CIVIL LIBERTIES IN THE IMMINENT HEREAFTER

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I. *The Populist Revolt.*

The populist revolt of the last decade will probably generate the key civil liberties issues of the next five decades.

Beginning with the sit-in challenge to Southern segregation during the late 1950's a torrent of grassroots rebellion has swept North America. The dispossessed have been organizing to challenge the rules and the rule-makers in every sector of society. Tenants have been challenging landlords. Welfare recipients have been challenging welfare administrators. Students have been challenging educators. Ratepayers have been challenging planners. Consumers have been challenging producers. The revolt has spread also to Canada. In a few short years, a host of new pressure groups has surfaced on the Canadian social landscape: The National Indian Brotherhood, The Provincial Unions of Indians, The National Black Coalition, The Black United Front of Nova Scotia, *Le Front de Libération du Québec, Le Mouvement de Libération du Taxi,* The Union of Unemployed Workers, The Workmens' Compensation Associates, Provincial Tenants Associations, The Just Society Movement, The Canadian Women's Coalition to Repeal the Abortion Laws, Pollution Probe, and so on. Indeed, a major study reported that within a few years, more than 200 new citizen groups had emerged in Canada.

The animating ideology of the revolt has been participatory democracy—the idea that all people should be able to participate in the decisions which affect them. This ideology, by itself, has created little difficulty. It represents, after all, the fulfilment of the very concept of democracy. What has created considerable difficulty, however, are the *tactics* of the populist revolt—confrontation politics. Confrontation tactics have embraced a wide variety of activities, for instance, sit-ins, wade-ins, pray-ins, freedom rides, seizing and occupying public and private property, conducting

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mass demonstrations and economic boycotts, shouting obscenities at public meetings, blocking and obstructing buildings and highways, destroying computers, assaults, bombings, and kidnappings. Some of the tactics have been violent and illegal; some have been non-violent and illegal; some have been non-violent and legal. But many of the populist tactics have been socially disruptive.

Herein lies the basis of the civil liberties problems we are likely to face in increasing numbers and complexity in the years ahead. What are the limits and what is the extent of the disruption which special interest groups may legitimately inflict upon their adversaries and society?

To express the problem in this way is to recognize that *some* level of disruption is indispensable to participatory democracy. Indeed, the tactics of disruption provide virtually the only avenues through which the "have-nots" of society can effectively compete with the "haves". It will no longer suffice to preach to the "have-nots" about the right of all citizens in a democracy to freedom of speech. Though freedom of speech is necessary, it is not adequate. It is based upon the proposition that people are persuaded by rational debate. But this is a fallacious description of human behaviour. Pressure, not reason, is the chief instrument of social persuasion. A few weeks of economic boycott, for example, did more than generations of verbal debate to persuade Montgomery, Alabama to integrate its bus company. Invariably, low wage employers are more susceptible to the injury of well-organized strikes than to the admonitions of well-prepared sermons. To confine the populist revolt to rational debate, therefore, is to load the dice against the "have-nots". This is not, of course, to advocate the abandonment of reason in social discourse. It is to recognize its limitations. Pressure without reason may be irresponsible, but reason without pressure is ineffectual.

The "haves" use the pressure of money to advance their interests. They grant and withold economic benefits. Social equity requires that the "have-nots" be entitled to use pressures that are compatible with their resources. In the case of the "have-nots", virtually their only resource will be their bodies. If the "haves" can use their money to grant and withhold economic benefits, the "have-nots" must be able to use their bodies to initiate, conduct, and terminate social disruptions. In my opinion, this view of the social processes constitutes the most realistic and equitable perception of participatory democracy in action.

While some forms of disruption are indispensable, others are completely unacceptable. Physical violence, of course, is in the latter category. No society can survive or even function in an atmosphere where its members use physical violence as a tactic to advance their social interests. Indeed, the whole idea of organized

society is to protect people from the terror and anxiety of anticipated physical attack. *A fortiori* is this true in a political democracy like ours which permits a wide variety of non-violent challenges to authority. Thus no combination of sophistry and sentimentality can confer legal legitimacy on the tactics of destroying computers, bombing buildings, instigating riots, or committing kidnappings.

Violence and reason represent the outer limits of democracy's tactical framework. Violence is too much and reason is not enough. The relevant debates will concern the legitimacy of the tactics in between these extremes. What non-violent disruptions may be accepted under what circumstances? In the next fifty years, we can expect social activists and reformers to employ an increasingly wide variety of socially disruptive tactics. The challenge of civil liberties will be to distribute equitably the levers of non-violent pressure among all of the competing social interests, compatible with the minimum orderly functioning of society as a whole.

II. *Mass Street Demonstrations.*

We can already begin to anticipate in more concrete terms some of the problems that will arise.

The experience of the last decade points strongly in the direction of a proliferation of mass street demonstrations during the next several decades. During the 1960's, hundreds of thousands of North Americans took to the streets in support of various political causes. The two hundred thousand who marched on Washington in 1963 have been given much of the credit for the enactment by the United States Congress of the 1964 Civil Rights Act. The interminable parades against the Vietnam war doubtless have contributed substantially to the reduction of America's military commitment in Vietnam. In Canada, demonstrations by Indians, Blacks, Québecois, welfare recipients, and public housing tenants have experienced varying degrees of success in advancing the goals of the protesting constituencies.

This record of at least partial success will propel more of society's aggrieved to employ the demonstration tactic. There is good reason for this propensity. Demonstrations and parades both express and mobilize support for a cause. They convey to the authorities something of the size and concern of the cause's constituency. While opinion polls simply count the numerical support for a given proposition, demonstrations help to measure the intensity of the feelings behind it. They dramatize community divisions and generate social tensions.

To the extent that a demonstration is large, representative, and conspicuous, it can lay claim to effectiveness. To the extent that it is non-violent, it can lay claim to legitimacy. The problem, how-

ever, is that demonstrations are sometimes accompanied by varying risks of violence and disorder. A gathering of hundreds or thousands with deep feelings about an issue could, if provoked, become an angry mob. Angry mobs have often degenerated into lawless rioters. In a society of ever increasing demonstrations, it is inevitable that the law will be frequently tested in its efforts to adjust the rights of effective protest to the interests of social peace. The demonstrator who commits or incites violence against his adversaries poses very little difficulty. Such conduct will invariably be designated as illegal.

But what about the demonstrator whose conduct, though non-violent, is so offensive to others that it provokes them to commit violence against him? During the mid-1960's, Nazi demonstrators who shouted anti-semitic slogans in Toronto's Allen Gardens were physically attacked by a group of Jewish concentration camp survivors. In the late 1960's, Maoist demonstrators at a Liberal party picnic were assaulted by Liberal partisans after they shouted insults at the Prime Minister.

How far will the law punish those who provoke their audiences in this way? Where a speaker provokes his audience to violence by the incitement of racial, religious, or ethnic hatred, he will be in violation of the hate propaganda sections of the Criminal Code. Even apart from racial invective, where a speaker uses insulting language at or near a public place and a disturbance results, he may be found guilty of causing a disturbance, although he had no intention of provoking a breach of the peace.[1]

To what extent would this mean that a potentially violent audience could effectively censor the conduct of a non-violent demonstration? To what extent would this effectively restrict the right of separatists to demonstrate in hostile federalist communities and vice versa? To what extent would Indians be risking legal retaliation by demonstrating at or near areas with deep anti-Indian prejudices? On the other hand, what, if any, should be the limits of the provocation which non-violent demonstrators may precipitate? Should a group of Nazis have the right to parade non-violently with conspicuous swastikas through Toronto's Bathurst Manor? Should a group of hooded Ku Klux Klanners have the right non-violently to burn a cross in the middle of Halifax's Creighton Street? Is there a distinction between a demonstration that intentionally provokes violence against itself and one that unintentionally but foreseeably results in such violence? Is this distinction too difficult to prove as a matter of fact? It is inevitable that these issues will be ventilated in the Canadian courts and legislatures during the next fifty years.

[1] My remarks are based upon the analysis of Mr. Mark MacGuigan, in Report of the Special Committee on Hate Propaganda (1966), p. 129.

Another problem concerns the *timing* of interference with the potentially violent demonstration. To what extent should the authorities be empowered in advance to deny or revoke parade and demonstration permits on the grounds of anticipated violence?

In response to the mid-1960's anti-Nazi flare-ups in Toronto's Allen Gardens, proposals were made that the City Council authorize the denial of permits for park meetings and demonstrations in situations where there was an anticipated risk of injury to persons or property. It was expected that such a measure would effectively prevent the disorders that had earlier accompanied the granting of park permits to Nazi meetings. During the late 1960's a series of violent unilingual demonstrations in Montreal's St. Leonard district produced the enactment of a by-law by the City Council prohibiting all parades and demonstrations in Montreal streets for a specified period. In order to prevent violent demonstrations, the City Council outlawed all demonstrations, including the non-violent ones. This by-law, of course, has already provoked heated debate in the press, in the legislative assemblies, in the courts, and in the political market place.

In one form or another, the power to prohibit potentially violent demonstrations, in advance, is likely to be asserted, challenged, and debated in the years to come. Must the authorities wait for the violence to be committed, incited, or provoked before they interfere? Some have argued that such waiting could be disastrous. If the authorities failed to act swiftly to prevent a riot, events might gallop out of their control. The consequence could be irreparable injury. On the other hand, if the authorities acted before the danger was imminent, there is a risk of erroneous exaggeration. Authorities in Canada have already proved their capacity to apprehend non-existent insurrections. Thus, they might choke off demonstrations in situations where the peril was slight or otherwise controllable. After all, the issues which beget demonstrations often grow out of deep controversies and tensions. Some risk of violence is an unavoidable component of the meaningful right of assembly. The question is not whether society should permit such risks, but rather how great and how imminent the permissible risks might be. This, then, is the dilemma. Procrastinated interference could permit the escalation of violence; precipitous interference could emasculate freedom of assembly.

What we are likely to experience much more in the years to come are not outright prohibitions but rather restrictive *regulations* concerning parades and demonstrations. Faced with the potential violence from the recent *La Presse* demonstrations, the Montreal authorities cordoned off an area for the striking employees and their sympathizers. In this way, the authorities attempted to pre-

vent the demonstrators from coming dangerously close to the *La Presse* building.

In this case, the authorities did not purport to prohibit the demonstration. They hoped, instead, simply to regulate it. Presumably, the idea was to keep the demonstration far enough away from the strike-bound building so as to protect both the rights of the demonstrators and the security of the building with its inhabitants. Whatever one may think of the wisdom or the lack of it displayed by the Montreal authorities in this situation, we will probably be faced again and again with the implications of their conduct. If the authorities can keep a demonstration a few blocks from its target, may they also keep it a few *miles* away? Instead of prohibiting demonstrations, may the authorities simply postpone and reroute them? Will the maintenance of peace justify relegating potentially volatile demonstrations to remote areas on quiet days? Such a power, of course, could deprive a demonstration of spectators, timeliness, and media coverage. To what extent, in other words, may regulations promote the interests of order by reducing the impact of protest?

The prevention of violence is not the only basis for restrictive regulations. The control of traffic may also motivate the imposition of impediments. In Metropolitan Toronto, for example, there is a Police Commission by-law prohibiting parades on normally busy streets, unless the parade has been occurring annually for ten consecutive years prior to October 1st, 1964. The by-law provides the further exception that busy street parade permits may be issued under "unusual circumstances of municipal, provincial, or federal importance". The power to determine what qualifies as an "unusual circumstance" is vested in the Chairman of the Police Commission and the Chief of Police. Indeed, in deference to the interests of traffic control, virtually every municipality in this country confers upon the Police Commission, Chief of Police, or traffic authorities the power to determine the time and route of parades and demonstrations.

But, as already indicated, the discretion to determine time and route is no routine power. It can affect the potency of a demonstration. Consider this example. In the late 1960's, a group of Vietnam war demonstrators sought a parade permit to march down Toronto's busy Yonge Street on a Saturday. Instead, they were offered a permit to march down Bay Street and University Avenue. Unfortunately, on Saturday, Bay Street and University Avenue are virtually urban deserts. Thus, the parade threatened to become not an exercise in freedom of speech, but an exercise in freedom of soliloquy. Significantly, a few years earlier the Chairman of the Police Commission and the Chief of Police had waived the "busy streets" prohibition and had allowed a Yonge Street parade on a

Friday to a visiting convention of the racially segregated Fraternal Order of Eagles. On what basis is a middle-aged fraternity party considered of more "unusual . . . importance" than the Vietnam war?

Just as the power to prohibit demonstrations has been challenged so will the power to regulate them come under attack. Why should the power to establish the criteria for determining time and place be given to an appointed body (the Police Commission) rather than an elected body? Why should police or traffic authorities have the power to apply the criteria in particular cases? The police or traffic authority's interest in a demonstration is an orderly flow of traffic; the demonstrator's interest is a conspicuous event. Often these interests are in conflict. It is a departure from our entire system of disinterested adjudication to make the police and traffic authorities umpires of their own ball game. Yet political protestors cannot be given automatic access to *any* street at *any* time. If we are to adjust reasonably the rights of political protest to the interests of maintaining peace and regulating traffic, we must have *some* regulations. Some body has to make the regulations and some body has to apply them. The real question is who should comprise these bodies and what criteria they should promulgate.

During the next fifty years, escalating pressures will force us to think through these difficult problems. We will no longer be able to rely on arbitrary fiat. Events will require that we attempt to establish a rational and equitable system of regulating demonstrations.

III. *New Tactics of Disruption.*

Inevitably, however, the continuing populist revolt will spawn new tactics of pressure and disruption. Though demonstrations have retained considerable impact, they have often been overused to the detriment of the issues behind them. Moreover, many of the other confrontation tactics of the past decade are now beginning to wear thin. At the inception of the populist revolt, the sit-in and the occupation created large constituencies of sympathetic support. Today, boredom is probably the dominant reaction to the picture of police carrying limp demonstrators out of places of illegal occupation.

The resort to and support of more violent tactics have created a large backlash constituency. This constituency swelled to overwhelming proportions following the *Front de Libération du Québec* kidnappings of October 1970. Indeed, the backlash was so severe that Pierre Vallières, the *Front's* leading ideologist, quit the revolutionary movement and urged his followers to join him

in democratic political activities. Vallières' disaffection symbolized at least the temporary failure of revolutionary violence to take hold at this stage of Canadian history.

It is very likely, then, that the next fifty years will see the evolution of new tactics of disruption. The earlier group of non-violent activists drew their inspiration from Thoreau and Gandhi—the tactics of passive resistance. The later group of violent revolutionaries drew their inspiration from Fanon and Guevara—the tactics of violent insurrection. The next group of non-violent populists will sit intellectually at the feet of the late Saul Alinsky, indigenous American radical. From him they will learn the tactics of disruptive ridicule, preferably, as he stressed, within the law.

In recognition that the only resources available to the "have-nots" are their physical bodies, Alinsky counselled his constituents to deploy their bodies in ever more novel, imaginative, and especially humorous techniques for disrupting their adversaries' activities. In many respects, Alinsky's tactics resemble practical jokes. Simultaneously, they ridicule the adversary and disrupt his operations. Moreover, the object is to neutralize the police by staying within the law.

Tomorrow's civil liberties problems will grow out of the increased use of such tactics. Their proliferation will trigger retaliatory efforts by the "haves" to limit the harassments they will have to endure. Even though the activists try to keep their tactics legal, if they are sufficiently disruptive, there will be inevitable resort to the law as a potential instrument of retaliation. The courts will be called upon to determine whether the impugned tactic is, indeed, legal; the legislatures will be exhorted to determine whether it ought to be legal.

Some examples of Alinsky-style tactics will illuminate the nature of tomorrow's civil liberties controversies. A large department store employed virtually no blacks in any but the most menial jobs. Alinsky's organization sought to pressure the store into hiring blacks for sales and executive positions. To accomplish this, he threatened a "shop-in". On a designated day, three thousand blacks would descend upon one floor of the store. They would spend an entire day carefully inspecting every article of merchandise. At the close of the day, they would begin purchasing everything in sight on a cash on delivery basis. On delivery, a few days later, all merchandise would be refused and returned. Upon hearing that such action was about to be launched, the store notified Alinsky's organization of the opening of 186 new jobs which would include blacks in sales and executive training positions. What is significant from the civil liberties standpoint is Alinsky's commentary on the *legality* of the proposed disruption.

> Now pause to examine the tactic. It is legal. There is no sit-in or unlawful occupation of the premises. Some thousands of people are in the store "shopping". The police are powerless and you are operating within the law.[2]

To pressure polluting companies into adopting anti-pollution measures, Alinsky proposed attacking the banks which service them. He suggested that hundreds of people on the same day move into one of the banks and open five and ten dollar accounts. A few days later, they would return again and close their accounts. Such a tactic would paralyze the operations of the bank in time-wasting clerical administration.

> Again, as in the case of the shop-in, the police would be immobilized. There is no illegal occupation[3].

These tactics are certainly non-violent. But lawyers in Canada cannot be as sanguine as Alinsky about their legality. Indeed, there appears to be a range of possible instruments of legal retaliation available to the victims of such tactics. Consider, for example, that great umbrella for miscellaneous intrusions on property rights—the mischief section of the Criminal Code. Section 387 provides that:

> Everyone commits mischief who wilfully . . . obstructs, interrupts, or interferes with the lawful use, enjoyment, or operation of property . . ..

Could it not be argued that the lawful enjoyment of store and bank involves *bona fide* efforts to facilitate commercial transactions—sales, deposits, loans, and so on? Might not the successful execution of an *intentional conspiracy* to do no more than tie up facilities and employees, therefore, qualify as a wilful interference with such lawful enjoyment of these establishments? By virtue of the same reasoning, might not the "shoppers" and "depositors" also be considered as constructive trespassers? Would they not be exceeding the implied invitation which these establishments extend to the public? And could the protestors not be deemed to have known that they were in violation of this invitation? Thus, Alinsky's "shoppers" and "depositors" might be vulnerable to charges of trespass, mischief, and, of course, conspiracy to commit trespass and mischief. Moreover, to the extent that they were involved in a concerted plan of action to injure their adversaries through such unlawful schemes, they might also be liable civilly for the old common-law tort of conspiracy to injure. And, if they followed Alinsky's strategy of threatening before they acted, they might be further susceptible to prior injunctive restraints.

In order to avoid such retaliatory measures, Canadian activists are more likely to introduce some refinements on Alinsky's naked power tactics. With a little more imagination, we can anticipate

[2] Rules for Radicals (1972), p. 147.
[3] *Op. cit., ibid.*, p. 162.

the development of more subtle strategies of disruption. Let us consider a hypothetical example: Canadian Indians, protesting the unhealthy conditions of life on their reserves, might attend simultaneously by the hundreds for a government-subsidized medical examination at the out-patient clinic in a nearby public hospital. Unlike the surreptitious "shoppers" and "depositors" they would announce to the world what they were doing. They would notify the press and hand out leaflets explaining that they were seeking medical examinations in order to dramatize their unhealthy living circumstances. They would declare openly that they would leave upon being ordered to do so by the hospital authorities. Otherwise, they would stay until each one had an examination, or until the government agreed to implement certain minimum improvements in the reserve situation. If the government failed to act, the hospital authorities would be faced with a difficult decision. If they refused or postponed the medical examination and ordered the Indians out, they would look bad in the eyes of the public. If they agreed to the examination, they would be *consenting* to a disruption of their facilities. Whatever happened, the publicity impact would be enormous.

But would the Indians be guilty of mischief because of the disruption they caused simply by attending en masse and asking for the examination? In answer to such an allegation, the protesters could point to an exception in section 387:

> No one commits mischief . . . by reason only that he attends at or near a place for the purpose only of . . . communicating information.

The Indians would argue that the whole point of their action was to publicize their terrible living conditions. In our society, only dramatic action can effectively communicate such messages. Delegations and briefs to government get buried on the back pages of the newspapers. Many picket lines go unheeded and ignored. Protesters have to do something striking in order to attract widespread attention.

As far as trespass is concerned, the Indians would argue that their activity fell within the terms of the hospital's invitation to the public. The hospital provides an out-patient medical service to the public. The Indians were requesting access to this service and many of them had good reason to do so. Moreover, unlike the surreptitious "shoppers" and "depositors", the hospital authorities knew what the Indians were doing and knew they would leave if ordered to. Thus the protesters would argue that no problem of trespass could arise while the hospital knowingly tolerated their presence there.

This is not to assert in any unequivocal way that such refinements on Alinsky would escape legal sanction. It is simply to indi-

cate that with a little more ingenuity, social reformers can equip themselves with more legally defensible positions. In any event, these are the kinds of tactics that are likely to surface and proliferate in the next several years. Protesters will increase the non-violent disruptions which they inflict on the operation of other people's property. But they will attempt to fit their disruptions into the implied public invitations of the property under attack. And they will attempt to tie their disruptions to the goal of publicity. Thus the legal issues will concern how far deliberate disruption can be harmonized with the implied invitation to come on the property and how far it may serve the goal of communicating information. These problems will involve also difficult value judgments concerning the relative effectiveness of the various methods of communicating information. Will protesters be permitted more effective, that is, more disruptive methods? Or, will they be confined to less disruptive, that is, less effective methods?

To whatever extent Alinsky-style disruptions lead to criminal convictions or to civil liability, we can expect, in turn, a number of political controversies to arise. The populist organizations would argue that the trespass and mischief provisions are too restrictive. Bearing in mind that some level of non-violent disruption is the only effective instrument of pressure available to the "have-nots", we can expect legislative campaigns to liberalize the offences of mischief and trespass. At the moment, for example, the mischief section contains another exception for wilful interferences with property that are caused solely by work stoppages in connection with labour disputes. If work stoppages in connection with labour disputes can confer an immunity on conduct that is otherwise mischievous, why not some mischievous disruptions in connection with racial disputes, pollution disputes, consumer disputes, and so on? Why is labour protest entitled to more liberty than other forms of protest? On the other hand, if the law were to be further liberalized, how far could it go? Could disruptions be inflicted to serve *any* interests or only *some* interests? On what basis could we circumscribe the permissible area and how could we determine the permissible level of disruption?

Thus, we can expect that a growing Alinsky influence on the populist revolt will precipitate a host of civil liberties controversies in the legal, legislative, and political sectors of society.

IV. *New Forms of Retaliation.*

Inevitably, an increase in the number and variety of social disruptions will be accompanied by the development and refinement of new forms of retaliation.

In response to a mass sit-down in the streets of Washington

D.C. several months ago, the Washington police authorities arrested thousands of demonstrators. Subsequently, however, they released the overwhelming number of them without charge. The growth in Canada of populist disruptions could trigger similar reactions by Canadian authorities. Under the Criminal Code, the police have the power to arrest without warrant where they have reasonable and probable grounds to believe an indictable offence is about to be committed. Although the police must lay a charge in order to detain, they need not lay a charge in order to arrest. But the arresting power, *by itself*, can be used to terminate troublesome disruptions. The authorities will not need to involve themselves in the cumbersome process of laying charges and collecting evidence. In order to accomplish their objective of quelling the disruption, they will need only to invoke their powers of arrest.

Thus, a substantial increase in social disruptions might very well provoke a substantial increase in arrests without charge. The civil liberties problem arises from the risk that the power of arrest may be used to terminate not only potentially unlawful disruptions but also completely lawful ones. Where charges are not processed, there will be no independent review of police discretion. Few victims of improper arrest are likely to counter-attack against the police. That requires the victims to lay charges or initiate lawsuits. But such legal entanglements are sufficiently unpleasant, even for the instigators, that most people would prefer to avoid them. Moreover, he who initiates legal action against the police faces the prospect of having the police retaliate in kind against him. The police will be impelled to lay counter-charges in order to pressure their adversaries to withdraw the legal proceedings against them. This is the kind of scenario that will inhibit most people from proceeding against the police in the first place. The danger, then, is that to an increasing degree the *police*, not the courts or the legislatures, may effectively be determining the permissible limits of lawful protest. This will pose a very special challenge in the years to come. By what means can we limit the improper exercise of police discretion without imperilling its proper exercise? What system of control will both permit the police to act when it is necessary, and deter them when it is improper?

We can anticipate yet additional forms of retaliation against populist tactics. Not all of the civil liberties problems will grow out of police interference. Indeed, as we have seen, many of the Alinsky-style tactics are not amenable to this kind of control by the police. State power will respond increasingly with more subtle instruments of retaliation. These will create a whole new category of civil liberties disputes. Following a number of socially disruptive actions conducted by a Hamilton welfare rights organization, the Minister of National Health and Welfare in late 1971 cancelled

more than $50,000.00 in grant money that he had earlier agreed to make available. Since that time, the group's activities have been substantially curtailed. Instead of wielding the stick, the government withdrew the carrot. The result is a diminution of populist tactics.

In the past few years, the federal government and several provincial governments have given thousands of dollars to populist organizations. In consequence, many of these groups have become financially dependent upon government funds. The cancellation of a grant anywhere threatens the security of grants everywhere. Such action telegraphs the limits of the politicians' willingness to subsidize disruptive pressures on themselves and their colleagues in other levels of government. To whatever extent a group is financially dependent on government, cancellation, of course, means the suppression of its activities. Moreover, even the groups which have not sustained such treatment will have to live in the fear that it might happen to them. Inevitably, there will be enormous pressures on them to restrict some of their more controversial activities in the anticipation of government cut-backs. In this way, the policy of giving government grants constitutes a substantial structural threat to the civil liberties of social disputants.

On the other hand, while the employment of government grants poses a threat to civil liberties, it has also provided a stimulant to them. This is particularly true of many "have-not" constituencies. The injection of public funds has created organizational life where otherwise there was little such life. The "have-not" constituency is not capable of funding its organizational activities with its own resources. In our complex society, effective citizen participation requires organization and organization requires money. Government seed money grants have enabled "have-not" organizations at least to be born.

But organizations, like Rome, cannot be built in a day. In order for "have-not" organizations to reach the self-sufficiency of adulthood, they require a *few years* of outside funding. This is where the problem emerges. In every fiscal year, government must evaluate its finances. What it has initiated, it can terminate. Thus its beneficiaries are forced to live out their organizational infancy in a state of financial anxiety. They will be unable to afford governmental disfavour. This factor alone could effectively censor their activities. Few Canadians have begun to face this dilemma. By seeding and nursing "have-not" organizations, government grants have increased the effective level of participatory democracy. But simultaneously, they have reduced the effective level of political autonomy. This policy will raise some of the most perplexing civil liberties problems of the future. The democratic processes would suffer immeasurably through over-supervision by

the government of society's voluntary sector. Yet democracy would be diminished substantially if the "have-nots" were unable to participate through viable organizations of their own. Unavoidably, these issues will be explored and debated much more thoroughly in the next fifty years. They cut to the heart of the democratic system.

V. *Toward a Re-evaluation of the Concept of Democracy.*

The foregoing commentary is based upon the inevitability of conflict in democratic society. Though we cannot exist without consensus, we cannot progress without conflict. In such a society, there will be a constantly shifting consensus. The social processes will be characterized by an infinite series of disruptions and accommodations. At any given time, the consensus will reflect the balance of power among the competing pressure groups.

In the ensuing era, we will have to supplement the nineteenth century concept of a market place of ideas with a twenty-first century concept of a market place of pressures. For the past several generations, we have conceived of the market place as a forum where citizens could advance rational arguments in favour of competing ideas. Now we must also have a market place where citizens can exert unpleasant pressures in favour of competing interests. Where we have long believed that truth would emerge from the conflict of ideas, we must now hope that justice will emerge from the conflict of pressures. A free market place of pressures cannot, of course, guarantee the triumph of justice. But, all other systems *can* guarantee the triumph of *injustice*.

The necessary concomitant of this market place is the development and growth of social disruption. The dominating civil liberties issue of the next fifty years will concern the threshold of our tolerance for disruption. If our threshold is too high, we could precipitate disorder. If our threshold is too low, we could perpetuate injustice.

The goal of civil liberties will entail in the future what it has involved in the past—the quest for the most reasonable balance.