

Positive Law, Manners or Morals, and Freedom

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In the discourse given last Sunday reference was made to the idea that what we have in this world today is not a civilization but a barbarism, which at best might be called an intellectual barbarism. It seemed to me that it would be of value for us to go more deeply into the reasons why we're justified in not regarding our present state of social and governmental development as a true civilization.

Some time ago I read an article written by an English gentleman in which he divided our field of activities into three zones: first, those governed by positive law; second, the zone of manners or morals; and third, the zone of freedom.¹ He made the point that the tendency today is to narrow the zone of manners and morals and extend the zone of positive law, and spoke of it with regret. People can govern themselves, in certain states or stages of development, so largely by manners and morals that the office of positive law becomes restricted. This generally applies to what we might call an aristocratic society where the code of the gentleman rules. We live in a day when this principle of governance tends to become less and less, and the authoritarian principle of positive law tends to become more and more applicable in the control of our lives. This, I think, illustrates the difference between a truly civilized society and one which is essentially a barbarism or, at best, an intellectual barbarism.

The principle of positive law is coercion. Law is something that must be obeyed. If you do not obey it, you are made to suffer. You are coerced by the law enforcing machinery into conformity—punished for a violation by being imprisoned or fined, and in some societies by various other means. Along with this there is a good deal of the view that morality is simply obedience to law. There are lawyers who are so little developed in their moral sense that they hold to this conception. The positive law is the judgment of the authority that rules, and in a democracy that authority is the representatives elected by the people. The conception, therefore, is essentially collective and coercive—a will opposed by a power too great for the individual to resist it.

Now, I think that this point of view that lays emphasis upon positive law really implies a lack of moral sense. Society survives the forces that would destroy it by means of collective coercion. Where the principle of morals and manners, or rather the zone in which morals and manners govern, we have the attitudes of behaving in ways that are acceptable more because one feels that they are right than because of a threat of coercion. This, I suggest, becomes the dominant principle in governments as a society progresses away from barbarism to civilization, and that when a society becomes completely civilized, all positive or coercive law will vanish and governance will be wholly by the principle of morals and manners.

¹ John Fletcher Moulton, "Law and Manners," *The Atlantic Monthly* (July 1924): 1-4.

The third zone which was called that of freedom applies to free choice in zones where there is no legal or moral imperative. Such zones exist in our fields of various kinds of conduct such as selecting one or another meal at a restaurant, choosing to travel this way or that way when there is no directive compelling one; and there is a fair zone of freedom still left to us. It must be admitted that the human nature that we now know is so imperfect that governance by morals and manners and with a maximum zone of freedom is not practical, for there are many, unfortunately, in our society who are definitely antisocial and morally unevolved; and if they are not restrained, society itself would collapse into a wild anarchy where the strong would build up a coercive power to dominate others, as was true, more or less, in the Dark and Middle Ages or the days of the robber barons in Europe. Therefore, we can say that for us governance by positive law is in large measure unavoidable. Nonetheless, it does not belong to what we may call an ideal society, and the fact that since the days of the Founding Fathers there has been a progressive encroachment by positive law upon the whole field of governance, including governance by morals and manners, we can conclude that we are witnessing what is essentially a decline in virtue, a decline from a more civilized state to a less civilized state.

This problem has become rather serious. How much law do we have? Some time ago I read an article written by the late Elihu Root in which he said that there were, in that day, something more than a million laws and that in many cases they were contradictory and produced, therefore, a situation that was impossible. More accurate information, apparently, which I derived from a book written by a Dr. Wilson, a psychologist, and which he entitled *My Sixth Convict*, a certain research was reported on the body of laws that were then existing. The number was 1,300,000, and further legislation has added greatly to that. When it is borne in mind that it is a legal principle that ignorance of the law is no excuse, we have a situation that is wholly irrational. I submit that knowledge of 1,300,000 laws is a psychological impossibility even for legal specialists, and all the more for the layman. Ignorance of the law, therefore, is inevitable; hence, the dictum that ignorance of the law is no excuse becomes wholly unreasonable and inevitably leads to injustice. This is one of the reasons for judging our country as being among those that are barbaric.

Is it possible to live without the principle of coercive law? Admittedly, the answer is no, if we consider the present situation; but granting that there is such a thing as a true evolution, not only in the narrow biologic or cosmic sense, but in a sense of an unfolding of a latent inner consciousness into outer form whereby man becomes more than what he is now or has been, then we can view as possible an ideal in which coercive law becomes less necessary and would become more and more reduced. I submit that the ideal for the future should be a state in which all government, in the sense of coercion, would cease and that in place of it all governance would be by means of considerations of manners and morals. This would be, then, quite in line with the underlying ideal envisaged in the Lockian political philosophy, namely, that all coercive government is only a necessary evil and the less of it that we can achieve without collapse of order, the better. We look, then, upon government as an evil—that is, government in the coercive sense.

But is it true that no people have ever been able to live without coercive government? Is it a sort of a utopian ideal that never will be possible? Frankly, I am not that pessimistic. However pessimistic I am about what we see now as being the existent condition, I am not pessimistic about this possibility.

Before a trip which we made up to Alaska in 1964, I would have thought that the fulfillment of this ideal was a matter of several thousand years in the future, but we had a very revealing experience in a visit to the Eskimo peoples, after having become somewhat acquainted with them through the writings of Sally Carrighar, who over a period of more than a decade had come to know the Eskimos very intimately. In the book, *Moonlight at Midday*, in chapter seven, she referred to a statement of the president of the native council of Unalakleet, in which he said:

“When the missionary came, he wanted to see our laws. I told him we didn’t have any. ‘But you must have laws,’ he said. ‘You must get together and make some laws and write them down.’ Now, wasn’t that silly,” the Eskimo commented, “when everybody knows what is right and wrong?”²

In other words, it appears that before the coming of the white man, the Eskimos lived in that northern country without coercive institutions. Apparently, they had no one like a chief who imposed his will. They had shaman, men apparently of some real psychological capacity who could help them in their problems. They had men as individuals who stood out and were more influential in the clans and tribes than others, but usually these were those who were more skillful in the hunt and generous in the sharing of the fruits of the hunt. There were customs, but not—apparently not enforced by any formal coercion. This brings up some very interesting matters, and I read at length a quotation from this book throwing a little more light on this. Sally Carrighar was a naturalist and was on an appropriation from a foundation fund for certain research work on the animals, particularly the sea mammals, in Alaska. She says:

When my field work was done, I returned to Nome and began writing the animal book. Writing and housekeeping don’t combine very well for me, and when the disorder became chaotic, I sent for an Eskimo friend, Bertha Aukon. She would always go first to the kitchen, tear off the last outdated sheet from the calendar, put clothes to soak, and, while she was washing dishes, would bake a cake. Before she would leave, the house would be spotless and food enough would have been prepared to last several days—all without any instructions. She could thaw out the complicated plumbing when need be, and she repaired my oil stoves as skillfully as a mechanic. Besides helping other distraught housekeepers, she took care of her children, her parents, and a sick sister and brother-in-law and three of their young ones. I used to think that Eskimos of her quality were the good fruit of the frozen North, of the arctic earth which is so unproductive in other ways.

Watching her one day, I asked impulsively, “Bertha, who made you the woman you are?”

² Sally Carrighar, *Moonlight at Midday* (New York: Alfred A. Knopf, 1959), 127-128.

“My mother,” she answered. “When I was a child, my mother was always telling us how we should be.”

I said that the parents in Unalakleet did not do that, they never corrected their children. She laughed.

“I think they do,” she said. “All Eskimo parents talk to their children about being good. They only do it when they are alone, though. The children would be embarrassed if anyone heard them.” That, then, was the reason that there had not seemed to be any particular training in the homes at Unalakleet—only no training when I was present.

Bertha had other comments on bringing up children: “Eskimos never let a child know when we think it is cute. We never laugh. We just can’t stand it to see a child showing off.”

She said further: “An Eskimo father never tries to act young. He doesn’t pretend that he is another boy with his son. If he did, when he had to correct the child, he would not have—” She sought for the word. Authority? Bertha nodded. “A child doesn’t know what to think if his father acts like a boy one day and the next day he demands respect.” That remark made me realize that among the Eskimos I had known there was always dignity in an adult’s relationship with a child. However, the dignity might be combined with a whimsical tenderness.

After awhile Bertha’s family took all of her time, and then Alma Pauwok came in to help me. Slender and shy, Alma seemed like a girl, but she was the mother of four, two of them old enough to be going to school. With her too I brought up the subject of rearing children. I asked how she made hers behave. “Like everybody. We talk to them.” Just talk? “Yes, every day we talk to them about being nice.” I asked her if she explained “niceness” —if she tried to give to her children a picture of what was expected of them. She said, “Children know. Nobody has to tell them.” I asked, “Do you mean they watch you, and you give them a good example?” “We try to do that,” she answered, “but they just know what goodness is. When they are born, they know.” Then what did she tell them? “We keep reminding them when they forget.”³

Now, this brings up a point of both philosophical and psychological interest. In the history of philosophy those who have been called the Rationalists, namely, the school founded by Descartes, have claimed that there existed in man that which was called innate ideas. This was challenged, as you may remember, by the empiric school of thought, and to this day does not have any particular standing as an idea. Nonetheless, to make a personal confession, I have always been oriented to the

³ Ibid., 121-123.

conception that in some sense we come here with an innate knowledge. Not a knowledge born, brought forth completely in conceptual terms, but a sense of direction, as it were, perhaps what we might call a formless knowledge that was far more fundamental than the knowledge derived . . .⁴ Kant's transcendental principles of the aesthetic and the understanding is in a sense a reaffirmation that we do come, indeed, with something of structure already in our psyches when we are born. He says, in fact, no doubt that all knowledge begins with experience, but it does not therefore follow that all knowledge comes from experience.⁵ Thus the innate knowledge that may be there back in the soul of a newborn is not brought forth into explicit form, to be sure, before experience. Experience, then, would not be the source of this part of our knowledge, but simply the occasion for its manifestation. Jung grants, in a somewhat similar way, that there is something which you might call a psychical or psychological tendency which while not explicit in the newborn consciousness, nonetheless, determines its direction and its valuation so that not all that we are can be reduced simply to the impact of sense experience. This is fundamental in the differentiation between the attitude and functional psychological types in Jung's psychology.

What is being suggested by this reference to the Eskimos is that there is in man an innate capacity for a moral orientation as well as a capacity that is ideational, and that therefore the newborn child carries with him in a sort of formless state a sense for that which is right and wrong. The importance of the Eskimo example is this: that it is not a case of a theoretical proposition, a theoretical possibility that we wish to entertain as an ideal, but rather that it has been a basis for a viable way of life that has worked in the northland where the Eskimos live. From what we can learn of them, they do not have any military history, that in their early days before the contact with the white man, they did not have an organized police of any sort; nonetheless, they were able to live in a very harsh environment, and out of those conditions emerged as a happy and very socially responsible people. They are non-competitive. They discourage all controversy. They give a kindly welcome with a smile to the visiting stranger, and it is not an artificial smile, but a smile with real warmth. They have a sense of a feeling for the other. There have been a few murders among them. There have been those who have departed from the normal course of good social conduct, but from all the evidence that we can gather, that has been a very minor fact in their lives—not the gross major thing that it is in our society. So now what I would like to suggest is that in the moral sense, in the fundamental moral sense, the Eskimos have given us an example of what a truly civilized life would be. The result is that I feel more than a little ashamed of our culture with its heavy emphasis on the principle of coercion, of compelling; its heavy emphasis upon the spirit of competition—the making of one's own achievement the result of injuring someone else as the competitor; the winning of the game at the price of making someone else the loser. These are things we will have to eradicate from our culture if we are ever to become civilized.

⁴ Something may be missing from the audio recording here. It seems clear that the sentence should have ended, “. . . derived from experience.”

⁵ Immanuel Kant, *Critique of Pure Reason*, trans. Norman Kemp Smith (New York: St. Martin's Press, 1965), 41.

There are certain other considerations which have a bearing upon the problem of becoming civilized that may be of interest at this time. In our current conception of democracy, we assume, implicitly at least, that one human being is a duplication essentially of another, and that therefore, recognizing no qualitative or quantitative distinctions, we treat them all as being equivalent to one another. This assumption is contrary to well-known psychological fact. Not all human beings are built upon the same pattern. They are not *tabula rasas*, or blank tablets, or zeros which become different merely by the impact upon these tablets of experience, as was assumed by John Locke. As Kant pointed out, we come with a structure in our consciousness. We are not simply empty. And then on top of that, as Dr. Carl G. Jung has noted, we have different individual psychologies: some of us are naturally born with an introverted orientation; some naturally with an extraverted orientation; some are predominant in the thinking function, some in the feeling, some in intuition, and some in sensation. And from these various combinations of attitude and functional type, we get a substantial number of subgroups. First, we may have an extraverted thinking type. His sense of reality would tend to be a conceptuality oriented to the external object. Or if you are an introverted thinking type, you would tend to orient to the unseen object. Conceptuality for him, the object of consciousness, would be the datum with which he works; whereas, with the extraverted thinking type, the object to whom he gives reality would tend to be the external *thing*. Another type could be the predominantly feeling type, also in the extraverted and introverted senses. An extraverted feeling type would be oriented to the external social situation, for instance; whereas, an introverted feeling type would be oriented to the felt values, let us say, rather than the external living objects. And then we have sensational types, both in an extraverted and introverted attitude. The extraverted sensational type is the most extraverted of all the functional types. He is conditioned, helplessly, by the external *thing*. The introverted sensational type is a difficult type for us to understand, and is manifested more frequently in the case of certain artists who, in painting, for instance, a given object, produce something that is more related to the effect of the object upon the consciousness of the painter, and so would construct something that does not look at all like the external photographic image. And finally, we have types that are the most mysterious of all, namely, the intuitive types, also in the extraverted and introverted attitudes. One who is an extraverted intuitive type is concerned in one sense with the external object, but not with its photographic or externally perceived actuality, but rather in the something hidden behind that appearance. This is the type that so often marks the professional prospector, the individual who goes over the earth looking for the unseen that may be indicated to him by the surface, but who is not concerned with merely that surface actuality, but rather to the hidden possibility behind the surface. In the typical well-developed case, he seeks the mineral value that is not there seen upon the surface. He seeks to discover, and when he has found, he may lose interest, for it is the search for the unseen external reality that interests him. So, he often fails to benefit financially from his external successes, but goes on hunting—ever hunting; the game being of more interest to him than the possession of wealth. Of most importance to him who is interested in either metaphysical philosophy or in the depths of the religious consciousness is the introverted intuitive type. This is the type that becomes preeminently the devotee, on one hand, or the metaphysical philosopher on the other. He becomes the kind of individual that can be very disturbing to the comfortable orientations of the

human mass. They are the ones that became the prophets in Israel, the great founders of religions and of metaphysical philosophies.

The picture is not yet complete, because it has been found that the combinations are a little more complex; for, in addition to the primary function, it is found that there are also auxiliary functions. Thus, an introverted thinking type may have as his auxiliary function either sensation or intuition. If he is oriented—if his auxiliary function is sensation, we could have a philosophic individual, or a theoretical physicist, or other theoretical scientist; on the other hand, if his auxiliary function were intuition, he would tend to be the metaphysician—the one who sees deep into that which for most men lies deep in the collective unconscious. But he would suppress, automatically, within himself functions that tend to be incompatible with his predominant attitude and functions. Thus, for this particular type, there would be a tendency to undervalue or devalue the extraverted attitude. It would tend to seem crude to him. And, he would tend also to repress feeling which, being a rational function like thinking but governed by a different law from that of thinking, interferes with the thinking process so that this is repressed into the unconscious, more or less, and remains, more or less, barbaric. And if his primary auxiliary function is intuition, then there would be a tendency to repress the sensational factor—a tendency to be unconscious, almost, with respect to the external situation. Well, in this way we can go through several combinations. I think, if I remember correctly, we can develop something like thirty-two subtypes.

Now, the conditions that are optimum for the development of one type as contrasted to another vary quite widely. That condition which is favorable to the thinker may be restrictive and even barren with respect to a sensationist, and vice-versa—and the same with respect to feeling types, and intuitional types, in both the attitudes. Now, since men and women, even from birth, are oriented to these various individual psychologies, and since they all find their optimum conditions favorable to their own self-expression and fulfillment, it is a great wrong to assume that all human beings have the same type of orientation, the same type of interests, or are served faithfully by the same conditions. As an example, take a strongly developed extraverted type, perhaps a thinking sensational type or a sensational thinking type, he may glory in a competitive situation. He may prosper through a multitude of relationships, and may grow through the very process of struggle in the external field. Competition to him tends to be a challenge, an opportunity—an opportunity to win. Since there is generally lacking here fine sensitivity of feeling, there is not a strong sense of guilt or of having done wrong in causing others to fail and to be defeated as a result of his winning. He fulfills himself in the objective situation, in the struggle and the clash of things and peoples. On the other hand, let us take a strongly introverted type. He does not prosper in a multiplicity of relationships in a competitive setting, but rather in a monopoly of relationships. Therefore, if a society is constructed upon the basis that is oriented, let us say, to an extraverted type, and this I would say is very clearly the case in our own socio-legal organization of our society, then the conditions thus imposed release the resources of a given attitude type while crushing the opposite attitude type. If the object of government is to bring about equality of freedom or condition under which all individuals can prosper, then organization must be something more than oriented to one attitude or one functional type. It no longer becomes a simple matter to devise a just society.

The thought has come to me long ago that what is needed is the conception of a complex social organization in which differences of type or caste are given recognition and that the privileges and responsibilities of each particular type pattern should be recognized. One type may need freedoms and privileges associated with the appropriate responsibilities that are quite different from those of another type. Some should enjoy certain legal immunities, while others should enjoy other legal immunities, corresponding in each case to a difference to the responsibilities. The total picture becomes very complex. Many years ago I did a considerable amount of thinking upon this problem and produced an unfinished manuscript that had bearing upon it, and sometime it may be worthwhile to render this available even though it is unfinished.⁶

But the point I wish to make now, that democracy, and the various dictatorships, and the various forms of government that we have seen in most of the world, have failed to take into account differences of type or caste that are innate. And in our own democracy in particular, great injustice is done by taking this position. We expect of all men the same thing. We grant them the same privileges, the same immunities, and hold them responsible for the same obligations. Whereas, since men are not made over the same mold, these regulations will work for the release of certain types, afford them the opportunity for the maximum of self-fulfillment, while they at the same time are highly repressive with respect to other types and castes.

This, I think, will be all that we'll say at this time; just a hint of the complexity of the problem of attaining a social organization which can serve justice.

⁶ This may be a reference to "On the Significance of Liberalism," which Wolff references in *The Vertical Thought Movement* as "a volume I plan to publish in the near future," and from which he includes a long quotation.