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A Political Paradox

Clarence J. Ruddy

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A POLITICAL PARADOX

Seven years ago, in November, 1919, five Socialists were elected to seats in the New York Assembly from districts in New York City. No sooner were these men assigned places in the Legislature than their right to hold office was challenged, and they were put upon trial to determine their fitness and qualifications. The sole charge against them was that they were Socialists. The defendants were not criminals in the popular sense of the word; their offense was far more grievous than any crime: they were Socialists. A criminal transgresses but one law; Socialists attack our whole theory of law, and deny our fundamental conception of justice. As Socialists these men, said their accusers, were "engaged in a conspiracy to destroy the right to hold and own property honestly acquired; to weaken the family tie; to destroy the influence of the church; and to overturn the whole fabric of a constitutional form of government". According to the Socialist doctrine the state is the source

of all rights, and the individual has no privileges except those given him by the government. The state is supreme, and should exercise a paternal authority over its subjects.

The five defendants were tried in the early months of 1920, and despite the forensic eloquence of Morris Hillquit, their attorney, they were expelled from the Assembly and their seats declared vacant. The decision of the Assembly was nationally endorsed, and all patriotic souls rejoiced that the pernicious doctrines of Socialism had been so emphatically rejected. Lovers of liberty smiled, and exclaimed gleefully that the "Reds" must go back to Russia if they wanted to advance their vicious theories. Orators recited their Fourth-of-July speeches with added fervor, and editors and cartoonists waved the flag. . . . And surely there was sufficient cause for celebration. A hand-to-hand battle with the destroyers of liberty had been fought, and the diabolical usurpers had been repelled. Paternalism had no place in America; the individual still had some rights which were unalienable, and which could not be denied even by a majority.

This spontaneous re-statement of belief in American principles was of course a salutary thing. It demonstrated with force and certainty that the ideals of Jefferson are still a vital part of our existence. Our love for liberty is known all over the world; aliens from all countries flock to the United States to partake of the blessings of our system of government. Every school child has memorized that paragraph of the American Declaration of Independence, affirming the principle that "all men are created equal; that they are endowed by their Creator with certain unalienable rights among which are life, liberty, and the pursuit of happiness; that to secure these rights governments were instituted among men deriving their just powers from the consent of the governed". In the schoolroom too the Constitution has been summarized, and the scholars' attention has been directed to the consistent attempt towards insuring the respect for the inherent rights of man. . . . All through our national life the sacredness of the individual has been stressed, and unnatural indeed is the person who asserts that the state is paramount to the citizen.

For more than a hundred years the legislatures were faithful to the ideals of the country's founders, and transgressions of individual rights were infrequent. Whenever the lawmakers did

happen to overstep their bounds, the Supreme Court never failed to condemn the derelictions. In fact, so firm was the Court in disapproving unconstitutional measures that it sometimes aroused the wrath of enthusiastic reformers, and as time went on, when any constitutional provision stood in the direct path of legislation, the Constitution itself was changed. If an act of the federal government is prohibited by the fundamental law, the fundamental law is changed. Then when the revised Constitution itself permits the Act, the Supreme Court is powerless to condemn.

A careful study of modern legislation cannot fail to disclose a growing tendency to stretch the powers of the government. This tendency is apparent in every kind of law-making body, from the councils of the smallest cities to the Congress of the United States. Almost every self-styled "progressive municipality" is considering, or has already passed, a zoning ordinance, whereby property owners are restricted in the use of their land. These measures are not designed to safeguard the health, morals or property of neighbors, but are intended solely as a means of beautifying the landscape and reducing the city to a municipal checkerboard. Some of our States—and the number is continually increasing—have passed laws providing for the sterilization of criminals and the socially unfit; evidently the legislators are not bothered by the difficulty of deciding who is unfit. And the social welfare workers are not yet satisfied; the other day the advocates of birth-control had a meeting and reported much progress with their doctrines. As yet they have not started agitation for a Constitutional Amendment, but they undoubtedly will in time. Then perhaps in a few years married people will be told how many children they may lawfully have. After that the eugenisists will have their turn; they would go even further, and give the state a right to say whether people may marry at all. Evidently marriage is not a happiness permitted by the Declaration of Independence. It is subverted, like use of property and freedom of contract as manifested in minimum-wage laws, to a careful supervision and control by the state.

But all of these denials of personal privileges and immunities are remote and illusory when compared with the combined effort of Congress and the legislatures of three-fourths of the States. In 1919, the same year that the five Socialists were elected to seats in

the New York Assembly, a new Amendment was declared to be a part of our Federal Constitution. Men were denied the right to judge for themselves how much liquor could be consumed without personal detriment, and regardless of whether individuals wished wine for debauchery or only for harmless refreshment, all were prohibited from buying one drop. Temperance is no longer optional, it is compulsory. Indeed, there is no temperance at all; the word temperance implies a moderate indulgence, but the Prohibition Amendment forbids any indulgence at all. Irrespective of the merits of the Amendment, and without debate on the question whether it is a wise act, the fact remains that it is a remarkable extension of the powers of the government.

To all of these encroachments the people of the country seem apathetic. To be sure, they are all attacked, but the opposition is by no means universal, or even well-organized. The minority may be earnest, but they are nevertheless the minority. The majority are rapidly and very perceptibly getting away from the original notion of our government, and are extending more and more the powers of the state. A hundred and fifty years ago even Hamilton would have been amazed at the suggestion that the national government should be given power to regulate the smallest and most personal details of a man's life. And Jefferson, in the event of such a measure as birth-control being contemplated, would regretfully cross out the "self-evident" truths embodied in his Declaration as being inconsistent with the American theory.

The American principle of government is undergoing a great change; the United States is becoming more paternalistic. Everything we do is becoming subject to the will of a legislature. Our privileges and immunities, heretofore considered unalienable, are being taken away; we are looking more and more to the State as the source of our rights. We are beginning to believe that we are made for the state, and not the state for us.

After all, why should we be so harsh with the Socialists? True, their theory arises from a concept different from ours, but the ultimate consequence of their theory and our dereliction is the same. And Socialists at least are sincere; they do not attempt to preach individual security in campaign speeches and deny it at the next legislative session.

C. J. R.