Liberty, Law, and Democracy

Dora Marsden

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The concepts with which one age will preoccupy itself, and in which it will invest its surplus emotional heat have shown themselves to be so essentially casual as to be now a matter for mirth rather than wonder with its successors. The subject of an age's Master Passion round which its interest rages will be anything accidental and contingent which will serve: stand the heat, that is, and last out until enthusiasm tires. The amount of genuine enthusiasm which Athanasius, Arius and their followers were able to cull from the numerical problems in the concept of the Trinity was—incredible though it may seem—equal to that which this age culls from the figures of the football scores. The Crusaders who were so concerned about the possession of the Tomb of Christ looked forward to finding as much diversion and profit as a Home Ruler expects to get from the possession of a Parliament on Dublin Green. It is only from a distance that these dead dogs look so determinedly dead. Nearer to, one would swear the body had stirred; and we who are so near to an age when the mere mention of "Universal Law" would produce lyrical intoxication, "All's love, All's law," a very swoon of security, do not purpose here to break in upon the belated obsequies of that dead or dying concept. As the sport of the ribald and the mockers "Universal law" is the perquisite of the youth of 1950, not of 1915. And we will not here trespass on the future.

The reference in the title of this article is limited to statutory law, a prosaic and earth-bound branch which not even Apollo himself could have strung to the lyrical note, and it must be allowed that however excellent a run "Universal Law" as a symbol and idealised concept may have been accorded by a generation now settled in obesity, its society representative, so to speak, with which we are here concerned, has never been held in any too high esteem. The increase in its bulk and scope of application, which oddly enough, grows rapidly alongside something called the "Liberty of the people" have proved matters for complexity even when they have not created indignation and alarm. Visions of those not the least penetrating, have seen in the steady advance of the statutory law a devastating plague in which the parchment of the politicias has seemed as capable of devouring the spirit of the people as a swarm of locusts devouring green grass. Proudhon writing in 1850 on the subject says:

> "Laws and ordinances fall like hail on the poor populace. After a while the political soil will be covered with a layer of paper, and all the geologists will have to do will be to list it, under the name of *papyraceous formation*, among the epochs of the earth's

> history. The Convention, in three years one month and four days, issued eleven thousand six hundred laws and decrees; the Constituent and Legislative Assemblies had produced hardly less; the empire and the later governments have wrought as industriously. At present the 'Bulletin des Lois' contains, they say, more than fifty thousand; if our representatives did their duty this enormous figure would soon be doubled. Do you believe that the populace, or the government itself, can keep its sanity in this labyrinth?"

And yet, while no one would care to dispute these facts or deny they had significance, it is the libertarian interpretation of them which provides the clue to the mystery why the gospel of liberty carries with it so little conviction. The Libertarian creed has no "bite" in it; "Liberty" remains the "beautiful and ineffectual angel." In its devouter moments common speech will accept the gospel, but common sense invariably slips past it. While not wishing to hurt its feelings, so to speak, it refuses to have any serious dealings with it. Now common sense is quite prepared to be serious about statutory law, even where it is suspicious of it. It is willing to hear law described as a threatening power and will think out ways and means of cutting its claws: but "liberty" it does not discuss. The discussion for and against the "principle of liberty" appears similar to a discussion on the ultimate and eternal implications involved in the "principle" in which one wins or loses a game of patience: or the principle of that popular child's game where one "arranges" either to tread on every chink in the pavement or to avoid treading on every chink. "You do, if you do, and don't if you don't."

It is however only when one gets at the temper behind law and realises its permanent nature that it becomes apparent why discussions concerning liberty are more or less frivolous diversions, and nothing makes law more clear than considering it under that form of "government" which has promoted its luxuriant growth—democracy.

A law means that "state" support is guaranteed on behalf of an interest which has obviously already sufficient power to command it. This law has a reverse side to it which implies a "state" guarantee to repress another interest or interests, too weak to command its support. Democracy, putting aside its alliterative and rhetorical jargon, means just the quickening of the pace at which these alliances of the State with owners of "interests" are put through. Representation of people is an impossibility. It is intended for platform purposes only, but representation of interests is a very real thing, one which can be judged with precision as to its efficacy or no. An "interest" is the particularised line of fulfilment which the accomplishment of a willed purpose takes. At points it breaks into and clashes with other interests: and at these points it becomes necessary for their owners to fight the situation out.

These are the precise points where rhetoricians and moralists try to work in their spoof. The people have "a right to" protection from invasion of their interests, and owners of "interests" should "respect" each other's interests. The "liberty" of each and all "should" be "respected." One "should" repress one's interest when likely to interfere with another's. The fact to be borne in mind is that whether one "should" or "should not," the strong natures never do. The powerful allow "respect for others' interests" to remain the exclusive foible of the weak. The tolerance they have for others' "interests" is not "respect" but indifference. The importance of furthering one's own interests does not leave sufficient energy really to accord much attention to those of others. It is only when others' interests thrust themselves obtrudingly across one's own that indifference vanishes: because they have become possible allies or obstacles. If the latter, the

fundamental lack of respect swiftly defines itself. In face of opposition to a genuine interest, its owner respects neither "his neighbour's ox, his ass, his wife, his manservant, his maidservant, nor anything that is his." Not even his opinions. One has only to think what jolly old proselytisers the world's "great" men have been to realise what "respect" they have for their neighbour's interests. What each has been concerned for has been to see his will worked upon any soul or body upon which his whim or purpose has seen fit to direct it. Their success has been proportional to the unformedness of the characters with which they have had immediately to deal.

If it is borne in mind that genuine "interests" are things which are never abandoned: that smaller interests are sacrificed ("sacrifice" being a word which has no meaning apart from an audience: it means a virtue, i.e. something likely to win the applause of an audience, for an act which did no audience look on we should do as a matter of course) for a bigger interest as we should "sacrifice" small change of, say, eight half-crowns for a guinea, we can clear "democracy" of its bluff and remove the complexity which the multiplicity of statutory laws creates. They are seen to be two names for one phenomenon. Democracy is government, i.e. persuasion by compulsion exercised from a largely increased number of centres. Multiplicity of laws indicates the detailed channels through which it is effected. It is too vague to say that democracy represents the liberty of the people: rather one would say democracy represented the increase in the number of people who are prepared to take liberties (i.e. persuade by personal violence), with the people who refuse assistance in the furthering of the audacious ones' interests. It is the increase in the number of those who have the courage and ingenuity to become in an open and unequivocal fashion the tyrants we all are subtly and by instinct. It is part of the human trend towards explicitness. If "democracy" had no "believers"—no followers whose voices break with lyric intoxication at mention of it, its clean swashbuckling character would be in no danger of being misunderstood. As it is, we are seldom permitted to view it, save through the veil of brotherhood, love and what not, as it steps forward like a mincing lady with a Clergyman on the one hand and a Wizard on the other: Liberty and the State, companions not chosen in stupidity.

It is not by accident for instance that Democracy and Liberty preach in pairs. Liberty is as necessary to Democracy as the second blade is to a pair of shears. Democracy boldly affirms government: Liberty whispers "Don't govern." Liberty plays 'Conscience with a task to't.' It is the ghostly spirit the moralists would have the meek always carry inside their waistcoats: it plays the policeman inside the man. Unfortunately for the meek, it is only on them that Liberty is able to impose. Those who can govern, i.e. forward their own interest to the detriment of those who let them, will govern. Those who feel no stomach for "governing" will espouse the gospel of liberty. That is why to those who already have, shall be given and from those which have not shall be taken away that which they have. The cry for "liberty" is the plea for the substitution of melodrama for drama in life: the life according to concept in place of life according to power. It is the hoisting of the white flag followed by an attempt to claim victory in virtue of it. It is the request that the powerful should refrain from taking liberties with the weak because they are afraid to take liberties with the powerful. That is what Libertarians have in mind when they speak of conduct which "should" be "non-invasive," not minding that it is scarcely possible to live a day in a community of two without being "invasive." We are one another's daily food. We take what we can get of what we want. We can be kept out of "territory" but not because we have any compunction about invading. Where the limiting line falls is decided in the event, turning on the will, whim and power of those who are devoured and devourers at one and the same time.

Life is feasting and conflict: that is its zest. The cry for peace is the weariness of those who are too faint-hearted to live.

So Liberty remains the foible of the poor in spirit, who monopolise most of the virtues. The plain man (a rarer person alas! than is imagined) does not trouble to stretch the irregular canvas of his life to fit into the framework of the moralists' concepts. When Liberty whispers "Do not be so unbrotherly, so rude, so wicked as even to desire to govern," it is in a deaf ear, and it is this plain person whom Democracy's other companion, the State, must deal with.

The State is the National Repository for Firearms and Batons Company Ltd. It is owned, directed and exploited by State's men whose main qualification is to preserve the State's charter granted to it by the people, the chief terms of which are: The State cannot be dissolved; it can do no injury sufficiently serious to justify retaliation or attack; it can get as much money as it thinks safe out of the people; and use it to defend such "interests" as it seems "good" to the State's men to make an alliance with. The charter was no doubt granted when the "people" were being put by dexterous directors of the State under the hypnotic influence of "law and order": and in this state of trance they have been lying—in the main—ever since. Occasionally there seems to be a hint that common intelligence might return to the people when they will waken up: whereupon a "great" statesman will arise and with a few skilful passes of the hand bring them back under the influence of "law and order"—other people's law and order: he will pacify the unrest.

It is the existence of this chartered state which makes "democracy" into a bludgeoning menace. It is the existence of the State which makes the rapid increase of "democratic" law a danger where French leave would be a sport. The difference between the two is the difference between the lists in a tournament and a slaughter-house. To empower a state after the fashion of a modern "civilised" state, and then leave it free to ally itself with interests already powerful is not merely for the lamb to lift its neck to the blade: it is to fashion the knife and drop it ostentatiously at the butcher's feet. A modern "poor" citizen appears so unmitigatedly a fool in his attitude towards the "state" that he suggests he is not merely a fool but is a knave in addition. One of an awestruck crowd of toilers, who when they are not licking their wounds in gaol for not minding their manners, are performing forced labour to feed and fatten—their governors, he fashions elaborated weapons of offence in quantities and allows them to be handed over—to those who dare govern: use them, to wit. They dream of heaven, toil, starve and are penalised: then lisp of liberty. All the same, they seem able to stand it. If these things have a lesson to teach, the meek at any rate have not learnt it.

However, the "flux of things" is in no way concerned to "teach." It defines itself more often than not before our intelligence can claim to have deserved it, and the modern democratic state is making its nature very clear indeed. Already it begins to look like the effigy of a stout and stupid old lady, twitching and lurching as though badly taken with hysteria and St. Vitus' dance. Without any organic living principle in itself it is at the mercy of every interest which cares to tweak at it. It is part of the jargon of "democracy" that the "state" is run in the interests of all: that before it, all interests are "equal," and though obviously they are not, every "interest" is quite ready to make what little it can out of the possibility. We all pay the piper so we all call a tune, and the chorus which results becomes so mixed in the long run that skilled "readers" are unable to decipher the score. The multiplicity of interests "protected" defeats its own ends. The very swelling in the volume prevents the guarantee of state protection from proving effective. A state which protects too many interests becomes like an army which fights on both sides: no use to

either, and no credit to itself, and the falling into discredit of the ”State” is tantamount to the change of statutory law into French leave; individual will and whim.

Moreover, nature will out, life is too short to spend overmuch attention on an institution which will serve a ”statesman’s” immediate purposes more if he practises a certain fine carelessness. Even successful politicians can have so much straightforward honesty in their natures as to be unmoved by the fierce necessity to practise hypocrisy which the mock-heroic pose of the ”State” demands. They cannot be diverted from their genuine interests: so we get a defalcating ”reform” governor, the achievements of Tammany Hall, a Chancellor who accepts tips from the Stock Exchange, and a speculating Lord Chief Justice. It gives one a warmer respect for one’s kind, but it is the death-knell of the State. To be sure the State dies piecemeal: for the spectators a tedious way of dying. To die—for the State—is to be found out: for its mouthpieces and component parts, individuals all, so to act as to be understood. The ”noble democrats” who stand for ”clean government” are wretched spoil-sports. They point to the parts from which the cover has slipped and say: it is corrupt: it must be washed: we are the men to do it. Except that they are serious, they are like the funny man in the pantomime who requests the plain-visaged female to take off her mask. They imagine that with Mr. Hilaire Belloc for instance as Prime Minister, we should feel happier in our insides. One would just as lief have Sidney Webb or Herbert Samuel, or Mr. Asquith. For choice, it would fall out to be the kind which would exist between Mrs. Webb sending a blue paper ordering us to take our food in lozenge form and demanding statistics how many times a day we washed: and Mr. Chesterton hesitating before granting us a dog-licence uncertain whether our secret imaginings were such as could be described as sound and British, such as the virgin Mary could whole-heartedly endorse. Of the two most people would prefer to swallow the Webb lozenge.

The growth of an interest in *clean* government would be the overcasting of a brightening sky. The will to govern is beginning to reveal itself as the inborn ineradicable force: and welcome or unwelcome is the form in which power inevitably makes itself manifest. Its trappings slip from it and it is seen stark for what it is. Of its ephemeral attendants, ”Liberty” and the ”State,” Liberty is feeble and faded and the hypnotic passes upon which the State depends for its privileged position as failing to work. Respect is gone from it, and without it democracy becomes individual caprice: the first and final basis of the will to govern. When all these veils are being rent what unsportiveness to reintroduce confusion as *clean* government! A mystery-play where life offers high drama!

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