

WHAT IS CIVIL LIBERTY?

[1889]

It might seem that liberty was one of the most trite and worn of all subjects. It will be the aim of this essay to show that liberty is the least well analyzed of all the important social conceptions, that it is the thing at stake in the most important current controversies, and that it needs to be defended as much against those who abuse it as against those who deride it.

In the first place, I put together some citations which will, I think, justify me in bringing this subject forward again.

1. Rodbertus is the one of the recent socialists with whom it is best worth while to deal, for he is the master of them all. He is also best understood in his writings on Roman taxation, in which his historical text and his social dogmas throw important light on each other. He defines liberty to be a share in the power of the state.¹ He then defines "free trade," in the following pages, so as to make it cover all civil liberty, according to Anglo-American institutions, and attributes to free trade, in this sense, no less harm than the destruction of civilization. It is amusing to notice how this denunciation of free trade, which it would have been so satisfactory for the opponents of free trade to quote, has been fenced off and marked with the strongest kind of a danger-signal, so that it is never quoted at all, because it is an assault

¹ Hildebrand's "Jahrbücher," V, 269.

110 EARTH HUNGER AND OTHER ESSAYS

on all modern liberalism as broad as the Pope's "Encyclical" of 1864. In fact, this parallelism must be noted more than incidentally, for it helps to show what I here have in view: that all forms of liberty are *solidaire* with each other; and all forms of assault on liberty, as well the revolutionist and socialistic as the extreme reactionary, are also *solidaire* with each other. A criticism of Rodbertus is a task which I reserve for another occasion, but, as germane to my present subject and as illustrating the sort of dogma which shows the need of re-analyzing liberty, I ask attention to the following proposition: "Moral freedom is conditioned on historical necessity." Some of our contemporaries take that sort of proposition as the profoundest wisdom. To me it is oracular in more senses than one.¹

2. From a large collection of similar cases I select the following: "Life appears to the Manchester party to run its course under the form of a parliamentary debate, and not otherwise. An assertion is followed by an objection, this by a rejoinder, and so on. The decision of the majority is final." The view here stigmatized is held by all those who believe in government by deliberation: "The great affair in this world is, not to convince a man's intelligence, or to increase his knowledge, but it is at least equally important to lead his will and to *conquer* it." ² The writer goes on to argue that, if men are allowed to act freely, they will not act by deliberation, but selfishly. There he leaves the matter, apparently believing that he has routed the "Manchester Schule," and established something of philosophical or practical importance. He must, of course, assume that he and his friends are to decide when others and their friends

¹ Hildebrand's "JahrbUcher," VIII, 420, note.

² Von Eichen in "Preuss. Jahrbücher," 1878, p. 882.

are acting selfishly, and ought to have their wills conquered.

3. To take another citation from a popular writer: "Not one liberal principle but is admirable in the abstract; yet not one liberal measure that has not worked terrible mischief in our time. The liberty of thought, for instance; who dare gainsay it? Yet it has proved destructive of the principle of religion, without which there is less cohesion among men than among a herd of swine. The liberty of settlement and circulation has given rise to the pestilence of large towns, in which men congregate and live together on terms worse than a pack of wolves. The liberty of industry has reduced four-fifths of the population to a state of serfdom more cruel than negro slavery, while more than half of the remaining population is engaged in a perpetual struggle, more savage than the intermittent warfare of cannibals. Free trade among nations has ruined, first individually, then industrially, then financially, and finally politically, prosperous countries, such as Turkey, while in England it has destroyed, not only agriculture, but all those sterling qualities which formerly characterized British industry and trade. . . . Parallel to the deception experienced by the modern world through the progress of industry, aided by discovery and invention, have come down on this generation the fatal effects sprung from the spread of education. While thoughtless or superficial writers pretend to find in education the remedy of all social evils, as a matter of fact education has become the source of a vast amount of human suffering in modern times, under which those whose education is their only patrimony or source of income suffer most." ¹ This is suffi-

¹ Karoly, "The Dilemmas of Labor and Education," London, 1884, *Introd.*, p. x.

112 EARTH HUNGER AND OTHER ESSAYS

ciently explicit, and also manifests the solidarity of all forms of liberty and modern civilization. Those who attack them all show that they appreciate the truth of things a great deal better than those who try to attack some and save others.

4. Then there are the philosophers of the newest school, who, seizing upon the plain fact that all liberty is subject to moral restraints, as we shall presently see, are forcing upon us, or trying to force upon us, by legislation, restraints on liberty derived from altruistic dogmas, and, in general, under the high-sounding name of ethics, are assuming a charter for interference wherever they choose to allege that they have moral grounds for believing that things ought to be as they want them.

5. Finally, the anarchists, taking liberty to mean that a man ought to be a law unto himself, and that there should be no other law, have shown from another side that we should try to find out what liberty is.

The History of the Dogma of Natural Liberty

The history of the dogma of the natural liberty of all men, with the cognate dogma of the natural equality of all men, would be an important topic for exhaustive treatment by itself. From the notes which I have made on the subject I condense as far as possible the following view of it.

Slavery in the classical states seems to have rested upon the law of war, that the vanquished man with his family and all his property fell under the good pleasure of the conqueror. Xenophon states this law explicitly: "The law is well known among all men that, when a state goes to war, the property and bodies of all in the state are the property of the captors. You will, therefore, not pos-

sess wrongfully whatever you get, but, if you permit them to retain anything, it will be out of humanity.”¹ It seems that the reason why slaves in antiquity so universally accepted their fate was that they understood that such was the fortune of war. They acquiesced in it as according to the rules of the game. The earliest writer whom I have found who utters the dogma of liberty is Philemon (about 350 b.c.): “No one by nature ever was born a slave, but ill-fortune enslaved the body.”² Aristotle discusses the subject in the third and fourth chapters of the first book of the “Politics.” He says that some held that slavery was against nature. Such persons, whoever they were, must have derived their opinions entirely from humane impulse and poetic enthusiasm; Aristotle was not of that tone of mind. He could not find in history any example of a state which had not slavery, and when he examined the state in which he lived he easily saw that slavery was of its very essence; he therefore held that slavery was a natural necessity. Such it was in the sense that it was rooted in the nature of the classical state; it is undeniable that the classical state could not have grown up and could not have produced its form of civilization without slavery. It must also be recognized as a fact that no other organization of society has yet shown itself capable of that degree of expansion which the Roman state developed by means of slavery. The mediaeval state broke down under the first expansive requirement which was made upon it. Whether the modern state, based on natural agents and machinery, is capable of expansion or not, is yet to be proved. There seems to be ample reason to believe that it is, unless the modern world votes not to go on;

¹ “Kyroped.,” vii, 5, 73. Cf. “Memorab.,” ii, 2, 2, and Polybius, ii, 58, 9.

² Frag. 39 in Meineke, “Com. Graec.,” iv, S. 47.

114 EARTH HUNGER AND OTHER ESSAYS

but, if the modern world votes to go on and not be afraid, it can only do so by virtue of education, and then it is subject to the remonstrance of Mr. Karoly at the head of this article, and of others who think with him. To return to the classical state: it remains only to observe that slavery was likewise the fate of that state which, having enabled it to grow up to immense power and achievement, also inevitably carried it down to ruin and disgrace.

It is free to us all to speculate on the question whether every force which makes high expansion possible will not also bring with it its own form of inevitable destruction or decay. Aristotle, however, proceeding upon the historical method and upon observation, found that slavery was necessary and expedient within the limits of the age and the form of society he was discussing.

Fuller expression of the dogma of natural liberty comes only with the Christian era. Dio Chrysostom, at the end of the first century, expresses himself in favor of it, but his declaration is incidental and can be taken only as rhetorical.¹ It is among the Christian writers that it first finds distinct and enthusiastic expression. With them it is rather an inference from fundamental doctrines of the faith than an actual article of the creed, although they quote texts freely in support of it. The doctrines of Christianity are undoubtedly favorable to it, and the inference was direct and easy. Tertullian (about 200 a.d.), addressing heathen, declares: "We are your brothers by the right of one mother — Nature."²

It was not confined to Christians, however; it is very probable that it may have entered into the Stoic philosophy in some vague way. We find it in the lawyers of the third century. Ulpian says: "In civil law, slaves

¹ "Orat.," vii, 138.

² "Apologet. ad Gent.," c. 39.

are considered null. Not, however, by natural right; because, as regards natural right, all men are equal.”¹ And Florentinus: “Liberty is the natural faculty of that which it is permitted to any one to do, unless something has been prohibited to him by force or law. Slavery is an institution of the law of nations, by which any one is subjected to the rule of another, against nature. *Send* are so called because military commanders are wont to sell captives, and so to preserve (*servare*) them and not kill them.”² The doctrine, therefore, gets into the Institutes of Justinian:³ “Slavery is the institute of the law of nations by which a human being is subjected to another’s control against nature.” These propositions in the law, remained, however, entirely barren, and were not different from the academical utterances of the philosophers. It was the voice of reason and conscience recognizing a grand abstract doctrine, but without power to solve the social problems which would arise if that doctrine should be in any measure admitted into the existing order. The Christians alone seem to carry on the doctrine as something more than a pious hope, something not more distant than any other feature of the kingdom of heaven, and easily realizable in that kingdom. The vague elements of social and political innovation in the revolt of the Donatists and the Bagaudes bear witness to the extent to which some such doctrines had been popularized. The latter had a very naive definition of natural rights, and, on the whole, as good a one as has ever been given. “Natural rights are bom with us, *about which nothing is said.*”⁴

¹ “Digest,” i, 17, 32.

* “Digest,” v, 4.

³ I, tit. iii, 2.

⁴ See Jung, in Sybel’s “Zeitschrift,” xlii, 65. He gives no authority for the definition of natural rights. Another topic which might be investigated with great advantage to social science is the history of popular revolts, with especial attention to their common elements of political and social dogma.

116 EARTH HUNGER AND OTHER ESSAYS

By the seventh century, the churchmen had made the doctrine of natural liberty one of the tenets of the Church. Gregory the Great writes: "Since our Redeemer, Creator of all creatures, deigned to put on human form, in order by His divine grace to break the bonds of the servitude by which we were held as captives, that He might restore us to our ancient liberty, it is fitting and advantageous that those whom Nature has made free, and whom the law of nations has made subject to the yoke of servitude, should be restored, by enfranchisement, to that liberty in which they were born." ¹ This passage became authoritative for the Middle Ages, as well for the point of view of the doctrine and the sanction of it, as for its substance. It is a familiar fact that the current reason then alleged for enfranchisements was one's soul's health in the realization of a high Christian ideal. About 825 Bishop Jonas, of Orleans, asks: "Why are not master and slave, rich and poor, equal by nature, since they have one Lord in heaven, who is not a respecter of persons? . . . The powerful and rich, taught by these (church fathers), recognize their slaves and the poor as equal to themselves by nature." ² In the twelfth century Bishop Ivo writes: "If we consult the institutes of God, and the law of nature, in which there is neither bond nor free," etc.³ In the thirteenth century the doctrine appears in Bracton.⁴ When describing the classes of men as free, villains, serfs, etc., he says: "Before God, there is no acceptance of men as free, or of men as slaves." Here we see the doctrine, such as the churchmen had been elaborating it, with its scriptural warrant, pass into the English common law.

¹ Epistles, book vi, ep. 12; 77 Migne, 803.

² "De Instit. Laic.," ii, 22; 106 Migne, 213. He quotes Coloss, iv, 1.

* Epist. 221; 162 Migne, 226. * Book i, eh. 8, ed. Twiss, 1878.

In the fourteenth century the kings of France, in enfranchising the communes on the domains, repeatedly allege this doctrine as one of their motives.¹ Undoubtedly, the real motive was that more revenue could be got from them by taxing them as communes than by exacting feudal dues from the members as serfs, but it all helped to spread the doctrine as an idea of what would be "right."

This review now shows that the doctrine of liberty and equality by "nature," by birth, and by natural right was not by any means an eighteenth-century dogma. It had been growing and spreading for eighteen hundred years. It had begun in skepticism about the fairness of slavery; it could not begin with anything else. It went on until it became a philosophical notion of liberty, meaning the natural right of every one to pursue happiness in his own way, and according to his own ideal of it; it could not stop short of that.

This dogma did not emancipate slaves or serfs. During a thousand years, from the sixth to the sixteenth century, the peasants of France and England passed through the stages of slavery, serfdom, villainage, and compulsory settlement,² by persistent struggles of their

¹ The originals of these documents are not accessible to me. One of Philippe le Bel is quoted: "Seeing that every creature who is formed in the image of our Lord ought, in general, to be free by natural right," etc.; and one by Louis le Hutin: "Seeing that, by the right of nature, each one ought to be born free," etc.

* In September, 1860, the correspondent of the "Augsbürger Allgemeine Zeitung" wrote from New York that the correct solution of the American slavery question would be to determine upon five steps: 1, forbid separation of negro families; 2, bind the slaves to the soil; 3, change them into serfs; 4, change serfdom to villainage; 5, abolish the last. (Quoted by Rodbertus, with approval, in Hildebrand's "Jahrbücher," II, 266.) This is as refined and beautiful an application of the "teachings of history" as could possibly have been made to that case, yet it requires very little knowledge of the case as it

118 EARTH HUNGER AND OTHER ESSAYS

own, aided by economic improvements and political vicissitudes, but the dogma of natural rights was aiding them all the time, by undermining the institutions of the law, and by destroying the confidence of the ruling classes, so far as they were religious and humane, in the justice of the actual situation.

And so the most important fact in regard to the history of the dogma of natural liberty is that that dogma has never had an historical foundation, but is the purest example that could be brought forward of an out-and-out *a priori* dogma; that this dogma, among the most favored nations, helped and sustained the emancipation of the masses; and that, by contagion, it has, in the nineteenth century, spread liberty to the uttermost parts of the earth. At no time during this movement could anybody, by looking backward to history, have found any warrant for the next step to be made in advance; on the contrary, he would have found only warning not to do anything. Such must always be the effect of any appeal to history, as to what we ought to do or as to what ought to be. It is a strange situation in which we find ourselves, when those of us who are most unfriendly to "metaphysics" and have most enthusiastic devotion to history, find ourselves compelled to remonstrate against half-educated denial of what speculative philosophy has done and may do for mankind, and also to remonstrate against the cant of an historical method which makes both history and method ridiculous. In the crisis of a modern discussion to go off and begin to talk about history is the last and best advice of reaction and obscurantism.

Let it be noticed also that from our present standpoint

really stood to see that this program was as unpractical and pedantic as the wildest proposition which could have been made by an *a priori* philosopher.

this doctrine has lost nearly all the arguments which were ever brought to its support. The notion of natural rights is not now held by anybody in the sense of reference to some original historical state of the human race. The biblical scholars would scarcely avow the exegesis by which the doctrine was got out of the Scriptures; the dogma to-day does not stand on the ground of an inference from any religious doctrine. The doctrine of evolution, instead of supporting the natural equality of all men, would give a demonstration of their inequality; and the doctrine of the struggle for existence would divorce liberty and equality as incompatible with each other. The doctrine, thus stripped of all the props which have been brought to its support, would remain only a poetic inspiration; but, if all this is admitted, if its historic legitimacy is all taken away, does that detract anything from the beneficence of the doctrine in history, render invalid a single institution which rests upon it now? Shall we any of us return into serfdom, because it is proved that our ancestors were emancipated under a delusion or a superstition?

On the other hand, it is when we turn to the present and the future that the rectification of the dogma becomes all-important. The anarchists of to-day have pushed the old dogma of natural liberty to the extremest form of abstract deduction, and they propose to make it a program of action. They therefore make of it a principle of endless revolution. If, however, the basis on which it once rested is gone, it is impossible that we should hold and use it any more. With our present knowledge of history, we know that no men on earth ever have had liberty in the sense of unrestrainedness of action. The very conception is elusive; it is impossible to reduce it to such form that it could be verified,

120 EARTH HUNGER AND OTHER ESSAYS

for the reason that it is non-human, non-earthly; it never could exist on this earth and among these men. The notion of liberty, and of the things to which it pertains, has changed, even in modern history, from age to age. Never in the history of the world has military service weighed on large bodies of men as it does now on the men of the European continent. It is doubtful if it would ever have been endured; yet the present victims of it do not appear to consider it inconsistent with liberty. Sumptuary laws about dress would raise a riot in any American state; a prohibitory law would have raised a riot among people who did not directly resist sumptuary laws. A civil officer in France, before the Revolution, who had bought or inherited his office, had a degree of independence and liberty in it which the nineteenth-century official never dreams of; the more this nineteenth-century civil and political liberty is perfected, the more it appears, on the contrary, that under it an official has freedom of opinion and independence of action only at the peril of his livelihood.

So far our task has been comparatively easy. It requires only industry to follow out the history of what men have thought about anything. To find out how things have actually taken place in the life of the human race is a task which can never be more than approximately performed, in spite of all our talk about history. To interpret the history is still another task, of a much more difficult character.¹

¹ The Emperor Paul, of Russia, showed what may be done in the interpretation of history. When he heard of the excesses of the French Revolution, he turned to his sons and said, "Now you see that it is necessary to treat men like dogs." (Masson, "M6moires sur la Russie," 219). It is true that he was crazy, but we all have our personal limitations, which are most important when we undertake interpretation.

Liberty in History and Institutions

We are blinded by the common use of language to the fact that all social actions are attended by reactions. To take the commonest and often noticed instance, we talk of buyers and sellers as if they were independent of each other; we call those who have money buyers, and those who have goods sellers. We find, however, that no transaction can be correctly understood until we regard it as an exchange, having two parts, an action and a reaction, equal and opposite. In the language of the market, also, we speak of being long or short of the market, but every one who has either money or goods is in the market, and is both long and short of it all the time. He is either long of goods and short of money, or long of money and short of goods. The philosophy of the market cannot be understood unless we study it from this point of view.

The fallacy of a great many doctrines in social science, and the philosophy of a great many errors in social policy, is that they divorce the action from the reaction. If there is not a reaction with equivalence and equilibrium, then there is an expenditure from one side toward the other, a drain of force from one side and an accumulation of it at another, until there come a crisis and a redistribution. When the return and equivalence are suspended, there is a necessary continuance of the movement, in the tendency toward a stable equilibrium of another kind, which would come about when all the force had been transferred. For instance, you give good schools for less than their market value; you must, then, give free schools; then you must give free books and stationery; then "hot breakfasts,"¹ and so on in succession.

¹ "The Economist," 1889, p. 430.

122 EARTH HUNGER AND OTHER ESSAYS

The fact that one thing has been given is made an argument for more. You are told: You have established free schools; "why should not you" do whatever else the proponent favors? The argument that because you have given a man one thing you ought to give him another is not good in logic, but it is intensely strong in human nature and in history. The saying is attributed to Danton, the revolutionist: "The revolution came, and I and all those like me plunged into it. The *ancien regime* had given us a good education without opening an outlet for our talents." The great fallacy of socialistic schemes is that they break off the social reaction. A man is to have something simply because he is a man — that is, simply because he is here. He is not to be called upon to render any return for it, except to stay. On the other hand, the tax-payer, who has provided all there is, is not on that account to be entitled to a recompense of any kind. He has only incurred a new liability, *viz.*, to do the next thing which is demanded of him. The only stable equilibrium under this system would be universal contentment. But bounty does not lead to contentment, and cannot, until the recipient has everything for nothing. The movement, therefore, runs to a crisis, a redistribution, a recommencement, and the further it goes, the nearer it approaches anarchy, impoverishment, and barbarism.

At various times, in primitive society, in ancient Egypt, and in the Roman Empire, when women have possessed the forces which were efficient in the society, they have had dominion over men. They abused the power when they had it, too. At other times the subjection of women has been due to the fact that they needed protection; they did not possess the forces which, at the time, were required for self-defense in the society. But

since they accepted protection, they could not be free; when they fell into dependence, they could not be independent. If they could claim protection and at the same time dominion, they would be privileged; and any one who enjoys privilege which some one else has to furnish, is of course superior. Hence, there are three positions only in social relations: servitude with inferiority, privilege with superiority, and a middle state of neither, with equality.

Peasant proprietors turn into colons and serfs through misery.¹ They abandon personal liberty in order to get protection, and they accept servitude to get security, because they find that they have not enough of the force which prevails in the society to defend themselves. Their lords maintain superiority and exact for themselves social privilege. Such was the course of things at the downfall of the Roman Empire. When things began to improve in western Europe, the slave thought that it was comparative freedom when he was bound to the soil, because his family could not be separated, and he could not be removed from his home. A villain, however, would have thought it slavery to be reduced to the status of the serf, with unlimited servitudes to render. The serf, in his turn, thought it immeasurable gain to get his servitudes made definite, although a free man would have thought it slavery to be reduced to villainage. A villain could not go if he wanted to, but he could not be evicted if any one wanted to send him away. A free man can go if he wants to, and may be evicted if the other party chooses. At what point does the servitude of the villain, who must stay and work and pay

¹ This is a disputed point, on which a great deal has been written, with very great divergence of opinion. The above seems to me to be the best opinion.

124 EARTH HUNGER AND OTHER ESSAYS

feudal dues, turn into the blessing of the free tenant, who has fixity of tenure, but works and enjoys subject to taxes? Evidently it is at that point where the rights and benefits of holding and using become equal to the burdens and duties of taking and using — always with reference to the comparative value of other chances which present themselves. If a villain wants to stay, it is a privilege that no one can evict him; if he wants to go, it is a servitude that some one can retain him. If the landlord wants to force tenants to stay and till his land, it is a privilege for him to be able to force them to stay;¹ if the landlord wants to turn his land to other use, it is a servitude for him if he cannot evict his tenants. The modern peasant proprietor is one in whose status all these privileges and servitudes have met, coalesced, and disappeared, so that they are all summed up in the question whether his land is worth holding and tilling, subject to the taxes which must be paid on it.

In all these variations and mutations of social status and of the relations of classes, which we might pursue with any amount of detail through the history of the last fifteen hundred years, where is there any such thing as personal liberty of the sort which means doing as one likes? None have had it but those who were privileged — that is to say, it has lain entirely outside of civil liberty. It has had the form of an artificial social monopoly, and the fact has come out distinctly that liberty to do as you please in this world is only possible as a monopoly, but that it is the most valuable monopoly in the world, provided you can get it as a monopoly. You would realize it when you got into the position of Nero, or Louis XIV, or Catharine II.

¹ It was so in Denmark in the last century. See Falbe-Hansen, "Stavnsbaands-Løsningen," and the "Nation," 1889, p. 123.

We may gather some other cases in point.

A man who expects to go to the alms-house in his old age may regard a law of settlement as his patent of security, because it defines and secures his place of refuge. A man who is in the same status, but who is determined to better his condition by energy and enterprise, and tries to move, finds the law of settlement a curse, which may hold him down and force him to become a pauper.

If you are not able to make your own way in the world, you want to be protected by status; if you have ambition and ability to make a career for yourself, you find that status holds you down. In the former case it holds you up, or keeps you from falling; in the latter it holds you down, or keeps you from rising, on the whole, therefore, it keeps the society stagnant. If numbers do not increase very much, there may not be much suffering; if numbers do increase, there will be mendicancy, pauperism, vagabondage, and brigandage. It is a matter of great surprise that so little investigation has been expended on the vagabondage of the Middle Ages; the students of that period have kept their attention on those who were inside of its institutions, but the test of the mediaeval system is to be found in a study of those who were kept out of its institutions.

If it is a mark of a free man, as in early Rome, to do military duty, every one may regard that function as a right or privilege rather than as a burden or duty; it may carry with it privileges of citizenship which make it worth more than it costs. If, however, the privileges of citizenship are lost and the burden of military duty increases, men will, as in the Dark Ages, sacrifice personal liberty as well as civil liberty in order to get rid of military duty. If, as in Russia, at least formerly, the privileges of citizenship are *nil*, and the burdens of mili-

126 EARTH HUNGER AND OTHER ESSAYS

tary duty very heavy, to be taken as a soldier is like incurring a capital sentence.

If a man enjoys a position of advantage compared with others, he is anxious to entail it on his children; if he is under shame or disadvantage, he is anxious to break the entail. One who is born of a duke is anxious to maintain hereditaryness, but one who is born of the hangman rebels against it. The two are part of one system, and, in the long run, must stand or fall together.

He who is not able to attain to his standards of happiness by his own efforts is one of the "weak;" he does not want to be let alone; he wants some one to come and help him. He who is confident of his own power to accomplish his own purposes, wants to be let alone; he is "strong" and resents interference. In the long run, however, he who may be called upon for aid in the former case will insist on his right to interfere in the latter case, and he who claims freedom in the latter case will find that he must bear his own burdens in the former. Any other course would simply lead to a new system of privilege and servitude, for he who can choose his own ends and make somebody else help him attain them has realized privilege in its old and ever-abiding sense.

Privilege and servitude, therefore, when we classify them with reference to our present study, are the poles between which all forms of social status lie. Rights lie on the side toward privilege; duties lie on the side toward servitude. Rights and duties, however, are not separated by any gulf nor even by a line. They overlap each other. Not only are they parallel and connected by the social reaction, but also to different men or at different times the same thing often presents itself either as a right or a duty, *e.g.*, military duty. Somewhere between, however, lies the middle point or neutral point,

where there is neither privilege nor servitude, but where the rights and duties are in equilibrium, and that status is civil liberty in the only sense in which it is thinkable or realizable in laws, institutions, and history.

We have seen cases above in which the same men were under privilege and servitude at the same time, having accepted one as the price of the other. We have also seen cases in which the privilege of some involved the servitude of others. The former class of cases have been those which have had the most unhappy issue, for the privileges have often faded with time and the servitudes have been intensified. It is a bargain which a rational being can rarely afford to make, to incur servitude in the hope of privilege. Herein lies the curse of socialistic schemes when viewed from the side of the supposed beneficiary — they are a bait to defraud him of his liberty. I do not see how the German accident and workman's insurance can fail to act as a law of settlement, thereby, under a pretense of offering the workman security, robbing him of his best chance of improving his position. Still, the cases where a man incurs his own servitude for the sake of his own privilege are not as bad in some respects as those in which some have privileges for which others bear servitudes.

The modern jural state, at least of the Anglo-American type, by its hostility to privileges and servitudes, if not by direct analytical definition of its purpose, aims to realize the above definition of liberty. It is the one which fills our institutions at their best, and the one which forms the stem of our best civil and social ideals. If all privileges and all servitudes are abolished, the individual finds that there are no prescriptions left either to lift him up or to hold him down. He simply has all his chances left open that he may make out of

128 EARTH HUNGER AND OTHER ESSAYS

himself all there is in him. This is individualism and atomism.¹ There is absolutely no escape from it except back into the system of privileges and servitudes. The doctrine of the former is that a man has a right to make the most of himself to attain the ends of his existence; the doctrine of the latter is that a man has a right to whatever he needs to attain the ends of his existence. If the latter is true, then any one who is bound to furnish him what he needs is under servitude to him.

The fact, however, is rapidly making itself felt that this civil liberty of the modern type is a high and costly thing. A generation which has been glorying in it and heralding it to all the world as a boon and a blessing, to be had for the taking and to be enjoyed for nothing, begins to cry out that it is too great for them; that they cannot attain to it nor even bear it; that to be a free man means to come up to the standard and be it; and that it is asking too much of human nature. They want somebody to come and help them to be free. It has always been so. Men have failed of freedom not because kings, nobles, or priests enslaved them, but because liberty was too high and great for them. They would not rise to it; they would submit to any servitude rather; therefore they get servitude.

The strain of liberty is in the demand which it makes on the whole mass of the people for perpetual activity of reason and conscience to re-examine rights and duties, and to readjust their equilibrium. Civil liberty is not a scientific fact. It is not in the order of nature. It is not positive and objective; therefore it is not capable

¹ The writer of an otherwise good book (Raubert, "Urgeschichte des Menschen," ii, 291, ff.) indulges in an extraordinary screed against the atomists. He reaches the conclusion that fate is the state. To me it seems that fate is one's father and mother.

of constant and easy verification. It is historical and institutional. That means, however, that it is in the flux and change of civilization, wherefore the reason and conscience of men are kept in constant activity to re-examine accepted principles, and to reach new and more nearly correct solution of problems. On account of this activity, institutions are modified constantly, and the concrete contents of the public creed, about rights and duties, are undergoing constant change. It does not appear that this can ever be otherwise. There is an assumption that we can attain to social stability by finding out the right "form of government," or the correct "social system," but no ground for such a notion can be found in philosophy or history.¹ The equilibrium of rights and duties constitutes the terms on which the struggle for existence is carried on in a given society, after the reason and conscience of the community have pronounced judgment on those terms. The very highest conception of the state is that it is an organization for bringing that judgment to an expression in the constitution and laws. A state, therefore, is good, bad, or indifferent, according to the directness and correctness with which it brings to an expression the best reason and conscience of the people, and embodies their judgment in institutions and laws. The state, therefore, lives by deliberation and discussion, and by tacit or overt expressions of the major opinion.

The fact that laws and institutions must be constantly remolded in the progress of time by the active reason

¹ One of the most remarkable signs of the confusion reigning in social science is the fact that current discussion is marked by an attempt to force positive character upon the doctrines of the state, or to make a science of "political science," which never can be anything but historical and institutional; and at the same time to deny scientific character to economic laws and to insist that they are historical and institutional.

130 EARTH HUNGER AND OTHER ESSAYS

and conscience of the people, is what has probably given rise to the notion, just now so popular, that ethical considerations do, or ought to, regulate legislation and social relations. The doctrine, however, that institutions must in the course of generations slowly change to conform to social conditions and social forces, according to the mature convictions of great masses of men, is a very different thing from the notion that rights and duties should be at the sport of all the crude notions which, from time to time, may gain the assent of even an important group of the population.

Among the most important tides of thought at the present time which are hostile to liberty are socialism which always has to assume a controlling organ to overrule personal liberty and set aside civil liberty, in order to bring about what the socialist authorities have decided shall be done; nationalism, really a cognate of socialism, with opposition to emigration or immigration; state absolutism, which, in its newest form, insists that the individual exists for the state; and altruism, which, when put forward as an absolute dogma, is as anti-social as selfishness. All these are only the latest forms of the devices by which some men live at the expense of others. In their essence and principle they are as old as history, and not even the device of making the victims vote away their own liberty, apparently of their own free will, because they think they ought to do so, has anything new in it.