

THE ADMINISTRATIVE STRUCTURE

Fascist Law and Liberty—"within the state"

THUS, SPEAKING EX CATHEDRA, MUSSOLINI DEFINED LIBERTY: "the only freedom that can seriously be considered—the freedom of the state, and of the individual within the state."

Obviously, a non-Fascist reader will need explanatory notes to the statement. "Freedom of the state" is plain enough, but "freedom of the individual within the state" is about as profoundly ambiguous a phrase as has ever been coined. Not that it is meaningless—far from it! But its real meaning has nothing to do with what a layman, equipped only with a democratic mind and knowledge of the English language, might conceive it to be. To such an observer, freedom of the individual connotes a state of affairs in which, as a rule, men are at liberty to act according to their individual fancies as long as they do not break specific laws of the community—provided, however, that there are certain privileges and activities of the individual (such as free speech, free assembly, a free press, or the right to trial by jury) upon which the community may not infringe at all, not

even by law. Since this interpretation includes already all the restrictions which the liberal would be willing to accept as possibly compatible with the term freedom, he cannot see any sense in the added words "within the state" of the Fascist definition. To discover its meaning he would have to approach it from Fascist premises. Only when we start out with the state as basic unit and relegate, in our analysis, the individual to his role as an "organic part" of this unit, can we possibly perceive how he may be called "free within the state." His is the freedom of the cell to fulfill its organic functions. The cell is free to do whatever it can want—but *it cannot want* anything not desired by the whole organism. As soon as we realize this—though we may have to turn a logical somersault for the purpose—Mussolini's definition does make sense. We have only to interpret it in connection with his preceding sentence: "Fascism is for the state—and for the individual *insofar as he coincides with the state.*" As far as in these words Fascism is "for him," the individual is free. He is free "within the Fascist state"—which phrase, as the entire state is organically conceived, can also be understood neither locally, nor legally, nor ideologically—only biologically.¹

¹ What makes this so difficult for us to comprehend is that again our terminology is inadequate. It is useless to discuss freedom of the individual, as we understand it, in a system *that does not recognize the individual as a basic social unit.* Essentially, the freedom of a social cell and that of a social unit are not comparable. They cannot be thought of in the same terms. Only our indiscriminate use of the *word* freedom, while mentally restricting its *meaning* to a conception which has no validity outside of the individualist

Actually Fascism—this will sound like heresy but is really the key to the whole problem—does not restrict the *freedom* of the individual at all. What it not only restricts but exterminates is his *individuality*. The difference between the limits of liberty as conceived by individualists and by collectivists is not one of degree but one of substance. The collectivist cannot understand how people can talk about a state as restricting the freedom of the individual—when it is so crystal clear, in his mind, that the idea of a free individual disconnected from the state is devoid of any even potential meaning. To him it does not make sense to talk about individual liberty—since individuals, in practice, are so evidently unable to pursue any other course of action than that of the community to which they belong. John Smith, human unit, consists of millions of protoplasmic cells. He could resolve to grant them any degree of individual liberty and it would not mean a thing—because they are essentially nothing but parts of John Smith and committed to share his fate as well as his actions for better or worse. They can refuse to do their part. In that case John gets sick and has to apply medical or surgical treatment, till the mutineers are either working again or cut loose from his body. But no amount of theory can make them susceptible of “individual freedom,” because their organic connection with the whole is such that they would be materially incapable of exercising it.

frame of mind, kept us from realizing what the collectivists mean by “liberty within the state.” It makes sense all right—only not the sense we are accustomed to.

Of course one might say that the democratic state, which in this view represents individualism, is also in speech and writing continually compared to a living organism. The difference is that—whether we believe it or not—*the collectivists take the comparison seriously*. The source of almost all our misunderstandings is our failure to realize that to them this metaphor is not a figure of speech but an exact picture of their own relation to their community. It may facilitate the acceptance of this psychological phenomenon to remember a few things about our own arguments with the non-Fascist variety of collectivists. What does the intelligent Communist invariably retort to the charge that Communism destroys liberty? That the average man in a modern community cannot be individually free *whatever* its political constitution; that the overwhelming majority have only the choice between accepting as their superior the socialist community of which they themselves are parts, or finance capital to which they are only objects of exploitation; that for the masses freedom today is only possible collectively—as freedom of the group into which the individuals voluntarily submerge themselves. *Mutatis mutandis*, the Fascist thesis is exactly the same. The Fascist admits of only two alternatives for the individual: he can either become an organic part of a disciplined but collectively free national community—or he can be duped into believing himself a participant in a scheme of popular sovereignty while in reality a few powerful groups and professional politicians are “playing him for a sucker.” To Fascists as well as Commu-

nists, individual freedom means nothing because they cannot conceive of a possibility of realizing it in practice in a healthy community. Their definition of democracy is "organized contrariness." A state in which liberty for the individual had actually materialized, is as inconceivable to them as an organism whose every cell, instead of functioning in concert with the others, could walk off in a manner and direction determined by its individual license. Obviously, such an organism could not live. Neither, in the opinion of the collectivists, could such a community.² They never think of the individual as restricted by the state, but they are constantly aware of the limitations inherent in the very conception of the individual. Human beings, as social cells, are free to do their part. They are free to act according to their personal judgment or desire in whatever the group inferentially, by not taking an active interest itself, refers to them. There, too, they can always act only as parts of the group and its interest must guide them—but they are to act on their own because the group prefers to get a particular kind of thing done by relying on the individual initiative of its components rather than on its own collective action. As soon as the group *does* take a hand

² That is why the Fascists have for every democracy either contempt as for a weakling, or open or concealed disbelief in the reality of its democratic nature. The latter attitude, for instance, was behind the reproachful skepticism with which the Germans used to greet official disclaimers of responsibility for the anti-Nazi polemics of the American press—it was quite impossible for them to believe that the government of the unquestionably powerful United States should be unable to control its own newspapers.

in any field, however, there can be no more freedom for the individual to take a different interest. His freedom is not restricted but becomes illusory by the very nature of things. A liberty of action for individuals regardless of the stand of the community is from the collectivist point of view a logical impossibility, a pipe dream that, in the language of Mussolini, "cannot seriously be considered."

Once we have digested this, we can hardly fail to see the "freedom of the individual within the state" in a new and convincing light. From here on the going is easier—because the same logic, which controls the moral principle of the Fascist individual-state relationship, will also enlighten us about what translates it into practice: *Fascist government*.

What is government? Traditionally it means the handling of state affairs—according to state principles. The democratic community, for example, is held to be established by its individual members for the purpose of benefiting them, principally by providing a protection of their interests which they could not effect singly. Danger threatens these individual interests from three possible sources: (a) from outside—to be dealt with by the state's armed forces and international policy (including tariffs, etc.); (b) from unsocial individuals within the group—to be dealt with by the body of the civil and criminal law; and (c) from the state itself, whose powers, although given to it "by consent of the governed," can so easily be used against them. This last menace led to the world-wide adoption of a principle

worked out while European absolutism reached its peak: the separation of powers. The idea is to keep the authority, which is delegated to the state for definite purposes, within definite bounds by making the state perform its business in three departments. An elective legislature translates the wishes of the individuals—the real masters of the state—into communal policy. An elective or appointive executive branch carries it out. And an elective or appointive judiciary acts as-controlling device—supervising the adherence of the second branch to the directions of the first, and often also of the first to the fundamental principles of the system, whether axiomatic or expressed in some sort of “basic law” or state constitution.

That a Fascist state could have no use for this type of structure is obvious. Since it is conceived as an indivisible unit, the dogmatic purpose of the separation of powers—to prevent the association from disfranchising its composing units—is meaningless. Neither could the principle be helpful in governmental practice. Fascist communal policy—the collective will—is determined by an a priori authority; a Fascist leader is the head of his government, not a branch of it. That disposes of one of the three departments. Judicial supervision of any governmental activity also becomes a dogmatic impossibility: observance of the leader-made law by inferior administrative agencies is enforced by Fascist discipline, and protection of the individual community member against state action is a democratic anachronism incompatible with the very foundation of Fascist doc-

trine. The judiciary, therefore, in the Fascist state found its functions reduced to virtual identity with those of the administrative branch: to enforce and effectuate, among the members of the community, the collective will as proclaimed from above. From an independent arm of state power, the courts turned into agencies of administration—and, with law-making removed into the metaphysical realm of leadership, Fascist government as a whole became a unified administrative structure with the function of insuring and regulating the compliance of individuals with the requirements of the collective interest.

The courts, ministries, commissions, agencies and other bureaus of officialdom together form the means employed to make Fascism a reality at home. Thus the governmental set-up exemplifies better than anything else what German and Italian political scientists called the "tripartite structure" of every aspect of a Fascist state: Leader, "will-bearer," and people. In every field the will of the higher organism is laid down by the Leader; followed by the people, and "borne" by a conducting organ. In politics that organ is the Party, in international conflict the army, in the "battles of bread and production" the respective economic institutions, and in everyday regulation of internal affairs the governmental machinery. Like the other "will-bearers," government is only a weapon in the hand of the collective body, to guard its interests and to assert its power in a particular field of action. As the Corporate State aims at economic welfare, the army at the effectuation

of international purposes, and the Party at the spiritual conformity of community members, so government aims at their conformity in fact.

Hand in hand with this re-orientation of the *concept* of government had to go a fundamental change in the standard according to which it is carried on. This standard—the precepts by which courts and administrative agencies are guided in the discharge of their duties—is “the law” of a community. Of course, no modern government could function without any such fixed set of rules to adhere to; and Fascist administrative agencies proceed by no means less according to law than those of a democracy. But—their law not only differs from ours in substance; it is a matter of entirely different import.

Individualist law, viewed as a whole, is a sum of restrictions which the people, by application of the majority principle, impose upon their freedom—restrictions which are themselves restricted and, if need be, supplemented by certain “*praeter-legal*” rights of the individuals, whether constitutionally guaranteed or implied from the essence of the democratic system. In Fascism the state is supreme and, as we have seen, swallows the freedom of its individual members by its very conceptions. Logically, therefore, *Fascist law* can only consist of restrictions which the community, through the mouth of its leader, imposes upon itself—and which in turn are always restricted and supplemented by the *Fascist* “higher law,” the communal interest. Under Fascism the individuals to whom the law is addressed are really not

the objects of its substance. The collectivist principle controls them much more completely and effectively than any law could. So the laws of a Fascist state are simply *rules by which the state declares itself willing to abide* in its governmental actions. And it is bound by them—until they are repealed, or conflict with the *state's* praeter-legal right, the collective will and interest, which is paramount and nullifies impeding rules even if the state itself has proclaimed them.

What this change in the conception of the law means for the citizenry is perfectly obvious. In the democratic community, the individual is subject to the law, which, however, is not allowed to infringe upon his specially protected rights. In other words, *the law signifies the worst that democratic communities can do to their single members*. In the Fascist state the relation is reversed. The individual is bound and restricted anyway, by virtue of the fact that he is a member of the collective body, to the behavior pattern required by the communal interest and its many synonyms, like "Fascist spirit," "sound popular feeling," and such. The law, in this relationship, marks the extent *beyond* which the community—always without prejudice to its all-overruling interest—has pledged itself not to enforce its claims: *in Fascism the significance of the law to the individual is that its observance is the LEAST the state will exact from him!*³ He

³ This is most strikingly illustrated by the different development, under the two systems, of the criminal law. In democratic countries its basic maxim has always been "nulla poena sine lege"—no punishment without previously enacted law to cover the crime. Over and above that, however, the individual always had a claim

will have to keep within the law as a matter of course; it marks his evident duty toward the state. But not his only one; for, just as in individualist law the *praeter-legal*—constitutional or “unalienably human”—right of the individual takes precedence over the letter of the law, so in Fascist law does the authoritatively determined collective purpose. If, in any practical instance, this purpose should require anything at variance with or even opposite to the law, the higher unit must nevertheless be served. The law, which is nothing but a standard of normalcy to regulate the universal service to the common interest, can of course not be allowed to work against this interest. If we may be permitted one more relapse into the Mussolinian: “the objective will of the

to the protection of those rights of his which were beyond the jurisdiction of the communal law—for example, to be properly tried by a jury—whether they were expressed by some authority with power to bind the law, or only inferred from the bases of democratic thinking. His freedom could in no other way be interfered with than as the law prescribed—and even then only if he could not successfully invoke any of his *praeter-legal* privileges. Under Fascism, where the criminal law, like any law, can have no other purpose than to protect the collective body, the logical basic maxim became “*nullum crimen sine poena*”—no crime which will not be punished, whether the law especially provides punishment or not. If the law does not so provide—if, as the legal phrase goes, there is a “gap in the law”—the collective interest which has been violated by the offense steps in and demands atonement, and there is no individual right which the offender could hold against it. Every criminal running afoul of an express prohibition will be punished, but the rights of the state do not end with punishing *lawbreakers*. The community is entitled to whatever may seem necessary to the protection of its *interest*—of which observance of the law, as it stands, is only one of the more elementary requirements.

personality of a higher order" makes the law, supplements it, and if any conflict should occur, supersedes it.

Practice, in every Fascist country, soon underlined the distinction. They all found it feasible at an early stage to separate the enforcement of the higher law from enforcement of the regular everyday law over which the other was to take precedence. The result was the emergence of the O.V.R.A. in Italy and of the Gestapo in Germany⁴—organizations with the distinct purpose of uncovering and handling such violations of state interest as are *not* violations of ordinary law, and therefore not under the jurisdiction of the regular agencies of law enforcement. Democratic observers usually wax indignant at the fact that these institutions are so vastly more powerful than any ordinary democratic secret police. Their criticism rests on a complete misapprehension. The democratic secret police is simply a secretly operating branch of the regular police force—with no other task than that of the main body: to enforce the law. But the Fascist political police is an institution expressly designed to enforce that part of the collective interest which is *not* law—and with which, consequently, the regular police has nothing to do. That there is much overlapping—for example, that cases taken up by the political police may also constitute violations of ordi-

⁴ In Russia the early revision of the entire Penal Law on a basis of "social defense" served to obscure not only the essential distinction between the definite norms of everyday administration and the blanket provisions guarding the proletarian revolution as such—but also the specific function of the OGPU, so that it came to appear as something like a super-police.

nary law and, if so, will often be disposed of as such—must not obscure the fact that essentially there are two entirely different realms of action. One is the enforcement of the law, in cases where there is no praeter-legal communal interest involved, with the procedure of police investigation, prosecution, trial, and sentence, if guilty, to the punishment prescribed by law. The other field is the enforcement of vital communal interests, regardless of what the position of the law may be in a particular instance. There the case, from beginning to end, is in the hands of the political agency; since the idea is to protect the state, little thought is given to protection of the individuals involved—and their treatment is determined not by any fixed standard, legal or otherwise, but by the needs of the situation.⁵ The procedure, as well as the administrative purpose behind it, is entirely in a class by itself. Naturally it does not measure up to the procedural requirements with which democracy seeks to make the citizen safe from oppressive measures—for the simple reason that the process serves a totally different purpose. As the snake-bite victim cares little, in cauterizing his wound, if he kills thousands of healthy cells along with the poisoned ones, so the imperiled Fascist state is not concerned with the safety of its citizens, if its own vital interests are at stake. The Fascist community

⁵ That considerations of prophylaxis have in most cases led to similar solutions—the concentration camp in Germany, the confino in Italy, the deportation to Arkhangelsk and Siberia in the U.S.S.R.—does not alter the fact that on principle this type of agency is bound by no rule whatever, and free to act entirely as it deems expedient in a given situation.

is interested only in its own safety. This view, which sounds extremely tyrannical to us, sounds entirely normal to people with a collectivist mentality. We, noticing many instances of state disregard for the legality of a situation, fell into the habit of talking about the "lawless despotism" of the collectivist countries. To Fascists, however, these are simply cases of safeguarding a higher interest at the cost of a lower one. They, in turn, speak with contempt of democratic judicial procedure, where an individual, by exploiting his "legal rights," may escape punishment, though he has done irreparable damage to the community. For a state to permit its law to become a possible accessory of crime, is in Fascist eyes the height of "lawlessness"—while closing legal gaps with communal policy is only a logical step in making the legal system serve its practical purpose.

Moreover, the interest of the Fascist state not only supplements and, if necessary, supersedes its law—it must even rule the law where it prevails. This, too, is nothing but a reversal of democratic practice. Every lawyer can see daily how our law, even where no constitutional privileges of the individual are involved, is filled to the brim with individualism. If possible, for instance, our courts will interpret a private contract of doubtful legality so as to let it become effective. Why? Because it is felt that by making a promise each party has created the substance of a legal obligation even though a lack of formal requirements should make it invalid under the circumstances—in other words, that a contract between individuals represents a kind of indi-

vidual-made law and is not *essentially* different from our law as a whole. And not only our courts incline to this view—we ourselves think always of the law as the manifest warrant of our sovereign rights rather than as the demarcation of our organic functions. Again, we are so engrossed in our notion, that even serious legal thinkers fail to recognize in it a somewhat naïve way of considering our individual humanity supreme over the universe. Again, the Fascists have to show us how a legal system can work the other way around: in *their* Weltanschauung the law—created by the state and construed as a sum of restrictions imposed, for practical reasons, by the state itself on its inherent power—must in every instance and in every aspect of its application *serve the state*. The “objective will” that makes it law must also rule its operation. We have seen that if Fascist law should ever tend to contradict Fascist authority, there is neither cause nor need to wait for formal amendment: the law has legal force only insofar as it expresses the communal will. And if, on the other hand, customary interpretation should vary from the legal purpose, there is no need to mark its overruling: it is equally fundamental that law can only be *applied* in the sense willed by the higher unit.

Thus when German judges adjudicate today “in National Socialist spirit,” to the extent of twisting the letter of existing precepts, this is no mere subservience to a political upheaval but an earnest and sincere fulfillment of judicial duty as it is now conceived. In Italy, a practically-minded people brought about this change in ad-

ministrative and judicial practice without much ado. In Germany, where pre-Fascist legal ideas had penetrated deeply into the official mentality, and where dogmatic issues had always been taken much more seriously than elsewhere, the change took place only with a good deal of theoretical commotion. But it did take place—and the vast majority of the highly conscientious and professionally proud German civil servants adjusted themselves to the new doctrine with surprising ease. Which proves not only that it must have appealed to some emotional chord, but also that it cannot have struck them as so “unjust” and arbitrary as it strikes us. As a matter of fact, what we call “misapplying the law,” to the Fascist simply means applying it in accordance with the principles that made it law. As a great German jurist put it: “the will of the state is the soul of the law.” The will of the state is incontrovertibly expressed by its leadership—and any opposing legal concept would be “dead,” a scrap of paper bereft of the energy that transformed it into an active force.

The main objection voiced by democratic critics against this way of legal thinking is that it contravenes our idea of the citizens’ “equality before law.” This principle, which under democracy has stood firm for centuries in the face of every class and social differentiation, is a moral postulate very dear to the liberal heart. We are pleased to think that it gives us “absolute justice”—though in fact, of course, it is nothing but the subjective justice of a mass of democratic individuals. Later, in considering the difference between the demo-

cratic and the Fascist idea of science, we shall see how, philosophically, the very basis of all individualism tends to vitiate *any* absolute concept: by placing all values—truth, beauty, happiness, justice—on the subjective plane of personal reaction rather than on a pedestal of objectivity. And yet we insist on pursuing absolute values, especially absolute justice. We cherish it as an ideal—although we know perfectly well that even in theory it can never be anything but the expression of what a particular group of human beings feels to be “right” at a particular time. Now this is exactly what the Fascists maintain also. But they refuse to pursue even as an ideal the illusion of a justice independent from the group administering it. They admit frankly that their law cannot be “absolutely” just. Its justice is avowedly a subjective justice based upon the communal interest. From the point of view of the individuals, of course, this means that the inevitably unequal importance to the community of its various members will put some into a more favorable legal position than others. We, considering the individuals as basic units, feel that this negates equality before law. Fascists, however, are unable to separate law from communal function—from their purely communal point of view the legal discrimination against a worthless community member is a necessary corrective to make for real equality before law instead of for an individualistically distorted one.

There is no better illustration of this difference in outlook than the aftermath of the German Reichstag fire trial. In Germany the fact that Communists—avowed

enemies of the state—could be acquitted of treason (which, after all, is nothing but applied enmity to the state!) solely because they were not found guilty of specific acts charged in the indictment, called forth such a storm of popular indignation that this condition had to be rectified at once by creating the “People’s Court” as a tribunal for the defense of the state not hamstrung by such individualistic technicalities. It has been charged that the protests against the Reichstag fire verdict were manufactured by the Nazis. This is perfectly true, but does it mean anything? If by “Nazis” is meant the National Socialist Party—it was its essential function to express and stir the reactions which leadership proclaimed to be those of the collective unit. Furthermore, if it was not clear at that time that one cannot draw a line between “German” and “Nazi” viewpoints, it should be clear now; and, as if to prove that, the People’s Court was then and is now accepted throughout Germany as something entirely normal and definitely in line with a desirable administration of justice. There were voices against its severity—to about the same extent that Americans will protest against their courts and law whenever a crooked financier or a big shot racketeer slips through some kind of legal loop-hole. In both cases the prevailing system is criticized for abuses, but nevertheless felt, by a vast majority of the people in either country, to stand for justice as they want it handled.

Our other objection to the Fascist view is that it destroys the “certainty” which we consider the main characteristic of “good” law: that the individual, at any time,

can know exactly where he stands.⁶ That argument does not impress the Fascist either. First, he cannot value the legal security of the single individual highly enough to let it take precedence, on principle, over the security of the state. Second—and this is the important point—since the individual is an “integral” part of the community, he is *presumed to know*, to feel, to participate in the collective will. The *individual Fascist is not supposed to have a different will from that of the community*. For that reason every deviation, whether covered by a legal text or not, can be held against him. This is the final and most consistent conclusion from the “organic conception of the state”—and it is the basis of the Fascists’ entire “lawlessness.” We feel they are putting the individual at the mercy of an arbitrary despotism. And they feel they are freeing the group from individualist disruption. In their view, *our* law—static, bound to the past, apt to lag behind changes in popular sentiment—would arbitrarily impede the flow of collective consciousness. They will deny indignantly that justice might better be served by democratic law. To men who do believe in their essential molecularity, the “dynamic” Fascist law is as “just”—that is, as expressive of their personal feelings about right and wrong—as our “certain” law is to us. Again, law or no law, the basic issue is purely a choice in values between the state and the individuals composing it.

⁶ Which, by the way, is a rather weak point to be made by Anglo-Americans, whose Common Law has so often been assailed on the very grounds of its comparative uncertainty!

Only after such a complete re-adjustment of terminology as we have now outlined in this chapter, is it possible really to consider the crucial question of Fascist government: *how much* of the "lawless despotism," of the undesirable features familiar from recent German and Italian history, *is inherent in Fascism*—and how much is only accidental, or determined by not generally Fascist but specifically national traits of those countries? (What makes the question crucial, of course, is that the answer to it also implies how much truth can *possibly* be attributed to the emphatic disavowals by Fascist propaganda in non-Fascist countries—"here it would be different," etc.) We know that in any Fascism two elements must be accepted as a priori: the unit and its authority. That the Fascist individual is, and is nothing but, an integrated part of a given collective body, to be thought of neither as an independent entity nor as part of any different group within or outside of that body; and that the will of the unit is determined and pronounced by a given source and in no other way—*these are given facts* which, in Fascist eyes, need no justification and are not open to questioning. And before embarking on any dialectic or analytical crusades *we must realize that there is no point in questioning these facts*—that they represent irrational preconceptions, beyond proof or argument. In our mind the communal relationship stands for one thing, in the Fascist mind for another; both conceptions are group-psychological axioms unsusceptible of effective rationalization. But if we accept the Fascist concept as basis of our investigation, and

try to interpret problems of the day in Fascist terms instead of in the democratic terms to which we are accustomed, those axioms will not only reveal the marks that distinguish a Fascist community—they will yield principles from which no Fascist community can depart.

The collectivist conception and application of law is the first such generality. It may not be expressly proclaimed, it may even be officially denied (although a Fascist government, authoritative on principle, is unlikely to pretend to be controlled by individualist norms). But in a really Fascist state—that is to say, in a state based on a genuine, not a forced or imaginary subordination of individual to group interests—the Fascist concept of law is bound to break through any camouflage. To whatever rules the system may promise to defer, a member of a Fascist community must always expect the communal spirit, will, and interest, in the form proclaimed by the a priori authority, to take precedence over any fixed standard. This, as has been pointed out before, does not affect the equal applicability of the law, as Fascism conceives it, to every single citizen. In fact, the citizen who is a real Fascist will not even notice any “outside” influence upon the law—his personality will be so integrated into the collective consciousness, that no law will fit the latter without also expressing his own wishes and ideas. Only individuals who are not thus mentally *gleichgeschaltet*—cells who refuse to do their part—will have no “objective” law to protect them in their non-conformity. The state will not maintain for them a legal haven in which Fascist purposes, con-

ceptions, ideology and Weltanschauung do not prevail.

In legal routine, as has been shown by German and Italian experience, there will be little change. Where formerly a lawyer tried to convince a judge that his client's prayer ought to be granted for reasons of law, he will now try to convince him that it ought to be granted because of national interest, or Fascist principles, as the case may be. Chances in litigation will remain as predictable as the turn of a roulette wheel—just as was the case under democracy. As a whole, the mills of the law will grind in pretty much the same fashion—except where the fundamental issue plays a part: where individual interests are really pitted against collective interests. Even in such cases the difference in practice will not always be one of eventual outcome. If a democratic community wants to infringe upon individual privileges, and wants to do it badly enough, it does not lack ways to achieve its objective. Nor, if it is a real majority objective, is that something to find fault with even according to the strictest individualist doctrine. What distinguishes the Fascist method, is the purpose and intent of the procedure. Democratic communities wishing to enforce their will against obstructing individual rights, can be compelled to establish—in objective tests specifically designed to prevent the instruments from usurping original power—their intentions as the product of orderly process by majority rule. Fascist authority, on the other hand, proclaims its will—and obstructing rights are *conceptually* removed. It does not matter whether they are claimed by majorities, minorities, or

single individuals. If, in any yet-to-be-created Fascist state, the leadership should make a practice of submitting to court decisions as does a democratic government, even that would not mean a recognition of inherent rights of the individuals (theirs because they are conceived as the group's masters). It could only be a governmental bounty, freely retractable. Reduced to simplest terms, it is the practical effect of the Fascist legal outlook upon the average individual, that *in no conceivable Fascist structure can a citizen ever COUNT on any of his personal interests to carry weight against communal purpose*. It is the *formal* security of the democratic legal order which Fascists will never know, because with them, law—the rule under which government works—is not, as in democratic doctrine, a means of holding the state to its function of serving the people; *Fascist law is a means of regulating the people's function of serving the state*.

In considering the need for terminological adjustment, we have already found indications of how this re-orientation will affect the various possible points of issue between state and citizens. The structural principle of democracy is individual freedom. It is to be preserved for the people, unless its surrender should be necessary for the specific purposes for which they entered into the communal association. Under Fascism, we have seen that individual freedom is conceptually qualified by addition of the words "within the state," and we have also seen what "liberty within the state" means. Thus, with regard to all kinds of "personal rights," questions about

the possibility of variations of Fascist practice can unhesitatingly be answered in the negative. In *any* Fascist state, all "civil liberties"—such as freedom of speech, of the press, of peaceful assembly, the right to strike, to be tried by a jury, to be secure from unreasonable searches and seizures—*can* hold good only "within the state," that is to say, as long as they are found in accord with the authoritatively proclaimed collective interest. (This would apply to the humane Fascist states heralded by Lawrence Dennis and Oswald Mosley as well as to Germany and Italy.) And what goes for big rights, goes equally for little rights: a Fascist government might uphold acts which are apparently most un-Fascist if they happen to be in line with its own immediate intentions,⁷ but no right will ever be so inalienable nor so insignificant that it will not be summarily withdrawn if Fascist leadership should deem its exercise potentially detrimental.⁸ As a rule, the amount of leeway granted

⁷ For example: it will surprise many readers to find the *right to strike* included amongst the conceivable instances of "liberty within the state"—it being the general impression that abolition, once and for all, of this particular right of labor is of the essence of Fascism. It may be interesting to note, therefore, that in 1925—*after* the establishment of the totalitarian state!—Mussolini's Workers' Syndicates called a strike in the metal industry, for which a most earnest distinction from ordinary strikes was claimed by the Fascist Grand Council, namely, that it had been called for "definite objectives." The sole objective, of course, was to whip an obstreperous industry into line at a time when Italy was not, as yet, so "fascized" as to make Big Business kow-tow to any hint from the Palazzo Venezia.

⁸ It is at this point that the Fascists will argue that democracy, in actual practice, also often suspends fundamental liberties. The difference, as pointed out in our first chapter, is not that the Fas-

by the state to individual choice and initiative will vary in proportion to the security and prosperity of a Fascist country. National stress and peril will always require a stricter discipline than prevailing normalcy. But what rights, at one time or other, the state will extend or curtail, can never be told in advance—because that depends not on conditions only, but on personalities as well. An activity quite harmless in the average man (or in the opinion of one Fascist leader) might become a major threat if taken up by particular individuals (or in the realm of another Fascist leader). It is safe to say that as a consequence of the very structure of a Fascist state *no activity whatever can be considered wholly immune from governmental interference*. The zone of regimentation covers the most intimate fields—a person may be prevented from whistling in his own bathtub if he should happen to whistle the wrong tune. The elimination of the entire “private sphere,” the collectivization of life, through and through, as a matter of principle, makes the existence of anything, which a man might *do under any circumstances*, dogmatically impossible.

In one sphere the effects of Fascist rule gave rise to much wonder and dissension: *freedom of religion*. The wonder was due to the fact—apparent at an early stage—that the Fascists have an innate sympathy for the anti-materialist and anti-individualist tendencies to be found in every religious movement. The Nazis, for instance, cist protestations of emergency are always hypocritical (although they often are, of course) but that Fascism has *built a system* on methods which democracy, on principle, strives to avoid.

have always been inclined to consider themselves defenders of the faith, and are quite indignant at the failure of the Christian churches to be properly grateful for their help against the "common enemy": Bolshevik atheism. On paper, furthermore, all our present Fascist governments approve strongly of rendering unto God the things which are God's, as long as people render unto Caesar the things that are Caesar's. In Italy, where the régime got along with the Church, as well as in Germany, where it did not, the official attitude has always been that restrictive policies were aimed only at ecclesiastical interference in secular affairs, and by no means at religious freedom as such.

However, a somewhat closer inspection of the issues involved will reveal that this attitude, which may be quite sincere, is nevertheless not quite realistic. One can ignore the sporadic outbursts of German neo-paganism. Its importance is generally overestimated because of its relative strength among Hitler's personal praetorian guard; it is tolerated, paradoxically, in the name of the very freedom which its spread is said to endanger; and, at any rate, it only wants to set up a new religion of its own, and has been up to now comparatively tolerant of other creeds. What matters is that the above-quoted official Fascist attitude is illogical and contradictory in itself. For as soon as Man's relation to his Creator oversteps the bounds of individual piety to become the common faith of a group, it invades the Fascist state's monopoly on collective consciousness. The Fascists disavow, quite honestly, every intention of coming between

an individual—or even a number of individuals—and the Deity. On the strength of that, they claim to uphold religious freedom. But religion is more than the fear of God on the part of unrelated individuals: it is a common bond between men of the same faith. And this common bond cannot but prove an ever-disturbing influence in the Fascist state. Fascism does not object to the *allegiance* which an individual gives to any Divine Being he may choose. Fascism does believe in the freedom of men to worship Jesus Christ, Mohammed, or Huitzilopochtli. What it objects to, is that religious communities, by creating in their members a sense of solidarity as worshippers of a common God, destroy the exclusiveness of their sense of solidarity as citizens of a common state. To prevent—entirely without anti-religious malice—this infraction of fundamentals of the secular community, Fascism will always have to be suspicious not only of political, educational or charitable activities on the part of any creed, but also of its every attempt to build among its adherents the common consciousness which *is* religion. There are only two ways to make a religious community really fit into the Fascist scheme: either as a state church (which was the aim of the National Socialist policies responsible for today's famous disputes) or as a monopolistic or all but monopolistic denomination (like Roman Catholicism in Italy). A church of either kind could conform to basic Fascist concepts. But no other one can possibly avoid implying an anathema to Fascism: the existence of a self-conscious collective body neither coinciding with the Fascist state nor developed

within its framework. Every other church, or sect, or private religious group, will always constitute a threat, not to trifling political objectives, but to the most vital concern of Fascism—the unity of the nation. Thus, a Fascist state's professed religious tolerance will always have to be subject to qualifications—the more stringent in that they are not arbitrary but dogmatically essential. The sincerity of official protestations of respect for it need not be questioned—but, as a matter of policy, logic seems to place religious worship under Fascism on the same level with all other human activity: free insofar as it coincides with the state.

Fascism makes freedom, in our sense of absolute liberty of individual action, disappear as a conception. It substitutes for it a collective freedom, with the citizen free to fulfill his functions, to pursue the path cut out for him by a superior will. What this principle of communal organization—which the Fascists call “liberty within the state”—would connote in practice to the individualist mind, is expressed by a perfectly good word in our democratic vocabulary: “conscription.” From the point of view of the single human being, that word describes the essence of a kind of relationship where men are drafted into the service of the state when- and wherever common interests should need promotion. Conscription as a principle of social organization is the individualist translation of “liberty within the state.”

As a state measure, conscription has a definitely collectivist character. It is no accident that the field we think of primarily in connection with the term, is the military

one—of necessity dominated by collectivist notions. An army is a concept inevitably absorbing the individuals who make it up; it is the very prototype of collectivism—one organization which, as such, *cannot* be construed in individualist terms. And an army's idea of what it is fighting *for*, is also likely to be the abstract concept of its nation rather than the majority-ruled sum of the non-combatant citizens. And yet, in no major democratic country has even military conscription been accepted wholly and with all its psychological implications. Britain and America have stood by voluntary enlistment, except in war-time. In France conscription was introduced in the fighting days of the First Republic, and has since been abolished repeatedly, only to be re-established again and again under pressure of international affairs. Today it is accepted by the average Frenchman as a most unwelcome necessity; as a surrender of rights by the individual for his own good, forced by adverse circumstances, and not without lodging a most emphatic protest on principle. In none of the three democracies did compulsory military service ever occur to the population as a natural expression of their being members of the state—as not a duty but a sacred *right* of citizenship.

For Fascism, however, to employ universal conscription for the maintenance of its armed forces was a matter of course. Nothing short of that could have satisfied either its basic psychology or its structural logic. This is so, quite irrespective of the method's actual military value—which, in fact, is very questionable. In the

opinion of most experts, future belligerents will do best to rely on (a) air, motorized or other technical corps which are necessarily restricted in numbers, and (b) on comparatively small and therefore highly mobile units of picked and specially trained men. From this point of view, mass armies as used in the World War could at best be cannon fodder—at worst, however, they could seriously impede the mobility which is now considered essential. For example, when Hitler came to power, he inherited not a conscript army, like Mussolini, but the Reichswehr of the German Republic, generally regarded as a superbly effective fighting force, and but for its lack of modern arms as a match for any Western or Central European army. It seems to be agreed among today's leading military theorists that an increase of this nucleus of one hundred thousand men, to about half a million professional soldiers with adequate equipment, would have made a force incomparably superior, from a purely military point of view, to the present German army of one million three hundred thousand two-year conscripts—which has to be constantly trained all over again and which, after discharge, cannot possibly remain in the physical and technical trim required of first-class modern soldiers. And yet Hitler, advised by what is believed to be the professionally ablest General Staff in the world, took the very first opportunity to place Germany's armed forces on a basis of short-term compulsory military service. His decision cannot have been due to considerations of national independence, because a large professional army would have been as

much a flouting of the Versailles Treaty, and as unmistakable an assertion of Germany's regained Wehrhoheit, as the conscript one. There was no conceivable reason for Hitler's choice except the Fascist principle of communal organization: the "liberty-within-the-state" idea that the collective military freedom should be shared by every member of the community.⁹

Of course it is common knowledge that the German people have always had a sentimental weakness for conscription. They loved it under the Emperors and they missed it under the Republic. But to attribute Hitler's act to this nation-wide sentiment would be to mistake just another symptom for the cause—as though one attributed that sentimental weakness itself to the justification so frequently put forward by German parents, that "it does the boys such a lot of good." Certainly it does, from their point of view—but argument, popular feeling, and governmental policy all express and substantiate the same thing: the consciousness of the "organic relationship," the existing mentality on which the whole Fascist system is founded. Economic advantages, too—visions of unemployment statistics improving rap-

⁹ The effacement of our notion that the function of an army is the defense of "the folks back home," became most obvious in the new German Defense Act's failure to set even an age limit to liability to military conscription! This omission—hailed by Nazi spokesmen for the quite correct reason that it "would have appeared unbearable to the individualistic thought of the past"—shows more clearly than anything else the difference between the concept of sovereign individuals taking upon themselves a clearly defined obligation, and that of "parts in essence" being, in the nature of things, at the disposal of the whole.

idly with the absorption of entire classes—are something which must have pleased the German government enormously. And, by the way, Hitler's more recent decision to extend the service period from one to two years—motivated by a very unreal Russian threat—may well, in fact, have been caused by a simple aversion to letting the number of jobless swell again at an economically critical moment. But that was an administrative measure, not a fundamental change like the restoration of the service as such. As far as the latter is concerned, no economic consideration could have made Hitler exchange a highly effective military establishment for a possibly less effective one, if the change had not also been urgently required as a matter of National Socialist principle: because of the dogmatic need to put in place of the professional army—instrument to defend the civilian population—the “nation in arms,” the militarized community whose every single individual stands ready for what may be required from him in preservation of the higher unit.

Even more than in the military realm—where, after all, conscription had been more or less familiar—the reversal of principle came to light in fields where freedom of individual action had always been proclaimed as fundamentally indispensable to the progress of civilization: labor, chiefly, and the arts and sciences.

As far as labor is concerned, the Marxist idea of Fascism as a capitalist anti-labor plot has unfortunately created a tremendous confusion, which for years now has made any rational discussion of the entire complex

of questions well-nigh impossible. To get anything like a clear view, it is necessary to distinguish strictly between three entirely separate aspects of Fascism's relation to labor: first, the Fascist attitude toward labor as an economic factor; second, the Fascist attitude toward labor as a political element; third, the Fascist attitude toward labor as an object of administration. The first and second problems we have considered in the preceding chapter, in connection with the principles of a Fascist economy. We have seen how Fascism tries to fit labor into a comprehensive scheme of national economic organization. Seeking to determine the actual economic effects of this process upon labor's interests we have come to the conclusion that as a matter of actual result, under present conditions, Fascism will probably depress real wages; that as a matter of economic structure every Fascist state will insist on labor's thorough organization and on its representative equality with industry; and that as a matter of economic outlook Fascism is neither pro- nor anti-labor, but that its economic policies, variable to the extent of possibly imperiling the system's capitalist base, will always be determined solely by national interests—which method, of course, puts a heavy premium upon the ability of any group to tie its private economic interest to the national welfare. The second problem—the Fascist attitude toward labor's political representation—we have found to be a most controversial subject and full of surprises; nevertheless we did reach the conclusion that politically no less than economically the theory of an anti-labor bias *as a social*

principle of Fascism appeared untenable on the premises of this investigation.¹⁰ What we did find is that Fascism—in comparison with democracy—works to *enhance labor's importance in the social scheme*, and to *minimize the economic importance of the rewards of labor*. Keeping this in mind, we shall realize the point of what otherwise can hardly fail to lead to the gravest misconceptions: the National Socialist *conscriptio*n of labor.

Fascist Germany and, to a lesser degree, Italy have always prided themselves on their establishment of the citizen's "right to work." In democratic countries this phrase is a somewhat shop-worn political slogan. In Italy, too, its significance was always largely academic. Industrial unemployment there was negligible even during the depression, and agricultural unemployment traditionally took care of itself. The economic crisis in Italy hit rural and non-industrial urban proletarian masses in a way to which, for centuries, they had been thoroughly accustomed. The acute problem was not to give work to men whom overdeveloped industry in a slump had cast adrift, but to nurse an incomplete industrialization along through a time of failing business.

¹⁰ These premises, it may be well to recall at this point, we did not choose at random. They follow inevitably from the decision to accept as genuine, regardless of its unfamiliarity, the psychology on which the two known instances of Fascism have managed to thrive—a psychology reported and confirmed by most of our competent and disinterested observers, the course of which was again and again borne out by events, while all predictions based upon attempts to fit Fascism to our own psychology have been signal failures.

Since so many unemployed had never worked steadily anyway, there was no urgent need to provide more jobs than were readily available. Just as in the military field, therefore, the question of principle can only be investigated in Germany, where circumstances favored action—an action which, once it was taken at all, had to assume specifically Fascist forms.

Re-employment, the most important practical campaign promise of the National Socialists, remained a main concern of their régime. From the start, they worked through expansion and intensification of the existing, Bruening-created “voluntary labor service.” While up to 1933 it had been something like the American CCC, under Hitler this institution—at first without a change in form and spirit, but merely by extension of its applicability—quickly became similar to our PWA, CWA, WPA: a public works organization available for state-wide and local projects, and big enough to absorb a really substantial portion of the unemployed. Abroad even this original labor service was often assailed as “forced labor.” Actually, its sole coercive element—dropping men who would not take a labor service job, from the relief rolls—is an essential feature of any public works program, democratic as well as Fascist. It is an elementary rule that, once a community decides to handle its unemployment problem by means of public works instead of with a dole, the individual jobless can no longer choose the dole. As a matter of cold fact, the individualist resistance to “forced labor”—which

made sense at times when work was plentiful and labor worth more than it could possibly be "forced" to accept—today in most cases simply tends to uphold the individual right to starve. Coming from Communists, whose entire political doctrine is based upon the conscription of individual labor for communal needs, the denunciation of coercive methods seems to be nothing short of hypocritical. Raised by liberal trade unionists, it is honest but silly; no state can possibly afford, in the long run, to apply to relief work standards of normal employment. The suspicion that the Nazis aimed at ousting men from well-paid jobs in order to force them to work for a trifle in labor camps, can be said today to be largely discounted. All reports agree that the labor corps were recruited exclusively from the ranks of the previously unemployed. And this seems substantiated by the fact elaborated on in our previous chapter, that the Hitler government used the strongest possible measures to prevent discharges of even the smallest number of workers. Whatever element of force was present in the labor service of 1933, really appears to be misleading. In its initial form this institution, like any democratic public works set-up, was nothing but the equivalent of a dole—a governmental method of taking care of the unemployed.

Soon, however, this method proved unsatisfactory to National Socialist ideology. Official acknowledgment of a duty of the state to look after its economically disabled citizens would inevitably undermine the self-sacri-

ficial spirit of the people and would tend to make the state again a plaything of economic pressure groups like the old democracy. Of course, as a matter of actual policy, the German Fascist government recognized the necessity not only of feeding the unemployed, but of giving them a sense of security. The only thing to be avoided was the belief of the people that a governmental pledge of help was a basis of individual *rights* against the state. It was as a way out of this dilemma that Hitler developed the idea of turning the *Recht auf Arbeit* into an *Arbeitspflicht*, *to fulfill the promise of a right by establishing a "duty to work."* Neither the original program of the Nazi Party, nor even its campaign propaganda contained any reference to this novel feature. It grew out of two acute needs, one practical, the other dogmatic. It was the logical solution of the extremely puzzling question of how to promise work, in a way that would set people's minds at rest, without letting them derive a claim from the promise. Viewed in this way, the plan is a stroke of genius. It is no less so because it appears now as the obvious way to handle the problem of large-scale unemployment relief in a truly Fascist manner. Hitler simply applied "liberty within the state" to the work, the right to which he had promised to establish. The people would get work—but not in the liberalist way of the state satisfying individual claims. They would get work as communal function, work as a general duty to the state to be performed by all individual citizens. Thus evolved the German "labor duty," the first example, in a capitalist economy, of an open and con-

sistent application of the conscriptionist principle in a non-military field.

To use this *compulsory labor service*—no longer affecting only the unemployed, but all members of the community—as a preparatory course for the National Socialist conscript army, was a rather obvious next step. It had the additional advantages of getting the new recruits of every class into good physical condition before they joined the colors, and of bringing youths of all social strata into an even more direct and intimate contact than the army provided. These were agreeable by-products—quite in line with Fascist ideas—and nothing more. A clear indication of that was the extension of *Arbeitspflicht* to girls, which is not yet generally enforced but has been announced and will no doubt be an accomplished fact before long. There the physical and social considerations could play no very important part, since the actual work to be got out of the girls is hardly considerable and, if anything, at odds with the Nazi principle of retiring women from active wage-earning. The reasons for the establishment of this feminine auxiliary of the labor service were purely practical and dogmatic: it provided an easy method of dealing with female unemployment (although so far little use has been made of it for that purpose) and it re-affirmed the principle that every member of the community is liable to be called into its service according to his capacity. Men for work and fighting, women for work only—their conscription for breeding purposes has been talked about but not yet approached in earnest. Unemployment was

the circumstance which set the machinery in motion—Fascist doctrine produced the results.¹¹

In other fields, in German and Italian practice, principles of conscription replaced principles of freedom without being incorporated in specific institutions. The Fascist press, for example, is not simply gagged like the papers of the eighteenth and nineteenth century police state, which could print what they pleased if the censor passed it. Nor is it state-monopolistic like the press of Communist Russia, which is owned, managed, and edited by the government itself. The Fascist press, in the last analysis, is a conscript press—made up of private newspapers whose function is not to disseminate information but to serve the community; “free within the state,” they are essentially nothing but *individual mouthpieces of the communal will and purpose*. The same is true of radio and of the movies—the other two main factors active in the building of contemporary public opinion. To art and literature the rule is less strictly applied, since, for the present, their effect upon the common welfare is not equally significant. Writers and artists are not yet drafted—they are merely made “draftable.” Though the state does not, as yet, directly call

¹¹ That Fascist Italy did not take up the labor service idea does not argue that it is not deeply rooted in Fascist ideology. As, under democracy, specific liberties will only become practical if the people want them, so Fascism will only practice conscription if the state wants it—in other words, if state interests promise to be served thereby. Conscription—our word for “liberty within the state”—expresses the trend of Fascist social organization, not an inflexible rule for Fascist practice in each or any particular field of human activity.

upon their services, their ancient freedom has been definitely enclosed within the collective consciousness—the principle has been repeatedly enunciated that their output is no more to reflect their individual state of mind or emotion but that of the communal body.

Application of this very principle created a strangely far-reaching stir in the world of *science*. Again, while the Italians had been content with the co-ordination required in actual practice, the dogmatic thoroughness of the Germans made them follow up the issue to a conclusion which aroused a heated antagonism: the elimination of “scientific objectivity.” And herein lies a tale about the individualist mind. For even the most convinced theoretical democrat, shades of the past had always made it difficult to condemn, as prohibitive to greatness, the influence exerted by rulers or ruling classes upon arts and letters. Those fields, under pressure of historical experience, had been recognized as subjective—and the taste of the times as the only possible standard. In the realm of science, however, “objective truth” had more and more become one of the dearest fetishes of mankind; and belief in the possibility of its pursuit remained unshattered even when our own materialist philosophers declared all knowledge contingent upon individual sense-experience—and so, inevitably, subjective. From Descartes to Einstein, science itself has moved steadily toward the negation of the absolute—and almost in proportion popular sentiment has insisted on an absolute science. So strongly did we feel ourselves as basic and decisive units, “cre-

ated equal," that we had no hesitation in calling "objective" our subjectivity as individuals. Now, on the basis of our own philosophy that nothing can be "absolutely objective," collectivism, eminently consistent, refused to accept the subjectivity of the individual as decisive, and insisted on substituting the subjectivity of *its* basic unit, the state. Whereupon liberals indignantly protested against the abandonment of an objectivity which, as a philosophic concept, they had never admitted! That Fascism must demand a state-centered science in place of our individual-centered one, is so obvious that it is hard to believe that anybody should have been really surprised by it. Scientific *methods* have nothing to do with this; their sole criterion is success, in either case. Fascists make airplanes with the help of physics and fertilizer with the help of chemistry just as we do. The point of view changes only the *goal of science*—which, of course, to some extent determines its means. While the purpose of our science is the discovery of individual truth, Fascist science aims at a collective one. Neither science, philosophically, can be objective—both are free; only ours is free from the point of view of the human being who is encouraged to search for the truth as he sees it, while Fascist science is free "within the state" and the single scientist, accordingly, is only free to search for the truth as the state sees it. The principle which, when the German doctrinaires announced it, called forth such an uproar in the scientific world, is nothing but the principle which guides Fascist practice in any field: that a Fascist individual can take no action

save as part of the whole, and none that would not at any time be available for the communal purpose.

In conclusion, the outlook for the individual in a Fascist state can be summarized as follows:

1. His personal freedom of action, as understood and practiced by democracy, will disappear as a conception. What, in any field, he may be allowed or able to do by himself, he can do only because it suits the state, and only insofar as it suits the state.

2. He will participate in the state's collective freedom—that is to say, he will be drafted for all activities which, in the opinion of the state's authority, will be of advantage to the communal body.

3. The rule according to which he will be treated by the state—and the only such rule, any pronouncement from whatever source notwithstanding—is the state's authoritatively proclaimed will; and the only standard by which men or their activities will be measured is the state's authoritatively proclaimed interest. While "equality before the law" as such will be fully maintained, a decisive shift will occur in the structure of the law itself: its basis is no more the democratic axiom of the essential equality of all citizens, but the a priori existence of the Fascist community to which its members stand in relations of varying importance.

Beyond that, all the excesses and iniquities commonly attributed to the Fascist system of government are unessential. They can be traced either to given circumstances or peculiarities of administration, or to specific national characteristics of a people, which Fascism

may emphasize without being in any way responsible for them. All such features, even those apparent in every known instance of Fascist rule, can be said to be avoidable. We may call them highly probable and even inevitable under certain conditions, but we weaken our own case by insisting that they will be present in any conceivable Fascist state or movement. It is entirely possible that somewhere Fascism may appear totally free from those particular faults; it is even possible that the existing Fascist nations may yet rid themselves of the one or the other. Shall we be forced then to consider them as no longer Fascist? If a totalitarian state should succeed in maintaining such rigid discipline as to exclude completely all Party graft or administrative brutality or minority persecution—should we have to hail it as an example of the kind of rule we approve of? In the opinion of the writer, the most serious mistake to be made in defense of democracy is the failure to distinguish clearly between traits that are essentially Fascist, and traits which, while often found under Fascism, are by no means necessary parts of the Fascist picture.

The first of such traits are those inherent not in Fascism but in a particular Fascist nation. Generally it can be said that Fascism will exaggerate nearly every distinctive quality of a people (except, of course, qualities inconsistent with Fascism as such). Germans, for example, have always been known to be thorough, dogmatic, and lacking in a sense of humor. And what were the main characteristics of the Nazi state? An orgy of

efficiency and organization, a terrifying dogmatization of life, and the cheerful but completely humorless spirit of the population. In Italy, the identical system of government was adopted by a naïve, uncomplicated and eminently practical people. And it excelled in an emphasis on simple principles, in theoretical short-cuts expressing contempt for dogmatic consistency, and in a marked preference for getting things done the easiest way, whether "correct" or not. Inevitably, this Fascist accentuation of national characteristics will affect unpleasant traits as well as pleasant or indifferent ones. Thus many national faults were noticed only after a totalitarian régime had made them prominent—and were credited to the new system, while their roots, in reality, were embedded in the respective popular psychology long before anybody ever thought of Fascism.

The outstanding example of such a development is the case of Hitler and the Jews. Since 1933, anti-Semitism has often been described as a Fascist characteristic—which is an altogether erroneous idea. In a religious sense, Fascism is anti-Semitic just as much as it is anti-Catholic or anti-Protestant—that is to say, it opposes the tendency of the Jewish faith as well as of any other to establish a separate group consciousness within the nation. In a racial sense, Fascism is anti-Semitic, if—and only if—its basic collective concept happens to be not purely nationally but racially determined; as is the case with National Socialism which, unlike Italian Fascism, does not embrace all citizens of Fascist mentality but

embraces Germans regardless of citizenship, provided only that they are of "Aryan" stock.¹²

The point is that the Nazi race bias is not, as has been suggested, an invention for publicity's sake. It is the normal emphasis which any German Fascism would have to place upon the rationalization of an *inherently German national characteristic*. Germans have been racial anti-Semites since time immemorial. Never, in German countries, was hatred of the Jews an affair of religion, as it was in France, or in medieval Spain or Italy. In all those countries baptism, in popular consciousness, eradicated the difference between Jew and Gentile after two generations at the most. In Germany it had no effect whatever, even before the Third Reich began snooping for non-Aryan grandmothers. Jews themselves, even the most completely assimilated ones, never found in German countries a completely natural feeling of solidarity with their fellow-countrymen; there was always a sense of "being different," which needed only a few favorable circumstances to develop into a deep mutual distrust.

This is not a phenomenon limited by German boundary lines. It is rampant in Austria, in the German-speaking parts of Czechoslovakia and Roumania, and in the

¹² A point may be made here which seems all too little realized as yet: it is quite useless to argue anthropologically that there is no such thing as an Aryan—because, as we have seen before, Fascist units are entities a priori. They are no more in need of scientific soundness than the famous maxim with which a Jew-baiting nineteenth century mayor of Vienna defended his non-Aryan associations: "I decide who is a Jew!"

formerly German-dominated Baltic countries. It did not spread in the Scandinavian countries because there were never any Jews to speak of there. Its development was arrested in Holland by the historical coincidence that after the expulsion of the Jews from Spain a previously practically Jew-less country deliberately invited a large influx of Jews, in an expectation of material gain which was richly rewarded. Even in Anglo-Saxon countries anti-Semitism has a racial tinge—nothing to be compared with the Germans' ever-consciousness of a decisive gap, but still an unmistakable bit of the "foreign body" notion. The most convincing example, however, is Switzerland—the German half of which is, and always has been, alive with a violent racial anti-Semitism, while French and Italian Swiss may accuse the Jews of having murdered Christ or of being usurers, but are otherwise not conscious of any important difference.

In Italy proper, such a difference was never felt. It may be due to the similarity of Jewish and Italian features and complexions (although in other cases that has not prevented racial strife, as between Jew and Arab). At any rate, Italian Jews may have been exposed to religious, economic, even to a historically contingent social animosity—but never to a racial one. Fascism, when it came to power, had neither need nor reason to conjure up something which had not been there before. On the contrary, it would have been an extremely dangerous precedent to demonstrate the fact that a gap *could* be made artificially into the dogmatically indivisible whole of the Fascist nation. Therefore, for twelve years, Italy

gave an exhibition of a totalitarian state without anti-Semitism; the roster of Jews important in the Mussolinian hierarchy is impressive and has often been read by others. At the time of this writing, a scare has been thrown into the public by the official Party organ, *Regime Fascista*, which published a call to Italian Jews for loyalty, in tones which could well be interpreted as indicating a swing toward anti-Semitism. In the opinion of the writer, this suspicion is unfounded. It seems improbable that Mussolini—who has never yet rejected any nominal Italian willing to come into the Fascist fold, not even the war-subjected Tyrolese and Istrians—would start such a thing now, even as a gesture to bind his new anti-Bolshevist alliance with the Nazis. It is more probable that, aware of the strong leanings of Jews all over the world toward either Liberalism or Socialism, both of which he abhors, he became suddenly suspicious of the sincerity of the professed Fascism of his own Italian Jews. It is most probable, however, that the call for loyalty was entirely sincere, that it was occasioned by the imminence of a close understanding with Germany—a country which, for obvious reasons, is anathema to all Jews—and was meant to remind them, in this special situation of conflicting allegiances, that they are required to be Fascists, and nothing but Fascists, and that it would mean failure in their professed loyalty as Fascists if they permitted any feeling whatever *as Jews* to come to the fore. It is very natural that Italian Jews were not overly enthusiastic at the prospect of having to devote their affection and fidelity to the friend-

ship with a nation that lost no chance to humiliate their name and persecute its Jewish citizens—and accordingly it is very natural for Regime Fascista to remind them sharply that their Fascist duty is not to make policies but to carry them out, and particularly, not to let another group feeling (treason in itself!) interfere with their performance of this duty. Again, as so often in Fascism, no explanation jibes so well with facts as the literal one.

In general, it seems to be reasonably well established by now that a Fascist régime will feature anti-Semitism only if anti-Semitism is also a pre-Fascist characteristic of the respective nation. If so, Fascism will quite probably exaggerate this characteristic into monstrous forms. Otherwise, however, it will be content with enforcing against Jews as against all others the totalitarian concept—which, of course, means the breaking up of the self-conscious community which Jews, under the influence of historical pressure, have formed and preserved in every part of the world for nineteen centuries.

The second type of allegedly essential but really accidental Fascist traits are those which Fascism practices but disclaims—the kind of thing which Fascists, when confronted with documentary evidence, blame upon “revolutionary excesses” or administrative negligence, while hotly denying that it has anything to do with the system. And strangely enough, in most cases it has nothing to do with the system—although, of course, it was always the Fascist revolution which provided the opportunity for the trouble to develop.

The principal example of such an unpleasant trait is the development of Party favoritism: Fascism by means of the Party structure re-admitting personal privilege by the back door after having fired it with aplomb through the front door. That after a Fascist revolution government positions of major or minor importance will go mostly to trusted members of the Party, is obvious—and not even in democratic eyes really reprehensible. In a newly-created Fascist state, however, the Party, unless invested with a great deal of power, could never fulfill its most essential functions, in fields which government is technically unable to control. There are so many occasions where only the single Party can really effectuate the superiority of the totalitarian state—all the cases where it has been said accusingly of German and Italian Fascists (and Russian Communists) that “qua Party they do it, and qua government they do nothing against it.” To be sure, such powers are not extended, like aristocratic prerogative, as privilege to be enjoyed free of charge, but as authority conferred for specific purposes. As we have seen before in discussing the Party as an institution, its dogmatic function is not to rule but to serve.¹³ Its purpose is the perpetuation of the disciplined energy and the self-abnegating idealism

¹³ Against this might be cited Hitler's words, in reference to the Party, “the state does not command us; we command the state!” However, it is quite clear that by state—in accord with common German usage—Hitler meant not the national concept but the governmental machinery; he simply wanted to express the obvious fact that administration is no more above the spiritual trend of Fascism than anything else.

on which Fascism is based—not the exaltation over others apt to follow upon the picking of political plums. It is meant to personify the virtues of the Fascist state, not its authority. Yet, as long as in *any* sense the Party constitutes a personification of the superior organism, it is virtually unavoidable that as “essence of the state” it will largely participate in the state’s power and glory. And unlike the state, the Party is not an abstraction but a group of men.

That the hatred, on which most of these men have fed for years and years, may run amuck in their new position; that non-membership in the Party may reduce a majority of the people to the mute fatalism of the slave who knows that there is no redress for his grievances; that the advantages of membership may in spite of purgings and supervision bring into the Party just the low-class opportunist type it should be free of—these are extremes which a very wise administration ought to be able to avoid. But not to feel themselves as victors would be wholly unnatural for men so carefully inoculated with the virus of fighting—and a victor obviously requires a vanquished. Thus arises—at least in the early stages after a Fascist seizure of power—a differentiation between the Fascist and the not-so-Fascist members of the community, which no amount of Party discipline could possibly check. And the law, natural arbiter of citizens, expressly disavows individual objectivity. It recognizes man only in his connection with the state—and, therefore, with the movement that has conquered the state. Justice—from the point of view of the single

individual—is no more blind. It is very definitely seeing, and in probing for the communal interest it looks at very definite things—such as that currently fashionable mark of distinction, a man's shirt. Irrespective of justice taking sides, the political upheaval itself will inevitably offer dozens of practical opportunities for a partisan of victory to express his superiority over the partisans of defeat—in importance, in material influence, and in cash.¹⁴

And still, the example of Italy has shown beyond question that, for instance, the more complete "fascization" of a people sometimes makes this new class differentiation decrease in volume. It seems to be a disease that may disappear with the cause—which cause is not Fascism but on the contrary incomplete Fascism, the continued existence of differences of political opinion within a people. Russia, after nineteen years of the strictest Party rule in history, now feels Communistic enough to restore equality before the law in the individualist sense. Even Germany, where Fascism is young and still rather unsettled, has already shown a distinct trend away from clothing the Party with extra-legal sanctity. It can hardly be doubted any more that the discrimination in favor of Party members which we object to *can* be largely eliminated. There is as little doubt that very seldom, in a Fascist state, *will* it be eliminated; certainly not until quite some time after the establish-

¹⁴ Which gave rise to an often-heard complaint among Fascist lawyers, that "half the people don't dare go to court any more, and the other half don't need to!"

ment of Fascist rule—and, human nature being what it is, probably not even then. But that is beside the point. What concerns us is that (regardless of present experience and future probability) *misuse of Party power is not such an essential trait of Fascism that its occurrence in a political system would warrant our diagnosing it as Fascist.*

Neither would such a diagnosis be warranted by the pièce de résistance of anti-Fascist propaganda: Fascist brutality. We know that both in Germany and in Italy the political revolution was accompanied by administrative excesses unequaled in any modern civilized country. From the castor-oil therapy invented by Mussolini's lieutenants to the beatings within an inch of the victim's life, which for some time were a regular feature in Hitler's concentration camps, arbitrary seizures and bodily maltreatment of prisoners characterized the known instances of Fascist rule. We also know, of course, that in this respect Italian experience was as child's play compared to the German one. We need only think of the outcry at the murder of Matteotti, a Socialist deputy who had publicly attacked the government, and then at the vast quiet which attended the authorized or unauthorized executions of several hundreds of former German political figures; or the fact that according to anti-Fascist computations the Italian Tribunal for the Defense of the State sentenced seven persons to death between 1927 and 1932—which number, during 1933 and 1934, approximately equaled the monthly mortality of a medium-sized German concentration camp. But although

this indicates that the measure of Fascist cruelty will largely depend on the measure of anti-Fascist resistance, there are certain things which make *some* of it appear highly probable in any case: first the fact that, in a movement which officially glorifies power by force, a good deal of praise will always fall upon plain ruthlessness; second, that such a movement will always and inevitably attract the bullies in a population—the men whose tastes for browbeating other people could find no satisfaction in the legalistic frame of democracy.

The story of German Fascism may make this clear. The core of the early National Socialist movement consisted of young men whose first contact with adult life had been war, who had stepped right out of school into an army fighting throughout in enemy country, mostly among culturally inferior “natives”—in Russia, in the Balkans, and particularly after the end of the World War proper with the various German bands of partisans in the Baltic countries, in Poland and Upper Silesia. They returned to an almost hostile Fatherland, were forcibly demilitarized, their ideals ridiculed by a war-tired majority, their soldierly pride—the only one they possessed—humiliated by others who were more adept at the required re-orientation to a life in peace. And all that time those youngsters had the definite feeling—and the future proved them right!—that *they*, and not the mad scramble for money or bread and butter, represented the real German spirit. When they won out after fourteen years of struggle, their accumulated hate and contempt for the “perverters of the German soul” could

hardly help exploding in violence. But what made this tendency, understandable in the original "Old Fighters," into a shocking tide were the thousands of others who had joined up not to save the nation but for the fun of fighting, or for gain or revenge. They constituted a majority to whom possession of complete power over former enemies only meant a chance to "show them."

Yet even in Germany there can be no doubt that violence has for some time considerably abated. Arrests are now made in an orderly fashion; the concentration camps have been cleared of the more outrageous sadists and begin to resemble American prison farms; even the Jews (although the drive toward their elimination from German life goes on with undiminished fervor) are practically secure from what the Nazis euphemistically termed "individual actions." Only to a limited extent are these developments due to the fact that all excesses are strongly discouraged from above. Chiefly responsible for them is the love of order and discipline which is inherent in the German national character: after the first outbursts had passed, Germans preferred an orderly procedure to the individual satisfaction of their grudges. In Italy, the Fascist movement had been less repressed, and was therefore less violent; when the seizure of power was accomplished after a struggle too short to have fomented real bitterness, it was comparatively easy for Mussolini to curb the dash of his followers and to replace their castor-oil raids with normal, quiet and efficient processes. There have been few complaints about administrative violence in Italy since 1924,

and the chances are that in a relatively short time there will be none at all from Germany. And the point is that this would *not* mean an essential change; it would simply mean that an external, unwelcome, and fundamentally insignificant feature had been successfully eliminated.

Anti-Fascists would do well to realize that all signs point to a future in which, from the point of view of outraged humanity, German Nazis will provide much less material for atrocity stories than, for example, democratic Americans—the inventors of lynching and the third degree. The peaceful serenity which greeted visitors to the 1936 German Olympics is of the utmost significance—for although this time we may still be able to discount the impression as manufactured, if repeated once or twice, it will stick. And in the case of Germany it will be repeated—because *atrocities are not inherent in Fascism; Fascism only exaggerates inherent national characteristics*. A rather shocking inference from this contention is that a potential American Fascism would be infinitely more vicious and unpleasant than any European one. Here the violence would be not the overflow of emotions repressed for years but a quite normal part of our Fascist administrative scheme. After all, we have managed to make lynchings, “hanging parties” at public executions, police brutality on a scale unequalled in other countries, into more or less regular parts of our democracy. We have developed a definite popular sentiment in favor of official sadism—as exemplified by our most successful type of gangster, leatherneck, and cowboy movies, the kind which glori-

fies the fist of authority smashing onto the civilian chin, and which it is no use denouncing as "un-American" because it is as American as ice cream soda. In this country—and that part of Sinclair Lewis's picture, frightening as it is, is terribly true—Fascist cruelty would not abate! If we ever get an American Fascism, authority will not be in the hands of the excitable but fundamentally light-hearted Italians, or of the stiff but methodical Germans. Here national discipline would be administered by the two-fisted, gun-toting, tarring-and-feathering brand, by a blend of the tough cop, the tough gangster, the tough cow puncher, and every other kind of tough—who would proclaim as No. 1 national virtue the ability to "take it," and who would consider it their prime duty to check up daily on the people's progress in that direction. Brutality, we have said before, is not necessarily a Fascist trait. Political unanimity, or rigid discipline, *can* hold it in check. In this country, however, one can only hope for the sake of the average citizen that no Fascism shall ever be put to that test.