

THE  
DECLINE  
OF  
LIBERTY  
IN  
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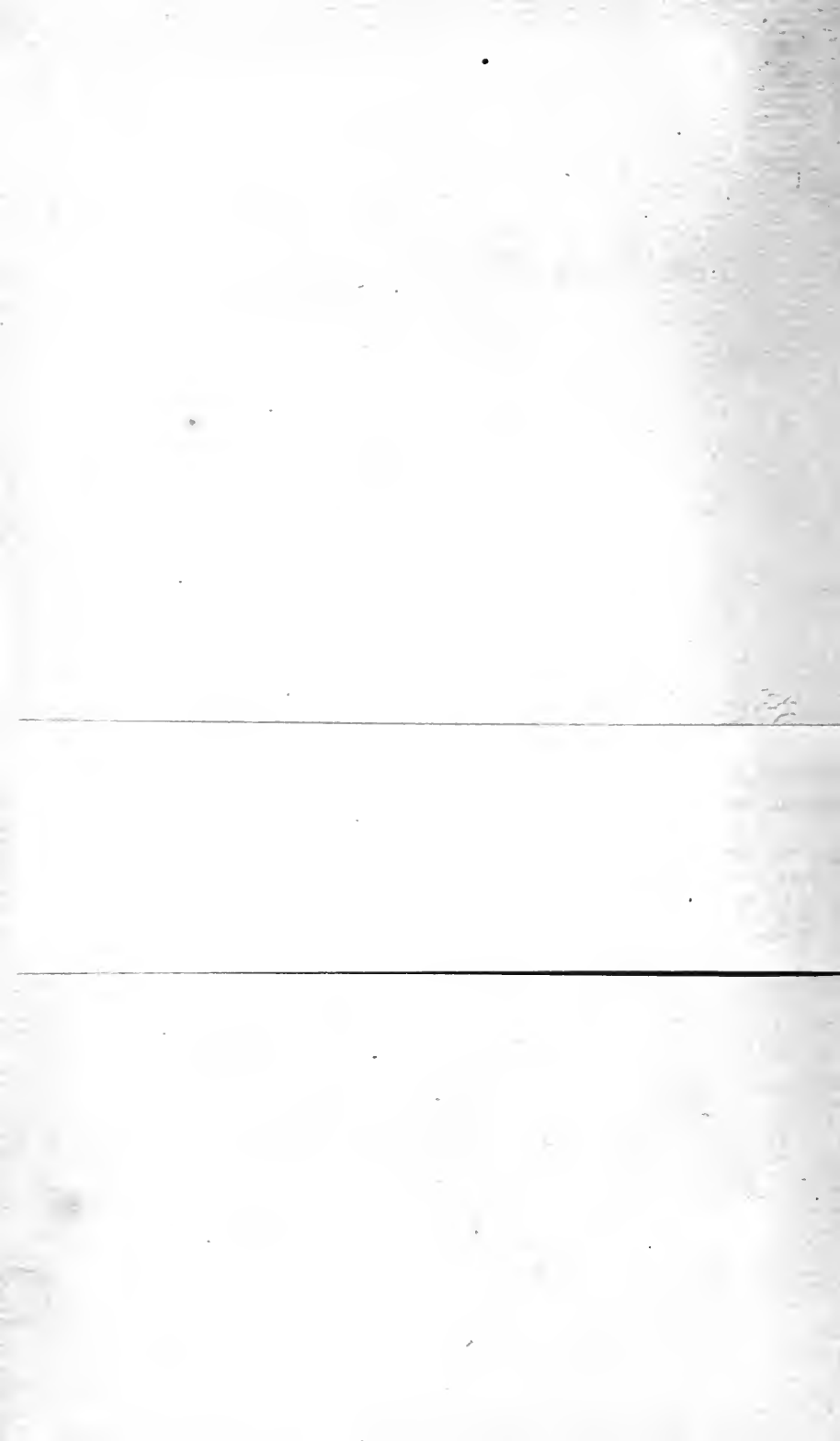


Dedication, line 5 : for " Queen's " read " Queens' "

Page 112, line 15: for " Judiasm " read " Judaism ' "

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Page 158: While this book was being printed the author was for the first time informed that Messrs. Belloc and Chesterton accepted after the publication of their book the Lord Chancellor's assurance that his amendment was due to no other motive than his enthusiasm for Free Trade.





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THE  
DECLINE OF LIBERTY  
IN ENGLAND

BY

E. S. P. HAYNES

AUTHOR OF

"MODERN TOLERATION AND MODERN MORALITY"



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TO THE MEMORY OF  
MY FATHER  
EDMUND CHILD HAYNES  
SOMETIME FELLOW OF  
QUEEN'S COLLEGE, CAMBRIDGE

“The worth of a State in the long run is the  
worth of the individuals composing it.”

J. S. MILL.

“It is better for a man to go wrong in freedom  
than to go right in chains.”

HUXLEY.



## PREFACE

A SENSE of real urgency in regard to the question of Liberty is my principal apology for the obvious defects of this book. It is (to say the least) bold to embark on the subject of Liberty without having read all the works enumerated by the late Lord Acton in his library catalogue, the preparation of which absorbed the time that he might have devoted to a treatise of his own. But we are in grave danger of altogether losing that unique tradition of individual liberty which was once the boast of England; and the principal cause of that danger is our still persistent admiration of the German Empire. Even before the war we had our laws imported from Berlin, and after the war the legend of Teutonic glory and efficiency will be industriously promulgated by those who cherish with equal enthusiasm the traditions of Martin Luther and the Prince Consort.

Unfortunately it is only too obvious that Liberty has declined in England since 1880, and that it is likely to decline more and more unless a different climate of opinion sets in.

The war has caused endless misery. Shall it also be allowed to achieve the death of British freedom? I may as well say at once that I do not object to war measures *as such*. I do not (for instance) object in theory to conscription as we have come to know it,

though I gravely question its expediency. Little can be said, in principle, against the Great Charter and the Habeas Corpus Act being temporarily eclipsed in order to detect spies, though there is perhaps reason to doubt whether the Executive has always exercised its extraordinary powers with the wisdom of the serpent. But the problem of the hour is to guard against the danger of what is to happen *after the war*, and to see that we do not then cut off our noses to spite our faces by imitating precisely those qualities that provoked us to an unprecedented sacrifice of life and of all that makes life worth living.

I have dedicated this book to the memory of my father because he was one of the few men I have intimately known who profoundly loved and understood all that Liberty means, and also never suffered from any of the illusions about Germany that befogged his contemporaries. He had none of that instinct for compartmental Liberty which is so common in England. This country contains innumerable societies, each of which wants Liberty for its own purposes but will have nothing to do with Liberty as a principle in itself—the principle for which our soldiers and sailors have for the most part unconsciously, though in a few cases as, for example, Rupert Brooke, consciously, risked death and mutilation.

Critics of my other books have occasionally suggested I am “advanced”; there is nothing I detest so much as that imputation. In search of ideal marriage laws I go to the Roman Empire and find there perhaps the nearest approach to the ideal.

For Liberty itself I find no more substantial sanction than the venerable traditions of our Common Law. For sound morality I prefer the works of Fielding and Voltaire to the thinly tyrannical maxims of the modern philanthropist.

In so far as this book follows in the track of any living writer, it follows, however lamely, in the track of my friend Mr Belloc. For nearly twenty years his books and conversation have given me whatever grasp I have gained of reality in contemporary history. I have often at times doubted his conclusions ; but have always in the end been convinced that on the main issues he was right. It is perhaps unusual for a free-thinker to accept a Catholic prophet ; but apart from ultimate issues, Mr Belloc has always been my guide and philosopher as well as my friend, profoundly as he disagrees with me on certain subjects.

Mr Belloc has been occasionally criticised for his uncompromising remarks about politicians. But these remarks are mild compared to those of an anonymous writer in the seventeenth century concerning two hundred members of the Parliament which sat from 1661 to 1678. An edition of this work (entitled *Flagellum Parliamentarium*) was printed in London in 1827, and a copy of it was the treasured possession of my great-grandfather Sir Harris Nicolas. Among the milder portraits is one of a Lincolnshire member, Sir Robert Carr, of whom it is recorded : " Married first his mother's maid, to whom he gave £1000 that she should not claim him, because he was married to Secretary Bennett's sister. He had a list of his debts given in to Bribe-

Master Clifford's hands, who has already paid off £7000 of them." Another runs as follows: "*Sir George Downing* Formerly Okey's little Chaplain; a great promoter of the Dutch War; a teller in the Exchequer; of the Council of Trade, and Secretary to the Treasurers. He keeps six whores in pay, and yet has got £40,000." Mr Belloc's criticisms certainly pale before the few specimens that can here be printed of this seventeenth-century manual.

I must gratefully acknowledge the assistance of my wife, especially on questions concerning women; of Mr Tedder, who has generously helped me with suggestions at the Athenæum; of Mrs Geoffrey Garrod, who has given much time to transcribing my book; and of Mr McCabe for his index. I am also indebted to Mr Cecil Chesterton, the editor of *The New Witness*, for permission to republish a small portion of the book which has already appeared in the columns of his paper.

Readers pressed for time will find a general summary in the last chapter of the book.

ST JOHN'S WOOD,  
*June 1916.*



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## INTRODUCTORY

INDIVIDUAL liberty has always been, in fact as well as by common fame, the peculiar blessing of Great Britain derived from and secured by the Common Law of England. Montesquieu's sentence about England, "C'est le peuple du monde qui a le mieux su se prévaloir à la fois de . . . la religion, le commerce, et la liberté," well epitomises European opinion on the subject.<sup>1</sup> To our forefathers down to the time of men still living it was almost a religion. The late Mr Justice Stephen, better known as Fitzjames Stephen, whose *Liberty, Equality, Fraternity* ought to be digested by every student of the subject, regards Liberty as inseparable from Equality and Fraternity and associates all three ideals with Positivism. But though myself no Positivist I attach more importance to Liberty than to Equality or Fraternity; for I believe that Aristotle wrote nothing truer than his definition of happiness being essentially implied and bound up with the exercise of a man's best faculties.

As regards modern philosophy the lover of Liberty will draw his best inspiration from the *Monadology* of Leibnitz, who conceived of a divine principle of

<sup>1</sup> Montesquieu of course in 1748 first analysed the freedom of the British Constitution as being due to the separation of legislative, executive, and judicial powers. In these days his *dictum* is remarkably to the point: "Ils ont bien raison de conserver cette liberté; s'ils venoient à la perdre, ils seroient un des peuples les plus esclaves de la terre."—*L'Esprit des Loïs*, Book II., chap. iv.

intelligence ever bubbling up in *monads* or individuals and finding fresh expression elsewhere as the individual body dies. If Liberty demands any metaphysical basis Leibnitz's *Monadology* supplies exactly what is wanted as opposed to the Collectivist philosophers and their attempts to achieve an artificial unity of vision by fusing individuals into a characterless mass.<sup>1</sup>

It is significant that to-day, as always, the cause of individual liberty and the free play of human personality is upheld by Catholic writers like Mr H. Belloc or the late Lord Acton, who have carried on the tradition of the early Church in defending the individual from the all-embracing supremacy of the State. Acton, however, never unequivocally denounced either serfdom or even slavery. He only demanded that the serf should be equal with his master before God, and that the State should not be autocratic. Belloc insists on a more practical equality to be achieved by the equitable distribution of property in what he calls the Distributive State. He forcibly clinches the prosaic truth that the best security for liberty is property.

The controversy in regard to Liberty is, therefore, as old as the hills, and some apology is perhaps due for writing a book on what before August 1914 was falsely regarded as an academic question. But to-day it can scarcely be denied that the subject is sternly practical. There is no doubt that for the last forty years the whole tendency of British

<sup>1</sup> "Because no individual is isolated it does not follow that all individuals are only constituent elements in a sort of supermind."—*Political Ideals*, p. 251. By C. Delisle Burns. London, 1912.

politics has been hostile to individual liberty. About 1880 a number of intelligent Englishmen became impatient when they saw the helplessness and ignorance of the proletariat and realised the enormous power of even the small capitalist over the penniless man. The capitalist employer, then as now, tyrannised over the individual in economic matters. These reformers had no belief in Mr Belloc's Distributive State and did not seriously tackle the problem of property distribution, for example, the encouragement of the small investor. They blindly invoked the State to put everything right under the odd delusion that democracy promotes individual liberty. They had (first of all) to get rid of sturdy individualist oligarchs like Lord Salisbury and Mr Gladstone in order gradually to set up in their stead the sort of ill-bred vulgarian that democracy applauds. The instinct of "Live and let live" is very rare among human beings. It tends in this country to be confined to prosperous autocrats and oligarchs who have grown up in an atmosphere of freedom and whose outbursts of youthful vitality have never landed them in the hands of the policeman or in the imbecile seclusion of the reformatory and common jail. Yet there is no inherent difficulty in promoting an atmosphere of freedom among the mass of the people such as actually existed in England and Scotland before the industrial revolution of 1800 and does still exist in Ireland.

Nor did these early Socialists grasp the real danger of democracy. In every modern community there must be a governing class; we cannot, like the

ancient Athenians, all take office in rotation, and the late Professor James's theories of Labour conscription, even as expanded by Mr Wells in *The Great State*, seem to me Utopian. If the Government is either monarchic or oligarchic it is obviously open to popular criticism and knows that it depends in the last resort on public opinion. Public opinion may even exalt an oligarchy to an aristocracy under exceptional conditions. But the governing class in democracy, to which I shall hereafter refer as the *Caucus*, passes off everything it does as a mandate from the people, and the Caucus inevitably attracts to itself those politicians who can most successfully fool all the people all the time. In this country it consists of a governing class, or rather caste, whose powers are exercised by the "Front Benches" in the House of Commons and whose constitution is fully described in the seventh chapter of this book.

For in all democratic countries the executive, and usually the legislative, powers ultimately fall into the hands of groups who exploit what they choose to call the popular will for their own purposes. I do not mean that any given popular cry can always be ignored but merely that capturing the political machine gives to its possessors the exclusive opportunity of deciding what popular measures can safely be conceded by them, and of using or inventing popular cries in order to carry out their private schemes. This almost inevitable state of things in our gigantic community is very clearly stated, though perhaps understated, by Mr Graham Wallas in his *Politics and Human Nature* and *The Great Society*. I shall hereafter describe the peculiar

dangers of the British system, which are due to its appearance of venerable respectability, and to the secret collusion of both the principal parties in the State when popular rights are really in conflict with the aims or ambitions of the governing class. This latter point is admirably expounded by Messrs Belloc and Cecil Chesterton in their book, *The Party System*. I have only digressed from the historical process I am tracing in order to explain quite clearly what I mean by the "Caucus."

The result, therefore, of early Socialism has been the creation (by a succession of statutes since 1880) of an irresponsible bureaucracy and a severely dragooned proletariat. The State, instead of safeguarding the wage-earner from his employer, has collaborated with the employer, whether individual or corporate, in a long process of tyranny, which was, and always is, disguised as interference with the rights of the employers. The poor man and his family are elaborately regimented. They are penalised if they drink beer (which is stigmatised as "intoxicating liquor"), while the rich, and especially the governing class, can drink what they like. Not allowed freedom of divorce, the poor are persecuted as immoral when they live as the rich do in the secure privacy that only money can buy. The poor are solemnly lectured on thrift and economy by men who have made their "careers" by squandering public money on private jobbery.

This state of things was bad enough before the growth of Prussian influences in this country. The worst of these influences can be traced back to the doctrines of Karl Marx and to the unfortunate

prestige of Prussian doctrines after the war of 1870 as expounded by Carlyle and other English writers. On the one hand the mass of men began to believe that the well-being of a community reposes on nothing but material wealth for the rich and eupeptic efficiency for the poor, and on the other hand that the individual must exist only for the State because the State represented Power, and Right is Might. Christian morality declined and nothing was put up in its place but the "pedantic barbarism" of the Teuton. These ideas badly infected England. Their prevalence was only too obvious at the time of the Boer War, and became even more marked when ministers like Mr Lloyd George found it necessary to go to Berlin to obtain inspiration for measures which (even if practicable for any minister with a genius for blundering) were wholly alien from the spirit of the English, the Scotch, and the Irish. Even as I write, Mr Lloyd George declares to the world that we must love and respect "commercial" as opposed to "military Germany" without (as it seems) comprehending that the one aim of commercial Germany was to loot Europe by exploiting the patriotism of military Germany.

The war, breaking out in August 1914, suddenly changed the scene. Russia, the long-established bogey of our Radicals and Socialists (though in that country individual liberty exists to a degree unknown in modern England), had to be treated with civility; Germany had to be denounced. But above all we had to be told by Mr Lloyd George that we were fighting for *Liberty* without at all clearly understanding what Liberty meant.



Now when Byron, Shelley, and Wordsworth wrote about Liberty they probably had in mind nothing more than general freedom from restraint, subject to equal liberty for each and all, but being sensible men these poets would certainly have admitted in conversation that individual liberty can only exist under the protection of a powerful and intelligent Government. John Stuart Mill would also have admitted this; but his essay on Liberty is in reality more of a protest against private than public interference with the individual. He objected (as he well might) to public opinion meddling with his own or any other man's domestic concerns and to its deriving a kind of moral support from interfering laws and bye-laws. It is significant, however, that all these men (except possibly Mill) assumed as a matter of course that England stood for individual liberty, and that foreign domination meant slavery.

This, however, is not at all what is meant by our modern champions of liberty. They defend small nationalities by employing the analogy of individuals; though small nationalities are, as a rule, the last to respect individual liberty. Small nationalities should of course share the right to govern or misgovern themselves in their own particular way, and this is certainly a cause well worth defending. But we ought not to assume that, for example, the defence of Belgium has any logical, or even practical, connection with the vindication of individual liberty in England. We are no doubt fighting Prussian aggression, but *not necessarily* Prussian ideals of internal Government. Indeed

the only effect of the war up to now has been to strengthen the hands of Prussian-minded Britons. It is of course unfair to criticise war measures as we should criticise peace measures; but great efforts will certainly be made after the war to preserve a number of ordinances which can only be tolerated on the ground of real or alleged necessity. It is, after all, no more absurd for the State in war time to employ a number of spies round small inns in order to convict a man of drinking a glass of beer at 2.35 P.M. without a plate of bread and cheese in front of him or of treating his wife to a glass of beer than it was and is for the State to spend in peace time large sums of money on ascertaining by equally elaborate espionage whether a successful petitioner in an undefended divorce suit has or has not committed adultery twenty-five years ago.<sup>1</sup> No doubt also the conscriptionist and the Puritan will support quite as obstinately as the "Temperance" fanatic any measure that may be invented to cow, subordinate, and dragoon the poor.

Should they succeed our condition will be far worse than it was before the war; moreover, the war will have killed off many of our more virile citizens who would have protested against police and bureaucratic tyranny. It is precisely for this reason that it is of vital importance for lovers of Liberty to be on their guard. They have lost much ground during the last century because they have allowed the whole question to be debated

<sup>1</sup> I do not mean that the Treasury economised such expenditure in war time. On the contrary, war economy did not prevent leading counsel being briefed by the King's Proctor.

sentimentally by sentimentalists. Journalists loudly complain in these days of being governed by lawyers. In fact we are really governed by bureaucrats appointed by the Caucus, who are allowed to be judges in their own cause, but if we were really governed by lawyers it would be our own fault. Up to 1880 politicians and publicists took the trouble to think instead of leaving it to the lawyers to do so. Any reader who turns abruptly from (say) John Stuart Mill to Montesquieu can see at once what I mean. The blighting influence of Rousseau and of emotional appeals to the mob for support has debauched all our so-called political science. I need not enlarge on a theme sufficiently expounded by Sir Henry Maine in his *Popular Government*.

In this book, therefore, I shall try to put aside all questions of sentiment and to avoid argument about purely abstract definitions of Liberty. It is my object to explain and define the kind of individual liberty that should be secured to each citizen in a really civilised State within the limits of expediency and common sense. So far the rich have enjoyed liberty to the exclusion of the poor. The present purpose of the Caucus is to deprive both rich and poor of liberty. I, therefore, wish to show why and how the poor may legitimately claim to achieve the liberty of the rich.

Former writers on the subject have been much concerned to defend the security of minorities. My own preoccupation is to ascertain how the majority is ever to be secure against the subterranean activities of plutocratic minorities. These minorities are the real tyrants of modern England and derive

their power from secret Party Funds and from the usurpation both of executive and legislative authority by a combination of ministers who alone know the obligations of their party to secret subsidisers. If the history of the Liberal party funds for the last ten years were published we should know much better how we are governed and misgoverned. This subject demands a chapter to itself.

One other chapter (namely that on Liberty in regard to women) demands explanation. It is logically indefensible to separate women as individuals from men and the family group. Yet the vagaries of modern thought and legislation have in fact induced a real segregation of women with property from women without property or earning power. The suffrage agitation has also raised points which demand separate treatment.

Fitzjames Stephen warned all lovers of Liberty that their principal danger was Quietism. He considered that if minorities could not protect themselves they were scarcely worth consideration. If Liberty merely reposes on an absence of really strong convictions in the community or on a collective conviction that the peace of invariable compromise must in all circumstances and at all costs be maintained then it is in a state of unstable equilibrium. Those who seek for the community the same sort of existence, free from accidents and disturbance, that Metchnikoff prescribes for the longevity of the individual, must not ignore the history of China or the prophecies of the late Charles Pearson. Such societies are either broken up from without or destroyed by bureaucrats from within,

just as the human body is worn out by phagocytes if it survives external accidents ; and that is why I have devoted my last chapter to this problem.

Lovers of Liberty cannot afford to sit still, and all those who have enjoyed the inheritance of it in youth are not going to see it taken away from their posterity without a struggle. The problem to-day is not what it was in 1873 when Stephen wrote. *There is to-day no really representative Government in this country.* The Caucus is supreme, and until the Augæan stable of British politics is cleaned out the promotion of the Servile State will be advanced in ways that must be publicly exposed. The battle must be fought out in the constituencies and the Law Courts but it will mean desperate fighting so long as the Caucus prevails. It is, therefore, of vital importance to study first principles and to decide within what limits and by what means Individual Liberty can be obtained and secured.



## CHAPTER I

### LIBERTY OF CONTRACT

“In the relations between a community and its members there must necessarily be restrictions upon individual liberty, and the more complex the organisation of the community the more numerous and detailed must be the restrictions. The growth of these restrictions is not incompatible with an increasing amount of liberty in those matters which make the real individual life. As both a socialist and a strong individualist I realise to the full the pressure of both these considerations. As an instance of the former we may take the growing, detailed, and sometimes irksome requirements of the Public Health Acts: as an instance of the latter the growth of individual liberty in matters of religion. The object of political action in a free State should be to restrain as little as possible the freedom of the individual to live his own life, think his own thoughts, and spend his own energies in the way that seems most desirable to him, except in those cases where the public safety or welfare imperatively demands interference with this freedom. This principle is often lost sight of nowadays, and those who are in power frequently seem to welcome coercion for its own sake because it saves them the trouble of thought. Thought is slow, painful, and laborious; coercion is easy, and appears to superficial observers to give the results desired. But the spirit which argues in this way is a spirit of brute force, of violence, and of unreason: it is not the spirit of a free people going rejoicingly and proudly on its way. The nation coerced, dragooned, and regimented is a nation infected with the Prussian spirit: it is no longer that free England of whose traditions we are proud.”—*Extract from Earl Russell's letter in The New Statesman of 22nd January 1916.*

IN this chapter I think it unnecessary to deal with any question of ancient slavery or medieval serfdom, though all ancient conceptions of Liberty implied slavery and nearly all medieval conceptions of Liberty tolerated serfdom. Sir Frederick Pollock indeed pointed out that :

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“Liberty, in the sense it regularly bears in medieval Latin, is a right, by way of monopoly, custom, or otherwise as it may be, to get all you can out of somebody.”<sup>1</sup>

It is therefore only necessary for me to consider how far modern ideas of individual liberty imply, or at any rate do not exclude, a condition which may be all the more servile because it is not openly recognised as such. To my mind the one vital security to liberty is the ownership of any property, even if the property be small. Economic independence does not necessarily depend on earning power, as Mr Belloc has pointed out in his *Servile State*.<sup>2</sup> It depends on the conditions under which the earning power is exercised, and these conditions may either not admit of saving money or may destroy the incentive to save. Mr Belloc considers that the best foundation for the liberty of the proletariat is a free peasantry, and certainly the examples which he gives of France and Ireland bear out what he says :

“In France the many experiments which elsewhere have successfully introduced the Servile State have been contemptuously rejected by the populace, and (most significant!) a recent attempt to register and to ‘insure’ the artisan as a separate category of citizens has broken down in the face of an universal and a virile contempt.”<sup>3</sup>

Mr Booker Washington was keenly aware of the same truth. He wanted to educate the negroes and

<sup>1</sup> *Genius of the Common Law*, p. 61. By the Rt. Hon. Sir Frederick Pollock. London, 1912.

<sup>2</sup> London, 1912.

<sup>3</sup> *Op cit.*, p. 189.



succeeded in doing so at Tuskegee, but his first and foremost object was to put the negro, so far as possible, on the same *proprietary* plane as the white man, and to give him the chance of accumulating property to however small an extent. The same truth was probably obvious to the feminists of the Victorian era. When in 1882 married women obtained the privilege of owning property independently of their husbands and to some extent of the swaddling clothes invented by the Court of Chancery they had made a much more important advance to their goal than when they sent their daughters to Oxford and Cambridge, and agitated about female suffrage. It ought surely to be obvious to all that in modern democracies votes count for nothing whereas finance counts for a great deal. Individual liberty depends also no doubt on certain minor conditions such as the separation of the legislative, executive, and judicial powers (which still theoretically prevails in this country) and on a certain balance between the different orders of the State. As Sir William Harcourt said to the electors of Oxford in 1873 :

“ We have limited the Crown, we have limited the aristocracy ; and depend upon it, if liberty is to be sacred, a democratic House of Commons must know how to limit itself.”<sup>1</sup>

Sir William Harcourt's peroration has been singularly stultified by history :

“ The Liberal Party having won liberty for the

<sup>1</sup> *How to Save England*, p. 16. By an Englishman. London, 1912: (Watts & Co.) For the really rousing portion of this remarkable speech see p. 14.

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English people, if need be, will yet defend it from the assaults of democratic despotism.”<sup>1</sup>

Applying tests like these, I propose in this coming chapter to trace the extent to which liberty of contract has been interfered with in England since 1800, and to discuss how far the process is likely to continue. It is scarcely necessary to dwell at length on the decline of medieval ideals after the Reformation. In medieval society each individual had a definite course of life prescribed for him or her almost from the cradle to the grave, and the Guild system, however rigid, solved many of the problems that modern society has to face. After the Reformation all was chaos, and I shall try to show how in this question of contract, which arose in the place of medieval status, our society has been restricted by State interference. During the last four centuries the State has interfered with liberty of contract mainly in the four following respects :

1. As to combinations of workmen to raise wages and to a minor degree with employers who created any monopoly in restraint of trade.

2. As to giving married women property independently of their husbands.

3. As to the protection of minors and lunatics but not spendthrifts.

4. As to money-lenders.

The professed purpose of all such interference has of course always been the public interest. This interference has usually been expressed through statutes while the tradition of individual liberty, so precious to our Common Law, has been preserved by

<sup>1</sup> *Op. cit.*, p. 16.

judges and juries. English custom as moulded by the Common Law differs from the Continental custom in a curious way which I may illustrate by an example. A public body lays down a rule which it imagines may benefit A and B, but if A and B manage to accommodate each other by breaking the rule without injuring the interests of the community in which the rule is made, the public body (according to English custom) would not trouble itself further whereas on the Continent the public body would feel it a personal insult that the rule should be disregarded. There are even a number of statutes on the Statute Book which are never observed though they have never been repealed.

I shall first deal with the question of State interference as between the employer and the artisan. This has taken two forms: (a) measures for the general well-being of the artisan like the Factory Acts and the series of Employers' Liability Statutes as from 1880. (b) For giving artisans the right of combination, even though in restraint of trade; against the employer to raise wages by collective bargaining. Dealing first with the Factory Acts and the Employers' Liability Statutes, which culminated in a system of national insurance, I shall try to examine the effect of these measures on the actual status of the artisan. As from 1880 reformers considered it wrong "that the State should abdicate its functions by remaining passive, and it was urged that the State should not only leave the road open for ability, but should also give active assistance in suppressing unfavourable external

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conditions and equalising opportunities,"<sup>1</sup> or as Mr Delisle Burns argues on behalf of modern individualism :

"If the restriction of law is removed, the restrictions involved in the very structure of society become all the more powerful; and indeed the Socialist might argue that Law is a removal of natural restrictions, not the addition of more. For he who is born underfed, lives ill-clothed and with no capital behind him, is very much restricted. His opportunities for 'free competition' and 'free contract' are absolutely non-existent. What sort of freedom of contract has one who must make a contract or die of starvation?"<sup>2</sup>

Mr Burns, however, does not seem to see that each individual may not necessarily enjoy the liberty he means to indicate even if the restriction of law *is* removed. He consistently ignores every argument put forward by Mr Belloc in his brilliant book, *The Servile State*, to the effect that our proletariat are in fact on the verge of slavery. Belloc defines what he calls the "Servile State" as a "State in which the mass of men shall be constrained *by law* to labour to the profit of a minority, but, as the price of such constraint, shall enjoy a security which the old Capitalism did not give them." According to his view "Society is recognised as no longer consisting of free men bargaining freely for their labour or any other commodity in their possession but of two contrasting status, owners and

<sup>1</sup> *Genius of the Common Law*, p. 108. By the Rt. Hon. Sir Fred. Pollock.

<sup>2</sup> *Political Ideals*, p. 253. C. Delisle Burns. London, 1915.

non-owners. The first must not be allowed to leave the second without subsistence; the second must not be allowed to obtain that grip upon the means of production which is the privilege of the first."

The theory of the "Servile State" may as well here be roughly summarised. The origin of capitalism is traced to the appropriation of church lands and wealth by big and small landowners when the monasteries were dissolved, and it is argued that this accumulation of property in a few hands was enormously increased by the industrial revolution. Capitalism when once established on a large scale cannot be logically enforced, because it must keep alive by non-capitalist methods great masses of the populace who would otherwise starve to death; and that is what capitalism was careful to do to an increasing extent as it got a stronger and stronger grip upon the English people. "Elizabeth's Poor Law at the beginning of the business, the Poor Law of 1834 coming at a moment when nearly half England had passed into the grip of capitalism, are original and primitive instances: there are to-day a hundred others. Because capitalism cannot be pursued to its logical conclusion it is the element of freedom which suffers to-day and always." The Socialist finds that he cannot dispossess the possessors of capital, and all he can say to the capitalist is: "I desire to dispossess you, and meanwhile I am determined that your employees shall live tolerable lives." But the ordinary reformer, as opposed to the Socialist, only works for public ownership in order to obtain

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security and sufficiency, and he can only get what he wants by the destruction of freedom.

I need not quote at length the psychological description of the person whom Belloc calls a "practical man," but there is a vivid picture of the mental process by which this typical being, who "dislikes all the infinite differentiation of the human and organic complexity which is the colour of any vital society, enthusiastically unites with his fellows in welcoming all the modern measures which take away freedom in proportion as they give security to the proletariat." The *fear of dismissal* becomes the one dominating motive in the life of the artisan, and as Fitzjames Stephen pointed out, liberty consists in responding to motives of hope and is killed by the constraint of fear. The ordinary artisan would welcome any secure life contract though this would be a negation of contract and the acceptance of status. "It would lay the man that undertook it under an obligation of forced labour, coterminous and coincident with his power to labour. . . . At the best the attitude of the proletariat towards property and towards that freedom which is alone obtainable through property, is no longer an attitude of experience or of expectation. They think of everything in terms of wage-earners. . . . To increase the weekly stipend of the wage-earner is an object which they vitally appreciate, and to make him cease to be a wage-earner would seem to them entirely outside the realities of life."

It is finally pointed out that the fixing of a minimum wage necessarily implies the compulsion to labour. Measures like the Employers' Liability,

Insurance, and the Minimum Wage Act are nevertheless quite distinct from such regulations as the Factory Acts because the Factory Acts do not mark off one class of citizens as legally distinct from any other by a test of manual labour or of income.

The motto of this important book might have been the words which Montesquieu himself used of England: "La servitude commence toujours par le sommeil." We may hope that Belloc has roused all classes of Englishmen to the dangers that he points out. Possibly he has overcoloured the situation, which is to some extent relieved by the magnitude of the investments made by the Trade Unions and Friendly Societies. These investments represent a vast mass of accumulated wealth, even if these bodies have been imprudent enough to invest a great deal of their money in land. I do not see the solution of this matter achieved by nothing more than the revival of Catholicism as Belloc does; but his more mundane remedy of small ownership, based on a respect for property as the guarantee of personal freedom, may become more practicable, owing, not so much to the enormous rise of wages since the war, as to the recent encouragement in England of the small investor, which nothing but a European war could have brought about. Wages are, on the whole, not likely to go down at all rapidly, unless there is a wild scramble of competition between the male and female artisan; and we may reasonably hope that the governing classes, having once roused themselves to take some notice of the small investor, will not suddenly cease to

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recognise his existence as, for all practical purposes, they did before the war.

I now come to measures of State interference as regards the rights of artisans combining, even though in restraint of trade, against the employers to raise wages and to enforce Trade Union rights against non-Unionists. Under the medieval scheme of things the law impartially suppressed monopolies in restraint of trade whether on the part of employers or any combination of artificers, workmen, or labourers, to raise their wages. A statute of 1548 quoted by Mr Jenks in his *Short History of English Law*<sup>1</sup> shows a characteristic impartiality in this respect.

Under our English system, which embodies no scheme of compulsory arbitration, the men may combine as much as they like, whether trade is restrained or not, while it is not at all impossible, as the law stands, for what used to be called a monopoly but is now called a Trust, to be established.

The theoretical grievance of labour since the days of Karl Marx is that all wealth is due to labour, whether the labour be good, bad, or indifferent, and not to the organising ability or to the enterprise of the capitalist. In the palmy days of Socialism the demand of labour was that the State should supply both enterprise and organising ability; but to-day labour aspires to supply everything. It may to some extent accept co-operation in the widest sense, but it will not accept what is commonly called co-partnership, which implies a limited participation in profits without any voice in the

<sup>1</sup> *Op cit.*, p. 322. By Edward Jenks. London, 1912.



management of the concern. Consequently the modern labour movement propounds what is known as Syndicalism, under which artisans as a body are to possess the means of production, and also claim the same rights as the medieval craftsman. Assuming the realisation of this ideal it must be remembered that the medieval craftsman was a highly skilled person, and such rights were only granted after some test in skill, such as, for instance, the examination which is to-day imposed by the Plumbers' Company on plumbers before they obtain the status of registered plumbers. The problem, therefore, of casual and unskilled labour is not solved by Syndicalism. Moreover, even under the existing system many a highly skilled man likes to become a highly paid manager on his own account, without caring whether his former associates have a voice in the management of the business or not.

The advocates of Syndicalism seem to lose sight of the fact that the State would probably interfere with a guild far more than it at present interferes with Trade Unions. The State would almost certainly exercise statutory powers over guilds which would prevent any strike calculated to injure the public interest, and this right of the State was scarcely questioned by the medieval guild. Another reason for this is that the guilds would probably have to rely on the State in the first instance not only for statutory power to buy out the present owners as opposed to the private investor, but also for the necessary funds. In these circumstances the State would naturally make as good a bargain as it could in the public interest. In the result, the

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artisan would probably lose even the small degree of individual liberty that he has now ; for he would be doubly fettered, first by the regulations of the guild and secondly by the regulations of the State. The champions of labour often talk as if a solicitor who is a member of the Law Society enjoyed all the privileges of a medieval magnate, and quite ignore the fact that a solicitor is treated by the State on exactly the same level as a taxicab driver so far as his fees go, and is far more severely dealt with than a taxicab driver should he take any advantage of his client. The profession has never dared to strike even when gravely provoked by the State, and would meet with but small courtesy if it did. There are no doubt many Syndicalists who imagine that Syndicalism will smash the fetters of the Servile State ; but my strong belief is that until the skilled artisan individually owns a certain amount of property and acquires the instinct of personal freedom he will be fiercely dragooned by the modern State.

This conclusion may startle many worthy citizens who imagine that the modern State is entirely ruled by the proletariat. Some of them at times exhort the proletariat majority as Fitzjames Stephen exhorted Mill's " wise minorities " to obtain what they want by political agitation. This of course implies that our Government represents the voters, and this common delusion no doubt still prevails all over the country. In sober fact, however, the country is entirely governed and misgoverned by the Caucus, and the most striking feature of the Caucus domination has been the imposition upon the community

at large (especially since 1895) of a bureaucratic tyranny. The incompetence of highly salaried officials thus appointed and the enormous increase of all officials, great and small, have not prevented the Caucus from crushing liberty and robbing the tax-payer so long as it can hoodwink a certain proportion of half-educated voters into supporting its nefarious designs. The whole process was very well described in a leading article of *The Times* which runs as follows :

“The machine is already far too powerful in this country, and it is growing in power every year. Not only is the representation anomalous and unfair, but it is more and more ceasing really to represent the constituencies as they are. Members of Parliament are becoming increasingly divorced from the real interests and wishes of those who return them and in scores of constituencies the electors have only a choice between two strangers about whom they know nothing, and who care nothing for them. They are simply sent by the machines to win a seat for the party managers. The great expense, direct and collateral, of winning and keeping a seat, is becoming prohibitive for many of the best candidates we could have, and the consequence is that the seats are filled by men to whom they are a stepping-stone to personal advancement. The machine promotes their candidature, and wealthy men feed the machine. They do not do that for nothing ; and the result is growing to be that the representatives forced upon the people are really, in the last resort, the nominees of wealth in the background. There are other reasons, but this is

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one which it behoves the nation to deal with, if it values its liberties.”

These words appeared on the 25th April 1910.

There have also been equally appropriate remarks about public jobbery, but this has become such a commonplace that I need not quote the newspapers any further on this point.

In this chapter, however, I am principally concerned with the disastrous consequences likely to result from the Syndicalist giving the Caucus any excuse for interfering with matters of real importance to industrial prosperity or the individual welfare of the artisan. I, therefore, particularly invite the attention of those who are concerned with such problems to two ghastly blunders of the Caucus which have gravely injured the wealth and credit of this country in regard to land.

From about 1840 onwards there were constant and well-deserved complaints as regards the verbosity of conveyancing and the complexity of all land transfer. The most substantial complaints of this kind were satisfied by the Conveyancing and Settled Land Acts in the early eighties, which were for the most part due to the late Lord Cairns. Simultaneously an agitation had been carried on for the registration of land on a voluntary system and this was set up in 1875. This system was quite different from the very sensible and efficient system of deed registration in the counties of Middlesex and Yorkshire, which had always given satisfaction as from the latter part of the eighteenth century. The whole system of conveyancing was working so well that in 1894 the late Mr John Hunter, then

President of the Incorporated Law Society, was encouraged to suggest various methods by which land should be assimilated to personalty as much as possible, with a view to its speedy and convenient transfer. The more enlightened type of solicitor has always wished to facilitate the sale and purchase of land, partly for obvious considerations of public spirit, and partly because he would not mind a larger number of simpler transactions at a smaller fee. These reforms, however, have never been consummated because about 1895 Lord Halsbury, who has an encyclopædic knowledge of almost every subject except land transfer, employed a number of Mandarins to carry through about as bad and complicated a statute as has ever been put on the English Statute Book. I refer to the Land Transfer Act of 1897, which, through the agency of the London County Council, inaugurated a grossly inefficient and expensive system of registration at a cost of at least £50,000 a year, that was and is a curse to every lawyer and layman who had anything to do with it. The other sections of the statute threw into confusion the whole Real Property Law of England, so that complicated amending statutes have become necessary, and the sale and purchase of land in the County of London has consequently become far more infrequent than it was before, and all this has divorced land more than ever from personalty. After the bureaucrats had told solicitors and their clients for many years that the obviously mischievous results of the Act were entirely due to the depravity of solicitors, its inherent and acquired defects were mercilessly exposed

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by a Royal Commission, who, however, had not the courage to do more than prevent the extension of the compulsory area from London to the rest of the country; for the invariable rule in these cases is that the heavens may fall and the public incidentally robbed and injured to any extent so long as the faces of the Caucus and bureaucrat are saved.

This is a good example of what can be done to the detriment of the public interest without any demand or "mandate" whatever. It is perhaps even more interesting to see how a fictitious "cry" can be created by the politician with exactly the same results. I need, therefore, only mention the famous or infamous Land Taxes which were first evolved in the autumn of 1908 in order to save the Government of the day from the critical situation into which it had fallen by reason of the imbecile Licensing Bill. It suddenly dawned upon Mr Lloyd George that he could indefinitely prolong the receipt of an official salary for himself and his colleagues by taxing landlords, and pretending that there was in land a mysterious source of wealth known as "increment value." The whole fallacy has long since been exposed; but the impostors succeeded at the time because landlords are a small minority of the community, and the community for some reason does not understand that land is as much the subject of prescription as any other kind of property, so that it is no more unreasonable for a man to sell land than it is for a man to sell boots or butter. Landlords have undoubtedly been mean in their dealings with public bodies; but they never plundered the community on the enormous scale permitted to the

kind of plutocrat and politician who now goes out of his way to denounce them, without proposing either to buy or confiscate their land.<sup>1</sup>

The history of this particular "cry" is conspicuously disgraceful. Mr Lloyd George pledged himself to the declaration that the State would tax nothing but the increase in the value of bare land (that is to say, land completely divested of buildings). Again and again this assurance was given, not merely in the House of Commons, but also to deputations of builders by Mr Lloyd George himself. He used towards the tax-payer on this occasion precisely the same trickery that resulted in so desperate a crisis on the Clyde during the Christmas week of 1915. The officials appointed to collect increment value found a pretty bare cupboard; but they ingeniously imagined that it might be a good plan to tax any property which happened to fetch a higher price than the two sets of Government assessors employed under the scheme thought it ought to fetch. This gave rise to the well-known Lumsden case, where a builder sold a house and the Commissioners admitted that the value of the bare land had not risen between the 30th April 1909 and the date of the sale, but demanded increment value duty on the ground that under the Bill of 1910 they were entitled to tax builders' profits as a "windfall." The case was fought, in circumstances of discreditable hardship for Mr Lumsden and with some political trickery by the Crown, up to the House of Lords,

<sup>1</sup> For the State to buy the land would be foolish and as the Caucus cannot confiscate the lands of the rich they can only persecute the poor who have put their savings into land.

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where the contention was admirably summarised by Lord Moulton. As he said in the judgment: "A catechism of the laws of England will read:

"*Question*: What is the increment of the site value of land when the value of the site has not changed?

"*Answer*: It is the difference of opinion of two sets of Government valuers as to the value of the owner's total interest in the estate."

to which he added the comment: "Could the farce of absurdity go further?"

Mr Lumsden's appeal failed mainly owing to the astonishing judgment of Lord Haldane, in which all legal reasoning was apparently sacrificed to political expediency. The injustice, however, was so flagrant that the Government at once promised remedial legislation; but the legislation has been delayed ever since May 1913. A final touch of public knavery was added by the fact that in these circumstances, while the only excuse for not passing a one-act Bill through Parliament was the so-called political truce, the Commissioners had the effrontery to sue persons in the same category as Mr Lumsden for increment value duty.<sup>1</sup> Here then we have the invention of a popular cry meant to deceive the populace, on the strength of which the Government obtain as from 1908 a fresh lease of power. Their object fails because it is palpably absurd, as all experts at the time openly stated, and the Government then invented a doctrine which was never submitted to the people at all, in order to conceal

<sup>1</sup> The procedure of the Commissioners has been characterised in language quite as clear as my own by two of the law lords in the Foran case in March 1916.



an unsuccessful fraud. Owing to the ambiguity of their own draftsmen they succeeded in carrying an unjust claim up to the House of Lords; after which during a great European crisis they persecute the tax-payer in order to extort the money in a manner which in all the circumstances can only be called robbery with violence; for what can be worse violence than the abuse of Executive power? If the Syndicalist can upset this kind of thing I hope he will, but he will have to attack the politicians before he attacks the employer.

It is clear that modern legislation of the type which is now tolerated from our rulers is bound to result in anarchy, unnecessary litigation, and irresponsibility. It has been suggested that in every Parliamentary constituency, in every city, borough, and district, there should be formed and maintained in a state of permanent efficiency a society representative of the commercial, professional, and industrial classes, the object of which would be to see that men are returned to Parliament and to local bodies who should represent the *whole community* and not act merely as the delegates of the Caucus or as the mouthpiece of plutocratic cranks. We have also heard a great deal about proportional representation. But probably no clean sweep will be made of the present system until the iniquity due to the existence of secret party funds and secret understandings has been once and for all cleared away, and exemplary penalties meted out to all those who seek to preserve it. Then, and not until then, a vote will mean power to obtain freedom of contract or any other freedom.

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The second example I gave of interference in liberty of contract related to married women. The position of married women had been largely determined in the eighteenth century. What was called her "equity to a settlement" was established about 1700. That gave a married woman the right to obtain a settlement from the Court of Chancery of her own property, which would otherwise have passed straight to her husband to dispose of as he liked; and thirty years later the Courts established what is called a "restraint on anticipation," which secured the income of a married woman not only against the demands of her husband but also the claims of her creditors. On the other hand the ingenuity of the Lincoln's Inn conveyancers destroyed the married woman's right of dower against her husband's land about the same period. In spite of all this her earnings were at the mercy of her husband as well as any free property. In the last half of the nineteenth century the State interfered to protect her earnings and in 1882 gave her a right to her separate estate without disturbing the protection given to her by the Chancery Courts. The result of this revolution is the family law of England as it stands to-day. Under that law a man may cut his wife and children completely out of his will, and during his life neither the wife nor the children have any right to more than being kept out of the workhouse unless he is guilty of a matrimonial offence. One would imagine that for a rich man to deny to his family all but bare subsistence would be in itself a matrimonial offence, but our legislators in their wisdom regard a single

act of adultery as a far greater offence against the family. On the other hand a husband is completely liable for his wife's torts, and is frequently sued by creditors who cannot touch the income of a rich married woman; for this income is subject to a "restraint on anticipation." Our modern legislation has, therefore, produced the same result here as elsewhere, namely, anarchy, unnecessary litigation, and irresponsibility.

My third subject was the rights of minors and lunatics as to which the State has fortunately done very little. We have never enjoyed in this country the useful machinery of a Family Council, of which I shall say more in the next chapter, so that we have no means of controlling the spendthrift or the incipient lunatic. In the early stages of general paralysis of the insane a man may easily dispose of his whole fortune and possibly other persons' property without any legal hindrance, and that is just the kind of individual liberty which is quite safe from legislative interference of the kind that prevails in this country.

My fourth subject was legislation in regard to money-lenders. On this question the State has perpetrated a series of ridiculous statutes which have only been saved from absurdity by the sensible decisions of judges, who are not inclined to accept the statement of any sane adult, save in exceptional cases, that he or she has not understood the document signed by him or her on the strength of which money has been paid. Here again we have the same result of anarchy, unnecessary litigation, and irresponsibility.

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State interference with liberty of contract in England has on the whole accelerated or promoted the servile condition of the artisan. In other matters it has done rather more harm than good without changing much. The fool has been protected a little more than he was, but probably not to the same extent as the knave who knows his way about the complexities of the modern Statute Book. The danger of the immediate future, however, is that if the overwhelming majority of voters are reduced to a servile condition they will become, as they have probably already become, singularly insensible to any inspiration which either the enjoyment or vision of liberty may bring to them.

And the importance of Liberty, apart from the purely economic view of it, will become even more obvious in the succeeding chapters.

## CHAPTER II

### LIBERTY OF PRIVATE MORALS

“ Chacun a appelé liberté le gouvernement qui étoit conforme à ses coutumes ou à ses inclinations. . . . Il est singulier que parmi nous trois crimes, la magie, l’hérésie, et le crime contre nature, dont on pourroit prouver du premier qu’il n’existe pas ; du second qu’il est susceptible d’une infinité de distinctions, interprétations, limitations ; du troisième qu’il est très souvent obscur, aient été tous trois punis de la peine du feu.”—MONTESQUIEU, *Esprit des Lois*, *Book I.*, *chap. ii.* ; *Book XII.*, *chap. vii.*

At the end of last chapter I pointed out that Liberty was important apart from the purely economic view of it, and this is because the absence of it has a very marked effect on any national character. I do not think it fanciful to suggest that the characteristic amiability of the English is due to the fact that until recently they were not perpetually harassed by officials ; and probably the great need of the poor in all countries is to shake off the mental starvation which comes of physical malnutrition and lack of healthy distractions. They certainly do not need any increase of Puritanical restrictions. There is, secondly, the superiority in initiative which has certainly distinguished the private soldier of the British army in all wars as distinct from the more mechanical virtues of the Prussian soldier. There is, thirdly, a certain freedom from hypocrisy in any country where men are neither intimidated by the State nor by public opinion, and this in so far as it

contributes to the general honesty of the community, is certainly important for the character of any nation. These advantages have been expounded at great length by John Stuart Mill in his essay, *On Liberty*. "Human nature," he there writes, "is not a machine to be built after a model and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides according to the tendency or inward forces which make it a living thing."<sup>1</sup> But he unjustifiably limits the function of the State in regard to this matter when he lays down the rule that the State only exists for purposes of self-protection. Even Adam Smith admits that the legitimate functions of government are not only self-protection but are also to secure each citizen from the injustice or ill-will of other citizens, and to erect and maintain certain establishments of public utility which are of such a nature that it would never be the particular interest of an individual or the interest of a small number of persons to construct them. Mill bases his theory on a distinction between what he calls "self-regarding" acts (*e.g.* getting drunk) and other acts which are not self-regarding (*e.g.* theft). This is a thoroughly arbitrary distinction which few persons would nowadays accept. Fitzjames Stephen remarked that this distinction was of the same kind as a distinction drawn between acts done in time and acts done in space. The fallacy is dealt with at some length by Professor Montague, who points out that no act can be so distinguished, although of course no human power can punish anybody for his

<sup>1</sup> John Stuart Mill, *On Liberty*, p. 34. London, 1913.

thoughts or should punish anybody for that which could not be in his thought. "It is only when thought translates itself into action that there is something which must affect other men besides the agent, something which lies in their discretion to reward or punish. For action, although in its root self-regarding, is social in its result."<sup>1</sup> He goes on to point out that even within the limits marked out by Mill the law would still punish drunkenness, though casually and indirectly, by, for example, punishing the drunkard for failing to pay his debts or for failing to maintain his children. "The distinction," he continues, "is impossible to those who look upon a man as receiving from society his whole character and his whole endowment and as reacting upon society at every moment of his life. Those who have once appreciated the infinite subtlety of relation between the individual and his society will no more attempt in politics to divorce the individual from the social life than they would attempt in physiology to divorce the life of the brain or of the stomach from the life of the body."<sup>2</sup>

Lord Melbourne has earned the gratitude of posterity by his remark after a sermon on profane swearing: "No one has a more sincere respect for the Church than I have, but things have come to a pretty pass when religion is allowed to invade the sphere of private life." If he were Prime Minister to-day he would certainly apply the same remark about the interference of the State.

<sup>1</sup> *Limits of Individual Liberty*, p. 186. By Prof. Montague. London, 1885.

<sup>2</sup> *Op cit.*, p. 188.

By private life and private morals I mean such conduct as does not obviously disturb the King's peace. Murder and theft must naturally be the subject matter of the criminal law, whereas that part of conduct which relates to dealings with individuals apart from the common tie of citizenship is no doubt best left to the rewards and punishments prescribed by public opinion. I find it more convenient, however, to postpone for a subsequent chapter the whole question of liberty in family life because the question of how children should be treated by the State in relation to their parents raises far more complicated considerations. In this chapter, therefore, I shall deal merely with the individual and his private habits without discussing such questions as marriage, divorce, guardianship, and education.

Mr Wells in his *Anticipations*<sup>1</sup> prophesied that a process of "moral segregation" would set in, and that "the State would cease to interfere with private morals just as a man's religious belief has ceased to be part of his social life and has become part of his individual life." Much as I respect Mr Wells's prophecies I see very little prospect at present of Upper Tooting achieving more freedom in private morals than Hampstead, or *vice versa*, although I think that some such idea was probably at the back of Mr Wells's mind when he wrote the above words. To-day the State interferes with us almost as much as the Church did. In a book like Hale's *Precedents in Criminal Causes* (London, 1847) we find a thoroughly characteristic picture of the Church

<sup>1</sup> *Anticipations*. By H. G. Wells. London, 1902.



when it possessed the power of inquiring into everyone's private life through domestic spies and hostile neighbours. From 1066 to 1640 an ecclesiastical judge could "propose articles of charge" to the accused in person as regards the smallest detail of personal misbehaviour and could require him upon oath to admit or deny the accusation. If the accused party did not confess the charge he had to deny it upon oath and then was obliged to defend his oath by the evidence of two or more compurgators (*i.e.* witnesses who would vouch for the innocence of the accused). One would imagine that the life of the laity was a kind of nightmare judging from the fact that no detail of their daily life escaped the attention of the Church.<sup>1</sup> On the other hand the society of that time appears more childlike and charitable than our own. If, to take one example, a lady seduced three clergymen and two married men in the same parish in fairly rapid succession it seems to have been sufficient for the Church that she and they should confess their misdoings and that quite a trifling fine should be inflicted. These people all had to live in the same parish and by the time they had all been found out and publicly fined there could be but little scope for virtuous indignation on the part of any one individual against another. I have especially selected this example because the learned and pious Archdeacon Hale thinks it

<sup>1</sup> The Master of Balliol wrote to me that the people submitted to this because they believed in penance being better than hell and it was a relief to get it over and wiped out. He mentions very justly that Calvinistic practices were even worse in this connection. Froude points out, in his *History of England*, how unpopular the courts became in the fifteenth century.

necessary to observe that offences against chastity far exceeded any other offences in number. The modern State, however, acts in quite a different way. It is useless to suggest that a professional man who is summoned in the police court for being drunk or protecting a prostitute from a blackmailing constable is not irreparably injured by the fact that he merely pays a fine of forty shillings; for he also thereby loses earning power and social esteem. The modern situation is therefore very difficult; nevertheless I do not accept Mill's argument that the State cannot and should not concern itself with private morals. On the contrary, I consider that the State is bound to take a definite line on almost any moral question. It is quite clear for instance that the State must either protect property in some form or other or not. It may of course tolerate the outpourings of the Fabian Society on subjects of which that society knows very little, but the policeman would speedily interfere if these same people proceeded to rob individuals by any other machinery than an Act of Parliament.

The State, therefore, must observe a clear principle and act on it. To-day the State does nothing of the kind. It has confused relics of Christian morality in its composition mixed up with a great deal of cant about social progress with which the modern Christian claims to be concerned in spite of the absolute hostility to any form of social progress on which the Christian religion of "other-worldliness" was founded. Laws and customs as to Sunday observance have, for example, obsolesced as noticeably as the belief in the Christian religion

during the last fifty years ; but this does not prevent the "temperance" advocate from urging that no alcoholic liquor should be drunk on Sundays. Another example is the recent statute on incest which was carried through the House of Commons without any criticism by sensible people. This statute originated in the ecclesiastical taboo against incest, which it may be mentioned quite as strongly proscribed marriage with a deceased wife's sister, and still as fiercely proscribes marriage with a deceased husband's brother. But the modern Puritan thought it necessary to state that the Bill was really based on eugenic grounds since it was thought that the children of a brother and sister must necessarily be defective. The prosperity of Egyptian dynasties, deriving from brother and sister marriages, is no doubt of small importance to the pseudo-science of to-day, but the real motive of those who promoted the law was undoubtedly a feeling of virtuous indignation. The kind of incest that has always required suppression has been the injury done to children by parents, but this was amply provided for by the ordinary legislation which protects children from older persons.<sup>1</sup>

However distracted the State may be between professions of Christian morality and muddled notions of social progress, there is one point on which its principles are only too clear, namely, that the poor are to be allowed no liberty whatever. All

<sup>1</sup> It is interesting to observe that the judges found it necessary to advertise the existence of the statute when they went on assizes, and for once offended against Bentham's maxim : " Ignorance of the law excuses no man but the lawyer."

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legislation on private morals is directed against the poor and not against the rich. Money of course insures privacy and privacy is merely a question of money as we see when the State tolerates the employment of motor scouts to preserve the amusements of the rich from the interference of the police. The tendency is very largely due to the inhuman contempt quite genuinely felt by our modern demagogue for the poor. I have met many Tories who might be accused of regarding their own labourers as only in a small degree superior to their best horses, but they had a very genuine affection for their tenants and labourers; whereas to a man of the demagogic type the poor much more resemble an offensive drove of pigs who have to be unwillingly prodded along the roads of social reform. This tendency is not perhaps confined to this country and has been admirably portrayed in the United States by Mr E. L. Masters in the autobiographical epitaph which he writes on John Hancock Otis<sup>1</sup> :

“As to democracy, fellow citizens,  
Are you not prepared to admit  
That I, who inherited riches and was to the manner born,  
Was second to none in Spoon River  
In my devotion to the cause of Liberty?  
While my contemporary, Anthony Findlay,  
Born in a shanty and beginning life  
As a water carrier to the section hands,  
Then becoming a section hand when he was grown,  
Afterwards foreman of the gang, until he rose  
To the superintendency of the railroad,  
Living in Chicago,

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<sup>1</sup> *Spoon River Anthology*. By E. L. Masters. London, 1915.

Was a veritable slave driver,  
Grinding the faces of labor,  
And a bitter enemy of democracy.  
And I say to you, Spoon River,  
And to thee, O republic,  
Beware of the man who rises to power  
From one suspender."

This particularly applies to the question of so-called "temperance." Some years ago I dined with a prominent social reformer and shared with him a bottle of Burgundy and a pint of Port. This gentleman, like most of his friends, whose blood will run through the gutters of London if the poor ever revolt against their masters, told me that in his opinion no man who earned less than two pounds a week should be allowed to drink any intoxicating liquor. He urged that this restriction would be a valuable incentive to the poor man to work harder. His argument was precisely that of a slave owner who would grant his slaves the privilege of eating meat twice a week if they did what he wanted at high speed. The irony of the situation was that this gentleman did not at the time earn two pounds a week but lived either on a paternal allowance or on the income of wealth of which, according to his own principles, the community had been robbed. It never occurred to him that the poor man is no more addicted to drink than the rich man. It is true that the poor man works hard, that the conditions of his life are dreary, that his food is badly cooked and adulterated, that he has no security of employment, and that he drinks beer adulterated by the brewers in order to compensate themselves for political

attacks on the brewing trade which they think it wise not to resist. It follows that a man living under such conditions may suffer from a certain amount of acute indigestion, which is often confused by the police with drunkenness, whereas no form of food is more digestible than pure beer. The real object of modern legislators, however, is not to promote temperance, which is the last thing they desire. To force a man or woman who goes into a public-house to leave their children outside in the rain, to insist on all public-houses being made as uncomfortable and sordid and furtive as possible is a policy which is meant to encourage and does encourage secret drinking at home of a kind which to my own knowledge prematurely ended the career of a contemporary of mine at Oxford, who was President of the Union and a prominent "temperance" leader in the London County Council and the House of Commons.

Modern legislation on this subject will therefore run its prohibitive course until we all see men carrying brandy and whisky flasks about with them and furtively drinking spirits in railway carriages and elsewhere, as can commonly be seen in the "dry" and even some of the "wet" States across the Atlantic. I can confidently predict, however, that no measure of prohibition will ever affect the right of the rich man to keep what he likes in his own cellar, and I have known at least one prohibitionist secretly chuckle over the fact. Hatred and contempt of his less fortunate fellow-creatures could scarcely be carried further.

I now come to the kindred question of gambling.

It is of course only to be expected that the rich should never be interfered with. Quite recently a few gaming-houses to which young officers resorted were closed; but otherwise I have never heard of rich people ever being prevented from gaming as they liked. The activities of the race-course and the Stock Exchange are left untouched, and not even taxed; although in France the Government makes a fine revenue from the use of an instrument called the "totalisator," and a considerable revenue could also be raised in this country by imposing an *ad valorem* stamp on contract notes, which would at once tax the kind of person who contracts to buy shares and gambles on differences without ever producing the purchase money. This gambling is of course severely punished when a poor clerk embezzles his employer's money to meet a difference; but it entails no particular punishment for the rich man who goes bankrupt. It is, however, only to be expected that a large number of the police force should be employed to prevent gambling at street corners.

The absurdity of Mill's theory is clear from the examination of the two above instances. It would obviously injure the national welfare if drunkenness became more common, as it certainly will be if modern "temperance" movements flourish. It is equally unsound for either the rich or the poor man to gamble on a large scale since this upsets the financial security of the community, and subsequent examples of freedom conferred on the rich to the exclusion of the poor will make this truth even more obvious. Perhaps the most widely reaching change

in private morals, a change that has made and is making history, has been the growth of popular knowledge as to methods of preventing conception. Since the trial of Mr Bradlaugh and Mrs Besant in 1876 this knowledge has been extended to the whole middle class of this country and has affected the birth-rate to an extent which is conspicuously shown by statistics. In this most vital matter we might most reasonably expect the State to be taking an intelligent line. We might, for instance, expect to find that certain measures such as the legitimation of children by subsequent marriage, or the enactment of reasonable marriage laws, would be undertaken in order to make possible the birth of children to fit parents who now abstain because they will not suffer the indignity of their children being outlawed by a State whose marriage laws have long incurred the contempt of every reflective citizen. We find, however, the usual muddle of Christian morality combined with the usual bullying of the poor. Under conditions quite remote from those of modern society the Church commanded man and woman to increase and multiply; but it is significant that after forty years of conception being more or less openly prevented for social and individual convenience the Catholic priest is now enjoined to preserve a discreet reticence on the subject, and even the Bishop of London has recently said little on a topic which at one time seemed to perturb him as much as it perturbed the early Christian who thought it impious for any man to shave off a beard created by God.

There are only two clear principles found in such



legislative interference as exists to-day. The first is the protection of what the French call *pudeur publique*, and to which I shall hereafter refer as "public modesty." Considerations of public modesty at least demand that unmarried women and children should not have the facts of sex openly thrust upon their attention, even though when pushed too far the protection of public modesty certainly tends to stimulate private curiosity. The second principle is the fear that the poor may possibly enjoy sexual intercourse outside marriage with complete immunity from the censure of the clergyman and the policeman. It will be remembered that after the clergy and many other persons had prophesied a large number of "war babies" in the spring of 1915 and the prophecy was discredited, it became necessary for the Archbishop of Canterbury to warn the community that great moral evil might have occurred even though but few "war babies" had arrived. What was, however, much more startling to the lay mind was an article by Mrs Drysdale in *The Malthusian*, in which she ventured to suggest that we should welcome the escape of such young girls as might have been improved and elevated by the experience of love, from the lifelong censure of their neighbours and the necessity of having to provide cheap labour for those employers who are not above saving their pockets by considerations of public virtue.

This subject is closely allied with the whole question of venereal disease. We may still be thankful that individual liberty has been preserved

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by noble women like Josephine Butler who refused to allow the systematic examination of prostitutes which was often in her time proposed without a corresponding examination of men. Such regulations have always proved as futile for their proposed object as they are degrading to any believer in individual liberty. There is, however, no doubt that universal public instruction as to the dangers of infection would enormously reduce not only the rates of mortality but also the shocking amount of disease transmitted to future generations. On the other hand no lover of liberty can for one moment tolerate the present status of the prostitute, which (as Lord Hugh Cecil once pointed out) is directly due to considerations of "Christian morality," although the Founder of Christian morality might be astonished to find His principles so interpreted. The prostitute, who in society as at present constituted is the one pivot of female chastity and male respectability, is not only blackmailed by her landlord and almost everyone she meets except her clients, but although to all intents and purposes an outlaw, is called upon to pay income tax. I say that she is an outlaw because she has no real remedy against blackmail, and because there have been cases of brutal assault, amounting almost to rape, by gangs of five or six men against prostitutes which have never been punished and are not likely to be punished so long as they come before the ordinary type of magistrate. Under any intelligent system of legislation there will probably come a time when concubinage will be recognised as a status as it was by the Roman Law. This will be necessary even if the

divorce law is reformed, and the law has already advanced in this direction by the provision for illegitimate dependents both during the war and in the existing Workmen's Compensation Acts. So far as restriction goes the main business of the State is to protect young persons, and it utterly neglects this duty as regards the protection of young boys from women. For example, a nurse in a domestic household can deprave the boys under her charge as much as she likes, and often does so, without committing any criminal offence.

I now come to what are known as unnatural practices. The word "unnatural" to some extent begs the question. Such practices are commonly called "crimes against nature." It is, however, contended by those who claim to have specially studied the subject that the real root of the trouble is what may be called an innate disharmony, such for instance as we observe in the sole and other flat fish. Such fish, instead of swimming on their sides, perversely insist, as they grow up, on swimming flat and thus impairing their vision. It is certainly difficult for any legislator to decide what the modern State could do and should do to a sole which swims flat if the sole were capable of understanding any system of rewards and punishments; but the illustration at least illuminates the nature of the problem with which the State has to deal. The first of such practices to be dealt with is what passes under the hybrid word "homosexuality," which word is quite as unnatural as any flat fish or homosexual person since it is an impure mixture of Greek and Latin. It is argued by some writers that there is a fixed

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ratio of inverts in any society.<sup>1</sup> This ratio is calculated by expert students as two per cent., but no doubt in our modern society where extra-matrimonial relationships are persecuted by public opinion, inversion and homosexuality may be artificially spread both among men and women who might otherwise have been normal, and any wise legislator would wish to prevent the increase of inversion for obvious reasons. Those who suggest that all homosexual men should be segregated from society in prisons for their natural lives, have perhaps hardly considered the economic difficulties of providing for two per cent. of the population and the fact that if this percentage really exists it will probably continue with each generation of mankind. It may be replied that the population produces a constant percentage of burglars; but on the other hand would the State really trouble to interfere if the burglars merely broke into each other's houses without demanding police protection? On the whole, the policy of the British police is wiser than the law. They rightly protect the young and take measures to prevent inversion from becoming promiscuous or mercenary and to restrain individuals from offending public modesty. This policy is also adopted in regard to other unnatural practices such as solitary indulgence, bestiality, or flagellomania. There is, therefore, some ground for contending (as many eminent psychologists have contended) that the State may feel that it has done its

<sup>1</sup> *The Sexual Life of our Time*, p. 520. By Iwan Bloch. English translation. Heinemann. London. *History of Penal Methods*, p. 349. By George Ives. London, 1914.

duty when it protects the young by legislation and leaves adults to the judgment of public opinion. Such legislation would not be likely to cause any breach of the peace such as abolishing penalties for burglary, and it already exists in the case of homosexual women; for I believe that Austria is the only country where any penalty is inflicted on such women.

What offends humanitarian sentiment to-day is that judges and magistrates make no allowance for the possibility of the disposition in question being congenital, and from this point of view it is as futile to punish such persons as it was for the worthy citizens of Basle to burn a cock alive in the year 1474 for having been accused and convicted of laying an egg. The fate of the cock was at least excused by the belief that monsters such as the basilisk were said to emerge from such eggs; whereas our judges and magistrates do nothing but relieve and express their own physical disgust in terms of virtuous indignation. Virtuous indignation thus inspired accounts for the unscientific severity of sentences where young people are not concerned; and this severity is even worse in the Navy, where far more severe sentences (such as five years' penal servitude as well as dismissal from the service) are inflicted than in civilian courts, although for obvious reasons there is more excuse for such offences in the Navy. The present state of the law, even apart from its administration, is also responsible for the most disgraceful blackmail; and in my professional experience such blackmailers have usually been Germans. There are some terrible instances of this given in

Mr Ives's book.<sup>1</sup> Mr Ives also points out that explosive forces and poisonous gases become most dangerous when they are enclosed. Prohibition in fact creates vices, and the investigation of these particular offences violates ordinary human privacy more seriously even than the prosecution of normal unchastity. Some very sensible rules on this point were laid down by Fitzjames Stephen. He urged that neither legislation nor public opinion ought to be meddlesome and added that a very large proportion of the matters upon which people wished to interfere with their neighbours are trumpery little things which are of no real importance at all. He maintained that both legislation and public opinion, but especially the latter, are apt to be most mischievous and cruelly unjust if they proceed on imperfect evidence. He wisely warned the legislator that he cannot punish anything which public opinion as expressed in the common practice of society does not strenuously and unequivocally condemn. He points out that to try to regulate the internal affairs of a family relation, of love or friendship or many other things of the same sort by law or by the coercion of public opinion is like "trying to pull an eyelash out of a man's eye with a pair of tongs. They may put out the eye but they will never get out the eyelash."<sup>2</sup>

Stephen, while fully vindicating the rights of State interference, vehemently protests that no police or any other authority can be trusted with the power to intrude into private society and to pry into

<sup>1</sup> *Op. cit.*, 353-358. Cf. also Bloch, *op. cit.*, 520.

<sup>2</sup> *Op. cit.*, pp. 173-177.

private papers, and points out that this maxim is observed in the rule of evidence which protects from disclosure communications made during marriage between husbands and wives. It is a pity that our legislation of to-day cannot observe the very moderate rules laid down by Stephen in 1873.

The last question of private morals which I shall mention is the question of suicide. Outside Great Britain and Ireland suicide is not a criminal offence, and now that the confiscation of the suicide's property has been abolished since 1870 the legal theory of suicide can be of but little interest to the successful criminal. There are, however, certain cases of severe hardship as regards those who fail in the attempt. I remember that Mr Labouchere some years ago called public attention to the case of a schoolmaster who, labouring under an accusation of financial dishonesty which turned out to be false, shot himself and destroyed the sight of one eye. The man was kept in prison for a long time, and when he finally appeared before the late Mr Justice Day received a severe sentence of imprisonment. Our laws against suicide are not likely to cause much human misery if they are administered by the ordinary judge of to-day, but so long as we allow bigots of any denomination to perform judicial functions in this country there is a distinct danger of cases like this.

I think it as well to summarise the contents of this chapter. Unlike Mill and others I admit that the State must have some theory of private morals to guide its action, but this makes it all the more important that whatever theory the State adopts

should be scientific and in harmony with the best reflection of the day so that it will deserve the respect of the community. For the reasons before mentioned the State should transgress against human privacy as little as possible both for humanitarian reasons and because the advertisement of such things as homosexual practices is not edifying to the community. Thus it is the duty of the State while not excluding the public from the Law Courts to exercise a wise control over the publicity of the Press. This is also necessary because it cannot be good for the State to encourage the livelihood of filthy scoundrels, mostly aliens, who make large sums of money by a system of blackmail. The system is encouraged by newspaper publicity to such an extent as often to prevent an entirely innocent person from prosecuting the blackmailer to conviction. Moreover, all such legislation must adapt itself progressively to public opinion in order to retain the moral dignity and authority which the State ought to have and which it certainly will not have so long as both Houses of Parliament continue to turn out the sort of legislation that has characterised the opening years of the twentieth century.



## CHAPTER III

### LIBERTY AND THE FAMILY

“One thing I will tell you  
And one I will ask :  
The stealers of husbands  
Wear powders and trinkets,  
And fashionable hats.  
Wives, wear them yourselves.  
Hats may make divorces.  
They also prevent them.  
Well now, let me ask you :  
If all of the children, born here in Spoon River,  
Had been reared by the County, somewhere on a farm ;  
And the fathers and mothers had been given their freedom  
To live and enjoy, change mates if they wished,  
Do you think that Spoon River  
Had been any the worse ? ”

E. L. MASTERS, *Spoon River Anthology* : Mrs Williams.

THE autobiographical epitaph quoted above asks a question which is being asked more and more insistently in these times. There is undoubtedly a serious danger that as the process of half-education becomes universal the belief in the family as a social unit will share the fate of instruction in the Humanities and of all the other old things which are to be swept away in the gale of modern progress. Nothing, however, can be more certain than that the rate of mortality among children brought up in public institutions not only is, but is bound to be, far greater than that of children brought up in the society of almost any mother. I refer my readers

to the ascertained rate of mortality among such children up to three or four years of age; and it is significant that children who die of being exposed, as in ancient Athens and modern China, die not from exposure but from fright. On the other hand it is equally clear to most students of the subject that the abolition of the institution of marriage would make very little difference to the relations of men and women taken by themselves. Professor Woods Hutchinson remarked in *The Contemporary Review* of September 1905 that "if by a single stroke all marriage ties now in existence were struck off or declared illegal eight-tenths of all couples would be remarried within forty-eight hours, and seven-tenths could not be kept asunder with bayonets." Commenting on this, Mr Havelock Ellis writes :

"In 1909 in an English village in Buckinghamshire it was found that the Parish Church had never been licensed for marriages, and that in consequence all people who had gone through the ceremony of marriage in that church during the previous half-century had never been legally married. Yet, so far as could be ascertained, not a single couple thus released from the legal compulsion of marriage took advantage of the freedom bestowed."<sup>1</sup>

It is clear, however, from the point of view of the children and of any system of inheritance that the State must recognise some system of marriage, and so long as some form of concubinage is also recognised it seems essential that the form of marriage

<sup>1</sup> *Studies in the Psychology of Sex*, p. 484. T. A. Davis, Philadelphia.

in question should be monogamous, both on account of our traditions and for economic reasons.

Unfortunately the institution of the family presents some of the same difficulties as the existence of secret societies, which result from the problem of an *imperium in imperio*. The State can go to one of two extremes. One extreme is typified in Roman Law, where the father has all the powers of punishment, including that of life and death, over his wife and children. The sons never (or hardly ever) pass out of the *patria potestas* unless or until they survive their father; nor do the daughters unless or until they marry or become Vestal virgins. Considering also that the father had the right of infanticide as well as of selling his son for a slave we observe a degree of paternal power which the world is scarcely likely to see again.

We find almost a complete antithesis to this in the modern world, where collectivist doctrines are expressing themselves in the servile state. From this point of view the family is only recognised as a convenient instrument of the State for continuing the population, though this recognition is also a decorous concession to Christian morality. The modern collectivist never seems to realise that the family is at all essential in itself. Nothing horrifies him more than the survival from the Roman Law of that admirable institution, the Family Council, on the Continent. Each child when born has a right to live, and becomes a citizen educated and even fed by the State when the parents are unable to pay for the food and unwilling to pay for the education. Where either parent is unable to pay the State no

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more recognises the existence of the parents. The child is taken away to some industrial school, and however rich the parents may subsequently become they are not usually allowed to see the child again. In one or two cases special care has been taken by the State to conceal the whereabouts, or even the existence, of the child from the parents. A typical case arose some time ago of a very neurotic little boy who had to go to a "special" school. Under any sensible or humane system he would not have been made to go to a school six miles from home through the London streets; but his feelings as well as the feelings of his parents were a matter of pure indifference to the collectivist administrators of our time, whose contempt for humanity takes a more subtle form than mere infanticide. It is of course quite true that much good work is done at industrial schools, but that does not affect my argument. The poor parents should be given a better chance in life instead of having their children taken away from them and alienated in proportion to the benefits of the industrial school system. Moreover, it is to my mind shocking that money should so completely overshadow human ties.

It is no doubt a lesser evil that the children should be taught to believe that the world was created precisely as described in the Book of Genesis and that their minds should be lumbered with a great deal more nonsense of a kind that has seriously handicapped the brain-power of the nation ever since 1870. We have now arrived at a stage when it is only a matter of time for the State to determine what it is pleased to call the "right of parenthood"

on what it is pleased to call "eugenic" lines, and after achieving the compulsory seclusion of any persons whom certain officials choose to seclude for their natural lives we shall no doubt arrive at a possibly more humane regimen of compulsory sterilisation. This vital question represents more tragically than any of my previous examples the muddle of Christian morals and the liberty that exists for the rich to the exclusion of the poor, although it may well be doubted whether the rich will cease to exist as such in years to come, in which case all men will suffer a common tyranny. Hitherto, however, the rich have enjoyed complete liberty as to the education of their children even to the extent of not educating them at all, and they can of course exercise a parental authority within far wider limits than the poor and treat both their legitimate and illegitimate children as they please.

There is, however, a reasonable compromise possible as between ancient and modern ideas of the family, and however useless the undertaking may appear, I propose in this chapter to try and indicate how the modern State might establish the best and most stable equilibrium as between itself and the family group. For this purpose we must necessarily begin with the whole problem of marriage and divorce. I have hitherto abstained from writing any large treatise on this subject; although I have given up the last twelve years of my life to studying it. This is because I cannot see of what use it is to write at all exhaustively about divorce law reform unless there is some sentiment of liberty to appeal

to in the community. Moreover, I should regret as much as Mr G. K. Chesterton or any of his friends any *régime* under which divorce was in any sense compelled by the State. The danger is not very plausibly indicated by Mr Chesterton in his recent little book on the subject; but had he chosen to illustrate his thesis from the National Insurance Act he could well have pointed out that the State might conceivably refuse to pay such insurance money to a husband unless he divorced himself from a wife for whom, in spite of obvious disadvantages such as epileptic fits or occasional bouts of intoxication, he might presume as a man, though not as a pensioner of the State, to feel affection.

In the case of marriage and divorce I am compelled to devote some space to the history of the marriage laws in Europe, since persons quite well informed in other respects are entirely ignorant of them. They do not read the admirable Appendix on the subject to the Report of the Divorce Law Commission,<sup>1</sup> and they are quite content to accept all the drivel which is spoken and written about marriage by priests and ministers of all denominations. I do not consider that the word drivel is at all too strong when we are told every day that the Christian religion protects (and has always protected) women and the family more than any other religion that has ever existed. In the opinion of nearly all those who have taken the trouble to ascertain the facts the actual reverse is the case. Under the

<sup>1</sup> Appendix to the Minutes of Evidence and Report of the Royal Commission on Divorce and Matrimonial Causes. H.M. Stationery Office, 1912.

Roman Empire, in proportion as women succeeded in acquiring economic independence, marriage and divorce became a private family arrangement, as it is to-day under Islam, and as it is tending to become in such countries as Norway. Under such a system private citizens are emancipated from the lawyer as well as from the priest, and are allowed to settle problems that vitally concern them without being launched into a sort of dog-fight in the Law Courts for the depraved amusement of the newspaper-reading public. The Roman Law was of course overthrown by the Christian idea of indissoluble marriage, though the transformation of Europe took far more time than is commonly supposed. Thus, Mr Kitchin, in his book on Divorce,<sup>1</sup> points out that the ancient customs of the Roman, Germanic, and Frankish peoples long preserved the immunity from divorce before a public tribunal. On the other hand we must not forget that Christianity was not the only factor in sweeping away the Roman conception of the equality of woman with man and the dignity and freedom of marriage. The barbarous Germans to some extent imposed their own ideas, and went far beyond even the early Romans in the subjection of their wives. The wife was essentially a subject of sale and purchase.<sup>2</sup>

The historical part of this subject has been on the whole admirably summarised by Mr de Montmorency in the Appendix to which I have already referred, and it is also thoroughly dealt with by my

<sup>1</sup> *A History of Divorce.* By S. B. Kitchin, B.A., LL.B. Chapman & Hall. London, 1912.

<sup>2</sup> Havelock Ellis, *op. cit.*, p. 431.

friend Mr McCabe in his recent book on the subject.<sup>1</sup> In Ireland, Wales, and England, the doctrine of dissolubility had a prolonged struggle with the Church, which tended to restrict divorce in proportion as the Bishops' Court arrogated to itself this jurisdiction. Throughout medieval Europe, indeed, we find that the Roman tradition of divorce by consent as a family arrangement only gave way as the Church obtained the control of marriage and of morals, which in this country lasted in regard to morals till 1640, and in regard to marriage until 1857. It was not fully established in regard to marriage till the reign of Canute or in regard to morals until the Norman Conquest. Even as late as the reign of King Ethelbert in England the Roman tradition remains.<sup>2</sup> There is also ample evidence of the same tradition in Wales, where the compromise between the Church and the Welsh is on the whole singularly in favour of the Welsh. The actual practice in daily life emerges in certain manuals called Penitentials, which were written to guide priests in their daily work. The Penitential written or authorised in seventh-century England by Theodore of Tarsus, Archbishop of Canterbury, allows divorce not only for adultery but also for malicious desertion, or where one spouse is captured in war. It also recognises divorce by mutual consent; although contemporaneously the Church was promulgating the doctrine that marriage was indissoluble. Even this practice faded away in the

<sup>1</sup> *The Influence of the Church on Marriage and Divorce.* By Joseph McCabe. London, 1916.

<sup>2</sup> *History of English Law*, vol. ii., p. 393. Second edition. Pollock & Maitland.



reign of Canute, when the Church asserted a more definite control of marriage.

From this time till the Reformation in 1540 we find a certain hostility between the State and the Church. The policy of the State, as represented by a few strong monarchs and by the Barons, was on the whole anti-clerical. One of the best-known examples is where the Barons at their Council in 1236 declined to adopt the ecclesiastical rule allowing legitimation of children by subsequent marriage. They opposed this on the ground that it changed the laws of England, but probably they would not have resisted the change if they had thought of it themselves. Partly by reason of this hostility, the State maintained the atmosphere of liberty which was denied by the Church. The State was always ready to relieve any hardship as regards property and inheritance. It is true that the State was only concerned with land and not personalty; administered by the Ecclesiastical Courts personal property was from a financial point of view negligible. In an age when Jews and Lombards alone lent money, personalty consisted only of chattels, jewels, and coins. The consequence was that the poor continued to do as they liked, subject only to a certain amount of interference by the Ecclesiastical Courts, and sold their wives as a matter of course. I have elsewhere mentioned an instance of this recorded by *The Observer* of the 14th June 1812<sup>1</sup>; and Mr Havelock Ellis mentions very interesting cases in the eighteenth and nineteenth centuries.<sup>2</sup> He also mentions

<sup>1</sup> *Divorce Problems of To-day*. W. Heffer & Sons Ltd. Cambridge, 1912.

<sup>2</sup> *Op cit.*, p. 403.

that in the eleventh century Gregory VII. tried to stop the sale of wives in Scotland and in England, but does not appear to have achieved much success.

The Church was of course equally ready to promote the claims of property, so that before the Reformation an extremely complicated system of annulling marriage had grown up. "Marriage was prohibited within seven degrees of relationship and affinity; and none but the astutest students of the law were able to unravel so complicated a system. The annulling of marriages, which had been contracted within the prohibited degrees, became a flourishing business of the Church. No exercise of its power yielded more money, or caused more scandal. So tangled was the casuistry respecting marriage at the beginning of the sixteenth century that it might be said that, for a sufficient consideration, a canonical flaw could be found in almost any marriage."<sup>1</sup> The terrible complications and uncertainty as regards marriage which this system produced were only redeemed by the fact that any children of any marriage whether annulled or not were regarded as legitimate, and in this respect the status of the child was very much better than under our modern system.

The Reformation naturally made the confusion much worse. The facilities for nullity did not disappear with the Reformation but existed for some time side by side with a system of parliamentary divorce, and between 1550 and 1600 the marriage and divorce law was about as uncertain as it possibly could be. I do not propose to deal with

<sup>1</sup> *The Family*, p. 83. C. F. and C. F. B. Thwing.

this period in detail, since the material points are very well set out in the Appendix already referred to; I need only remark that as the Reformation deprived the Church of the various loopholes which ecclesiastical ingenuity had devised, it became necessary for the State to come to the rescue of the rich man, and this was done by private Acts of Parliament which began with the Marquis of Northampton's Bill in 1548. As time went on it became necessary for an injured husband to succeed in two suits before he could apply for the Act of Parliament, namely an action of criminal conversation against the adulterer and proceedings for a separation decree in the Ecclesiastical Courts. I need not perhaps dwell upon the well-known scandal of the Fleet marriages in the eighteenth century, which, though clandestinely celebrated, were indissoluble and led to widespread scandal and illegitimacy. It is, however, interesting to note that the opponents of Lord Hardwicke's Bill to end such marriages in 1753 were at pains to state that "even the Legislature itself can hardly make void that which was valid by the Law of God and the law of nature. . . . For an Act of Parliament to declare nugatory and worthless that which had in all ages been deemed binding and religious was something too dreadful to be thought of in a Christian community." <sup>1</sup>

I need not in this book labour to point out that our divorce law as it stands to-day has no historical, logical, ecclesiastical, or practical justification. Catholics denounce it because it offends the doctrine

<sup>1</sup> *Divorce Problems of To-day*, p. 69.

of indissolubility; free-thinkers because it offends nearly every principle of humanity; Anglican Churchmen and feminists because the sexes are on an inequality as regards adultery. Everyone agrees that if divorce is to exist at all it ought to be as possible for the poor as for the rich, and no person acquainted with the subject can be ignorant that the present system of extending divorce to the poor is of no possible use for those who live at any distance from London and have to bring their witnesses to London for the trial. It is, of course, not remarkable that in this country we should not merely ignore the admirable law of divorce north of the Tweed, which grants divorce for desertion and equalises the sexes as to adultery, but should also decline to adopt the well-thought-out details of the Scottish system which make, and have always made, divorce as easy for the poor as for the rich. It is by this time notorious that the unjust, illogical, and immoral laws of this country result in a vast number of individuals being permanently separated from each other in the prime of life, which is largely responsible for the birth of forty thousand illegitimate children every year and for the loss to the State of many children possible for men and women who feel it unfair to impose the stigma of illegitimacy on their children.

The great war of our time has brought this home to anyone who has to deal with the relief of soldiers' dependents; and even before the war concubinage was recognised by the State, as I have before pointed out, in certain statutes, owing to the tardy recognition by our legislators of the fact that the

marriage laws were a scandal, although they had no mind to remedy the scandal itself.

The particular hardship of the poor to-day is that since 1906 the Nonconformist conscience has exerted a strong influence towards inaugurating a system of Puritan morals applied by the State to the poor with a severity that is not shown towards the rich. Catholic writers like Mr Cecil Chesterton are apt to assert that the absence of proper facilities for divorce cannot possibly limit the right of the poor man to form unions in disregard of marriage. Such writers do not seem to realise the effect of modern legislation on the community. Thus within the last few years the newspapers have recorded three striking cases. The first was that of a working man whose wife not only deprived him of employment by creating a disturbance at the various places where he was employed, but also insisted on living in prostitution. The man was too poor to obtain a divorce, and the only advice that he could obtain from a Poor Man's Lawyer was to leave this country, since he would otherwise be sentenced to a flogging for living on the woman's immoral earnings. Parenthetically, I may observe that in all the worst cases of "white slave" traffic the man marries the woman in order to keep her completely under his control. Our rulers are anxious to appease the large flagellomaniac section of our community by making such a man liable to corporal punishment. Any reasonable person might suppose that it would be even more advantageous both to the lady and to the community to grant her the right of divorcing her husband for practising this incredibly foul fraud

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upon her, but as the law now stands she is completely debarred from any remedy of the kind.<sup>1</sup>

The second case was of a man dying of starvation according to the verdict of the jury at the inquest. He and his mistress were refused outdoor relief because they were and long had been quite monogamously living together and yet could not legalise the tie by reason of the present expense of divorce. This abominable state of things is aggravated by the tyranny of inquisition under the National Insurance Act.

The third case is contained in the Law Reports of *The Times* of the 13th May 1915, and concerned a midwife who was, by a bureaucratic act of the Central Midwives' Board, struck off the roll of midwives on the ground that she had been guilty of misconduct under Section 3, Sub-section 5, of the Midwives' Act 1902. The woman in question thus had her livelihood taken away; but fortunately the Lord Chief Justice allowed her appeal. She had lived with her husband until 1909 and had had two children; in that year she obtained a separation order owing to her husband's misconduct. The custody of the children was given to her and the husband was ordered to pay her ten shillings a week. But he did not obey that order and she was obliged to earn her own living. In 1912 she cohabited with another man by whom she had a child. In July, 1914, the Central Midwives' Board served on her a notice that she was charged with misconduct because she had cohabited with a man who was not

<sup>1</sup> *Divorce as it Might Be*, p. 56. W. Heffer & Sons Ltd. Cambridge, 1915.

her husband. She attended an inquiry before the Board on 22nd July and the inquiry was adjourned until October. She was for some reason unable to appear at that time, and in her absence the Board accepted a report which contained a statement that the Court now knew to have been inaccurate and on the strength of which she was struck off the roll. No more striking picture of the injustice due to modern bureaucracy and the marriage laws can be imagined. In the past it was no doubt thought that the marriage or non-marriage of the poor did not matter inasmuch as there was no property for their children to inherit ; but we are here confronted with an organised system for depriving the poor of their earning power for nothing worse than refusing to live like monks or nuns because the law refuses them divorce. The stinking iniquity of modern England in this respect combines all the hardships of Catholicism and Calvinism.

I shall now venture to sketch what I consider would be a reasonable system for the State to adopt as regards the family, having regard to the elementary respect which any wise man or woman would wish to preserve for human liberty and dignity and which is conspicuously absent from contemporary legislation.

In the first place, we ought certainly to have a system of divorce either on the principles laid down by the Report of the Royal Divorce Commission in 1910 or more logically on a system of divorce by mutual consent, including a well-considered system of divorce where one party is in the wrong. Such a view starts with the principle that the State

must promote the good life in the Aristotelian sense without too directly interfering with the private life and habits of the citizen. I conceive that the universally approved object of all divorce facilities is to promote where necessary the welfare of (a) the family (including parents and children), (b) where there are no children, of the spouses themselves, and (c) the State itself.

(a) The first object of the State is to secure for all children, wherever possible, the joint care of both parents. Too often death destroys this ideal, but it is equally destroyed where one of the parents is guilty of desertion or gross cruelty in any form, or becomes insane or hopelessly incapacitated by any other form of disease. The question of moral guilt is irrelevant as regards the welfare of the children, except in cases where moral guilt inflicts a more serious injury upon them than death or disease would. Thus, to take an analogous instance, it is immaterial for the beneficiaries under a will or settlement, whether a trustee has been sent to prison or taken to drink or drugs. In either case they want to remove him. The fact of incapacity for parenthood once fully established, the State is simply concerned with the relationship of the spouses *inter se*, and this brings me to the next head of the subject.

(b) The second object of the State is to secure certain rights to the spouses *inter se*, for example, to enforce such economic rights as marriage creates for the husband or wife as the case may be. Clearly the wife is in most cases entitled to financial support if abandoned by the husband, and the husband is



entitled to disown such obligations if abandoned by the wife. The degree to which the marriage contract has been observed or violated by either or both parties is therefore obviously bound up with the economic aspects of marriage. But the modern State has almost entirely given up the idea of interfering with the private relations of the parties, as these were and are interfered with in Catholic countries by the Catholic Church, or between 1857 and 1884 by the State in England, for example, by enforcing cohabitation on pain of excommunication or imprisonment. Divorce is naturally and in fact much rarer in cases where there are children of the marriage; and when there are not, modern States will more and more recognise, as many of them already do recognise, the justice and expediency of divorce by mutual consent, subject to necessary time limits and financial safeguards. Such divorces are effected either by mutual consent *eo nomine*, by separations maturing into divorce, or by the legal fiction of collusive divorce for collusive adultery or any other matrimonial offence. When once the question of the children has been satisfactorily decided, the relationship of the spouses becomes a purely private relationship.

(c) The welfare of the State reposes entirely on the rearing of good citizens. The State is therefore not concerned with extra-matrimonial unions except where children result. To achieve for such children equality of opportunity and decent advantages, by enforcing their rights as against the parents, ought to be the first care of the modern State, and no doubt will be so when the ecclesiastical tradition of

hostility to children who have had the audacity to get born without a preliminary fee to the Church, grows weaker. In a few States there may exist prohibitions of remarriage for a guilty spouse; but this is no real exception to the rule I have laid down, because the State cannot restrain such persons from cohabitation outside marriage.

Secondly, it is a matter of elementary justice that children should be legitimated by subsequent marriage. This law prevails nearly all over the world, and the only reason for its not existing in England, a few colonies, and some of the American States is the fact that the Barons before mentioned were seized in 1236 with a fit of anti-clerical spleen. There are two possible objections to this; namely, the high rate of illegitimacy that exists in modern Scotland and the possibility of two uncongenial persons being forced into marriage merely for the purpose of legitimating the child. The higher rate of illegitimacy may or may not be due to the Scotch law of legitimation, but whether this be the case or not I do not think that the fact should stand in the way of an elementary act of justice to children, especially as the absence of such a law is often unjust to certain dependents of a workman under the Workmen's Compensation Act, who would under the system here advocated have had preferential rights conferred on them by the father. The danger of two really incompatible persons being forced into marriage would of course not be so grave under any system of rational divorce.

Thirdly, it is most important that the testamentary law should be reformed, so that a man

should no longer be able to cut his wife and children entirely out of his will as he can to-day. It may perhaps be of some interest to my readers to understand the rather odd reasons why a man can do this to-day although he cannot do it in Scotland or in most civilised countries. The whole story is very well told in the second volume of Pollock and Maitland's *History of English Law*. The wife was of course entitled as regards land to a right of dower which, as I have said before, was evaded by the skilled conveyancers of the eighteenth century. It was, however, the existence of this right of dower which made medieval Englishmen indifferent to the disappearance of the widow's indefeasible right to one-half of the husband's personal property if she had no children, and to one-third if she had children, the children taking another one-third. It will be remembered that the Church had full control of personal property as opposed to land; and the gradual lapse of the right of the wife and children to personal property was due (a) to the anti-clerical feeling of Edward III.'s Lords in Parliament, who disapproved of anything that the Ecclesiastical Courts did and thus of their dealings with wills and personal property; (b) to the fact that the Church gained legacies by the right falling into disuse; and (c) to the fact that land in the Middle Ages was far more important than personalty. The utterly helpless position of the wife and family to-day is thus due to a series of historical accidents.

The remedy for this state of things among the well-to-do has been the common use of marriage settlements and of the equity to a settlement. The

latter device has proved unnecessary since the Married Woman's Property Acts, but the property-less wife has to-day no financial security unless she has a marriage settlement or unless her husband commits a matrimonial offence. The drawback to the marriage settlement is the expense of drawing a lengthy and highly complicated document and of the stamp duty, which amounts to five shillings per cent. on all property settled. It is clear that as things stand marriage settlements are beyond the reach of the poor and that the proper remedy of the family's present hardship in relation to the father is the reform of the testamentary law.

Fourthly, wives and children ought to have a proper legal right to maintenance as against the husband. I have already indicated the necessity for this as regards the well-to-do; but the question is even more urgent as regards the poor, although very few workers among the poor have the sense to recognise this. I need, however, not do more than call the attention of my readers to an admirable article in *The Nineteenth Century and After* of December, 1915, written by Miss Anna Martin, who with an expert knowledge of the facts goes so far as to declare that even such intemperance as exists among the poor would be far better remedied by giving wives a legal right to a certain proportion of wages than by any of the ridiculous laws that are now directed not against drunkenness but against facilities for moderate drinking.

Fifthly, fundamental reforms should be undertaken in regard to our system of education. Men who understand the poor have for some time past

advocated some subscription, however small, by poor parents to education as such. This would create in the parent some interest in the education which his child receives, and might even induce him to vote with knowledge on the subject. Undoubtedly the age of education should be raised at the same time as the subject matter and methods of so-called education are improved. What is above all things first required is a system of education which, without divorcing the manual worker from manual work, will give him a wider mental horizon and an interest in things of the mind. The few manual workers who have achieved this desirable state of things state that they come home to books with far more aptitude for their enjoyment than after a day of brain fag; and we may hope for great results from the latest system of University Extension work which has been admirably administered and encouraged by such men as Mr A. L. Smith, the Master of Balliol College, Oxford. The desirability of secular education scarcely needs demonstration; but inasmuch as the pamphlets and publications of the Secular Education League are easily accessible I need not dwell further on this very useful propaganda.

Lastly, I again insist on the absolute necessity of the poor man and his family being recognised as human beings if the proletariat is to be saved from a servile condition which will have none of the compensations that existed either in ancient or medieval Europe; for in the past the relation of master and slave was always mitigated by the personal ties of human affection. To be the slave of a community is a thousand times worse than to be the slave of an individual.

## CHAPTER IV

### LIBERTY IN REGARD TO WOMEN

“ It is for men to give Woman freedom, even as it is her bounden duty to demand it as her right. Let Reason be her guide and Truth her beacon. Then men shall cease to be the sons of slaves, and through their free mothers inherit the glorious birthright of true liberty.”—*From the Introduction, by Lady Florence Dixie, to the Religion of Woman, by JOSEPH McCABE. London, 1912.*

IN any discussion of women and liberty it is important to eliminate any of the sex passion or antagonism which has so often confused thinking and writing on the subject. Yet anyone acquainted with the history of woman's rights or woman's wrongs and who has any real passion for liberty, must necessarily find it difficult to write without some kind of bias. Unfortunately few persons have any real passion about liberty. In sober fact a robin-redbreast in a cage puts very few people in a rage, especially nowadays.<sup>1</sup> In the nineteenth century, however, there were many men who had a passion for liberty. I can remember the late Mr George Pollock, who recently died at the age of ninety-four, telling me that while in church at Wimbledon he used to pay little boys to frighten away larks in the churchyard from a man who tried to catch them, and no one who has read Herbert Spencer's dour description in his book on *Education of a girls'*

<sup>1</sup> Perhaps Messrs Belloc, Bottomley, H. G. Wells, and Cunninghame Graham may feel this, but I know of few others.

school out for a walk can fail to see that he, perhaps more than Mill, was fired by Liberty rather than by enthusiasm for women as opposed to men. I do not propose to deal at any length either with the differences between men and women or with the history of their treatment by men. Such points have been very well dealt with by my friend Mr McCabe in his *Religion of Woman* and by Mr Havelock Ellis in his *Man and Woman*. Certain things, however, are not sufficiently remembered in these days; for instance, that women were in some ways better off in primitive society when they were supreme in their own department. In primitive society, the conditions of which have tended to revive since the war, the men fight and the women work. Women supply all food, and in the Middle Ages took a genial interest in producing ale and other pleasant liquors. There is in simpler societies a clear division of labour which of itself gives the woman certain power because she is not interfered with. These conditions to a certain extent prevailed even up to the end of the eighteenth century in this country.

It also ought to be better recognised that women gained nothing from Christianity but a possibly superior sex attraction by reason of their being made more or less contraband, and by the invention of a new kind of chastity which titillated the jaded appetites of the Pagan world. In ancient Rome they had quite clearly recognised rights of property and a considerable amount of political power. They had a Meeting House of their own on the Quirinal for the discussion of their public affairs; in the

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Provinces they sometimes held high municipal offices, and they exercised a direct influence on politics. When, however, we turn to the pages of Christian history we find that at the Council of Laodicea in 352 women are no longer allowed to serve as priests. The degradation clearly foreshadowed in such a book as *St Augustine's Confessions* became far more pronounced as the ecclesiastical injunction of sacerdotal celibacy, first promulgated at the Council of Elvira in 305, came to be seriously enforced. During the whole controversy of sacerdotal celibacy, which has been admirably described by the late Mr H. C. Lea,<sup>1</sup> the Church invariably compromised on every point except that of marriage. Every priest was in practice allowed a concubine, and paid money which went under the name of *cullagium* for the privilege. Even priests who preferred to live by themselves were still forced to pay this exaction in case they should subsequently change their minds. Promiscuous intercourse was of course even more acceptable to the ecclesiastical mind than anything which might constitute a permanent tie. The high-water mark of the whole hardship was the decree of Urban II. published in 1089 at the Council of Amalfi, by which all wives of clerics were reduced to be the slaves of the nobles.

The Reformation scarcely altered this state of things. Neither Luther nor Melanchthon were hostile to polygamy, although they would have been horrified at polyandry. Milton in the seventeenth century, whose writings on divorce bear the stamp

<sup>1</sup> *History of Sacerdotal Celibacy*. By H. C. Lea. London, 1907.



of genius, certainly regarded women as inferiors and also favoured polygamy. At the beginning of the nineteenth century a determined attack was made on woman's disabilities entirely by heretics and free-thinkers. Christianity has done nothing more for women during the nineteenth century than produce a fresh variation—*i.e.* the religion of the Mormons. This sect favours polygamy in a particularly oppressive form, and encourages the kidnapping of young girls from this country by emissaries from their community. Women have, therefore, very little to gain from any *residuum* of Christian morality in the State. Anyone who has read Mill's *Subjection of Women* will be interested to note what far-reaching changes have occurred since he wrote the book in 1869. From that year onwards a number of statutes have certainly improved the position of women. Since a statute of 1884 it is no longer possible for a woman to die in gaol because she will not return to her husband. Improved powers of guardianship were given by the Act of 1886. Various Acts have been passed which secure the wife's proprietary rights, and according to the writings of Mr Belfort Bax women are to-day in a state of privileged irresponsibility. It certainly seems hard that whereas a man can advertise in the newspaper that he will not pay his wife's debts he should not also be able to advertise that he will not be responsible for her libels or slanders. Various other statutes like the Matrimonial Causes (summary jurisdiction) Act of 1895 have been claimed as improving the position of women but inasmuch as this legislation has created incessant obstacles to

any poor woman obtaining a divorce they have made things much worse.

Before the war of 1914 we were faced with conditions which will probably revive. The province of man and woman in our modern civilisation was far from distinct, and Mr Havelock Ellis points out that modern men and women are not at all unlike each other. I am aware that Mr Iwan Bloch holds quite contrary views, but I think that most people will agree with Mr Havelock Ellis, who writes as follows :

“The modern man who for the most part spends his days tamely at a desk, who has been trained to endure silently the insults and humiliations which superior officials or patronising clients may inflict upon him, this typical modern man is no longer able to assume effectually the part of the ‘noble savage’ when he returns to his home. He is indeed so unfitted for the part that his wife resents his attempts to play it. He is gradually recognising this, even apart from any consciousness of the general trend of civilisation. The modern man of ideas recognises that, as a matter of principle, his wife is entitled to equality with himself; the modern man of the world feels that it would be both ridiculous and inconvenient not to accord his wife much the same kind of freedom which he himself possesses. And, moreover, while the modern man has to some extent acquired feminine qualities, the modern woman has to a corresponding extent acquired masculine qualities.”<sup>1</sup>

The attitude of the State towards women may be

<sup>1</sup> *Studies in the Psychology of Sex*, p. 405. By Havelock Ellis.

conveniently considered from three different points of view. A woman can be classified :

(a) As a citizen.

(b) As a wife.

(c) As a mother.

(a) Taken as a citizen a woman's liberty cannot be secured without a full ownership of property as well as unrestricted earning power and responsibility. These powers seem to me more important than the possession of a vote because, as I have often argued before, the main road to liberty is through property. From this point of view all professions should be open to women whether they wish to enter them or not. Women vary as infinitely in capacity as men, and there are intermediate types on both sides which are often associated with the successful performance of particular kinds of work without regard to considerations of sex. Women are in a stronger position if there is no question of privilege or inequality of any kind as regards their earning power, although it is obviously much better that they should whenever possible receive the same remuneration as men. Mr Wells admirably handles this aspect of the matter when he writes : " I want this coddling and brow-beating of women to cease. I want to see women come in free and fearless to a full participation in the collective purpose of mankind." Our present law and custom in regard to women is founded on the assumption that all women either marry or live on an unearned income, or become domestic servants, or shopgirls. The woman is paid on the hypothesis that she lives in her father's house and only needs a little pocket-money,

or else that she requires far less money than a man. The assumption is palpably untrue. Under ordinary wills a daughter frequently gets only half the share of the son and is thereby forced into marriage.

As citizens women also require a thorough education in civic functions. For instance, a man acquires a certain amount of political education in the use of the vote and by sitting on a jury. I have never yet been able to see why every jury should not be composed of six men and six women. Women can usually spare the time more easily than men, and certainly more justice would be done to men as opposed to women if this plan were adopted. In breach of promise and divorce cases a really pretty woman has at present so great an advantage that her personal appearance produces a real miscarriage of justice. In cases that are tried without juries and which directly affect women it would be most desirable for a woman to sit as a kind of assessor with the judge; and this is even more important in all cases which affect children. Again women would certainly be far more trustworthy in public and municipal finance than men are. They have been the trustees of other people's money for centuries and, as a rule, are quite disinclined to the lunatic extravagance of the male official. These two points being granted the right to the vote would naturally follow. I confess that I feel tepidly about it as I could never understand why it became almost a sexual fetish in the palmy days of the suffrage violence before the war, but although no vote is of much use under our present system of

government it does to some extent preserve the rights of the voter with property and the right of trade combination among female workers. No politician would venture to treat female workers if they had a vote with the indifference which he has displayed up to now. Whether women sit in the House of Commons or not seems to me a trivial matter. I do not see the use of any compromise in these questions, and it is certainly ridiculous to see a number of prominent barristers urging the House of Commons as they recently did to allow women to be solicitors while rigidly excluding them from the "higher" branch of the profession.

Many men who like myself love liberty have frequently feared the possible effect of the female vote in increasing the influences of Puritanism and State interference, although all the primitive legends credit women with the invention and manufacture of intoxicating liquors. The modern woman, however, is supposed to have strong prohibitionist views. For instance, we have often been reminded that the women of New Zealand made their young men into conscripts and then denied them beer in camp. Fortunately, however, for ourselves we possess a civilised tradition in regard to drink. The Pankhurst family have also been credited with a design to make any sexual intercourse outside marriage a criminal offence; but fortunately again the Pankhurst family are not typical of British femininity; and even if they were able to achieve anything of the sort by reason of other women abstaining from the use of the vote the other women would certainly come to the rescue before long.

(b) Taking the modern woman in her capacity of wife, I need not add much to what I wrote in the last chapter. I there laid stress on her right of maintenance being more directly defined; and it would certainly be better for her and the family if the State recognised the sort of partnership in property as between husband and wife which we find in other legal systems, for instance, the Napoleonic Code and the Roman-Dutch system. It is certainly monstrous that there should be any inequality in regard to adultery as bearing on the question of divorce and the custody of children; yet I believe that the proposal to abolish this inequality is the principal if unavowed obstacle to any divorce law reform. I do not say that adultery is necessarily the same thing for a man as for a woman, especially where the woman abandons her home and children for another man; but I do say that so far as the mere act is concerned the legal consequences, whatever they are, should be the same.

(c) Considering the position of woman as a mother, she should certainly have far more rights as regards her own children. It is (as I have before pointed out) monstrous that if she is guilty of a single act of adultery her husband can exclude her not merely from the custody of her children but also from all access to them. In other words a woman who yields to a momentary impulse which is considered quite venial in a man, can be, and sometimes is, prevented from ever seeing her children again. Until recently I had supposed that no husband existed who would thus take advantage of the law, but I have actually come across instances where a

husband and his family have not been ashamed of behaving in a way which would disgrace a savage, and of others where senile judges in the Chancery Division have been known to refuse proper justice to the mother in such circumstances.

The unmarried mother should also be given better rights as against the father of the child wherever the paternity can be established. At present a woman has no more than five shillings a week till the child is sixteen, and this is clearly inadequate inasmuch as if and when the fact is known to her employer her wages are invariably cut down. It is perfectly amazing that in this country the woman is worse treated as a mother than in any other capacity, although the essential importance of woman to the State is obviously based on the fact of motherhood. We have only to cross the Channel to find the best possible facilities given in France to unmarried mothers. Adequate provision is made for them to receive shelter and care in secrecy and to preserve their self-respect and social position. Of this system Mr Havelock Ellis writes as follows<sup>1</sup>:

“This is necessary not only in the interests of humanity and public economy, but also, as is too often forgotten, in the interests of morality, for it is certain that by the neglect to furnish adequate provision of this nature women are driven to infanticide and prostitution. In earlier, more humane days, the general provision for the secret reception and care of illegitimate infants was undoubtedly more beneficial. The suppression of the medieval method, which in France took place gradually

<sup>1</sup> *Op. cit.*, pp. 12-13.

between 1833 and 1862, led to a great increase in infanticide and abortion, and was a direct encouragement to crime and immorality. In 1897 the Conseil Général of the Seine sought to replace the prevailing neglect of this matter by the adoption of more enlightened ideas and founded a *bureau secret d'admission* for pregnant women. Since this both the abandonment of infants and infanticide have greatly diminished, though they are increasing in those parts of France which possess no facilities of this kind. It is actually held that the State should unify the arrangements for assuring secret maternity, and should, in its own interests, undertake the expense. In 1904 French law insured protection of unmarried mothers by guaranteeing their secret maternities, but it failed to organise the general establishment of secret maternities, and has left doctors the pioneering part in this great and humane public work (A. Maillard-Brune, *Refuges, Maternités, Bureaux d'admission Secrets, comme Moyens Préservatives de l'Infanticide*, Thèse de Paris, 1908). It is not among the least benefits of the falling birth-rate that it has helped to stimulate this beneficent movement."

Even stronger measures are contemplated in Germany as the result of the war.

This question of unmarried motherhood is of course closely connected with the question of the attitude of modern society towards female unchastity. Generally speaking, unchaste women who have been detected as such are social and legal outlaws unless they are rich, titled, or famous, in which case they can command the services of



competent lawyers and entertain any sort of society that may be congenial to themselves. It is of course not necessary to mention names in this connection. This odd state of things is due to our decaying but still surviving code of Christian morals and to the Teutonic barbarism to which I have before referred and which regards women from a singularly crude point of view. Mr Shaw pointed out long ago that all women are not necessarily domestic just as all men are not necessarily military. In ancient Greece, in modern France, and in modern Japan the prostitute is not necessarily more degraded than members of the other professions. As Mr Havelock Ellis writes :

“In some respects the position of the Greek *hetaira* was more analogous to that of the Japanese geisha than to that of the prostitute in the strict sense. For the Greeks, indeed, the *hetaira* was not strictly a *porne* or prostitute at all. The name means friend or companion, and the woman to whom the name was applied held an honourable position which could not be accorded to the mere prostitute. Athenæus (Bk. XIII., Chs. xxviii.-xxx.) brings together passages showing that the *hetaira* could be regarded as an independent citizen, pure, simple, and virtuous, altogether distinct from the common crew of prostitutes, though these might ape her name. The *Hetairæ* ‘were almost the only Greek women,’ says Donaldson (*Woman*, p. 59), ‘who exhibited what was best and noblest in woman’s nature.’ This fact renders it more intelligible why a woman of such intellectual distinction as Aspasia should have been a *hetaira*.

There seems little doubt as to her intellectual distinction. 'Aeschines, in his dialogue entitled "Aspasia," writes Gomperz, the historian of Greek Philosophy (*Greek Thinkers*, vol. iii., pp. 124 and 343), 'puts in the mouth of that distinguished woman an incisive criticism of the mode of life traditional for her sex.'"<sup>1</sup>

In another place Mr Havelock Ellis makes an interesting reference to religious prostitution :

"The custom which Herodotus noted in Lydia of young girls prostituting themselves in order to acquire a marriage portion which they may dispose of as they think fit (Bk. I., Ch. 93) may very well have developed (as Frazer also believes) out of religious prostitution ; we can indeed trace its evolution to Cyprus where eventually, at the period when Justinian visited the island, the money given by strangers to the women was no longer placed on the altar but put into a chest to form marriage portions for them. It is a custom to be found in Japan and various other parts of the world, notably among the Ouled-Nail of Algeria,<sup>2</sup> and it is not necessarily always based on religious prostitution ; but it obviously cannot exist except among peoples who see nothing very derogatory in free sexual intercourse for the purpose of obtaining money, so that the custom of Mylitta furnished a natural basis for it."<sup>3</sup>

<sup>1</sup> Havelock Ellis, *op. cit.*, p. 308.

<sup>2</sup> The girls of this tribe, who are remarkably pretty, after spending two or three years in thus amassing a little dowry, return home to marry, and are said to make model wives and mothers. They are described by Bertherand in Parent-Duchâtelet, *La Prostitution à Paris*, vol. ii., p. 539.

<sup>3</sup> In Abyssinia (according to Fiaschi, *British Medical Journal*, 13th March 1897), where prostitution has always been held in high

As regards Japan his conclusions are as follows :

“ In Japan the prostitute’s lot is not so degraded as in China. The greater refinement of Japanese civilisation allows the prostitute to retain a higher degree of self-respect. She is sometimes regarded with pity, but less often with contempt. She may associate openly with men, ultimately be married, often to men of good social class, and rank as a respectable woman. ‘ In riding from Tokyo to Yokohama, the past winter,’ Coltman observes (*The Chinese*, 1900, p. 113), ‘ I saw a party of four young men and three quite pretty and gaily-painted prostitutes in the same car who were having a glorious time. They had two or three bottles of various liquors, oranges, and fancy cakes, and they ate, drank, and sang, besides playing jokes on each other and frolicking like so many kittens. You may travel the whole length of the Chinese Empire and never witness such a scene.’ Yet the history of Japanese prostitutes (which has been written in an interesting and well-informed book, *The Nightless City*, by an English student of Sociology who remains anonymous) shows that prostitution in Japan has not only been severely regulated, but very widely looked down upon, and that Japanese prostitutes have often had to suffer greatly. They were at one time practically slaves and often treated with much

esteem, the prostitutes, who are now subject to medical examination twice a week, still attach no disgrace to their profession, and easily find husbands afterwards. Potter (*Sohrab and Rustum*, pp. 168 *et seq.*) gives references as regards peoples widely dispersed in the Old World and the New, among whom the young women have practised prostitution to obtain a dowry. *Op. cit.*, p. 233.

hardship. They are free now and any condition approaching slavery is strictly prohibited and guarded against. It would seem, however, that the palmiest days of Japanese prostitution lay some centuries back. Up to the middle of the eighteenth century Japanese prostitutes were highly accomplished in singing, dancing, music, etc. Towards this period, however, they seem to have declined in social consideration and to have ceased to be well educated. Yet even to-day, says Matignon (“*La Prostitution au Japon*,” *Archives d’Anthropologie Criminelle*, October 1906), less infamy attaches to prostitution in Japan than in Europe, while at the same time there is less immorality in Japan than in Europe. Though prostitution is organised like the postal or telegraph services, there is also much clandestine prostitution. The prostitution quarters are clean, beautiful, and well-kept, but the Japanese prostitutes have lost much of their native good taste in costume by trying to imitate European fashions. It was when prostitution began to decline two centuries ago, that the geishas first appeared and were organised in such a way that they should not, if possible, compete as prostitutes with the recognised and licensed inhabitants of the Yoshiwara, as the quarter is called to which prostitutes are confined. The geishas, of course, are not prostitutes, though their virtue may not always be impregnable, and in social position they correspond to actresses in Europe.”<sup>1</sup>

There can be no doubt that so long as prostitutes are outlawed in the sense of being ill-treated and

<sup>1</sup> *Op. cit.*, p. 237.

blackmailed with impunity we shall have to put up with the wide prevalence of preventible venereal diseases. The present status of the English prostitute leads to the community not only being infected with venereal diseases but also degraded in character. So long as the purchase of a woman's person for a short time is associated with nothing more than an act of pure physical relief on the man's part the indulgence in which entitles him to treat her like dirt and even to bilk her with impunity, we shall always have among us the same attitude of brutish stupidity that to-day prevails among most men in regard to sex problems. Such a state of things in itself perpetuates the attitude of shirking any moral or intellectual grasp of the problem; and though I hate few things more than Puritanism yet I cannot but be grateful to the Puritans for the reaction to better things that their odd activities and eccentric notions have produced. Josephine Butler and W. T. Stead may possibly be denounced as cranks, but the community owes far more to such cranks than to the average sensual man, who is of course the same person as the average "sensible" man. The cranks of this country have at least saved us from the degrading and futile system of inspection that is associated with State-regulated prostitution on the Continent. They may quite possibly protest against the present measures that the British Government is taking to preserve soldiers and sailors from venereal disease by supplying them with suitable appliances for the purpose; but behind all such protests, however ill-advised, there will always be a reverence for human liberty and dignity

which cannot produce wholly bad results. I cannot conclude my remarks on this subject better than by again quoting Mr Havelock Ellis :

“ We may sum up the present situation as regards prostitution by saying that on the one hand there is a tendency for its elevation, in association with the growing humanity and refinement of civilisation, characteristics which must inevitably tend to mark more and more both those women who become prostitutes and those men who seek them ; on the other hand, but perhaps through the same dynamic force, there is a tendency towards the slow elimination of prostitution by the successful and purer competition of higher and purer methods of sexual relationship freed from pecuniary considerations. This refinement and humanisation, this competition by better forms of sexual love, are indeed an essential part of progress as civilisation becomes more truly sound, wholesome, and sincere.”<sup>1</sup>

I hope I have now shown that women whether regarded as citizens, wives, or mothers cannot enjoy, or have security for the enjoyment of, any real individual liberty without guarantees as regards their property and earning power. These they are not likely to obtain or retain at all safely without the right of suffrage, and the possession of the vote requires a system of education in civic functions such as performing certain legal and municipal duties. The wife should have a proper right of maintenance against the husband as well as a certain partnership in his property acknowledged by the State. Whether married or unmarried the mother

<sup>1</sup> *Op. cit.*, p. 316.

should have such protection as will not merely improve her status but also the status of the future citizen to whom she gives birth. Further, the woman who does not fall naturally into the course of domestic life should not be penalised if her sexual life is consequently different from that of other women. I hope I have made it clear that the object of this chapter is not to claim superiority for women over men. I do not even attach much importance to what is called equality, but I do maintain that individual liberty is even more important to women than to men as things are now. If women can once make good their claim to own property and earn money and perform such functions in public and private life as best suit them they will have achieved for themselves and especially for women to come untold possibilities of happiness. If we read again Herbert Spencer's description of the girls' school or remember the blighted lives of elderly spinsters whom we can recall within the last twenty or thirty years or if we take the trouble to observe carefully all the women of to-day we can see what progress has been made during that time and how important it is for women that the torch of liberty should not be extinguished by the Prussian tendencies of our age.

## CHAPTER V

### FREEDOM OF DISCUSSION

“Freedom of discussion is in England little better than the right to say or write anything which a jury consisting of twelve shopkeepers think it expedient should be said or written. Such right may vary at different times and seasons from unrestricted license to very severe restraint and the experience of English history during the last two centuries shows that under the law of libel the amount of latitude conceded to the expression of opinion has in fact differed greatly according to the condition of popular sentiment.”—*Professor Dicey in his Law of the Constitution.*

BEFORE the decline of ecclesiastical control in England our old law always restrained liberty of discussion much less than the laws of other countries. This was no doubt partly due to the jury system ; but it was also largely due to the English tradition of local self-government which comes down to us from Saxon times. Modern liberalism has enlarged this freedom ; but it is interesting to observe that the protest of John Stuart Mill was on the whole much more against the interference of public opinion than against actual police measures. He goes so far as to suggest that the State would never be intolerant except in order to indulge the intolerance of the mob. We have not of course reached the extreme development of the British tradition which exists in the United States with regard to lynch law ; and the police in England will still control public opinion from manifestations of violence. The jury system, however, has formed a kind of *referendum*



which no politician would ever admit in the matter of legislation but which he tolerates in the Law Courts. During the last ten years both the jury system and the Law Courts have been rather hypocritically exploited by the politician—notably in the case of collusive libel actions—and a new intolerance seems to be springing up which is none the less real because it is dissociated from the State. Newspapers being nearly all in the hands of particular capitalists can sometimes be compelled to a common policy by political pressure. We also have a quasi-private censorship of printed books and cinema films, the professed object of which is to liberate authors and producers from police control but which is in many ways more unintelligent than if the police were allowed free play. Yet in principle this system is better than bureaucratic control since it savours of the hypocrisy which is homage to virtue, and can sometimes be exposed. It is on the whole probably better than a severely bureaucratic control of opinion.

The subject of this chapter can be conveniently divided under three headings, namely :

1. Religion.
2. Morals.
3. Politics.

Generally speaking, liberty of discussion is secured, and only secured, by the simultaneous co-existence of four different conditions. In the first place, there must be some kind of *faith in the rationality and intelligence of citizens* such as is well described by the late Professor Ritchie in his admirable essay on *Toleration*<sup>1</sup> :

<sup>1</sup> *Natural Rights*, p. 185. By David E. Ritchie. London, 1895.

“On the other hand, if faith be taken to mean faith in human nature and in the rationality of the process of evolution, it is only such faith that makes toleration possible; for to such faith the various beliefs about which men fought so fiercely are but ‘broken lights,’ or partial truths, which are false if taken to be the whole truth. That there should be diversity of belief may even be thought of as an advantage: there is more variety for natural selection to work upon. There is a security against stagnation. There is an educative influence in the substitution of peaceable discussion for forcible repression.”

Such faith of this kind as exists to-day is largely based on theories of human progress from Condorcet onwards, and it is strongly reinforced by the influence of liberal writers like Mill and Spencer, and by the Darwinian doctrines of variation coupled with the curiously irrational optimism that grew up in the nineteenth century about the necessity for everything to become better and better. Such optimism is aptly illustrated by the extraordinary notion that the survival of the fittest must necessarily mean the survival of the best. But granting the existence of such a faith on a large scale, we find that the most rational-minded person has a very human tendency to load the dice on his own side and to desire the utmost publicity for his own principles as compared with those of his opponents.

Secondly, in any State which allows liberty of discussion there must be a *strong sense of internal and external security*. The safety of the people is the supreme law, and not, as Mr C. H. Norman

recently argued in the Law Courts, the liberty of the subject ; although we must all regret that the judge who heard Mr Norman's argument should seriously imagine that any sensible Englishman is likely to side with Germany after reading Mr Norman's pamphlets. Nor does the existence of such a principle necessarily involve the assumption that most citizens are fools ; for there are necessarily great crises of State when we have no time to suffer fools gladly.

Thirdly, there must be a *conviction that in certain cases it is impossible to suppress the discussion of a given subject*. There are, it is true, cases where the discussion of certain ideas has been suppressed in the sense that it has been permanently delayed ; for instance, it is common ground that the Inquisition postponed a great deal of heresy in Europe and that the Spanish Inquisition delayed for three centuries the deliquescence of the Catholic faith in Spain. But as Leslie Stephen pointed out many years ago, "It is impossible for a cordon of policemen at each end of Pall Mall to keep smallpox out of Pall Mall even if they do keep out persons with an actual eruption."<sup>1</sup> Poisonous opinions cannot be destroyed since all opinions are the inferential part of a large body of truth already admitted by thinking men. "To remedy a morbid growth," he writes, "you have applied a ligature which can only succeed by arresting circulation and bringing on a mortification of the limb."<sup>1</sup>

The State has no supernatural powers in this

<sup>1</sup> *Essay on Poisonous Opinions*, in the volume entitled *An Agnostic's Apology*. London, 1893.

matter, and the days of the Inquisition have not yet returned though they very well might under any Prussian domination of Europe. The State must therefore decide as best it can what doctrines, however pernicious they may seem, *cannot* be suppressed since the alternative is ultimately a revolution or civil war. From this point of view the jury system has proved an excellent kind of political barometer; for jurymen are personally affected by the law whether statutory or judge-made. Two valuable examples of this can be found (1) in the refusal of juries to convict minor thieves in the early part of the nineteenth century of offences which involved capital punishment and (2) in the obvious apprehension by the Treasury of the same result after the trial of Mrs Besant and Mr Bradlaugh for spreading the knowledge of Malthusian devices in 1876.

Fourthly, *whatever latitude is allowed to public opinion or individuals the State must be the final arbiter for the sake of law and order.* As Fitzjames Stephen well remarked<sup>1</sup>:

“Struggles in different shapes are inseparable from life itself as long as men are interested in each other’s proceedings, and are actuated by conflicting motives and views. The great art of life lies not in avoiding these struggles, but in conducting them with as little injury as may be to the combatants, who are after all rather friends than enemies, and without attaching an exaggerated importance to the object of contention. In short, toleration is in its proper sphere so long as its object is to mitigate

<sup>1</sup> *Op. cit.*, p. 180.

inevitable struggles. It becomes excessive and irrational if and in so far as it aims at the complete suppression of these struggles, and so tends to produce a state of indifference and isolation, which would be the greatest of all evils if it could be produced."

This passage admirably defines the *métier* of the State in these matters. There can be no question that any new opinion on really vital questions must necessarily tend to disturb the peace. There is an admirable passage in Fitzjames Stephen's book on this point.<sup>1</sup>

"Mr Mill's whole charge against social intolerance is that it makes timid people afraid to express unpopular opinions. An old ballad tells how a man, losing his way on a hill-side, strayed into a chamber full of enchanted knights, each lying motionless in complete armour, with his war-horse standing motionless beside him. On a rock lay a sword and a horn, and the intruder was told that if he wanted to lead the army, he must choose between them. He chose the horn and blew a loud blast, upon which the knights and their horses vanished in a whirlwind and their visitor was blown back into common life, these words sounding after him on the wind :

Cursed be the coward that ever he was born  
Who did not draw the sword before he blew the horn.

No man has the right to give the signal for such a battle by blowing the horn, unless he has first drawn the sword and knows how to make his hands guard his head with it. Then let him blow as loud

<sup>1</sup> *Op. cit.*, p. 84.

and long as he likes, and if his tune is worth hearing he will not want followers. Till a man has carefully formed his opinions on these subjects, thought them out, assured himself of their value, and decided to take the risk of proclaiming them, the strong probability is that they are not much worth having."

I now propose to discuss how far liberty of discussion in religion, morals, and politics is respectively modified by each of the four conditions which I have just described.

1. I will take religion first. It would of course be absurd to expect from most religions any faith in the future; for the whole appeal of every religion reposes on the past and not on any terrestrial future, with the possible exception of Judaism. It is true that the Society of Friends is the only religious body which has never indulged in persecution even when in power; but this is not so much due to their faith in the future as to their Quietism—an idea which does not come within the scope of this chapter. It is also true that the belief in exclusive salvation is as dead as a door-nail except in circles which need not be seriously considered here. Consequently, the hostility of contemporary religion to free discussion is professed in the supposed interests of morality. The Christian may feel obliged to maintain the morality inculcated by his religion, which is quite an impregnable position so long as he does not go on to say, as he always does, that the requirements of society and the commands of his Maker coincide. It is clear, however, that although the popular mind is by now educated up to the level of believing that religious faith may vary as time goes

on, it is not at all inclined to hope for any better morality than that of its own time and place. This curious tendency of the human mind is admirably illustrated in the replies which American lawyers sent from each of the United States in reply to inquiries addressed to them by the Divorce Commissioners of England. Whether the State in question, *e.g.* South Carolina, prohibited divorce but made laws about concubinage or whether it was a State where you could get a divorce in five minutes without what in America is called "the trying ordeal of cross-examination," the lawyers of that State wrote that its morality was absolutely ideal and that no marriage reforms were required.

2. It is clear that the State can tolerate no religion which menaces either its internal or external security, and on this point the State must necessarily come into active conflict with some of the Quakers and in fact all conscientious objectors to national defence. The same considerations apply to questions like vaccination and Christian Science. These two latter points are of course distinct since unlike vaccination Christian Science involves no danger except to individuals, but so long as suicide is treated as a crime Christian Science is obviously in a dangerous position. All these sectarians are of course tolerated in a rather unreal manner; for they are only tolerated because they have no following. If, for instance, the Quakers had really been in a position to stop recruiting so as to endanger the country they would speedily have found themselves suppressed—unless indeed they had obtained the upper hand, in which case Lord Kitchener would

have found himself without an occupation. The State has at least done more to protect the Quaker meetings during the present war than it ever did to protect the far more justifiable pro-Boer meetings. I venture to suggest, however, that the Quakers could never have won their way during a time of crisis to the same extent that the Malthusians have been able to win their way during a long period of peace and prosperity.

3. The principal assertion by the State in our time of its right to act as the final arbiter in religious questions has been its occasional prosecutions for blasphemy. These prosecutions have been capricious and have brought the State into contempt. Of recent years they have not been instituted to prevent any breach of the peace, and if any breach of the peace had occurred the police would probably not have interfered very seriously with the mob. Prosecutions have been mainly due to a desire to conciliate important Nonconformist supporters of the Government who desire to repress any diffusion of heresy. They know quite well that it is of no use to interfere with the discussion of heresy among the well-to-do, especially having regard to the theological opinions of most of the Cabinet Ministers and to the interesting circumstance that Lord Morley for some time thought it important to refuse to his Maker the trivial homage of a big "G." The State has therefore soothed Nonconformist prejudice by punishing poor preachers who are unable to clothe their atheistic opinions in polished language and so use just the language that appealed to Wesley's converts. The



State has done this with even more zest where some other heinous offence has been suspected such as selling (openly or secretly) appliances to prevent conception. The blasphemy trials of Mr Gott and Mr Stewart are too recent to be recapitulated here, but it is at least interesting to remember that soon afterwards a deputation to abolish the blasphemy laws was sympathetically received by Mr Asquith. The whole subject has been very well dealt with by Mrs Hypatia Bradlaugh Bonner in her book *The Penalties of Opinion*.<sup>1</sup>

I shall now deal with liberty of discussion in regard to morals.

1. As I said before, very few persons are inclined to trust either to the future, or to any kind of progressive reason, on questions of morals. The mass of men are far more conservative about morals than about religion; for morality is a matter of usage and religion a question of temperament. Most men are quite ready to follow Professor Fraser in his extraordinary contention that "it is far better for the world that men should do right from wrong motives than that they should do wrong with the best intentions," on the ground that "what concerns society is conduct not opinion." The proposition takes no account of the fact that the wrong motives that make a man do right in one case will make him do wrong in another. A man who does not steal merely because he believes in hell will certainly persecute those who do right from higher

<sup>1</sup> Watts & Co. London, 1912. The book contains all relevant details of recent trials and the draft of a Bill introduced by Mr Bradlaugh in 1889 for the repeal of the blasphemy laws.

motives—especially if they express disbelief in hell. Professor Fraser's plea for Superstition is psychologically most interesting; but his illogical truce with the intellectual indolence and intolerance of mankind is, to my mind, lamentable.<sup>1</sup>

Such an essay as Mr Carpenter's essay on the *Defence of Criminals* ought to be read by every citizen who has to discharge any civic functions at all; but it is difficult to imagine the ordinary judge or magistrate intelligently grasping such a paragraph as the following<sup>2</sup>:

“The upshot then of it all is that ‘morals’ as a code of action have to be discarded. There exists no such code, at any rate for permanent use. One age, one race, one class, one family, may have a code which the users of it consider valid, but only they consider it valid, and they only for a time. The Decalogue may have been a rough and ordinary ready reckoner for the Israelites; but for us it admits of so many exceptions and interpretations that it is practically worthless. ‘Thou shalt not steal.’ Exactly; but who is to decide, as we saw at the outset in what ‘stealing’ consisted? The question is too complicated to admit of an answer. And when we *have* caught our half-starved tramp ‘sneaking’ a loaf and are ready to condemn him, lo! Lycurgus pats him on the back, and the modern philosopher tells him that he is keeping open the path to a regenerate society! If the tramp had also been a philosopher he would perhaps also have done the same act not merely for his own benefit

<sup>1</sup> *Psyche's Task*, p. 83. By Prof. Fraser. London, 1909.

<sup>2</sup> *Civilisation, its Cause and Cure*, p. 123. Geo. Allen & Unwin.

but for that of society ; he would have committed a crime in order to save mankind.”

The problems raised by this passage still demand solution.

In what Mr Havelock Ellis entitles the Postscript to his six volumes on sex he illustrates the conservatism of the moralist very well by analogy. He mentions that when only one volume of his *Studies* had been written and published in England a prosecution instituted by the Government put an end to the sale of that volume in England and led him to resolve that the subsequent volumes should not be published in his own country. It is by the way interesting to note that while the Americans have no objection to Mr Havelock Ellis's volumes being published in Philadelphia, the English police have never objected to the sale in this country of Walt Whitman's *Leaves of Grass*, which only recently, and for aught I know still is, more or less contraband in the United States if sent through the post. It is an extreme illustration of the saying that a prophet has no honour in his own country, although he may have wonderful privileges in another. Mr Havelock Ellis's statement of the particular problem with which he was concerned cannot be put better than in his own words<sup>1</sup> :

“ For it so happens that I come on both sides of my house from stocks of Englishmen who, nearly three hundred years old, had encountered just these same difficulties and dangers before. In the seventeenth century, indeed, the battle was round the problem of religion, as to-day it is round the

<sup>1</sup> *Op. cit.*, pp. 640 et seq.

problem of sex. Since I have of late years realised this analogy I have often thought of certain admirable and obscure men who were driven out, robbed, and persecuted, some by the Church because the spirit of Puritanism moved within them, some by the Puritans because they clung to the ideals of the Church, yet both alike quiet and unflinching, both alike fighting for causes of freedom or of order in a field which has now for ever been won. That victory has often seemed of good augury to the perhaps degenerate child of these men who has today sought to maintain the causes of freedom and of order in another field.

“It sometimes seems, indeed, a hopeless task to move the pressure of inert prejudices which are at no point so obstinate as this of sex. It may help to restore the serenity of our optimism if we would more clearly realise that in a very few generations all these prejudices will have perished and be forgotten. He who follows in the steps of Nature after a law that was not made by man, and is above and beyond man, has time as well as eternity on his side, and can afford to be both patient and fearless. Men die, but the ideas they seek to kill live. Our books may be thrown to the flames, but in the next generation these flames become human souls. The transformation is effected by the doctor in his consulting room, by the teacher in the school, the preacher in the pulpit, the journalist in the Press. It is a transformation that is going on, slowly and surely, around us.

“The present is in every age merely the shifting point at which past and future meet, and we can

have no quarrel with either. There can be no world without traditions; neither can there be any life without movement. As Heraclitus knew at the outset of modern philosophy, we cannot bathe twice in the same stream, though, as we know to-day, the stream still flows in an unending circle. There is never a moment when the new dawn is not breaking over the earth, and never a moment when the sunset ceases to die. It is well to greet serenely even the first glimmer of the dawn when we see it, not hastening towards it with undue speed, nor leaving the sunset without gratitude for the dying light that once was dawn. In the moral world we are ourselves the light-bearers, and the cosmic process is in us made flesh. For a brief space it is granted to us, if we will, to enlighten the darkness that surrounds our path. As in the ancient torch-race, which seemed to Lucretius to be the symbol of all life, we press forward torch in hand along the course. Soon from behind comes the runner who will outpace us. All our skill lies in giving into his hand the living torch, bright and unflickering, as we ourselves disappear in the darkness."

2. Touching on the necessity for liberty of internal and external security it is clear that heretics on such questions as property, public health, and national defence would never be tolerated if there were any real danger of any individual being robbed except by Act of Parliament or if the other heretics were not supposed to be in a permanent minority of cranks. The State would, for example, not hesitate to put down any riot directed by the Fabian Society for the spoliation of the Bank of England after being

told by Mr Belloc that they must confiscate or be stultified !

3. The old idea that suppression was impracticable where it invaded privacy, is unfortunately weakened in many respects. The modern State shows very little respect for privacy ; although it still punishes a man for giving his wife a black eye while genially permitting him knowingly to infect her with a venereal disease. The modern State, morally and financially inspired by the crank and the Nonconformist, undoubtedly thinks that it can promote universal chastity and a total abstinence from intoxicating liquors by Act of Parliament. The fact is that legislation of this kind has overpowered public-spirited opposition and is being forced on the country by wealthy cranks who subscribe to party funds, and especially to the Liberal party funds. This country is rapidly approximating to the quasi-barbarism of Canada and the United States in this respect without the excuse that these countries may derive from their Calvinistic origins. The autocracy of the Cabinet must be destroyed before any real progress can be made.

4. The United States no longer make their authority supreme over the private hostility of the mob against other citizens so far as negroes are concerned. Fortunately our own country has not yet fallen to this level ; although there are dangerous references in the Yellow Press to what its hacks are pleased to call the "unwritten law." There is, however, as I have before pointed out, a certain outlawry practised as regards prostitutes and

homosexuals, who can generally be murdered with complete impunity.

I now come to the question of politics.

1. The whole force of liberal and democratic theories in this country, and perhaps in the British Empire at large, has been derived from a faith in the rationality and intelligence of democracy, although the Mandarins of our time have certainly done much to destroy any optimism of this kind. The whole energy of the Caucus and of its bureaucracy is devoted to fooling all the people all the time. It is therefore refreshing to find a thinker like Mr Cecil Chesterton, who has been quite unsparing in denouncing the abuses of modern politics, still expressing the utmost confidence in democracy as an ideal. In *The Nineteenth Century and After* (January, 1916) he strongly reaffirms Rousseau's theory of the General Will, and apparently hopes that it will one day find power and expression.

Perhaps the most difficult question that arises under this head is the question of secret diplomacy. It is not easy to see how any diplomacy that is to be at all efficient can possibly be submitted to the country at large unless all newspaper comment is simultaneously suppressed. I believe, that is to say, in the judgment of the people as a whole provided that the facts are properly submitted to them. I do not believe, for instance, that there need have been any popular hostility to a definite agreement between France and England in 1912 to defend the French coast from the German fleet. On the other hand, all the money employed by rich cranks to support universal peace at any price would have

been spent in raising a fictitious "cry" against it, and this again would have been very cleverly exploited by the secret Prussian agents whom we still allow to take part in public discussion at a time when we have thought it necessary to suppress the wholly innocuous, because unconvincing, pamphlets of Mr Norman and his friends. Secret diplomacy would not be so fiercely attacked if the old law of impeachment was still in force, and if ministers knew that if they betrayed the honour or interests of their country they would be liable to capital punishment. On the whole, therefore, I think it possible to justify a faith in the rationality and intelligence of democracy so long as those qualities are given free play.

2. Where the external or internal security of the State is really in jeopardy it is of course clear that public meetings and newspapers must be sternly controlled except where liberty of discussion can be regarded as a safety valve. Such a policy can never be safely followed unless the people are quick to recognise that liberty is allowed from this point of view. It is, for example, difficult to follow it in the East, where such a policy tends to be regarded merely as the result of weakness.

3. Modern politicians have always been tempted to imagine that almost any discussion can be suppressed in regard to matters which for reasons of their own they prefer to keep secret. The troubles arising out of the Jameson raid were hushed up in a manner that deserves all respect for its competence; but in modern communities truth will out. Even if all the newspapers are squared or suppressed in this



country the facts find their way into newspapers abroad ; and in Paris, if not in London, the assertion may quite possibly fly "from one foul lip to another" that when a minister states that he has no shares in the Marconi Company he merely means the English and not the American Company !

4. It is of course in some cases to the interest of the State that it should secretly encourage mob violence ; but in England it cannot afford to run any serious risk of detection.

A certain collusion between the State and the mob was freely suggested at the time of the Women's Suffrage riots ; but I do not remember any very convincing evidence of this. In any case it is sufficient to show that the danger exists. It is of course very easy for the State to take the negative and unobtrusive line that is required by the passive party to a collusive agreement.

Generally speaking, there can be no doubt that liberty of discussion has attained a high level in Europe, and certainly a much higher level than in other continents. It is sometimes asserted that there is more freedom of discussion in the United States than in this country ; but the recent trial of Mr and Mrs Sanger in New York City for diffusing Malthusian knowledge among the poor certainly shows an intolerance which does not exist in this country, although no doubt the trial has done much to change opinion on this point. The high level reached in Europe is due to the international cosmopolitanism of modern Europe and also to the strong blast of anti-clericalism that prevailed during the nineteenth century in Europe, if not so much in

England. But if these conditions cease to exist we must be prepared for a considerable decline from the present level. If European nations are to become national in the sense that modern Germany has been national under the hegemony of Prussia, we must expect much trouble. It is curious that in modern Prussia great liberty was allowed before the war on non-political subjects; and if, for example, the Christian religion was protected from ribald criticism this was only because it derived a reflected glory from the divine Hohenzollerns.

There is also a considerable danger of any State under the influence of modern collectivism stepping into the shoes of the Church, or, perhaps, as Hobbes wrote of the Pope, "sitting crowned upon the grave thereof." These two tendencies, therefore, of Prussian nationalism and collectivist tyranny must never be left unwatched by those who care about liberty of discussion.

## CHAPTER VI

### SOCIAL FREEDOM

“ All this is nothing to the evils  
Which men, and their confed'rate devils,  
Inflict, to aggravate the curse  
On their own hated kind much worse ;  
As if by Nature they'd been serv'd  
More gently than their fate deserv'd,  
Take pains (in justice) to invent,  
And study their own punishment ;  
That, as their crimes should greater grow,  
So might their own inflictions too.'”

SAMUEL BUTLER, *Satire upon the Weakness and Misery of Man.*

I PROPOSE to devote this chapter to the question of what I call social freedom as distinct from other freedom. Although the Churches have declined in authority the community as such has not altogether relaxed all of the inquisitorial authority that the Churches used to wield, and it was chiefly this tyranny which roused the indignation of John Stuart Mill in his essay on Liberty. Mill, as is well known, was deeply attached to Mrs Harriet Taylor, whom he subsequently married. During his life Mr Taylor very kindly absented himself from his house on certain evenings in the week so that Mrs Taylor could listen with undistracted ecstacy to Mill's philosophy. Here was an arrangement which deserved all respect and which could not by any means injure other parties. Even if Mill was a gay Lothario, which was by no means his reputation

among hostile critics, the private domestic arrangements of the Taylor household did not concern the world at large.<sup>1</sup> Nevertheless society was scandalised. The austere Carlyles were moved to protest and Mill's parents were deeply shocked. In fact it was one of Mill's grievances against his mother that after Mrs Taylor's marriage to him his mother would not receive Mrs Mill. It is, therefore, not surprising if Mill displayed considerable indignation about the interference of society with the individual. Mill felt very keenly that it is much easier to suppress freedom than to encourage it, and also that society has no right as such to meddle and interfere with problems which are purely private and domestic problems. He puts the general problem very well in the following passage<sup>2</sup> :

“The only ground, therefore, on which restrictions on Sunday amusement can be defended, must be that they are religiously wrong; a motive of legislation which can never be too earnestly protested against. ‘*Deorum injuriæ Diis curæ.*’ It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offence to omnipotence, which is not also wrong to our fellow-creatures. The notion that it is one man's duty that another should be religious was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railway

<sup>1</sup> Cf. Fitzjames Stephen's opinion of Mill as given in the biography by Leslie Stephen.

<sup>2</sup> *Liberty*, pp. 53 *et seq.*

travelling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested."

If we substitute "sexual morality" for "religion" in every place where religion is referred to in that passage we get Mill's true attitude to the subject. Mill objected very strongly to the attitude of persons like Shelley's mother, who, on being told that her son was accustomed to think for himself, expressed great alarm and said, "For heaven's sake teach him to think like other people." But Mill was of course fully aware that thinking for oneself is not necessarily and always the same thing as thinking differently from other people.

Leslie Stephen and Fitzjames Stephen opposed Mill's essay on the ground that obstacles to liberty strengthen the character of the oppressed. Their own arguments can be conveniently summarised in a little rhyme :

"Restraint and coercion  
Stimulate exertion."

Leslie Stephen, as quoted by Fitzjames Stephen, argued as follows<sup>1</sup> :

"The hope that people are to be rendered more vigorous by simply removing restrictions seems to be as fallacious as the hope that a bush planted in

<sup>1</sup> *Op. cit.*, p. 46.

an open field would naturally develop into a forest tree. It is the intrinsic force which requires strengthening, and it may even happen that in some cases that force will produce all the more effect for not being allowed to scatter itself."

To this Fitzjames Stephen adds :

"If you wish to destroy originality and vigour of character no way to do so is so sure as to put a high level of comfort easily within the reach of moderate and commonplace exertion."<sup>1</sup>

Fitzjames Stephen points out that a complete moral toleration is possible only when men have become completely indifferent to each other—that is to say, when society is at an end. He considered that the great problem of society was to see that all struggles in public and private life were fairly conducted like a game of football. He considered it "a duty to do your best to win, to treat your opponents fairly, and to abide by the result in good faith when you lose without resigning the hope of better luck next time."

All this is of course very true as regards public life in England but it is not very apposite when applied to really poisonous things that have to be stamped out, and which work in secret. It would, for instance, be ridiculous to maintain that Teutonic espionage can be treated in this spirit at all, and Fitzjames Stephen would have been the last person to advocate anything so absurd. There is no doubt that much of the social inquisition and backbiting to which Mill objected had nothing very sportsmanlike about it. Jowett once remarked that no man ought to care

<sup>1</sup> *Op. cit.*, p. 47.

about what is said behind his back, but that is only true so long as what is said behind his back does not seriously injure his character and earning power, which is precisely what the ordinary tittle tattle does in the case of a woman, and this is the reason why since 1891 women are entitled to claim damages for slander as regards chastity without proving special damage.

Fitzjames Stephen never seems quite to realise that although coercion may stimulate the stronger members of society into resistance yet the effect on the weaker members, who are certainly a large majority, is to produce hypocrisy and secretiveness. He deliciously satirises the attitude which Mill thinks society should take up to "experiments in living" by an imaginary dialogue between the State and the pimp. Yet even Stephen's masterly irony cannot mask the fact that the pimp is in all respects far more dangerous if he is working secretly. The other day I received a very silly pamphlet from a man who apparently proposed to found a large secret society for polygamy in order to increase the English-speaking races to such an extent that the globe would be painted entirely red. Much as I dislike such nonsense, especially as it offends against every doctrine of "live and let live" and is at the root of the German auto-intoxication which has convulsed Europe, I feel it far better that this pamphlet should be printed and circulated without legal penalties than that it should be suppressed, and that people who feel like the pamphleteer should secretly conspire for some equally absurd and immoral purpose. Secretiveness and hypocrisy disintegrate a society

more than most things, and will always flourish whenever and wherever people feel very strongly that they are entitled to say or do certain things, and do not really accept the public verdict of society. Fitzjames Stephen certainly admits this doctrine in the case of unchastity; although even there he limits the exception in a way which I think is illogical.<sup>1</sup>

Perhaps this can best be illustrated by the question of preventing cruelty to children. I imagine that Mill and his contemporaries would have regarded the Society for the Prevention of Cruelty to Children with considerable apprehension. They would have said, and quite justly, that the privacy of family life must not be interfered with; and if the Society in fact abused its powers there would certainly be a strong case against its activities. It is, however, well known that the Society has done its best work by means of gentleness and persuasion, and where it has in the last resort prosecuted, the convicted parent has usually been converted to a sense of his or her own cruelty. The cruelty in question has either been the result of thoughtlessness or poverty, and very rarely of the mental perversion which has come to light in one or two cases where the parents were well-to-do. The moral of all this is that the Society has succeeded precisely because cruelty to children in itself offends the conscience, even of the guilty parent, whenever he or she becomes aware of it. On the other hand, if the parents in question really desired to be cruel to their children they could invent many kinds of

<sup>1</sup> *Op. cit.*, p. 161.



cruelty which could not be measured in a *voirdupois* or by ordinary medical methods. There are no doubt many cases where one spouse has succeeded in inflicting the greatest possible amount of cruelty on the other without being guilty of legal cruelty, which can only be measured by injury to physical health, but there is not so much danger of this occurring in regard to children.

Mill and Stephen are at any rate agreed on the necessity of a reasonable regard for privacy where there is a difference of opinion, even where the dissenting persons are only a small minority. It must always be remembered that on most points of conduct there is for all practical purposes unanimous agreement and it is only on a few points that any question arises.

In dealing with this subject it must not be forgotten that social pressure has always been much stronger in England than elsewhere, and that owing perhaps to our insular position, among other causes prudery has always been stronger in this country than on the Continent. Throughout the history of England there is a conspicuous tradition of local self-government. From Saxon times each township or village was responsible for its criminals, and this substructure thrived even when the government of the country was better organised and centralised after the Norman Conquest. The system was obviously most useful for repressing crimes of violence and anti-social acts of every kind. On the other hand it could be extremely tyrannical as regards religious heresy or sexual laxity. No modern person would for one moment tolerate the

conditions of life in a mediæval village under the eye of the Church, or in a Scotch or New England village in the seventeenth century under the eyes of the elders. It is curious to realise how much easier it was to suppress religious heresy than sexual laxity. We have seen how liberal the Ecclesiastical Courts had to be in spite of themselves where offences of chastity were concerned. Acquittal by compurgation seems to have been fairly easy, and excommunication does not seem to have occurred very often. There are two cases of long-standing excommunication recorded in 1579 as follows :

1. "1579. 30 May. Meringtone. The offices of the Judge against Margery Brandelinge. She standeth excommunicate a longe tyme, and hathe commytted fornicacion in Newcastle, and fled to one Umfray Blaxstone's house in Lytle Shiltone. Did not appear."

2. "1579. 4 April. Sedgelfelde. The offices of the Judge against Helionor Dent. Fornication with Thomas Elstobe. She has fled. Excommunicated."<sup>1</sup>

But these cases must have been rare, and in any case excommunication did not seem to amount to more than banishment from the place. John Knox, on the other hand, was not inclined for half measures when introducing the morality of Calvin into Scotland. He made adultery a capital offence, but this only resulted in sodomy becoming more prevalent. He then ordained that all sodomites were to be burnt alive; but as we hear very little of these

<sup>1</sup> Publications of the Surtees Society, vol. xxii., p. 117. London, 1849. *Op. cit.*, p. 118.

penalties being inflicted I imagine that his followers were eventually forced back into the unworthy tolerance that they had always associated with Popery.

In our own day there is little direct interference by Church or Chapel, and religious heresy has become almost uninteresting. Such interference as society exerts mainly concerns questions of sex. The social policy of our time presents a confused medley of motives derived from ecclesiastical taboos, the old sense of tribal unity, and where sex matters are concerned, a certain element of jealousy.

1. The ecclesiastical taboo scarcely survives; although we may remember that Keble strongly exhorted English Christians to boycott infidels as such. The attitude of the clergy to divorced persons recalls the penitential time limits of Saxon England; the guilty parties to a divorce are not supposed to make themselves too conspicuous for a year or two after the divorce has occurred. This attitude of the clergy has been to some extent copied by the laity. It is after all quite possible for a guilty couple to live quite happily without seeing very much of the clergy or troubling themselves much about the attitude of society so long as they are on good terms with their intimate friends. There is to-day scarcely any question of religious boycott outside schools and universities, and even in Scotland there is little more than a trivial interference with personal habits on the Sabbath. I remember for instance staying at a house in Scotland some years ago where I was implored by my host not to bathe in the sea because it would hurt the feelings

of the adjacent villagers, but I gathered that no more dreadful consequence would ensue than their feelings being hurt.

2. It may seem fanciful at this time of day to allude to any feeling of tribal unity, but there is no doubt that these old instincts survive in very unexpected ways. In the debates in the House of Commons about Charles Bradlaugh taking the oath it was solemnly suggested that if he did God would destroy the building by lightning.

It was of course a commonplace among primitive peoples that incest, adultery, and fornication had a very bad effect on the crops. There are perhaps but few persons alive who would seriously apprehend any disaster to agriculture from the Archbishop of Canterbury being made a co-respondent; but such a catastrophe in public life would no doubt afflict many pious persons with a vague sense of approaching misfortune to the community.

3. The feeling of jealousy against the male and female transgressor is largely sexual, but is perhaps even more due to a feeling that they have been enjoying themselves more than their neighbours. Many years ago I remember a man complaining to me that his sister would not call upon his mistress. He was, however, shocked by his sister's attitude. She did not justify her refusal on high moral grounds, but merely asked what benefit she would have derived from living a dull and monotonous existence if the other lady were to be her social equal. This feeling of jealousy is intensified where the suppression of strong sexual feeling becomes perverted into cruelty; as, for instance, when Cromwell

slashed at the faces of the camp-followers with his sword after the battle of Naseby or as when prostitutes were habitually flogged in public during the eighteenth century.

This kind of cruelty is not so freely indulged in nowadays because we have become in many respects more humane, but it is merely latent and occasionally breaks out in popular agitation about sex questions. This popular agitation displays not so much the perversion which I have just described as the collective instinct of cruelty which we associate with the so-called sport of hunting. During the nineteenth century there were occasional displays of gregarious barbarity which broke out quite capriciously against certain individuals. I make no apology for quoting in full the following well-known passage from Macaulay's essay on Byron since every word of it is as true to-day as it was when it was written.

“We know no spectacle so ridiculous as the British public in one of its periodical fits of morality. In general, elopements, divorces, and family quarrels pass with little notice. We read the scandal, talk about it for a day, and forget it. But once in six or seven years, our virtue becomes outraged. We cannot suffer the laws of religion and decency to be violated. We must make a stand against vice. We must teach libertines that the English people appreciate the importance of domestic ties. Accordingly some unfortunate man, in no respect more depraved than hundreds whose offences have been treated with lenity, is singled out as an expiatory sacrifice. If he has children, they are to be taken from him. If he has a profession he is to

be driven from it. He is cut by the higher orders, and hissed by the lower. He is, in truth, a sort of whipping-boy, by whose vicarious agonies all the other transgressors of the same class are, it is supposed, sufficiently chastised. We reflect very complacently on our own severity, and compare with great pride the high standard of morals established in England with the Parisian laxity. At length our anger is satiated. Our victim is ruined and heartbroken. And our virtue goes quietly to sleep for seven years more.

“It is clear that those vices which destroy domestic happiness ought to be as much as possible repressed. It is equally clear that they cannot be repressed by penal legislation. It is therefore right and desirable that public opinion should be directed against them. But it should be directed against them uniformly, steadily, and temperately, not by sudden fits and starts. There should be one weight and one measure. Decimation is always an objectionable mode of punishment. It is the resource of judges too indolent and hasty to investigate facts and to discriminate nicely between shades of guilt. It is an irrational practice, even when adopted by military tribunals. When adopted by the tribunal of public opinion, it is infinitely more irrational. It is good that a certain portion of disgrace should constantly attend on certain bad actions. But it is not good that the offenders should merely have to stand the risks of a lottery of infamy, that ninety-nine out of every hundred should escape, and that the hundredth, perhaps the most innocent of the hundred, should pay for all. We remember to

have seen a mob assembled in Lincoln's Inn to hoot a gentleman against whom the most oppressive proceeding known to the English law was then in progress. He was hooted because he had been an unfaithful husband, as if some of the most popular men of the age, Lord Nelson for example, had not been unfaithful husbands. We remember a still stronger case. Will posterity believe that, in an age in which men whose gallantries were universally known, and had been legally proved, filled some of the highest offices in the state and in the army, presided at the meetings of religious and benevolent institutions, were the delight of every society, and the favourites of the multitude, a crowd of moralists went to the theatre, in order to pelt a poor actor for disturbing the conjugal felicity of an alderman? What there was in the circumstances either of the offender or of the sufferer to vindicate the zeal of the audience, we could never conceive. It has never been supposed that the situation of an actor is peculiarly favourable to the rigid virtues, or that an alderman enjoys any special immunity from injuries such as that which on this occasion roused the anger of the public. But such is the justice of mankind."

A more recent example of the same thing was the case of Lady Twiss in the middle Victorian period. This lady was the wife of a highly respected ecclesiastical lawyer; they both enjoyed all the amenities of good society and were deservedly popular. Unfortunately for herself the lady had been compromised before her marriage with a scoundrel, who on the strength of these relations

blackmailed Sir Travers Twiss until Sir Travers could stand it no longer. A prosecution ensued in which the miserable story became public property. One would have thought that this ordeal was quite sufficient for Lady Twiss without having to undergo any further suffering; but Queen Victoria thought it necessary to vindicate the cause of female virtue by publicly announcing that she would no longer receive Lady Twiss at Court. This would not perhaps happen nowadays; but English society is always liable to sudden outbursts of a virtuous indignation which, however mitigated by modern civilisation, is necessarily unjust and capricious in its results.

The fact is that the whole attitude of society towards sex questions has immensely altered during the last twenty or thirty years, and there is undoubtedly in this respect more liberty, just as there is far more religious tolerance. And the reason that we are more liberal in matters of religion is because religious ideas change more rapidly, as I have before pointed out, than moral ideas.

Directly any taboo is exposed to the test of discussion it is *ipso facto* weakened. So long as it was impossible to discuss publicly the truth or falsehood of the doctrine of the Trinity heretics on this point were fiercely persecuted. In my book on religious persecution I describe a process of what I call "implicit scepticism," which always precedes open scepticism. When Cromwell admitted men of different sects into his army, he did not say to himself, "Religious ideas have no meaning or importance compared to the regeneration of my country,"



but the idea that many of such differences were comparatively unimportant assuredly lay at the back of his mind. Similarly, modern statesmen do not dismiss theological interpretations of the universe as meaningless, though they do confine themselves to the certain and tangible problems of modern politics. But if we were all convinced that the will of God could invariably be ascertained by an encyclical of the Pope, by a majority in the House of Commons, or by any other means we should certainly revert to unqualified theocracy.

We see much the same process of thought in the controversy between Mill and Stephen. Neither Mill nor Stephen ventured to attack the ascetic theory of sex morality which is binding on any real believer in the Christian religion. Each assumes that sexual transgressions against Christian rules are necessarily evil and anti-social. It is true that Mill in 1822 distributed Malthusian pamphlets and maintained Malthusian doctrines in his writings; but he did not seem to see that the preaching of these doctrines logically involved repudiating ascetic theories of sex. The early Christian view was that the only excuse for sexual intercourse was the commandment of the Church to increase and multiply. Directly society admits, however secretly, that sexual intercourse which is intended not to result in the increase of the population, is venial, society has abandoned, in theory as well as in fact, the whole doctrine of Christian asceticism; and sooner or later that doctrine is bound to fall like a house of cards.

It is of course a commonplace that the Victorian

compromise in matters of sex was in most respects tolerant towards men, although quite intolerant towards women. This is quite inconsistent with the old ecclesiastical doctrine that both men and women were to be treated alike. There is, for example, one case at Durham in July 1580 where a man and woman were for some reason treated with great severity for living in sin. They seem to have provoked the wrath of the community, probably by trying to justify themselves in some way. They were both condemned to be whipped and carted in all open places within the city of Durham because they had failed in their compurgation and were therefore convicted of the crime detected.<sup>1</sup>

The disintegration of the Catholic faith no doubt explains the one-sided toleration which came to prevail in the eighteenth and nineteenth centuries. In our own time we find much more toleration for women as well as men. It is fortunately impossible to-day for any unchaste woman or prostitute to be put in the stocks or flogged; although it is much to be regretted that women are never admitted to any hospital but the Lock Hospital for the cure of venereal disease in spite of the fact that a General Ward is provided in nearly every hospital for men.

Among the poor the evidence taken before the Divorce Commission showed that there is considerable laxity, which is largely due to the want of divorce facilities and also perhaps to the ancient idea that it was undesirable for a man to marry a woman unless and until she was pregnant. Among

<sup>1</sup> Surtees Society, *op. cit.*, p. 126.

the well-to-do a woman who can support herself or has money of her own can do much as she likes if she is tactful and discreet. There is a story of a British spinster in Florence who wrote to a freshly arrived curate as follows :

“ Miss —— presents her compliments to the Reverend Mr —— and will be obliged if he will call at three o'clock to-morrow to baptise her infant.”

The admirable courage of this lady is not likely to find many imitators ; but there is, I think, no reason why any unmarried woman in similar circumstances should allow the social conventions to separate her from her child ; although society, as represented by her family, too often intervenes for this unnatural purpose. Society will always fiercely repress any sudden or violent avowal of such a step on the part of an unmarried woman ; but the fact remains that any unmarried woman who chooses to tell society in general that she has adopted a baby, can generally live at peace, even in a small village, although the whole population are quite aware of the real facts. Society in fact insists nowadays on nothing more than a homage to hypocrisy, and even that homage is only rendered in a perfunctory way.

I imagine that these conclusions in regard to the present state of social opinion may be fiercely contested by those who have not devoted as much time to the problem as I have. I therefore venture to quote the following extract from a Manifesto of the British Society for the Study of Sex Psychology<sup>1</sup> :

“ On the one side is sex-psychology, a subject of scientific investigation which has only of recent

<sup>1</sup> Publication No. 1. Beaumont & Co. London.

years become wide and far-reaching; on the other side social custom, based often upon preconceptions immemorially old, by which problems, arising from unknown causes, have of necessity been unscientifically treated. And since on the scientific side—in all that concerns cause and effect—we have to recognise, as students, that humanity is still very ignorant in regard to these matters, it follows necessarily that, on the practical side, in law, in medicine, and in education, humanity has been acting ignorantly, or, at least, experimentally. As a result society is faced to-day by sex-problems of the gravest character, apparently as far from solution as ever—patent symptoms of wrong social conditions which, by common agreement, demand a new mind and mode of approach. The admitted evil of prostitution, male and female; the attendant and widespread existence of blackmail which takes criminal advantage of the law as it now stands; the lack of proper safeguards for consent in sex-relations, free from all compulsion social, economic, or physical; the unsatisfactory conditions of marriage and divorce; the failure to deal equitably and soundly with the spread of venereal disease; the almost total absence of sex-training from education; all these things are a cause of weakness and deterioration to the national life. And here, where science is most needed for right and effective treatment, science, so far as popular acceptance is concerned, is most lacking. We need far more than we have it to-day, the co-operation of all classes of society—experts willing to state and explain, laymen willing to learn. We need a

general understanding that a huge unsolved problem of double aspect, intimate in its effect upon the lives of all, stands at our doors ; on the one hand human nature waiting to be investigated ; on the other failures in our social treatment of it needing to be exposed. . . . In the Middle Ages society assumed that ecclesiastical authority was the safe repository of natural science ; and as a result it persecuted and endeavoured to exterminate those who held that the world and the solar system were of an altogether different construction from that described by theologians. The results of that assumption seem laughable to us now ; but they were no laughing matter when the moral judgments arising therefrom were enforced by the civil arm.

“ We are faced to-day by a very similar position. The official mind wherever it is found (as inadequately equipped for the task as were the censors of Bruno and Galileo) makes assumptions to-day of knowledge about human phenomena, and of the right to pass judgment thereon, as arrogant as were claimed in the sixteenth and seventeenth century with regard to astronomy, and shows an equal readiness to condemn on moral grounds those who are determined to question and to investigate even its most cherished conclusions.”

For further confirmation I refer my readers to a book by Professor Förster.<sup>1</sup> Professor Förster is a free-thinker who has been reconverted to Catholicism by recognising that Christian morality is the

<sup>1</sup> *Marriage and the Sex Problem.* By Prof. Förster, Lecturer on Ethics and Psychology in the University of Zurich. Translated by Meyrich Booth. London, 1914.

only basis of the sex morality which he desires to maintain. He condemns Malthusian methods and strongly opposes giving the young information as to sex. He points out that monogamy is necessarily an ascetic regimen, at any rate for the husband, and that regulation of the family must lead to sex being regarded from a non-mystical point of view. He even goes so far as to advocate the celibacy of priests in order to set an example of asceticism. Here then we have an eminent and logical professor maintaining the exact converse of my proposition and supporting the Catholic faith, not so much because it is theologically convincing but because it is the only buttress of asceticism in sex.

I do not wish my conclusions on this matter to be misunderstood; for I am no anarchist. Sex problems must always be decided by strict reference to considerations of social peace, welfare, and convenience. Society must always preserve an ideal of temperance even if the ascetic ideal is rejected. I imagine that by the year 2000 men will not be able, even if they desire it, to demand virginity from the woman they marry as a matter of right. A French writer, M. Blum, has argued that a social transformation of this kind will increase the stability of the marriage relations inasmuch as the woman will much better understand what marriage means than she does now. This thesis is at least arguable. And I imagine that a growing tolerance as regards matters which ought to be entirely private as between adult men and women, so long as they do not injure other people, will achieve far greater

results as regards human happiness, and towards abolishing the more miserable forms of prostitution than any influence that the asceticism of Christianity has ever brought to bear on society. To look back on the history of Christendom is to see from start to finish nothing but an unavailing attempt of the priest to restrict the natural impulses of mankind with most unfortunate results for the community. It is perhaps a privilege to belong to a generation on whom has dawned the possibility of abandoning the absurd conflict with human nature in order to establish a new and better society in the light of common sense.

I have before remarked that the progress of liberty in regard to sex problems is not so much due to any enthusiasm for liberty in itself as to the decline of Christian doctrines on the subject. It is therefore necessary to add a note of warning as regards the slow progress of social freedom. The worst offences against social freedom to-day are those of the rich against the poor. I need not again labour to point out that the rich treat, and want to treat, the poor for the most part as inferior animals. They are to be teetotallers, they are to produce children as and when required for industrial or military purposes, and they are to lead an entirely colourless and servile existence. Unless and until this climate of opinion changes it is dangerous to boast of any progress in the direction of social freedom.

## CHAPTER VII

### LIBERTY AND MINORITIES

“ We agree that the minority are wise and the majority foolish, but Mr Mill denies that the wise minority are ever justified in coercing the foolish majority for their own good, whereas I affirm that under the circumstances they may be justified in doing so. Mr Morley says that Mr Mill’s principle would protect the minority from being coerced by the majority, whereas my principle would expose them to such coercion. My answer is that in my opinion the wise minority are the rightful masters of the foolish majority, and that it is mean and cowardly in them to deny the right to coerce altogether for fear of its being misapplied as against themselves. The horse is stronger than the rider in one sense, but the man who maintained that horses and men ought to be entirely independent of each other for fear of the horses riding the men, would be a very poor creature. In many respects one wise man is stronger than a million fools. The one man in a million who possesses extreme force of intellect, force of character, and force of sympathy, is more likely to coerce the rest than they are to coerce him, and I affirm his right, in certain cases, to do so. Mr Mill is so timid about the coercion of the one man who has no business to permit himself to be coerced by the many, that he lays down a principle which confines the one man to a way of acting on his fellow-creatures which is notoriously inoperative with the vast majority of them.”—*Fitzjames Stephen*.

I PROPOSE to point out in this chapter that the real danger of any State, and more particularly of modern England, is not that of minorities being coerced by majorities but of majorities being coerced, or else hoodwinked, by minorities. It follows that a great many of the precautions that have been suggested by men like Mill, such as proportional representation, do not touch the real evils of the State or guard against the menace to



individual liberty which is due to the secret tyranny of minorities ; I shall also show that the supremacy of minorities as such is on the whole far more hostile to liberty than any supremacy of a majority. In considering this subject, however, it is impossible to avoid a general discussion on the different forms and machinery of government.

For practical purposes we may divide all forms of government into monarchy, aristocracy, oligarchy, and democracy. We have all been taught to believe, and for aught I know it is true, that the characteristic government of the prehistoric and of the ancient peoples in the East was purely despotic, being based on the necessities of warfare and military organisation. When we come to the thinkers of ancient Greece we find it generally assumed, as, for instance, by Plato, that different forms of government occur in a cycle, and that one is always shading off into another. This idea is very well worked out in Plato's *Republic* and has a certain plausibility about it. In medieval Europe we see an ideal that has always seemed to me much finer and truer than any other ideal past or present of Europe. At the top there is a supreme Pope and a supreme Emperor, and underneath are a number of different communities speaking, perhaps, different languages but all having a common language, common morality, and common ideals. In those communities it was thought that all estates should be properly represented, to wit, the king, the nobles, the church, and the burghers. It is true that this omitted the peasants and serfs to some extent, but it did not for one moment presuppose the servile proletariat

that I have described in connection with modern politics in a previous chapter. As from the date of Rousseau we find, both in Europe and on the other side of the Atlantic, the belief that all good government is democracy based upon some method of representation in which the will of the majority prevails, as opposed to other forms of government in which minorities rule the State. The fact remains, however, that Pope was right when he wrote :

“ Let fools for forms of Government contest ;  
Whate'er is best administered is best.”

In every form of government, except modern democracy, the view of the majority, directly or indirectly, prevails. The despot, the aristocrat, and the oligarch are all directly responsible to the majority. Each is as governor responsible to those whom he governs and is clearly recognised as such. He can repeat to those whom he governs the words that were said to be written up at the back of a piano at a cow-boys' festival—“ Don't shoot the man at the piano ; he is doing his best.”

Even under a modern despotism, such as Russia, there has existed a considerable amount of local government and independence, while individual liberty, apart from politics, exists to a sense quite incomprehensible in this country. Where a despot wishes to exploit his people for his own ends he must, like the rulers of modern Germany, embark on a long process of influencing their minds by what Mr Graham Wallas calls “ the process of non-rational inference,” to which I shall refer later. On the other hand, democracy in the sense that

Rousseau used the word, cannot exist except as carried out in Athens or Geneva or any other small State. Directly we expand democracy to the modern scale and try to achieve the expression of what Rousseau called "the general will of a community," we at once run up against the existence of a Caucus or secret conspiracy of men who masquerade as the leaders of the people and who, possessing the powers that they must in that capacity possess, are specially apt to confuse what they think good for the people with what is, in fact, of personal advantage to themselves. We often see directors of a joint-stock company treating the shareholders very much as democratic leaders treat the people. It is true, of course, that in a modern State the executive must have a great deal of discretionary power. There may be the expression of a general will in regard to ends which would leave those who carried it out a certain latitude as regards the means; and this is still more the case where certain problems have to be left to experts; but that does not release the community from keeping a very vigilant eye on ministers and bureaucrats. The ruling class of a democracy will always find it easier to deceive the many than the few, as Herodotus long ago pointed out. I imagine there is no real democracy in the modern world, with the exception of San Marino or a few islands like the Isle of Man or the Channel Islands, in which the will of the people is not shamelessly exploited every day by those who have the power to do so, nor does any scheme of local government appear to be altogether free from scandal.

## 150 DECLINE OF LIBERTY IN ENGLAND

I must, however, in this book, confine myself as much as possible, to the condition of modern England. Given a country like England with ancient and deep-rooted traditions of liberty, there is very little danger of liberty being seriously injured by any majority rule, for any majority is *ex hypothesi* English, although we must, of course, allow for the Calvinistic training of the Welsh and Scots which is, on this point, alien from English ideas. There is, however, every chance of a fanatical minority, or even a cynical minority, fiercely attacking liberty. Let us, for instance, take the question of intoxicating liquors. On the one hand we find a number of fanatics like the members of the United Kingdom Alliance, who seem set on treating all their fellow-citizens as if they were less responsible than children, while on the other hand we see the brewers who, having cast aside all principles of liberty by the establishment of their tied-house system, are naturally indifferent to the liberty of the publican on the one hand and of their customers on the other. The brewers have not, as a rule, shown themselves possessed of much political sagacity; but during the last few years it has probably dawned on some of them that a general policy of prohibition would lead to so much secret drinking that the demand for beer would be ultimately increased.

It would be amusing, if it were not so tragic, to find how strongly the delusion still prevails in this country that we are suffering from a merciless majority who must be restrained by schemes like proportional representation. The fact is, however,

that the governing classes fear nothing so much as measures which would undoubtedly give power to the majority. I mean such a device as what Mr Cecil Chesterton labels the "Recall," about which he writes as follows: "Not only should elections be reasonably frequent but a certain proportion of the electors should, at any time, have the right to demand a general poll on the question whether the delegate was or was not carrying out the mandate of his constituents. Should the vote go against him the delegate would have to resign and another would be elected in his place. The mere threat of this action would probably be enough in most cases to prevent the delegate from shamelessly and continually violating his trust, as is so often done to-day."<sup>1</sup>

The same gentlemen are considerably pained by any allusion to the "referendum," which they are accustomed to denounce as "calling in the mob." Mr Chesterton, however, rightly points out that the mob ought not to wait to be called in. He thinks it would be of no use unless it could be put into force, not merely on the initiative of the legislature itself but on the initiative of a fixed proportion of the electors.<sup>2</sup>

The late Professor Ritchie used to write that all that minorities could do was to turn themselves into majorities. Fitzjames Stephen, as we have seen, thinks that a minority ought to ride a majority like a man riding a horse, but what really happens is that the minority hoodwinks the majority in a way

<sup>1</sup> *The Great State*, p. 216. London, 1911.

<sup>2</sup> *Op. cit.*, p. 217.

that suggests the activities of a mole-catcher, if I may appropriate a phrase which I once heard Mr Max Beerbohm use about politicians.

This is not at all difficult to do under modern conditions. As Mr Graham Wallas has pointed out: "If the rich people in any modern state think it worth their while, in order to secure a tariff, or legalise a trust, or impose a confiscatory tax, to subscribe a third of their income to a political fund, no Corrupt Practices Act yet invented would prevent them spreading it. If they did so, there is so much skill to be bought, and the art of using skill for the production of emotion and opinion has so advanced, that the whole condition of political contests could be changed for the future. No existing party, unless it enormously increased its own fund or discovered some other source of political strength, would have any chance of permanent success."<sup>1</sup>

The same writer then analyses in a masterly way the manner in which the political opinions of the mob can be manufactured. The political opinions of most men are the result "not of reasoning tested by experience, but unconscious or half-conscious inference fixed by habit. It is indeed mainly in the formation of tracts of thought that habit shows its power in politics."<sup>2</sup>

I need only refer any person who has not read the book to the book itself, in which Mr Graham Wallas shows how political opinions can be created by a constant repetition of posters and advertisements of

<sup>1</sup> *Human Nature in Politics*, p. 5. 2nd edition. London, 1910.

<sup>2</sup> *Op. cit.*, p. 103.

different kinds. I do not, of course, mean to suggest that there are not genuine examples of a real minority being in conflict as such with a real majority. There is, of course, the obvious instance of Ulster and the rest of Ireland. These cases, however, are very rare, and such conflicts can nearly always be solved by compromise, and if they are not they have to be settled in the last resource by strikes, passive resistance, or civil war.

The "fatalism of minorities" has become a common phrase but I do not believe that minorities are as a rule composed of fatalists. Any self-conscious minority which feels at all strongly on any point concerning itself can usually, by one means or another, obtain what it essentially wants by some sort of bargaining with the majority. On the other hand, the real fatalism of to-day is the fatalism of a hoodwinked majority, like the Electorate of Great Britain, which has seen for some time that something is particularly rotten in the State, and yet cannot diagnose it, and therefore cannot decide what to do.

In order to show the menace to liberty that exists in England to-day, it is necessary for me to analyse, so far as I can, what I believe to be the real conditions of government in this country. These have, in my opinion, been admirably analysed by Mr Belloc and Mr Chesterton in a book entitled *The Party System* and published five years ago. During the five years that have elapsed, much of what they then wrote has been verified. Writing at the end of 1910 they pointed out that the standing committee of professional politicians, which is called in

the House, the two Front Benches, had determined to alter both the Constitution and the powers of the House of Lords and they predicted as follows: "Without any reasonable doubt the powers of the House of Lords, after the most ridiculous sham demagoguery from the Treasury Bench, and equally ridiculous sham indignation from their relatives and private friends across the table, and after perhaps some sham resistance organised to give vitality to the show, will be modified in such a fashion that (1) the House of Lords shall not be able to prevent the passage into law of measures concerted between the two Front Benches; and (2) the House of Lords shall be able to prevent the passage of measures which towards the end of a Parliament are put up in order to secure the swing of the pendulum."<sup>1</sup>

In other words, so far as its powers are concerned, the second chamber would be turned into a machine subservient to the bi-party system. This is precisely what has happened.

Mr Belloc and Mr Chesterton maintain that the power of the House of Commons has passed to the Front Benches. "This committee is not elected by vote or by acclamation or even by general consent. Its members do not owe their position either to the will of the House or the will of the people. It is selected mainly from among the rich politicians and their dependents by a process of sheer unchecked co-option. It forms in reality a single body, and acts when its interests or its powers are at stake, as one man. No difference of economic interest or of political principle any longer exists among its

<sup>1</sup> *Op. cit.*, pp. 57-58. London, 1911.



members to form the basis of a rational line of party division. Nevertheless, the party division continues. The governing group is divided arbitrarily into two teams, each of which is by mutual understanding entitled to its turn of office and emolument, and a number of real issues defined neither by the people nor the Parliament but by the politicians themselves, are raised from time to time in order to give a semblance of reality to their competition.”<sup>1</sup>

The present situation is admirably contrasted with the power exerted by the House of Commons over the ministers and ministries between 1830 and 1870.

“That power was not only possessed by the early parliaments of the nineteenth century but was continually exercised; and administrations strong in reputation and parliamentary support were rapidly overthrown by revolts of their own followers and dismissed by the vote of the Commons. So Wellington was overthrown in 1830 and Grey in 1834. So Peel was driven from power by the Protectionist revolt in 1845. So Lord John Russell fell in 1852 and so in a few months afterwards fell the ministry of Derby and Disraeli. So the coalition ministry of Lord Aberdeen was defeated in 1855 by a vote of censure on the conduct of the Crimean War. So in 1857 Lord Palmerston was beaten on the Chinese War and again in 1859 on the Conspiracy Bill. So in 1865 the strong ministry of Russell and Gladstone was overthrown on its Reform Bill by the rebellion of the ‘Adullamites.’”<sup>2</sup>

<sup>1</sup> *Op. cit.*, pp. 33, 34.

<sup>2</sup> *Op. cit.*, pp. 30, 31.

“If we take the year 1870 as the pivot year, we shall find that in the forty years that preceded 1870, nine Administrations which could normally command a majority of the Commons were upset by the independent action of members of that house. In the forty years that have passed since 1870, only one instance of this happening can be mentioned—the defeat of Mr Gladstone’s Home Rule Bill of 1886. There, the circumstances were, in many ways, exceptional, and even that example is now nearly a quarter of a century old. In the last twenty-four years not a single case of such independent action on the part of the Commons has occurred.”<sup>1</sup>

I confess that when I first read the book, five years ago, I personally thought that it exaggerated the situation, especially on the question of collusion between the Front Benches, which is very vividly described in a special note on the subject. This was not because I am not familiar with many sham contests. It is, for instance, abundantly clear to anyone who has to transact business in the Chancery Division, that two King’s Counsel who both practise before the same judge and see each other every day, are far more intimate with each other than they are likely to be with any lay or professional client. It is not unnatural that they should be suspected of saving each other trouble by compromising cases which their clients would like to fight, or that one of the Counsel should be inclined to take for gospel the evidence of the other side as presented to him by his friendly colleague, without inviting the opinion of the humble solicitor, who might be able to shed a

<sup>1</sup> *Op. cit.*, pp. 30, 31.

very different light upon it from his longer and often more intimate acquaintance with the persons and facts. I imagined, therefore, that the real collusion that went on between the Front Benches was very much of this nature because I imagined that political life was as honest as professional life. In the case that I have taken no one Counsel would consciously give away his client's case. He would not settle it in order to have an afternoon at golf, nor, needless to say, for any pecuniary advantage. On the other hand, the collusion described by Messrs Belloc and Chesterton is particularly mean and dirty ; for it is nothing more than a conspiracy to secure a succession of salaries for a particular clique of men, which is, perhaps, not inconsistent with an intermittent patriotism in times of great crisis, but is yet wholly inconsistent with any public spirit of the kind that every politician professes every day and hour of his waking life. I need only say that men who in 1911 thought that the Party Division corresponded to facts, had their convictions rudely shaken when Sir Edward Carson accepted a brief from Mr Godfrey Isaacs in the prosecution of Mr Cecil Chesterton over the Marconi affair, and men who doubted the collusion of the Front Benches found food for thought in the formation of the Coalition Government in 1915, which would, according to the doctrines of Messrs Belloc and Chesterton, certainly be due to fear of outside forces obtaining power by reason of the popular outcry against the mismanagement of the war.

I need not worry the reader with all the detailed description given by Messrs Belloc and Chesterton

of the whole Caucus system radiating from the Central Office to the remotest constituency and moulding each member of Parliament to its own ends, while still maintaining the illusion in the provinces of a real contest going on all the time. It will be sufficient for my purpose if I recapitulate certain points which they make. There is, to start with, no power for private members. There has not been within recent times a single case of a private member's bill to which any opposition was offered, passing into law without special facilities from the Government. This is partly because the Government have got practically all the time, under the present standing orders, at their absolute disposal. This was of course the case when the *Party System* was published five years ago. The Government can also prevent a division on an inconvenient resolution by putting up one of its henchmen to move a shelving amendment. This, for example, was done when Mr Belloc, then in the House of Commons, raised the question of the secrecy of the party funds. Mr Buckmaster, now Lord Chancellor, "was approached by the officials of the Executive, after full consultation with the Opposition Front Bench, asking whether he would undertake to nullify the debate. . . . The task of nullifying the debate was refused by more than one man ; but at last Mr Buckmaster tabled an amendment to the effect that this secrecy was particularly bad in the case of the Tariff Reform League. This, of course, successfully put a stop to the discussion. Unionists moved a similar amendment referring to the Free Trade Union, and the division,

instead of being on the secrecy of the party funds, was an ordinary division between Liberals and Tories.”<sup>1</sup>

Messrs Belloc and Chesterton state in the next paragraph that Mr Buckmaster lost his seat at the next election. They suggest that “the two Front Benches were no doubt relieved to discover that they had thus escaped from their bargain.” It would be interesting to know what Messrs Belloc and Chesterton thought when he was appointed Lord Chancellor in priority to Sir Robert Finlay, and other very eminent lawyers.

It is, of course, quite obvious that no member can really criticise a Bill brought forward from his own side of the House without rejecting a certain chance of getting office, and if too successful in his object, being threatened with all the financial penalties of a General Election. It is not therefore surprising that no member can really fulfil his pledges to his constituents. We have already seen how a debate on the secrecy of the party funds was converted into a sham contest between the two official parties, but Messrs Belloc and Chesterton do not overstate their case when they say that the people are quite unable to raise their own solution of any given problem. They are only allowed to choose between the solutions put before them by the politicians, and, as they point out, “to frame the question is to go a long way towards framing the answer.”<sup>2</sup>

The political machine of to-day presupposes that popular opinion shall have no initiative. I need

<sup>1</sup> *Op. cit.*, p. 69.

<sup>2</sup> *Op. cit.*, pp. 134, 135.

not discuss the instances given by the authors, such as the Drink Question, or the other instances which they give of what are called "non-controversial measures," which, as they say, "include all violently unpopular proposals for the oppression of the poor which happen in no way to affect the professional politician."<sup>1</sup>

Much of the above will, I fear, seem to be irrelevant to my main thesis, and if Messrs Belloc and Chesterton's conclusions were generally accepted I should not have described them at such length, since in that case they would be as much taken for granted as the existence of capital punishment for murder. But the book was little read when it first came out, and the war has distracted us from the exposure of our politics that was being slowly achieved up to August 1914. I therefore ask my readers to assume, as I do, that Messrs Belloc and Chesterton's conclusions are substantially accurate in order to follow the rest of my argument. In the first place, I must point out that if the power of the Front Benches was frankly admitted and recognised in this country, no great harm would be done. Those who were, and are, discontented with the way in which the country is governed would know what to do. An appeal could be made at any moment to any large public bodies to support either Lord Northcliffe or Mr Bottomley or any outside leader who appeared available unless the Front Benches ceased to pursue a policy such as, for example, total prohibition, which grossly menaces the liberties of the ordinary citizen. Unfortunately the Front

<sup>1</sup> *Op. cit.*, p. 138.

Benches have succeeded in the feat, which Abraham Lincoln said was impossible, of "fooling all the people all the time."

Secondly, there would not be so much objection to the supremacy of the Front Benches if even while concealing their power from the country, they exercised the powers of an ideal despot and were influenced by no motives save those of genuine public spirit. It is, however, only too obvious that men who have risen to power under the conditions described by Messrs Belloc and Chesterton are more likely than anyone else to exploit the advantages of their position. They would be less than human if they did not feel that they were entitled to some reward for their extremely disagreeable exertions; for nothing can well be more disagreeable than the amount of dirt that a successful politician has to eat in the course of his career. Even if they were not ideal despots, the country would not grudge them a certain amount in the way of perquisites if they still carried out even approximately what the people as a whole want. Unfortunately, however, the Front Benches exist to carry out quite other purposes, which are prescribed for them by rich men. As Messrs Belloc and Chesterton point out and as most persons will admit to-day, peerages are freely sold; but what most people forget is that a peerage means not merely a public honour but also "legislative power which is equal even in theory to that of some ten or thirty thousand men and is in practice of course indefinitely greater."<sup>1</sup>

The gravest question, however, is what Messrs

<sup>1</sup> *Op. cit.*, p. 105.

Belloc and Chesterton call "The Sale of Policies." As examples of this, they point to the dealings of the late Mr Cecil Rhodes with the Caucus of his day in regard to the Cape to Cairo Railway and the interesting disclosures of Dr Rutherford Harris in connection with the well-known scandal in regard to Chinese labour. Their conclusion about the drink controversy illuminates their whole contention so well in detail that I give it in full.

"So it comes about that, while a sound policy which would discourage drunkenness (especially the degraded kind of drunkenness characteristic of the slums, the true name of which is drugging) while allowing normal men to get good liquor under decent conditions, would undoubtedly command the support of the people, which is just the one thing that the people are never allowed to consider. Their decision is only between the brewer and the cocoa manufacturer. Not unnaturally, they usually prefer the brewer. It must not be supposed that the Liberal politicians themselves are in the least degree more teetotal than their Conservative opponents. Most of them have quite an adequate taste in alcohol. But that the game may be carried on, money is needed, and the two organisations agree to appeal to different sections of the plutocracy. Thus the paymasters of the politicians are in this sense more sincere than the politicians are. They do want something in the way of legislation or administration, while the politicians want nothing but their salaries. The effectiveness of the two is proportional to their sincerity."<sup>1</sup>



I think that the above considerations fully explain the dangers to individual liberty that I have described in the preceding chapters. We are faced with the growth of the Servile State and of the most puerile restrictions on the personal freedom in some cases of the rich, but always of the poor, which would never come into being if the majority of voters in this country had any real or practical connection with the government of this country. On the contrary, these results are due to the tyranny of plutocrats who buy legislative and administrative facilities from the Government of the day. Plutocrats of this description find it a cheap and wise policy to enslave the poor by doles, like a man who will not admit his son's right to an allowance but prefers to pay his bills and give him occasional tips so as to obtain constant control through the purse-strings. They are often cranks and fanatics like the United Kingdom Alliance, or the sort of Puritan who indulges his suppressed sexual desires by interfering with the normal indulgence of them by his fellow-creatures. The decline of liberty is therefore not surprising under these conditions; especially when we remember that the whole system is secret and that it would be very easy to stop the exposure of it if opinions like mine were at all widely accepted. The really surprising feature of our time is that any remnant of liberty should remain alive in this country. We have no individual liberty except in regard to political discussion, and even this liberty is a fraud because it gives us no participation in the government of the country.

<sup>1</sup> *Op. cit.*, pp. 114-115.

## CHAPTER VIII

### LIBERTY AND RELIGION

‘Homo liber de nulla re minus quam de morte cogitat.’—*Spinoza*.

THESE words of Spinoza (“A free man thinks of nothing less than of death, and his wisdom is a meditation not of death but of life”) contain the whole kernel of his philosophy. According to Spinoza’s teaching “A man was free when his nature, being consistent and unified, was able to express itself clearly in his thought and work. Freedom meant virtue in the old sense of this word; it meant faculty to do mightily and to do well; and this virtue implied or constituted happiness. Freedom, accordingly, lay not in indetermination of character or freedom to have chosen anything else as readily as what one has actually chosen, but rather in efficiency of character, and liberty to carry out one’s innate choice.”<sup>1</sup>

For Spinoza “eternal life is not a continuance of the existence but a manner of existence; something which can be realised here and now as much as at any other time and place, not a future reward of the soul’s perfection, but the soul’s perfection itself.”<sup>2</sup>

Spinoza thought that men in general knew the

<sup>1</sup> Introduction to Spinoza’s *Ethic*, by Professor Santayana, p. xvii. J. M. Dent & Sons. London.

<sup>2</sup> *Spinoza, his Life and Philosophy*, p. 275. By the Rt. Hon. Sir Fred Pollock, Bart. 2nd edition.

eternity of their own minds, but confounded eternity with duration, and instead of recognising eternity as such, ascribed it to the imagination of memory which they supposed to remain after death. The reason, therefore, why the free man thinks of nothing less than death is that he recognises his participation in eternity while he is alive, and attributes no importance to his own individuality after death. We get perhaps a more modern answer in regard to the ultimate aim of our existence in the definition of good and evil by Monsieur Deshumbert which runs as follows :

“Et à la question du début : ‘Qu’est-ce que le Bien ? Qu’est-ce que le Mal ? Nous pouvons répondre maintenant : Le Bien est tout ce qui contribue à la conservation et à l’accroissement de la Vie, au plein développement physique, intellectuel, moral, social, et esthétique, à l’emploi normal de toutes nos activités à l’épanouissement harmonieux de tout l’être, chez nous et chez les autres, en se rappelant que l’emploi normal de toutes nos activités ne peut se manifester pleinement que par la coopération, l’aide mutuelle, l’union, la sympathie pour tous les êtres.

“Le Mal est tout ce qui amoindrit la Vie, tout ce qui entrave ce plein développement, cet épanouissement harmonieux.”<sup>1</sup>

This passage roughly summarises the answer of modern religion to the riddle of existence. Although it will be obvious that in this chapter I am here using the word “religion” in a wider sense than

<sup>1</sup> *Morale fondée sur les Lois de la Nature*, p. 76. Watts & Co. London.

usual, even in this sense religion, as I define it, does not solve the problem of the universe; it is only a convenient term to describe our attitude to this life and the universe within the limits of our small knowledge. It is, however, clear that if this world can provide the kind of freedom that Spinoza postulates, liberty is in itself well worth achieving.

In one of his books Mr Filson Young has asked "What is liberty for?" and he has answered his own question by saying that liberty merely means "liberty to take up a new bondage." Yet, after all, we need not be afraid of any new bondage if, as our Liturgy expresses it, the service in question is "perfect freedom." Anyhow liberty is in itself a negative good. Nearly twenty years ago I was in Tangier and suddenly saw the city gaol. In a filthy enclosure there were about twenty Moors in every stage of disease and misery. Many of them had been blinded according to the laws of their country. I remember feeling at the time that if the British Empire had anywhere abolished cruelty of that kind it had justified its existence though it perished the next day. Even the sort of battle between two households equipped with machine guns in a modern suburb,<sup>1</sup> which, as Mr Wells points out, is only prevented by the prohibition of the State against killing, is at least preferable to a spectacle like the prison at Tangier, or (let me add) the Wittenberg Camp of 1915.

Lord Acton went so far as to say that "liberty is

<sup>1</sup> *A Modern Utopia*. By H. G. Wells. Published by Nelson, London.

itself the highest political end.”<sup>1</sup> I venture to go further and say that it is also the highest end outside politics ; but the question of liberty outside politics scarcely occurs in Western Europe until the rise of the Christian religion. Aristotle, for instance, conceded that in the last resort the ultimate and highest end of all existence is the contemplative life. Just as the Buddhists had their Nirvana, and the Catholics their Beatific Vision, so in the same category Aristotle would no doubt have placed such a vision of Ideas as Plato describes at the end of the *Phædrus*. But according to Aristotle, a man never ceases to be a citizen, and he would probably have said that such visions were fit only for gods. While, however, according to Christianity and its Oriental prototypes a man was a worshipper as well as a citizen, in ancient Greece and Rome citizenship came first. The Greeks thought it very dangerous to allow any man to indulge in private devotions, particularly as he might influence the gods for some private ends of his own, whereas the gods were in duty bound always to assist the State and never the individual. The same idea emerges in the Twelve Tables of ancient Rome.<sup>2</sup>

If ever any man led the contemplative life it was Diogenes in his tub ; yet he was not a popular figure in the ancient world, whereas St Simeon Stylites is still a hero of Christendom. The conflict of ideals is largely a conflict between the East and the West. As Dean Inge writes :

<sup>1</sup> *History of Freedom and other Essays*. By Lord Acton. London, 1906.

<sup>2</sup> For further details see my *Religious Persecution*, chap. i.

“The break-up of the ancient civilisation, with the losses and miseries which it brought upon humanity, and the chaos of brutal barbarism in which Europe weltered for some centuries, caused a widespread pessimism and world-weariness which is foreign to the temper of Europe, and which gave way to energetic and full-blooded activity in the Renaissance and Reformation. Asiatic mysticism is the natural refuge of men who have lost faith in civilisation, but will not give up faith in God. ‘Let us fly hence to our dear country!’ We hear the words already in Plotinus—nay, even in Plato. The sun still shone in heaven, but on earth he was eclipsed. Mysticism cuts too deep to allow us to live comfortably on the surface of life; and so all ‘the heavy and the weary weight of all this unintelligible world’ pressed upon men and women till they were fain to throw it off, and seek peace in an invisible world of which they could not see even a shadow round about them.”<sup>1</sup>

This Oriental tendency in Europe was no doubt precipitated by Stoic philosophy; but Stoic philosophy never sanctioned, as Christianity did, the withdrawal of the individual from the service of the State. The duties of the contemplative life were of course immensely emphasised by the Christian doctrine that this life was of no importance whatever as compared with the future life. As Dean Inge has admirably written of Christian belief:

“The human spirit beats against the bars of space and time themselves, and could never be satisfied with any earthly Utopia. Our true home

<sup>1</sup> *Christian Mysticism*, p. 115. By Dean Inge. London, 1899.

must be in some higher sphere of existence, above the contradictions which make it possible for us to believe that time and space are ultimate realities, and out of reach of the inevitable catastrophe which the next glacial age must bring upon the human race.”<sup>1</sup>

Starting then from the origins of Christianity, we see the rise and growth of mysticism, certain forms of which have also been defined as quietism. The mystics and quietists close their eyes to the world and seek refuge in intercourse with God himself and in thoughts of the future life. The contemplative life was considered to be higher than the active life. The two sisters of Lazarus symbolise the two conflicting ideals. Martha, who prepared the meal symbolises the active life, and Mary, whose main object was to converse with Jesus Christ on higher matters, symbolises the contemplative life.

As we have seen, Spinoza revived the more ancient attitude of Europe by eliminating the idea of personal immortality; but on the other hand he raised the ideal of the contemplative life to a much higher level than it had held in the eyes of Aristotle and his followers. Spinoza, with all the cosmopolitanism of a Jew living in a small country like Holland, naturally thought little of the citizenship as compared with individuality, even though he wrote that the State should decide all questions of public worship.

I now propose to deal with the modern attitude of what may conveniently be called the problem of life. Liberty to-day is no mere commonplace

<sup>1</sup> *Op. cit.*, p. 328.

universally accepted by our world. We see the Central Empires of Europe exerting all their strength (as I write these words) to crush out all liberty in any real sense. The world is to become Prussian; all races of all colours are to use Prussian words and to use the vile Prussian script. There is no room for any private god except the German god. There is no time under the Prussian drill-sergeant to think of anything but Prussia. A series of highly fortunate coincidences which our forefathers would have called providential, seem to have thwarted the ultimate success of the Prussian idea; but there is still the danger of being infected by the corpse as indeed we were infected by the living body before the war when Mr Lloyd George and his political friends thought it necessary to go to Berlin at every stage of their attempt to set up the Servile State in England.

There are, however, other countries in the world besides the Central Empires, and in those countries the old ideals which presuppose the existence of individual liberty still prevail. In these countries (and especially our own) the modern attitude to the problem of life is threefold, namely:

- (a) The religious or quietist view,
- (b) The intellectual and contemplative view, and
- (c) What I find it convenient to call the "Cultivate your garden view." It is in fact the philosophy of Voltaire.

(a) This classification naturally includes all denominations of the Christian religion, large or small; but above and beyond this there has certainly been a revival of mysticism which would claim to be altogether independent of Christianity.



Thus for example we find the Tolstoyan in our midst, and the Military Service tribunals discovered quite a large number of conscientious objectors whose tenets were not those of orthodox Christianity. There are also movements which christen themselves "Christian Science" and "The Higher Thought," and which flourish exceedingly on both sides of the Atlantic. It is, however, significant that they lay more stress upon this life than upon any future life. They are connected with definite schemes of philanthropy, and where they are concerned with healing are run on a highly profitable basis as so often happens in the United States. Whether such a community as the Oneida community comes under this classification or not, it is significant that it began on a basis of pure community both as regards women and property, and has ended as one of the largest chain-making concerns in the United States.

(b) Those who would to-day pursue the intellectual and contemplative life are those who feel that the immense intellectual curiosity of our time makes life in itself worth living. Some indeed would reject the word "curiosity" and would say that they were "searching for truth." As Renan has, a little pontifically, put it :

"La raison triomphe de la mort, et travailler pour elle, c'est travailler pour l'éternité."

This kind of scientific research has very largely ousted not merely the Beatific Vision of medieval Christians but also the Platonic visions which were elaborated by Plotinus and which largely influenced even the Cambridge Platonists of the seventeenth century. It seems probable that intellectual

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curiosity will always provide a more permanent occupation than the contemplation of the universe in the Platonic manner. Many years ago I dreamed that I met the First Person of the Trinity. The meeting was quite unexpected, and I naturally waited for Him to speak first. I was much gratified when He addressed me and asked if He could oblige me in any way. I then expressed my great pleasure at the opportunity which I now had for the first time of inquiring why and how He had created the world and everything on it as well as the universe, and what was the purpose of the whole scheme. In short, I put before Him what in Oxford used to be called the theme of the weekly essay at Balliol, namely, "The World, its Past History, its Present Condition, and Future Prospects." The information was, however, refused. I was told that nothing could be more cruel to me than to know what I had asked to know since I should then have nothing left to think about and should therefore, after a certain interval of time, desire annihilation owing to sheer vacuity of mind. This little piece of direct personal revelation to myself may well be commended as an impressive warning to those who believe in an eternity of contemplating nothing but the glories of heaven.

(c) I now come to the attitude which is (I think) most characteristic of the modern world. When Voltaire preached the doctrine "Cultivate your garden" he no doubt meant that we should exercise our faculties for practical ends without bothering too much about any ultimate result. Obviously, however, we cannot exercise our faculties to much

advantage unless we enjoy a very respectable measure of individual liberty. This exhortation is no doubt easy enough for those who believe in Progress, especially if by Progress they mean the establishment of the Servile State on the Prussian model. It is of course also easy enough to organise human society in this symmetrical manner whenever sufficient persons have been converted to the belief. It is comforting to find definitely optimistic thinkers like Mr H. G. Wells, who recognise the necessity of liberty increasing proportionately with the complexity of what he calls the "Great State." The Great State will achieve any amount of public service for which the modern State is inadequate, but liberty will still remain. As he writes in his *Modern Utopia*:

"But the modern view, with its deepening insistence upon individuality and upon the insignificance of its uniqueness, steadily intensifies the value of freedom, until at last we begin to see liberty as the very substance of life, that indeed it is life, and that only the dead things, the choiceless things, live in absolute obedience to law. To have free play for one's individuality is, in the modern view, the subjective triumph of existence, as survival in creative work and offspring is its objective triumph. But for all men, since man is a social creature, the play of will must fall short of absolute freedom. Perfect human liberty is possible only to a despot who is absolutely and universally obeyed. Then to will would be to command and achieve, and within the limits of natural law we could at any moment do exactly as it pleased us to

do. All other liberty is a compromise between our own freedom of will and the wills of those with whom we come in contact. In an organised state each one of us has a more or less elaborate code of what he may do to others and to himself, and what others may do to him. He limits others by his rights, and is limited by the rights of others, and by considerations affecting the welfare of the community as a whole."<sup>1</sup>

There is undoubtedly a certain school of thought in modern England which accepts the establishment of a millennium in which every citizen will be happily engaged in beneficent activities and reclaiming the races of the world to the same activities. The beneficent activities will not of course exclude different forms of art or scientific research from the community. We may suppose that even the Prussian might evolve a modern Utopia of his own in which the world, speaking, writing, and thinking German would at length have leisure to contemplate Hohenzollern divinity in all its glory.

It is, however, necessarily not so easy for those who do not believe in progress or in a future life. For them the history of the world represents little but the perpetual triumph of the fool and the barbarian. They see both communities and individuals perish if and when they are civilised above a certain point. We need only take up the plays of Shakespeare, and especially the historical plays, to see the same conception of life running right through them. Huxley said that Spencer's idea of a tragedy was a theory killed by a fact. Shakespeare's

<sup>1</sup> *Op. cit.*, p. 41.

perpetual idea of a tragedy was of the wise man being killed by the fool. Directly a man begins to think too much he lays himself open to the attack of the fool who has nothing to think about at all, and who in our time is generally described as the "plain man" or the "sensible man."

Anatole France represents about the highest level of modern intelligence to-day. We need only take up *Les Pengouins* to realise how convincing his vision is of human life moving in a perpetual cycle from barbarism to civilisation and back again to barbarism. M. Gustave Le Bon preaches the same doctrine in his *Psychologie des Foules*. He shows how the modern State embarks on more and more restrictive legislation which necessarily increases the number, the power, and the influence of the bureaucrats whose business it is to carry it out. These bureaucrats become the real masters of a civilised country. Their power is all the greater because while ministries are incessantly changing the administrative caste escapes these changes and alone remains irresponsible, impersonal, and perpetual. They are indeed like the phagocytes, which while originally protecting the body against disease, themselves devour the body of the old man. This process progressively narrows the sphere in which citizens enjoy liberty of initiative, and as they become more and more accustomed to support each fresh attack on their liberty, so they lose all spontaneity and all energy. They become passive automata, without will, without resistance, and without strength. What was once a people ends by becoming a conglomeration of individuals

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without cohesion, artificially kept together for a little time by traditions and institutions. It is this disintegration of society which makes men lean more than ever upon the State. The cycle is finally defined by Monsieur Le Bon as follows :

“ Passer de la barbarie à la civilisation en poursuivant un rêve, puis décliner et mourir dès que ce rêve a perdu sa force, tel est le cycle de la vie d'un peuple.”<sup>1</sup>

In our own country we need only turn to the prophecies of the late Mr Charles H. Pearson. His book, which produced a considerable sensation almost a quarter of a century ago, can be profitably read to-day since his predictions are on the whole singularly accurate. He envisages the gradual decay of the higher races. Thus he writes :

“ What therefore seems probable is, that as the Chinese race forces itself into a position of equality with its neighbours, the spectacle of lives consumed in labour, lives rewarded by nothing but the supply of animal wants, would cease to be considered repulsive and humiliating. European socialism aims at distributing labour and wealth so that every man may have leisure and the opportunity of becoming better than he is. The practical socialism of the East has never aimed at more than the satisfaction of material needs. The question is whether when the two forces are measured one against the other, that which has the lower aims is not bound to starve the other out of the field.”<sup>2</sup>

<sup>1</sup> *Psychologie des Foules*, p. 180. By M. Le Bon.

<sup>2</sup> *National Life and Character—A Forecast*, p. 132. By Chas. H. Pearson. London, 1894.

He draws a particularly lurid but convincing picture of the higher races gradually fading off the globe while the Chinese and other races breed all over the earth and prevail because they have no standard of comfort to distract them from breeding and labour. The conclusion and last words of his book are as follows :

“It is now more than probable that our science, our civilisation, our great and real advance in the practice of government are only bringing us nearer to the day when the lower races will predominate in the world, when the higher races will lose their noblest elements, when we shall ask nothing of the day but to live nor from the future but that we may not deteriorate. Even so there will still remain to us ourselves. Simply to do our work in life, and to abide the issue, if we stand erect before the eternal calm as cheerfully as our fathers faced the eternal unrest, may be nobler training for ourselves than the faith in progress.”

It is odd that Pearson should end with the phrase “nobler training.” If there is no future life and if the human race is doomed to the fate he describes there seems no particular object in the noble training of any soul. Unconsciously, however, he may have absorbed the doctrine of Spinoza to which I have previously referred.

As Professor Santayana writes :

“He who while he lives lives in the eternal, does not live longer for that reason. Duration is merely dropped from his view ; he is not aware of or anxious about it ; and death without losing its reality, has lost its sting. The sublimation of his

interests recalls him so far as it goes from the mortality which he expects and surveys. The animals are mortal without knowing it and doubtless presume in their folly that they will live for ever. Man alone knows that he must die; but that very knowledge raises him in a sense above mortality by making him a sharer in the vision of eternal truth. He becomes the spectator of his own tragedy. . . . The truth is cruel but it can be loved, and it makes free those who have loved it.”<sup>1</sup>

To-day we can only be certain that as Heraclitus put it, everything is in a state of flux. There is nothing before us but everlasting change. The contemplation of eternity is an interesting intellectual gymnastic but lands us nowhere. A man can only live on from day to day, well knowing that his work, in whatever field it may be, will at best scarcely endure more than thirty years after his death. He can but hand on the torch to those who come after him without being fortified by any doctrine of final causes. The contemplative joys of Mary can be snatched at fitful intervals, but can scarcely ever be systematically indulged. In these circumstances we can only prepare ourselves to respond socially and individually to all changes just as an organism does; for it is precisely this quality of the organism which preserves it from death. It is not merely a matter of the organism adapting itself to external change. The change may often be internal. In his great novel *Time and Thomas Waring* Mr Morley Roberts has pointed out that the organism that can adapt itself to internal change

<sup>1</sup> *Op. cit.*, pp. xviii. and xix.



not merely survives but achieves a higher complexity. He suggests that the dilatation of the straight alimentary canal so as to form the stomach must originally have seemed, and been, a disease; yet the formation of the stomach has assisted in creating a more sensitive and complex organism by sheer force of adaptation. What in some organisms might have been organic disease may merely become a functional disease, and even in process of time, an improvement in itself.

I insist upon the value of this adaptability because it is the most important feature of our own time. We cannot achieve this adaptability, either socially or individually, except in a society where individual liberty is cherished and preserved. Moreover it is only this adaptability which enables us to fight the pestilent mechanism of Prussian ideas. The one object of what is called Prussian efficiency is to create an invincible machine. The whole weakness, and the only strength, of Germany during the last fifty years has been this mechanical quality. The war was planned to break out at a certain moment, but when once that moment had been chosen and the machine let loose nothing could be altered. The machine was let loose, and most unfortunately for its makers, broke down before it had achieved what it was constructed to achieve. The logical result of the Prussian mechanism is that it not merely deprives the individual of initiative by transforming him into a machine, but it also deprives the man who designs it of adroitness because he has only a machine instead of an organism to rely upon. A few men may hold a trench with machine guns, but

a trench cannot be held with nothing but machine guns, and that is precisely what the Germans are perpetually trying to do when they mechanise their men and call the process organisation. Their failure is both the practical and theoretical justification of liberty. It is also the practical and theoretical justification of all religious thought which maintains the cause of freedom against tyranny.

If we forget these lessons as completely as our governing classes forgot them before the war we shall simply come to grief as the Germans have come to grief. But our danger is by no means remote, and to point out that danger is my principal object in writing this book.

## CHAPTER IX

### LOOKING BACKWARD

“ Liberty, next to religion, has been the motive of good deeds and the common pretext of crime, from the sowing of the seed at Athens two thousand four hundred and sixty years ago until the ripened harvest was gathered by men of our race. It is the delicate fruit of a mature civilisation ; and scarcely a century has passed since nations that knew the meaning of the term, resolved to be free. In every age this progress has been beset by its natural enemies, by ignorance and superstition, by lust of conquest and by love of ease, by the strong man’s craving for power, and the poor man’s craving for food. During long intervals it has been utterly arrested, when nations were being rescued from barbarism and from the grasp of strangers, and when the perpetual struggle for existence, depriving men of all interest and understanding in politics, has made them eager to sell their birthright for a pottage, and ignorant of the treasure they resigned. At all times sincere friends of freedom have been rare, and its triumphs have been due to minorities that have prevailed by associating themselves with auxiliaries whose objects often differed from their own ; and this association, which is always dangerous, has been sometimes disastrous, by giving to opponents just grounds of opposition, and by kindling dispute over the spoils in the hour of success. No obstacle has been so constant, or so difficult to overcome, as uncertainty and confusion touching the nature of true liberty. If hostile interests have wrought much injury, false ideas have wrought still more ; and its advance is recorded in the increase of knowledge, as much as in the improvement of laws. The history of institutions is often a history of deception and illusions, for their virtue depends on the ideas that produce and on the spirit that preserves them, and the form may remain unaltered when the substance has passed away.”<sup>1</sup>

IN these days we are all too much inclined to assume that individual liberty is necessarily the creature of

<sup>1</sup> *History of Freedom and other Essays*, pp. 1, 2. By Lord Acton. Macmillan & Co. London, 1909.

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progress. The latest exponent of such a theory is Mr L. T. Hobhouse in his otherwise admirable book *Morals in Evolution*.<sup>1</sup> He does not seem to see that the conditions necessary to individual liberty vary from age to age. We need only take the question of slavery, with which he has himself dealt very fully, to see that however we juggle with words the facts remain the same. We see the servile state at work in modern industrial communities, and the way in which the German Government has treated its prisoners both in respect of forced labour and atrocious barbarity is more disgraceful than almost any record of slave-owning communities.

The two conditions essential to the bare existence of individual liberty are (1) (as we have seen) a strong government, and (2) a high degree of enlightenment in public opinion. Public opinion must be in the habit of reasoning; it must be free from superstition. Even Professor Frazer cannot contend that superstition has contributed anything to the establishment of liberty except a respect for human life, which has no doubt increased the security of the individual. It may be objected that neither a strong Government nor an intelligent public opinion necessarily abolishes slavery or the servile state; for we can only achieve this abolition by extending the uses of machinery and improving the distribution of wealth. But extending the uses of machinery may sometimes blunt the faculties of the human beings who have to supervise it, and the better distribution of wealth remains a problem for

<sup>1</sup> London, 1906.

which no really satisfactory solution has yet been proposed.

It will be instructive, perhaps, to summarise shortly and roughly the fortunes and misfortunes of individual liberty in the past. Starting with primitive society, it is clear that the only government of most savage tribes is a kind of military despotism which need not in itself much interfere with personal liberty apart from the necessities of tribal defence. But law and custom are not really distinct, and the tyranny of superstition usually blights and distorts every detail of private life. I need only quote Professor Frazer's remarks on the subject of marriage.

“Thus it appears that in the opinion of many peoples sexual irregularities, whether of the married or unmarried, are not regarded merely as moral offences which affect only the few persons immediately concerned; they are believed to involve the whole people in danger and disaster either directly by a sort of magical influence or indirectly by rousing the wrath of gods to whom these acts are offensive. Nay they are often supposed to strike a blow at the very existence of the community by blighting the fruits of the earth and thereby cutting off the food supply. Wherever these superstitions prevail, it is obvious that public opinion and public justice will treat sexual offences with far greater severity than is meted out to them by peoples who, like most civilised nations, regard such misdemeanours as matters of private rather than of public concern, as sins rather than crimes, which may perhaps affect the eternal welfare of the individual

sinner in a life hereafter, but which do not in any way imperil the temporal welfare of the innocent community as a whole. And conversely, wherever we find that incest, adultery, and fornication are treated by the community with extreme rigour, we may reasonably infer that the original motive for such treatment was superstition; in other words, that wherever a tribe or nation, not content with leaving these transgressions to be avenged by the injured parties, has itself punished them with exceptional severity, the reason for doing so has probably been a belief that the effect of all such delinquencies is to disturb the course of nature and thereby to endanger the whole people, who accordingly must protect themselves by effectually disarming and, if necessary, exterminating the delinquents. This may explain, for example, why the Indian Laws of Manu decreed that an adulteress should be devoured by dogs in a public place, and that an adulterer should be roasted to death on a red-hot iron bed; why the Babylonian code of Hammurabi sentenced an adulterous couple to be strangled and cast into the river; why the same code punished incest with a mother by burning both the culprits; why the Mosaic law condemned the adulteress and her paramour to death; and why among the Saxons, down to the days of St Boniface, the maiden who had dishonoured her father's house, or the adulteress, was compelled to hang herself, was burned, and her paramour hung over the blazing pile, or she was scourged or cut to pieces with knives by all the women of the village till she was dead. Among the Nandi of British East Africa 'incest,

intercourse with a step-mother, stepdaughter, cousin or other near relation, is punished by what is known as *injoket*. A crowd of people assemble outside the house of the culprit, who is dragged out, and the punishment is inflicted by the women, all of whom, both young and old, strip for the occasion. The man is flogged, his houses and crops destroyed, and some of his stock confiscated.' Among the Baganda adultery was invariably punished by the death of both the delinquents : they were first put to horrible tortures to wring a confession from them and then killed." <sup>1</sup>

We find the same cruelties connected with ceremonies of initiation and necessities of ceremonial mutilation. The custom of widow-burning in India and elsewhere is conveniently typical of what I mean. Hobhouse points out that in the rudest tribes there are no class distinctions, but that as a tribe grows in culture and military strength the first result is, as a rule, that the conquered enemies are sacrificed, eaten, tortured, or in some cases put to death.

" Later on with a certain softening of manners or at any rate with a cooler perception of permanent advantage persons are spared and enslaved.

" A class is thus formed who are within the jurisdiction of the conquering tribe, but from the point of law and morals remain outside it either in the form of a class of slaves or of a degraded quasi-servile lower caste. The presence of such an element in the population is a general feature in societies which have emerged from the lower savagery and the rawest militarism.

<sup>1</sup> *Op. cit.*, pp. 42, 43.

“The typical slave can neither marry nor hold property except on sufferance. His very life is in his master’s hands. He may be flogged, maimed, sold, pawned, given away, exchanged, or put to death.”

He then points out how the servile state is recruited by inheritance and by debt, crime, and the slave trade.<sup>1</sup>

It is no doubt true that in Acton’s words liberty is the “delicate fruit of a mature civilisation.” He defines liberty as “the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion.” The most certain test of liberty, he thinks, is the amount of security enjoyed by minorities, and as I should add, the amount of security enjoyed in spite of minorities. Acton warns the student against supposing that legislation is very intimately connected with the real facts of liberty. He considers that men like St Augustine, Grotius, Cicero, and Seneca have done more than any legislator to promote liberty, and in the essay already referred to gives striking historical instances of legislation being defeated by facts. As a rule it is only a lawyer who understands how easily legislation is evaded and how much men are the slaves of legal and verbal terminology; but fortunately Acton was keenly alive to these pitfalls of historical research.

I propose to examine several typical civilisations which are interesting to the student of individual liberty. It is curious, in the first instance, to note

<sup>1</sup> *Op. cit.*, p. 287.



that there was comparatively little slavery in India ; for, as Hobhouse points out, slavery is of very secondary importance in Hindoo society as compared with caste.<sup>1</sup> The Aryans were a conquering white minority among the savage dark-skinned population and the Sanskrit word for caste means originally colour. It is, by the way, interesting to remember that the first definite declaration of religious toleration was made by the Buddhist King Asoka in India about 244 B.C.<sup>2</sup>

In Babylon we find a very interesting code of laws commonly called the Hammurabi Code. It is a digest of law and custom declared about 2100 B.C.<sup>3</sup> Under this code very severe penalties are prescribed, though penalties are often all the more severe on paper for not being enforced in fact, and in this code there are many saving clauses. There is a certain anxiety to make the punishment fit the crime. If, for instance, a man strikes the pregnant daughter of a free man and thus causes her death his daughter shall be slain. Again if a surgeon cures a man by an operation he obtains ten shekels of silver, but if the patient dies his hands are cut off. If on the other hand he operates on the slave and the slave dies then he need only "render slave for slave."<sup>4</sup>

The marriage and licensing laws left little to be desired and might profitably be imitated by ourselves after a period of four thousand years. Priestesses are not allowed to drink wine, wine-

<sup>1</sup> *Op. cit.*, p. 301.

<sup>2</sup> See *Emperor Asoka*. By Vincent Smith. Clarendon Press, 1901.

<sup>3</sup> See *The Oldest Laws in the World*. By Chilperic Edwards. Watts & Co. London, 1906.

<sup>4</sup> *Op. cit.*, p. 27.

sellors must not aid and abet rebels, and domestic peace and convenience have to be observed by married persons; but with the exception of these fairly reasonable provisions there is scarcely any real interference with liberty. As regards slavery we find that a man and his goods can be sold for silver if he has been too lazy to strengthen his dyke, and cannot reimburse the value of corn which has been destroyed by the resulting flood. But generally speaking, the law on this point is less harsh than that of Rome.

In Egypt there is a very definite basis of feudalism, but the feudal system seems to have protected the citizen, and especially the peasant, very inadequately against the tax-gatherer. The ancient Egyptian often boasted of the marks which could be found on his body of the beatings which he had received before he would give up the money which was demanded of him. Women had perhaps more freedom than we should expect and, for example, were allowed free use of wine as contrasted with the later civilisation of Rome. There was, however, severe legislation as to adultery and usury. If (for example) a man and woman were taken in adultery the woman had her nose cut off and the man received a thousand strokes with the bastinado.

As regards slavery Hobhouse gives some very interesting figures which confirm his statement that slaves were incessantly recruited by capture and the slave trade. The monuments of Egypt could never have been achieved without an astonishing amount of slave labour. It appears that in the course of

thirty years Rameses III. presented 113,433 slaves to the temples alone.<sup>1</sup>

As regards the Jews Acton points out that the "government of the Israelites was a federation held together by the unity of race and faith and founded not on physical force but on a voluntary covenant. The principle of self-government was carried out not only in each tribe but in every group of at least 120 families; and there was neither privilege of rank nor inequality before the law."<sup>2</sup> Monarchy when it arose was severely limited, but Acton omits to mention the fact that the Jew's life must have been made a perfect burden to him by the minute observation of all the rules laid down in the Pentateuch.

Hobhouse shows that as regards slavery there was a strong distinction between the Hebrew and the Gentile. The period of service for a male Hebrew is limited to six years. Slaves are also to some extent protected against the cruelty of the master or mistress. But the humanitarian sentiment in regard to the slave was not apparently extended to the Gentiles.

We now come to the civilisation of Greece and Rome, in which as Fustel de Coulanges remarks, there was no individual liberty at all. State and Church, priest and king were for all practical purposes combined. A man's body belonged to the State for purposes of military service, in Rome up to the age of forty-six, and in Athens and Sparta all his life. His fortune was always at the disposal of the State. If the city had need of money it

<sup>1</sup> *Op. cit.*, p. 294.

<sup>2</sup> *Op. cit.*, p. 4.

could order the women to hand over their jewels, creditors to forgive their debts, and olive growers to hand over the oil which they had made and stored.<sup>1</sup>

As regards marriage many Greek cities prohibited a man from being celibate. In Sparta a man had to marry early in life; at Locri the men were not allowed to drink wine without water; at Rome, Miletus, and Marseilles women could not drink wine at all. The laws of Sparta interfered with the hair-dressing of women, at Athens women were forbidden to take more than three dresses on a journey, at Rhodes a man was not allowed to shave, while in Sparta he had to shave his moustache. As regards infanticide a father who had a deformed child had to kill it according to the codes of Sparta and of Rome. This provision was thoroughly approved of by Aristotle and Plato. Aristotle thought that the State should interfere even with the deportment of the citizen, and this was carried to an extreme extent by the famous compulsion of the Spartan people to take cheerful in defeat after the battle of Leuctra. As regards politics the philosopher and the learned man were not allowed to live a purely academic life. They had to vote in the Assembly and to take office in rotation. In any public disorder a citizen had to take one side or the other according to the law of Athens.

As regards education the parents had no rights at all over their children. Parents in fact were not allowed to educate young people at all except by leave of the magistrate. I need scarcely repeat

<sup>1</sup> *La Cité Antique*. Paris, 1898.

that the State religion was supreme and that no private devotions were allowed. Probably conformity to ritual atoned for any speculative heresy so long as the heresy was not uttered. De Coulanges particularly refers to the case of Aristides, whose civic virtues made him dangerous. The ostracism to which he was subjected was in no sense a penalty or punishment; it was a precaution that the city took against a citizen who might be able to injure the city by reason of his power.<sup>1</sup>

As against all this we must remember that the family law formed an *imperium in imperio*. The father as head of the family exercised a most important jurisdiction, and even questions of marriage and divorce were as a rule decided within the limits of the family jurisdiction. Mr Zimmern points out that the same state of things existed in China up to recent times, and that competent observers prefer the justice dealt out by the village elders to that of the official courts which are now being set up.<sup>2</sup>

Zimmern also points out another curious feature of ancient Greece which was to some extent also true of Rome. One would scarcely expect a system of voluntary taxation in communities where there was no individual liberty; yet in Greek democracies the citizen, as opposed to the resident alien, was left free to help the city in his own way. He naturally paid a certain amount of indirect taxation, but the only direct contribution he made to the State's resources was by preference a free gift known as a

<sup>1</sup> *Op. cit.*, pp. 265-269.

<sup>2</sup> *The Greek Commonwealth*, p. 102. London, 1911.

“liturgy.”<sup>1</sup> Zimmern suggests that this system has never existed in the modern world owing to our feudal origins. “The wealthy Englishman remains a baron or a magnate rather than an ordinary private citizen a little more fortunate than his fellows.” This may also explain the generosity of Americans for public objects. It is interesting, however, in this connection to note the gift by King George V. of £100,000 to the nation in March 1916. His example may possibly revive the Greek feeling on this point.

On the whole, however, the general attitude of Greece and Rome is well summed up by Acton’s remark that “the passengers exist for the sake of the ship,” and in his quotation of Aristotle saying that the mark of the worst governments is that they leave men free to live as they please. As regards Greece it is interesting to note the early legislation of Solon, who gave to the poorest classes a voice in electing magistrates and calling them to account. He also put an end to the practice of a citizen selling himself into slavery and the pledging of the person. Slavery in Greece was on the whole humane. It was for the most part confined to barbarians, and the slave had a certain legal security against ill treatment. “He was often allowed to hold property and found a family while he might buy his freedom by entrusting his earnings to a priest.”<sup>2</sup>

The experiment of Hellenic liberty broke down because the State was not sufficiently secure from without, but it is continued in the Roman Empire

<sup>1</sup> *Op. cit.*, p. 284.

<sup>2</sup> Hobhouse, *op. cit.*, p. 309.

after the conversion of Roman men of letters to the Stoic philosophy in or about 150 B.C. The remarks of de Coulanges apply mainly to the Roman Republic. There must have been a respectable amount of individual liberty under the Roman Empire. Certainly men acquired under it more freedom as to their personal habits than they ever had in the ancient city State of Greece, and women acquired freedom in proportion to their control of property. Slavery was undoubtedly mitigated after the close of the Republic, under which slaves had been very harshly treated. The influence of the Stoic philosophy did much for them. "The practice of the exposure and sale of children and pledging them for debt was forbidden, while an edict of Diocletian forbade a free man to sell himself. The insolvent debtor was no longer made a slave. The right of bequest was granted to slaves. Some approach was made to the recognition of their marriage not only after emancipation but even while in slavery with a view to hindering the separation of families. They acquired some security even for property."<sup>1</sup>

Acton pays the tribute of a liberal thinker to the Stoic philosophy. I may perhaps remind the reader in passing that the basis of that philosophy is what is nowadays denounced as pure materialism.<sup>2</sup> Lord Acton's words are as follows :

"It is the Stoics who emancipated mankind from its subjugation to despotic rule, and whose

<sup>1</sup> Hobhouse, *op. cit.*, pp. 310, 311.

<sup>2</sup> See especially *The Stoic Philosophy*, being the Moncure Conway Lecture delivered at South Place, London, by Prof. Gilbert Murray. London, 1915.

enlightened and elevated views of life bridged the chasm that separates the ancient from the Christian state, and led the way to freedom. Seeing how little security there is that the laws of any land shall be wise or just, and that the unanimous will of a people and the assent of nations are liable to err, the Stoics looked beyond those narrow barriers, and above those inferior sanctions, for the principles that ought to regulate the lives of men and the existence of society. They made it known that there is a will superior to the collective will of man, and a law that overrules those of Solon and Lycurgus. Their test of good government is its conformity to principles that can be traced to a higher legislator; that which we must obey, that to which we are bound to reduce all civil authorities, and to sacrifice every earthly interest, is that immutable law which is perfect and eternal as God Himself, which proceeds from His nature, and reigns over heaven and earth and over all the nations.”<sup>1</sup>

Undoubtedly the influence of the *Jus Naturæ* as preached by the Stoic philosophers has had an incalculable influence on the history of the world, and especially on all movements towards individual liberty.

Acton remarks that three things are lacking in the ancient world, namely, representative government, the emancipation of the slaves, and liberty of conscience. In spite of various approximations such as federal councils elected *ad hoc* or the establishment of a toleration that is consistent with polytheism,

<sup>1</sup> *Op. cit.*, p. 24.



or utterances like the dying speech of Socrates, these things were not achieved until the Middle Ages, and while Acton does not exaggerate the degree of liberty achieved by the Church he yet nowhere reminds his reader of the *imperium in imperio* that the Church tried to set up. He remarks that feudalism made land the measure and the master of all things. "Men depended on the landlord for the means of escaping starvation, and thus his power became paramount over the liberty of the subject and the authority of the State."<sup>1</sup> The real security against the feudal hierarchy was the ecclesiastical hierarchy.

Hobhouse has well analysed the causes that made for freedom in medieval Europe. He demonstrates that the sale of men was on the whole opposed by the Church and that slavery was limited under religious influences. Although in the Frankish Empire the serf might not leave his land he could not on the other hand be sold apart from the land. He could acquire property though he had no definite control of it. He had to perform certain definite services to his master and in the earlier period he required the lord's consent to marry. He came under the protection of the law. Later on he acquired the right to marry, and it was against the doctrine of the Church that the marriage and family ties of the slave should be disregarded by the master. The growth of free cities and of the Church substantially favoured freedom.<sup>2</sup>

The Crusades had vastly stimulated trade and

<sup>1</sup> *Op. cit.*, p. 34.

<sup>2</sup> *Op. cit.*, p. 318.

industry, and this created wealth which was not land. Acton summarises in a brilliant paragraph the struggle between democracy and chivalry in the fourteenth century, which was largely reinforced in England by the Black Death. To medieval thinkers we owe the formulation of the principle that no tax was lawful that was not granted by the class that paid it, a principle which might with some advantage be recognised in modern England. The sixteenth century, however, brings about a definite decline of political and individual liberty. Luther and the Lutheran writers condemned the democratic literature that arose in Germany as the result of the Reformation. Zwingli died too early to vindicate liberty in and through Protestantism, and Calvin initiated a system of restraint and espionage which has always been far more oppressive than any Catholic institution, with the possible exception of the Spanish Inquisition.<sup>1</sup>

The sixteenth century thus brings about an era of absolute government consolidating the newly created nationalities, and we have to wait for the seventeenth century for any counterblast on the side of liberty. Acton attributes great importance to the action of the Independent congregations in England, "who grasped with vigour and sincerity the principle that it is only by abridging the authority of states that the liberty of churches can be assured. That great political idea, sanctifying freedom and consecrating it to God, teaching men to treasure the

<sup>1</sup> See the famous chapter on the Scottish Church in Buckle's *History of Civilisation*. Further details of Calvin's methods may be found in any account of the trial of Servetus at Geneva and in my *Religious Persecution*.

liberties of others as their own, and to defend them for the love of justice and charity more than as a claim of right, has been the soul of what is great and good in the progress of the last two hundred years. The cause of religion, even under the unregenerate influence of worldly passion, had as much to do as any clear notions of policy in making this country the foremost of the free. It had been the deepest current in the movement of 1641, and it remained the strongest motive that survived the reaction of 1660.”<sup>1</sup>

He finds it humiliating to trace any political lineage as regards modern liberty to Algernon Sidney, to Lord Russell, Shaftesbury, Halifax, Marlborough, and Locke, but Acton seems unaware of the connection between these writers and the Jesuits. The whole Whig philosophy is finely summed up in Locke's doctrine that law is not so much the limitation as the proper direction of freedom. Where there is no law there is no freedom, but law and freedom are strictly correlative. This doctrine crowns the interesting antithesis between sovereignty and individual rights which runs through the philosophy of Hobbes. This Whig philosophy is, however, largely derived from the writings of the Jesuits during the counter-reformation and especially those of Mariana. The Jesuits employed against heretical monarchies the old Hildebrandine theory, which reposed on theocracy. Political government is simply a human institution and therefore exists only by a precarious title. The medieval champion of the Church against the State

<sup>1</sup> *Op. cit.*, pp. 52-53.

emphasised the doctrine of popular sovereignty more to belittle the authority of the Crown than to assert the supremacy of popular majorities. The Jesuits, however, cunningly served up the Hildebrandine theory with a humanistic sauce, and their main appeal was to the "natural rights" of man. They thus created an intellectual atmosphere in which as time has passed the claims of theocracy have certainly not flourished. Acton himself points out this danger, which he calls "the advent of the democratic claim to unlimited power," but he attributes this to the popularity and prestige of Machiavelli's writings, and, oddly enough, leaves out the Jesuit writers.

In this book, however, I am chiefly concerned with England and I shall, therefore, devote the rest of this chapter to a short summary of the steps which led to the establishment in this country of what is known as the "liberty of the subject." Such liberty as we have achieved was due, in the first instance, to the existence of a strong central government, to our insular position, and to a strong anti-clerical feeling. England has always been a country of turbulent islanders fortunately gifted with a marked capacity for co-operation. Our Charter of 1215 and the traditions connected therewith are so old that the liberty of the subject has no written security of legislative guarantee. The provisions of the Great Charter were constantly reaffirmed in certain medieval statutes, and it was even enacted by both Houses of Parliament in 1369 that any statute made in derogation of the Great Charter should be void. But lawyers as eminent

as Coke and Selden considered that the judges were the guardians of English liberty, and this tradition reigns right through English history up to the nineteenth century when writers like Austin and Dicey asserted that the sovereignty of Parliament was absolute and unlimited, and by this assertion unwittingly paved the way for the parliamentary and bureaucratic tyranny of our own time. Apart from the Great Charter, there existed from the earliest times of the Common Law writs which secured a free man from unjust imprisonment without trial; but all these writs were finally superseded by the still existing writ of *Habeas Corpus*.<sup>1</sup> The issue of this writ was evaded in all sorts of ways right through English history. The battle lasted till the passing of the Habeas Corpus Act in 1679, but even this had to be reinforced by the Bill of Rights in 1689 (which prohibited the demand of excessive bail) and by a further Act of 1816. It was also necessary to fortify the independence of the judges of the Executive and the machinery for making all officials amenable to the ordinary law of the land. Owing to the success of this policy it has often happened that the most important constitutional issues both here and in the United States have been fought out in the Law Courts and not in Parliament.

Individual liberty has, however, been precarious in many respects. For example, in the last century debtors could be imprisoned for life not only for contempt of Court but also for inability to pay the

<sup>1</sup> The writs are enumerated in *A Students' Manual of English Constitutional History*, by Mr D. J. Medley. Oxford and London, 1898.

costs of an unsuccessful suit in Chancery. Until 1838 the debtor could be arrested for debt and his person was the property of his creditor until the debt was discharged.

The Court of Star Chamber interfered intolerably in private quarrels, and made use of torture for personal examination of the prisoner. The Court was a standing menace to any individual liberty in this country until it was abolished in 1641 about the same time as the Ecclesiastical Courts to which I have referred in a previous chapter.

In these days when the most private letters arrive with the inscription "Opened by the Censor" it is curious to remember the uproar created in 1844 by Sir James Graham's announcement that he had opened letters. It is important to remember that even in time of peace the Secretary of State has the legal right of opening letters. The word "censor" recalls the censorship of the Press, which extended to all printed matter and until the Reformation belonged to the Church. After the Reformation it was part of the prerogative of the Crown, and until 1696 when it was abolished, very seriously interfered with freedom of discussion.<sup>1</sup>

The independence of the judicature has been established after a secular struggle, in which the great lawyer Coke took a distinguished part during the reign of James I.; but although the independence of the judge has now been secured by a measure which protects a judge in his office during good behaviour and subject only to an address by both

<sup>1</sup> The censorship has been well and exhaustively covered by Dr Putnam in his well-known book on the subject.

Houses of Parliament, there are some who think that the puisne judges of the Victorian age were more independent than their successors by reason of the fact that they could not be promoted.

What is perhaps more unfamiliar to the modern reader is that it took a long time to vindicate the independence of the jury. Both judges and juries could be summoned before the Star Chamber for verdicts inconvenient to the Government and could be heavily fined and imprisoned if they did not reconsider them. A jury was in the eyes of the law a collection of witnesses instead of being judges of fact. They could, therefore, as witnesses be convicted of perjury and until 1670 were amenable to legal penalties on this ground.

The part played by juries in the eighteenth and nineteenth centuries was very important for the cause of individual liberty, and their existence and immunity must be preserved if we are to hand on our liberty to posterity. After two hundred years we have at last secured the right of presenting petitions to Parliament, holding public meetings, and forming public associations. These rights are of peculiar importance in the present time when Parliament can be so little relied on to represent the real desires of the people. Mr Medley refers his readers to the case of the Kent Petitioners in 1701 when with great difficulty the Grand Jury and many of the freeholders of Kent protested against the Tory ministry withholding supplies for a war begun by the Whigs. The movement for organising petitions again became conspicuous in 1779 in connection with the popular desire to reform the

House of Commons. It also played an important part in the abolition of the slave trade. Public meetings became important during the same period of the last two centuries, and when properly organised they to some extent mitigate the absence of such a device as the *referendum* from our constitutional machinery. According to strict theory, all public meetings are legal until some illegal act has been committed. But this is not adhered to as I have pointed out before in cases of what is called blasphemy, namely, the expression by a poor man in plain language of what he thinks about orthodox religion. The formation of political associations has played a great part in English history, notably in connection with Catholic emancipation and the revolt against the Corn Laws. To-day the question principally hinges round the Trade Union movement with which I have already dealt in a previous chapter.

This historical summary would scarcely be complete without some further reference to serfdom and slavery in England. The movement for emancipation in the fourteenth century to which I have already referred was largely due to the serf's escaping from the lord's jurisdiction by running away. Labour services were also commuted for a money rent. The Tudor legislation was extremely savage, and Hobhouse actually mentions a statute of Edward VI. whereby "all idle vagabonds should be made slaves, fed on bread and water, and wear iron rings, and be compelled by beating and chains to do their work." This was repealed two years afterwards, but labour legislation was extremely



severe up to the beginning of the nineteenth century. Even the nineteenth century saw decades of child slavery that came in with the industrial revolution, and this slavery was not really abolished until the middle of the nineteenth century.

The history of England in this respect is comically relieved by the agitation in this country for the abolition of negro slavery. The movement started in 1787 and was finally carried to success in 1833. In other countries slavery was abolished a little later—by France in 1848, by Portugal in 1858, and by the Dutch in 1863. Across the Atlantic emancipation was proclaimed in 1863. But the abolition of slavery has resulted in the lynch law which prevails in the Southern States, and in raising a problem all over the United States which will probably not be solved in our own time. My personal observation of negroes in the United States has led me to the conclusion that they are even now happier in the South than they are in the North. Mr Booker Washington's scheme of education may succeed as time goes on, though his death jeopardises the whole movement. But it must never be forgotten that Mr Booker Washington was himself only half a negro, and it is doubtful if pure-blooded negroes are capable of carrying out his ideas. In any case the contrast between the solicitude of Englishmen for the liberty of negroes as compared with their utter indifference to the servitude of their own countrymen, lays them open to a grave suspicion of hypocrisy; for while negroes were being emancipated women and children were working

naked in chains underground for hours and hours together.

I think that the above sketch covers the main points of my subject since I have already described the growth of religious toleration and freedom of discussion. I have not dwelt at length on the long process which resulted in the abolition of the press-gang and of military service because the experience of an European war has considerably minimised the distinction between the volunteer and the conscript. On the whole it has been easier for a man to escape military service for really good reasons by putting his case before a tribunal appointed for the purpose, than to lead a tolerable life under the conditions of wholesale interference by ignorant busybodies that prevailed before conscription became part of the law of the land ; though at a time of national crisis the community as a whole will naturally exert every kind of pressure to raise whatever army may be considered necessary without too much inquiry into questions of facts and finance.

In the present situation of the country we have thrown overboard all the old safeguards of individual liberty. The Great Charter has become a newspaper joke and those who achieved it are derided because they could not write nor spell in the manner demanded by a modern Board School. The writ of Habeas Corpus is refused where a man's intentions, as opposed to his actions, are suspected by a bureaucratic committee whose proceedings are secretly conducted. The Defence of the Realm Act has been invoked among other purposes for suppressing the publication of books like Edward Carpenter's

*The Intermediate Sex* ; and if this tendency remains unchecked we may yet see a new kind of Star Chamber jurisdiction. Letters are opened as a matter of course, and judicial utterances bear every sign of a desire to carry out the wishes of the Executive without much attention to other considerations. Nevertheless liberty has suffered little as regards juries and the right of political association and public meetings, except in so far as the Quaker meetings have been suppressed by popular riot.

I quite recognise the distinction between normal and abnormal times, but the European war has only brought to a head a great many dangers that existed before August 1914. One of the worst signs before the war was the decline of the judicial spirit. The unchecked power of the Executive and especially of the Front Benches, the surrender of judicial powers to bureaucratic bodies, and a general indolence of mind were all tending to a *régime* under which individual liberty and all the considerations pertaining to it were not likely to be treated with any respect. An increasing number of judicial posts were given to men who in their time had been party hacks. There was a spirit of impatience and indolence which all too easily reinforced the contempt of the collectivist for the rights of the individual. The jury system was perpetually attacked in connection with criminal as well as civil justice. A statute was actually passed which allowed a judge to detain any criminal in prison at his sole discretion, and this measure largely diminished the advantages derived from the establishment of a Court of Criminal Appeal.

This decline of the judicial spirit was made more conspicuous by the conditions of war. It has become quite common for certain tribunals to arrive at their decision for all practical purposes before they hear the proceedings. A particularly gross case recently occurred where a bench of magistrates brought into Court a written judgment which they proceeded to read, without the least regard to the arguments which were placed before them, in regard to the desirability of a naturalised British subject holding a public-house licence. The military tribunals are composed for the most part of men who are unacquainted with principles of law and are obviously content to let the military representative decide before the hearing what is to happen. Fortunately this official often does his duty better than the tribunal itself. The same lack of the judicial spirit is conspicuous in those provincial tribunals which have exempted almost every man who applied for exemption. As regards freedom of discussion it may be remarked that there is no anti-clerical Press in England as there is in every other European country. Our newspapers represent either Church or Chapel, and any school of thought opposed to Church or Chapel is studiously ignored in their columns, even when the question at issue is so vital to the country as that of the marriage laws.

The bureaucratic tyranny of our time has found its climax in the regulations of the Central Liquor Control Board. Without any proper appeal or responsibility to the people this Board have forced on the poor the dangerous habit of secret drinking

which has so far been confined to the "dry" States on the other side of the Atlantic. They have interfered even with the right of a licensee to entertain his friends in his own house outside the few hours prescribed by the Board for public drinking, and have made it illegal for any man to give any friend of his a bottle of wine except during these hours.

Even our system of taxation has taken forms peculiarly inquisitorial and therefore hostile to liberty. A vast and irresponsible bureaucracy has been established all over the land, and it is only a matter of time before our desks will be broken open by these gentry. In the Middle Ages it was considered the first principle of justice that the class who had to pay a particular tax should to some extent be consulted before it was imposed. In our own day we have seen the right of the House of Lords to throw out the Budget denounced because the Budget contained the land taxes of 1909. These were described (in order to hoodwink the public) as measures directed against the peers, although in reality they hit only the small investor in land and the builder. It may be true that previous taxation on land through death duties had really hit the House of Lords and the country generally. It has certainly resulted in driving off the land those men who respected the traditions of duty with which the possession of land was previously associated.

We have therefore done as much as possible to kill the spirit which inspired the liturgies of ancient Athenians and the benefactions of the ancient Roman. A retrospective view of the painful effort

that each generation of Englishmen has made to safeguard the rights of individual liberty against the oppression of king, oligarch, and demagogue, must necessarily sadden any Englishman who cares at all about individual liberty. All that wealth of achievement is to-day in the melting-pot and although the crisis through which we are passing has brought to a head many of the vital issues in question yet the final issue remains more than doubtful.

In the next chapter I shall attempt to estimate the chances of survival that yet remain for the cause which our forefathers prized like their own lives.

## CHAPTER X

### LOOKING FORWARD

“ From the first the individual relies on social forces to maintain him in his rights, and in the higher form of social organisation we have seen order and liberty drawing together again, the underlying truth that unites them being simply that the best ordered community is that which gives scope to its component members to make the best of themselves, while the ‘ best ’ in human nature is that which contributes to the harmony and onward movement of society. Thus the modern state comes to rest more and more on the rights and duties, the obligations and responsibilities that we include under the ethical and legal conception of personality. The responsible human being, man or woman, is the centre of modern ethics as of modern law, free so far as law and custom are concerned to make his own life, bound by no restrictions of status nor even of nationality or race, answerable for his acts and for those of no other, at liberty to make the best or worst of himself, to accept or decline relations with others. On the other hand, as this free individual breaks the shell of the older groupings, he comes into direct relations with the state as a whole which succeeds to many of the rights and duties of the older groups. The social nature of man is not diminished either on the side of its needs or its duties by the fuller recognition of personal rights. The difference is that so far as the rights and duties are conceived as attached to human beings as such, they become universalised, and are therefore the care of society as a whole rather than of any partial group organisation.”—*Hobhouse*.<sup>1</sup>

THE quotation at the head of this chapter seems a little pathetic in its unreality to-day; but it is a useful summary of the ideals which inspired the more enlightened type of Englishman ten years ago despite all the influence that collectivism then held. Hobhouse’s book did not entirely carry conviction

<sup>1</sup> *Op. cit.*, pp. 367-368.

when it was published even to those who were anxious to be convinced, and the uneasiness that any reasoning man must have felt about the remarks in it about liberty and the value set by politicians on human personality has been multiplied a hundred-fold in our own time.

I imagine that any reader who has been patient enough to read the previous chapters of this book may criticise the title which I have chosen for the book, namely *The Decline of Liberty in England*. They may find it difficult to believe that any tradition of such antiquity as liberty in England can altogether perish from the land. They may believe that some sort of regeneration may come to pass despite the parlous condition of our politics and of our society. Others may hope against hope. But whatever the ultimate issue may be it cannot be denied that at this particular time the outlook is about as black as it can be.

It may, however, be useful while trying to estimate the situation, to summarise roughly the contents of the previous chapters in so far as they bear on the future chances of liberty, since it is sometimes difficult to keep this side of the argument clear while describing the historical evolution of our institutions.

*Liberty of Contract.* In this chapter I repeated and amplified the leading arguments to be found in Mr Belloc's *Servile State*, which show that the servile state is the resultant of Socialism and Capitalism. I pointed out that there seemed very little prospect of any Distributive State which would bring into being a number of small property owners.



There are to-day signs that the State would like to encourage the small investor, but it has chosen a moment when those who might become small investors seem singularly disinclined to save money, and the plans of compulsory saving which some collectivist thinkers have recently proposed would probably kill whatever faint instinct there may be to save. I also dealt briefly with other contractual relations outside the industrial world, and gave reasons for thinking that the interference by statute with the traditions of the Common Law had resulted in little but anarchy, litigation, and irresponsibility.

*Liberty of Private Morals.* In this chapter I showed how the poor, though not the rich, suffered from the tyranny of a decayed and illogical Christian morality in regard to questions of drink, gambling, and sex. Obviously it is only the poor who are punished for moderate drinking at hours and places convenient for themselves but proscribed by Mr Lloyd George and his co-opted colleagues on the Central Control Board, for gambling in regard to small sums, and for trying to communicate to each other the knowledge of limiting families which can alone save many poor homes from being small hells for the wife and therefore for the children. The same tyranny pursues prostitutes who have not sufficient money to conceal their vocation from the police and general public. I argued that apart from its gross injustice the general policy of the State in regard to private morals cannot to-day command the respect of any thinking person, since that policy is a mixture of Christian taboos about sex which no longer command public respect, of police tyranny.

and of a clumsy coercion secretly engineered by Puritans which leads to nothing but the oppression of the poor and the blackmail of the rich.

*Liberty and the Family.* The argument of this chapter was to show how the collectivist contempt for human personality found expression in the complete disregard of human ties so far as the families of the poor were concerned, especially in regard to schemes of education and of taking away the children from their parents. The whole existence of the family as a social unit depends to-day on our obtaining a liberty which does not in fact exist. Catholic writers maintain, not without reason, that the medieval Church put an end to slavery by insisting on the recognition by the master of the serf's family ties, but there is to-day no sanction of that kind at work among modern communities. The denial of divorce to the poor would not so much matter if it were not aggravated by the bureaucratic inquisition into the affairs of the poor; but the denial to children of legitimation either by subsequent marriage or by a proper system of adoption, and the absence of any proper security for the maintenance of wives and children all tend to the disintegration of the family, and that process is going on before our eyes to-day. There is, from this point of view, a grim irony in Hobhouse's description of the free individual "breaking the shell of the older groupings as he comes into direct relations with the State as a whole." We have, in short, lost the freedom of the Catholic tradition and preserved only its taboos, which again have been intolerably perverted by Calvin and his Puritan successors.

*Liberty in Regard to Women.* In this chapter I indicated the essential interdependence of property and responsibility and urged that women should be given a proper education in civic functions and the exercise of the vote, subject to the same conditions as men ; further that they should have the right to sit on juries and even possibly to act as assessors in certain cases, as well as the right of entry to all professions, however little they may avail themselves of the right. These privileges are for the most part denied to women to-day ; while as wives they are ill treated as regards maintenance if they have no property of their own before or after marriage, and as mothers subjected to barbarous injustice where the custody of the children is concerned. And if the position of women was recognised to this extent it is impossible to believe that women who choose to "lead a man's life," as Sir Arthur Pinero has phrased it, would be outlawed and blackmailed as they are to-day except when they are well-to-do.

*Freedom of Discussion.* In this chapter I admitted the high level which freedom of discussion has reached in the civilisation of Europe and especially in England, although so far as England is concerned this freedom has of recent years been severely limited by such devices as collusive libel actions and the mushroom growth of unofficial censorships which the half-educated mobs of our time do not resent. Such freedom is also fettered by the concentration of all-important newspapers in the hands of a few capitalists. I suggested that freedom of discussion might be seriously damaged in the future by any strong movement towards a

national militarism which would interrupt the free play and interchange of international thought, and even more by an increasingly tyrannical collectivism which would destroy the freedom of the individual to discuss any problems except from the collectivist point of view. I asserted that social freedom has always been severely restricted in England owing first to the power of the Ecclesiastical Courts from 1066 to 1640 and subsequently to Puritan traditions. Freedom has, in short, always suffered from the tyranny of either Church or Chapel, of presbyter or priest; and many queer taboos still survive the comparative extinction of Church and Chapel influence to-day. The whole fabric of Victorian morality, which was a queer compromise between Christian morality and common-sense, was obviously undermined in the trial of Mrs Besant and Mr Bradlaugh in 1877 by the uncompromising fall of the birth-rate ever since. Promising as the outlook may be in regard to the particular question of sex, the facts point not so much to a victory of liberty as to the victory of common-sense in regard to this particular subject only.

*Liberty and Minorities.* In this chapter I pointed out that the exercise of political power by the majority of English people would probably make for liberty while the old traditions of liberty still exist, but that we are to-day governed by a secret Caucus which sells policies and legislative power to cynical or fanatical minorities. Our real rulers are not openly recognised as such, and the secrecy of their authority naturally stultifies the criticism

which is made against the leaders of apparently hostile parties. Such criticism to be effective must be employed against the system itself. The opportunity of destroying many of our ancient liberties has been already sold to a number of rich men, and so long as this system of government is allowed to exist freedom is not safe for one moment.

*Liberty and Religion.* In this chapter I pointed out the essential importance of liberty to any adequate fulfilment of our destiny on this planet. Those who love liberty and have no illusions about progress must be prepared to enjoy the philosophic contemplation of life as a whole only by fits and starts as and when they can, since if they abandon themselves to any form of Quietism the fools will have their own way and dominate everything. Practical activity is, therefore, specially incumbent on those who are often the least inclined for it by reason of their inability to suffer fools gladly. Such persons should never relapse into the kind of Quietism, either theological or intellectual, which may be as strong a temptation to them as the song of the Sirens to Ulysses. Whether there is any "abiding city" outside this world or not it is clear that there is no "abiding city" in this world, and human beings must be prepared both socially and individually to encounter perpetual flux and change and to "cultivate their garden" without looking too far ahead. The adaptability required for survival under the conditions of our world can only be achieved through liberty being a recognised necessity; for in all contests between rival nations or races it is liberty that makes for survival as

opposed to the rigid mechanism that cannot adapt itself to circumstances.

*Looking Backward.* In this historical retrospect I showed in what an unstable equilibrium liberty always is. It is, for instance, clear that we should in many respects be better off in modern England if we adopted with but few modifications the laws of Hammurabi which were promulgated four thousand years ago. Neither the Egyptian nor the Jewish nor the Greek nor the Roman civilisation shows any real approach in practice to the principles of individual liberty, and Acton is justified in deriving the origins of individual liberty from the Stoic philosophy and the Catholic faith. The Catholic Church, however, merely imposed fetters of its own while shaking off the restraints of the State, and to-day we see the coercive powers of Church and State combined and concentrated in the ruling bodies which exploit the powers of modern democracy. I traced in some detail the establishment in England of the liberty of the subject and other freedoms after centuries of struggle, and pointed out how all the results achieved are to-day in the melting-pot.

If individual liberty is not really declining to-day it is undoubtedly in a far more unstable equilibrium than in 1850. There are undoubtedly certain very dangerous tendencies, both in the political world and in public opinion, which to-day threaten the very existence of liberty in this country, and they can be briefly summarised as follows. In the political world there is :

1. The secret collusion of the Front Benches and

the sale of honours and policies to men and societies who hate liberty as they hate nothing else.

2. The growth of Prussian ideals which make for collectivism at home and aggressive nationalism abroad. This is bound up with the military and industrial conception of men and women as machines instead of as organic personalities.

3. The development of the Servile State as the resultant of collectivism and capitalism, under which a system of bureaucratic doles makes the proletariat indifferent to the necessity for equitable distribution of property.

4. The omission by the State to protect the institution of the family by reasonable and equitable laws of marriage, divorce, and maintenance.

5. The intellectual indolence of the politician who entrusts the bureaucrat with judicial powers and carries out an administrative tyranny in matters where he dare not affront even what survives of a sentiment for liberty by the legislation that would be necessary.

6. The resulting contempt felt by the politicians for the separation that used to exist between the legislature, judicature, and executive.

Outside the world of politics we find in the public opinion of modern England :

1. The revival of a tyrannical spirit of Puritanism combining for its objects the powers of Church and State and filling the void of deliquescent creeds. It is, for example, quite common to find men who, feeling uneasy at their loss of the creed which they learnt in the nursery, try to cure that uneasiness by strenuously preserving in their minds the morality

which they were taught as the logical result of the creed, although and even because, the logical sub-structure has vanished from their minds. It is also common to find men who having faced the disappearance of their faith, have not the courage to face the ethical result of the religious change.

2. The marked decline of the respect for personal rights derived from the Stoic philosophy through Christianity. Hobhouse in his *Evolution of Morals* maintains that this respect is *increasing*, and he may possibly be right; but I imagine that his conclusions will not necessarily convince others more than they have convinced me.

3. The rising influence exerted through the Press of the financier for whom human beings are merely counters in the financial game. The views of the often half-educated financier are easily propagated among a population the greater part of which lacks the first rudiments of education in social science or in other subjects of social importance.

4. The increasing abstention from politics in England as elsewhere of men who approach public problems with the public spirit that was in fact characteristic of the country squires and other gentlemen who sat in the House of Commons during the first nine decades of the last century, and the resulting monopoly of political power by the professional politician, whose first object is to maintain the personal interests of the clique to which he belongs and thereby to obtain what is euphemistically called "a career."

5. The growth of class conflicts, which first became acute owing to the Tariff Reform controversy in



1903 and have been severely aggravated by the demagogic extravagances of Mr Lloyd George, upon whom the mantle of the late Mr Chamberlain has fallen. The existence of these class conflicts is probably the principal obstacle to any general movement on the part of private citizens to clean up modern politics.

6. The progressive contempt of the mob for the freedom and privacy of the individual in proportion to the speed with which these blessings are abolished by politicians. This evil is originally due to the contempt expressed by the rich for the freedom and privacy of the poor.

These conditions, both as regards the political world and public opinion in England, have existed for the last five years, during which time we have been more and more infected by the ideas of modern Germany. To-day the imminent danger to liberty comes from Germany whatever may be the result of the war. There are to-day perhaps few followers of Herbert Spencer. It may, however, be as well to repeat his wise and trenchant words in *Social Statics* as to what civilisation means :

“ Whatever fosters militarism makes for barbarism ; whatever fosters peace makes for civilisation. There are two fundamentally opposed principles on which social life may be organised—compulsory co-operation and voluntary co-operation, the one implying coercive institutions, the other free institutions. Just in proportion as military activity is great does the coercive *régime* more pervade the whole society. Hence, to oppose militancy is to oppose return towards despotism.”

## 220 DECLINE OF LIBERTY IN ENGLAND

By the test of this definition modern Germany must stand or fall. It is perfectly clear to-day that modern Germany fosters a militarism which makes for barbarism, and that her existence implies the growth of coercive institutions as opposed to free institutions.

Mr Austin Harrison once wrote that the whole existence and prosperity of modern Germany reposed upon the Prussian doctrine of efficiency, and that the essential fact of this efficiency was the right of every Prussian to strike the face of the man immediately below him either in the industrial or military hierarchy. The dominating object of the Prussian rule is to kill individual initiative and to convert the individual into a machine. If the individual resists this process then he must be scrapped like a machine. Even apart from questions about liberty it is not too much to say that the Germans have always menaced the civilisation of Europe. Their ancestors prepared, and to some extent carried out, the disintegration of the Roman Empire and plunged Europe into the period of what is called "Dark Ages." The Roman Empire, however, was partially preserved by the Catholic Church. If the "Papacy was but the ghost of the Roman Empire sitting crowned upon the grave thereof" it has at least preserved for the world a part, though but a small part, of the civilisation which flourished under the Empire; and as from about the year 1200 Europe was once more united on such questions as international diplomacy or private domestic institutions like marriage. This European tradition was developed to even higher

levels by the revival of learning and the Renaissance. If the religious controversies of the sixteenth century could have been settled by Erasmus and his friends Europe might have achieved in the seventeenth century a certain real unity through humanism, of which perhaps some symptoms were visible before the great war of our time. It was, however, in the sixteenth century that the Germans once more smashed whatever then existed of European civilisation. To our Protestant hero, Martin Luther, we owe the Thirty Years War in Germany, the Erastian Church in England, the abomination and desolation of Calvinism elsewhere, the rise of the Jesuits through and by means of the counter-Reformation, and the consequent degradation of Europe and the Catholic religion. The possible marriage of Catholicism and humanism had been destroyed for ever under the leadership of a typical Teuton, who in later life devoted his best activities to advising the German princes how best to repress all the popular aspirations which had been aroused by his fine show of resistance to constituted authority. Luther must have known quite well that the princes were in fact more powerful than the Church or the Empire, and astutely traded on the fact.

In the period of chaos which resulted from the predominance of Luther and the failure of Erasmus to carry on the process of European civilisation it was again a Dutchman, namely Grotius, who came to the rescue. The publication of his famous treatise *De Jure Belli ac Pacis* in 1624 marks the laborious beginning of a new civilisation in Europe. By invoking the sanctity of the law of Nature he

and his precursors inaugurated our international jurisprudence. Grotius is succeeded by a long line of eminent followers such as Pufendorf in 1672, Leibnitz in 1693, Wolf in 1749, and Vattel in 1758. By the middle of the eighteenth century Europe had painfully achieved the permanent regulation of international usages ; and in the first two decades of the last century our civilisation had achieved the idea of a rudimentary police force which could be used for the benefit of the Continent and therefore of the world. It was to some such ideal of European unity that Sir Edward Grey appealed in the last efforts which he made for peace while desperately trying to restrain the criminal activities of the General Staff in Berlin as the sands ran out in July, 1914. To such ideals as indeed to any considerations of good faith he appealed, as we know, in vain. Modern Germany had successfully opposed every possible obstacle to the establishment of a really effective international tribunal at The Hague, though this would almost certainly have been achieved but for that opposition. For the third time in European history they have exerted their utmost strength to shatter European civilisation. They have not merely destroyed the mutual confidence and good will that had slowly grown up between European nations in the nineteenth century, but they have also revived the horrors of the Thirty Years War and violated every international usage that has been built up during the last three centuries and of which the origins are to be found in the Roman Empire. This work of destruction is rendered peculiarly offensive by the

hypocritical appeals to the old German God, who has invariably throughout their history been invoked as the champion of German righteousness.

The danger in which we stand to-day is not so much of the Central Empires winning the war as of the infection to which I have before referred. In the seventeenth and eighteenth centuries the English ignorantly and innocently adored Martin Luther and Frederick the Great as the champions of Protestant liberty. Whatever may be said for Martin Luther, even Carlyle could not plausibly excuse the appalling crimes of Frederick the Great. The nineteenth century, however, brought with it a cult of the Germans as such. From Coleridge and Carlyle, from Oxford historians like Freeman and Green, from Cambridge historians like Kingsley and Seeley, and from metaphysicians in all our universities we learned that we were ourselves Teutons, that the civilisation of England was purely Teutonic, that the German philosophers had said the last word in philosophy, and that in the region of science the Germans were infallible. From the Prince Consort our Foreign Office inherited through the idolatrous sentiment of Queen Victoria's widowhood the policy of "a strong Prussia," to which we sacrificed the integrity of Denmark and incidentally the honour of this country. From the doctrines of Karl Marx our collectivists derived and preached the doctrine that the poor must be moderately fed but not allowed to call their souls their own; and from modern Berlin Mr Lloyd George and his friends have imported their experiments in establishing the Servile State.

The British mind is curiously simple and uncritical as regards Germany. There is even now in this country a widespread belief in the Teutonic legend of military efficiency. It need only be pointed out that the proportion of forces in the invasion of August and September 1914 west of the Rhine was about two Germans to one Ally at the critical moment, and on the actual battle line of the Marne eight to five. "There is," Mr Belloc informs me, "no other case in history of an army fully deployed and enjoying such an enormous numerical superiority suffering defeat, except of course where there had been a great difference in armament. The German field gun is still a contemptible instrument of war after twenty years of effort to make something approaching the French '75' and ten years in which to copy the English 18-pounder. The Germans are bad at nearly everything which cannot be done by mere second-rate painstaking, and such success as they achieve is due to nothing better than the careful co-ordination of innumerable second-rate minds."

It is time that a great effort should be made to dispel the superstition in England about what is really a "pedantic barbarism" in modern Germany since liberty in England is doomed for ever unless the crude criminality of Prussian ideals is exposed once and for all. The only possible good that can result from the rape of Belgium and of Serbia, from such abominations as the sinking of the *Lusitania* and the filthy atrocities of the Wittenberg Camp is that even the most simple-minded dons of Oxford and Cambridge may realise, once and for all, the

horrors that result from the repudiation of all those humane instincts which can only flourish in an atmosphere of individual liberty. Callous, utilitarian, second-rate, and pseudo-intellectual as the individual German undoubtedly is, it must not be forgotten that he is a human being and therefore, as Aristotle pointed out, almost infinitely educable. The point about him is that all the most disgusting potentialities of the human character have been carefully trained in him and evoked from him by the foul religion which we may roughly define as Prussianism, the religion of tyranny, force, and cruelty. For the history of Germany is one long tale of this religion dominating their race with more or less power at different periods of history. It is obviously, however, not impossible for Germans to behave as law-abiding citizens when isolated from the particular pestilence of soul that we associate with Prussia.

These considerations, however, do nothing but show more clearly the danger to which our country is exposed unless the last relics of the Teutonic legend so widely propagated in the nineteenth century are uprooted from our minds.

It was Horace who pointed out to the Romans that Greece when defeated by Rome captured the Roman mind, and this was undoubtedly a gain to Rome; but the idea of the same process occurring at the end of the present war has been to me, and no doubt to many others, a nightmare ever since the war began. That this country should sacrifice her best and youngest citizens to torture and death and then worship a German Moloch, is the most

horrible disaster that the human imagination can conceive. When, therefore, the war ends a fresh army must be mobilised of those who are resolved that come what may we must never in any sense become Prussian, that our victory shall be moral and intellectual as well as military, and that those whose "spiritual homes" are in Prussia shall no longer preach and practise their diabolical gospel through the British Empire.



## APPENDIX

### HOME LIFE IN A.D. 2000

[This prophetic little tale, recently published in *The Free Woman*, so concisely embodies my vision of the future that I have here reproduced it.]

VISCOUNT CRICCIETH smiled wearily from his sick-bed on his son George, who was sitting beside him. "It really seems a pity that the Medical Control Board won't let me live a little longer. Of course there is a good deal of pain for one hour out of the twenty-four, which requires a certain amount of medical attention, but I should not mind paying a little extra for that if the State allowed any doctor or nurse to have a private practice. (However, I daresay I should never have been born under the new Inspection of Parents Act.) The point is that I am quite interested in the morning paper and talking to all of you and seeing a friend sometimes . . . and in old days I could have gone on indefinitely."

"Yes, father," cried George, "one *does* sometimes regret the anarchy of one hundred years ago, but in those days you would never have reached the age of ninety-eight, and you might have died of a painful and incurable disease without a chance of escape instead of this arteriosclerosis. You yourself have often told me how wildly enthusiastic people were over the Voluntary Euthanasia Act of 1940."

“They were indeed,” replied the old man, “but of course it had to become compulsory soon. The principles of my great ancestor had sunk deeply into the more thinking minds of the community, and everything did become compulsory. Besides that they began killing criminals by anæsthetics in 1930 instead of by hanging, and a great many crimes were committed by persons who were unlawfully eager to get their revenge and an easy death at the same time. Moreover the expenses of the State medical service have been considerably reduced by the power of the Local Board to decide when a patient is not worth further attention. No doubt, even when I was a young man, many humane doctors accelerated the end of the patient when it could be easily done—and then of course there were the surgical operations, which were fairly well bound to kill many people who preferred to avoid a long period of suffering. However we are far in advance of all the Christianity and Individualism of those days. . . . By the way, did you see the official form? Did it give me a week or a fortnight?”

George picked up some papers from the table. “Oh, here it is,” he said and read the form:

“MY LORD,—I regret to inform you that my Board have decided to allow you no further medical service after a week from this date, and they are of opinion that you would save yourself and your relations much inconvenience and pain by availing yourself of Section 3 subsection (1) of the Compulsory Euthanasia Act 1980. Everything can be done at your house, if suitable preparations are

made, as our Travelling Euthanasia expert will be in London at that date. You are probably aware that in cases like yours the Board will allow a grant of five pounds towards the cremation expenses, and will accept a preliminary Probate affidavit from yourself for the purpose of assessing death duties. For your guidance I enclose a special form which you must forward within three days to the Inland Revenue Department. I am, Sir, your obedient servant,

CHAS. BROWN,

“*Asst. Secy.*”

“How very odd my father would have thought that letter,” the old man remarked. “I think it would have made him very angry. When I was quite young there were a few wild writers—one of them was called Belloc or some such name—who had no respect for the collective wisdom of the community. They thought that individuals should own land and ought not to be compulsorily insured. However, they were all ultimately secluded under the third Mental Deficiency Act, which substituted some more scientific tests for the cruder tests of the first Acts. Well! I suppose I must make my arrangements. The injection is painless, I believe. Don’t they give me an appointment? No; I see not. How very careless! I think I should like it about seven in the evening if they can manage it. Perhaps you will arrange it by telephone? And, after all, I would rather not know the exact time. . . . How curious to remember the crude lack of precision with which people used to die in my young days—days when apparently commonplace men sometimes

committed physical assaults, swore, drank alcoholic preparations at meals, married without medical permission, and even then couldn't get divorced without some legal fiction of adultery. Why, they actually owned houses and land in perpetuity, and read books which were excluded from the British Museum Catalogue, and wrote quite scurrilously about the Government. Those were indeed turbulent times. Everything was so casual and unforeseen. . . . However I must make a new will and get the Law Registrar to send someone to help me with that and the Probate affidavit. A week isn't long, perhaps, but still I doubt if anything will ever be very different now, and of course life nowadays is not so exciting as it was. By the way, you can put my ashes in the safe downstairs, and I should like a few ethical words at the Crematorium. There is an ethical lecturer called Jones in the next street who only charges two guineas. He might just make a passing reference to my work in connection with the 'Better Regulation of Female Underclothing Act.' What a splendid achievement that was. We never thought it would pass the House of Female Representatives. Well, well . . ."

*(Left dozing.)*

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