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Law and the Climate of Consent

A. B. Bonds, Jr.*

IN THE FIRST SENTENCE of the Declaration of Independence, Jefferson affirms that "A people proclaiming their independence should declare the causes impelling them to the separation." In the second sentence, he gives us the essence of his belief about the centuries of mankind's struggle for a free and responsible existence.

"All men," he declares, "are created equal, . . . (and) are endowed by their Creator with certain unalienable rights . . ." You know the lofty phrases that follow and tell us that among these rights are "life, liberty and the pursuit of happiness."

Then follows a key sentence: "To secure these rights governments are instituted among Men, deriving their just powers from the *consent* of the governed."

In these brief words lay the ferment that was to topple kingdoms, shatter empires and give hope to men who had known no hope in the ordering of their lives.

No man, Jefferson was saying, was to have a better or worse start than another. None would be forced to bare his head or bend his knee to another by reason of birth, rank, or vested powers. It is a creed which has continued to move Americans from Bunker Hill to Birmingham. It is a conviction which has swept through the jungles of Africa, the rice paddies of Asia, and the old, cobbled avenues of Europe.

Let me warn you that it is a dangerous creed. On the one hand, it can release in man the finest elements of aspiration and concern. On the other hand, if misunderstood, it is a creed which might produce a howling, futile anarchy.

In speaking with a group of distinguished jurists concerned with the fundamental mechanics of administering laws based upon consent, I want to start by defining what I mean by this term, "consent."

Philosophically and historically consent has meant that the end product of the legislative process is broadly representative

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[*Editor's Note:* This is an extract from an address delivered by Dr. Bonds to the annual Ohio Probate Judges' Convention, held in Cleveland early this year.]

of the will of the people. It also suggests that the people have chosen the administrative means by which they express their will. To the totalitarian mind, both truth and salvation are far more likely to be found in a collective entity rather than in the combined choices of many individual citizens. The method of communism, as Camus has pointed out, divides the community into executioners and victims, as well as the politically placid who are frightened into accepting the rule of those on top. But in our history, we have projected continually a stubborn belief in individual freedom. We have seen that belief generate a revolution and live through a Civil War and two World Wars. And, in spite of the trends of our time, there remains a broad, residual resistance to the centralizing of power in the government or in corporations. We might well add, therefore, that our notion of consent carries the concept of vigorous dissent as an indispensable element of our faith.

Within the Soviet Union, political consent is merely unquestioning orthodoxy. The communists have based their convictions about human nature on the Pavlovian psychology of conditioned behavior. This creed holds that man is a completely pliable creature who has no spiritual or cultural roots and who can be molded to fit the needs of the corporate state. As Max Lerner has said, the Soviets have made governmental organization central, while we make it instrumental.

Some years ago, when I was Chief of the Technical Assistance Mission in Education in a Middle Eastern nation, we undertook a project on village development. We worked for many months with the villagers to lead them to identify the specific goals which they most wanted to achieve. They wanted street lights, clean streets, renovation of their Mosque, vocational skills for their young people, and income-producing activities for themselves. We helped them design very inexpensive kerosene street lamps. We helped them to organize a volunteer citizens' group which cleaned their streets of a fantastic accumulation of debris. We opened a modest but effective training operation which taught vocational skills to the boys, and health and household skills to the girls. We set up an arrangement whereby individuals could raise rabbits and engage in bee-keeping to provide a significant increase in their incomes.

We felt that we could be justifiably proud of what these people had been able to do for themselves. A high official of

the government came out from the Capitol to inspect the project. Upon his return the activity was canceled. When we sought to learn why, we were told that he felt that "something dangerous was going on in that village." Further questioning revealed that on State visits to other villages the official was usually besieged by individuals bearing petitions of one kind or another. These petitions were handed to appropriate officials in the Central Government, who in due time presumably gave attention to them. "When I was in that village," he said, "no one gave me any petitions. There must be something dangerous going on there."

It is a sad little story, but it illustrates one of the most crucial problems in our world today. We believe in utilizing the fullest strength and initiative of our citizens in solving their own problems and the problems of their government as well. In many of the other nations of the world, however, there is a strongly imbedded distrust of the ability of the citizens to know what is best for them. Thus, in the lands where broad progress is most desperately needed, movement is usually confined to the energy and vision of centralized government.

In an utterly inescapable sense, the continuity and durability of the American concept of government is dependent upon an extremely high level of acceptance of individual responsibility. There are some forces loose in our land and in the world at large which could very well dampen our optimism for the survival of a government of free men. In our own nation, there is a discouraging loss of initiative and a wide-spread surrender to government, of functions which could and ought to be done at the local level. There are other factors which suggest that we have been more concerned with our own pleasures than with taking the actions essential to strengthen our total society.

Bluntly, I am saying that a society which spends as much on gambling as it does for national defense, which permits to organized crime an annual income of more than it spends on the education of its children, and which lays out 400% more for cosmetics than for churches, may well be in need of a spiritual overhaul!

There are many other barriers to responsible consent in our nation. We shall be operating below our best when extremists of the right or the left can muster strength to harass unduly our national existence.

There is a threat to the operation of self-government when we permit individuals to claim that the accident of their own color, creed, or economic success has conferred upon them a halo of indisputable privilege. Some responsible research should illuminate the full and unexamined implications of deliberate defiance of law as a means of bringing about or preventing social change. There is a continuing threat to our freedom in the sheer ignorance which is all too pervasive among our youth.

For years, Dr. H. H. Remmers of Purdue University conducted a nation-wide attitude poll among teen-agers. His research showed that:

More than half of them believed that most people are not capable of deciding what is best for themselves.

A total of 83% believed that we should help federal and local police maintain obedience by legalizing wiretapping and the third degree. Sixty percent felt that police should be given the duty of censoring books, movies, radio and TV.

About half of our teen-agers were ready to dispense with freedom of the press. One-fourth thought that police should be free to search your home or your person without a warrant. One-third believed free speech should be denied to certain people if it seemed convenient. Another 13% would restrict by law religious belief and worship. Is there any wonder that delinquency is increasing more rapidly than our population!

In my mind the greatest issue confronting free man everywhere is the necessity for developing, in each generation, a majority of citizens who will protect the concept of the dignity of the individual and the social forces which provide for liberty and justice under law. If the law should fail, there would follow the erosion and dissolution of the freedoms for which many men have paid over the centuries with their blood and courage.

But the freedom to choose the laws by which we will consent to be governed is of little worth if we lack an abiding understanding of the nature of man. Unless we are willing to strengthen our efforts and techniques of disciplining ourselves, to accept and support our own concept of responsible freedom, we may well become, just as did John F. Kennedy, the victim of the very freedom which he praised as the highest good.

There is a stern precondition to the rule of law in any aspect of our lives. We have consented to laws concerning speed and drunkenness, yet we continue to kill and maim over a million

persons per year in automobile accidents. We consent to love, honor and obey, but we continue to shatter two out of five marriages with divorce. We have consented to a system of self-government, but we threaten to assassinate the system through indifference, selfishness and sheer stupidity. Consent, then, is more than mere passive acquiescence or apathetic disregard. Consent is commitment, and commitment implies a willingness for ultimate sacrifice if need be, in order to sustain an environment which will uphold the majesty of the law.

There is a direct correlation in any society between emphasis on what we call the liberal or liberating arts and the support of a government of laws. Mathematics, engineering, astronomy and literature are noble servants when used by noble men. On the other hand, they can become the tools for tyranny in the hands of immoral and unprincipled persons. In our scramble for scientific ascendancy, we have tended, far too often, to forget our perspective on history and the urgency for commitment to ethical values. We have poured uncounted millions into splitting the atom, but we have given relatively little support to those elements of learning which distinguish free men from slaves. These studies in the liberal arts traditionally have given to man the power to form judgments, to identify and solve problems, and to expand his perception of the endless mystery of man's understanding of himself and of his God. But such subjects are still lowest on the academic totem pole at the time of the greatest expansion of higher education in our history.

In your magistral relationship with the law, I urge you to broaden among all our people the climate of understanding which will strengthen the concept of dynamic consent. I urge you to speak out to your fellow citizens and challenge them to learn better to distinguish between what is wise and unwise, and to give their proper supportive consent to that which is creative and just.

Demosthenes told us long ago: "Law is that which men should obey for many reasons and especially because every law is a discovery and gift of God, a judgment of wise men, a correction of voluntary and involuntary transgressions, a common agreement of the community in accordance with which all those who are in the community should live."

It was Cicero who said that a free man is one who is part of the legislative body of a community. It was Pericles who de-

scribed a true citizen as a contributor and not merely a participant in the blessings earned for him by others.

Not long ago I had the privilege of sitting in the gallery of the House of Representatives where a joint session was being held to welcome President Segni of Italy. It was an unforgettable experience. The members of the House were assembled with the Speaker of the House and the President of the Senate presiding. In succession there came the Senate of the United States, the members of the diplomatic corps, the Joint Chiefs of Staff, and finally the members of the President's Cabinet. As President Segni entered, I was caught up with reflection on the vast changes which already have occurred, and which are still under way in our world. In dealing with the new unity of man, this generation has a frontier as real and tangible as that faced by our ancestors who poured across the plains and the great mountains to populate this continent.

As I looked at the base of the Speaker's desk, I saw carved there a number of words representing the values by which our people have given a special flavor to the concept of government by free men. The words were:

Justice, Order, Liberty

As my eyes roamed over the House Chamber, they fell upon a quotation just above the Press Gallery. In that statement by Daniel Webster I found an orientation of patriotic purpose for all of us. These are his words:

Let us develop the resources of our land, call forth its powers, build up its institutions, promote all its great interests, and see whether we also in our day and generation may not perform something worthy to be remembered.

Can we meet the strains and tensions of both the domestic and foreign issues which beat upon the elements of our heritage? I say we can if the sources of our courage and creativeness have not been eroded away in a dreary procession of piecemeal surrender, of compromise, of accommodation, and of painless complacency, which are the milestones toward the dissolution of a free society.

It would be one of the classic ironies of history if we were to lose our freedom because we lacked the wisdom and discipline to use it. I say that we must work without thought of fatigue or discouragement to cultivate a positive consent for the rule of law

and a willingness to work to undergird it. The forces of conformity, fanaticism and rigidity from within have coupled with revolutionary communism from without to try to push Americans toward the final indignity of an ant-hill society.

If we are true to the basic doctrines of our Revolution we can find the strength and imaginative creativity to hold the fortress of freedom. Walt Whitman sent his book, *Leaves of Grass*, to Ralph Waldo Emerson with these words: "We have not come through centuries, castes, heroisms, fables, to halt in this land today."

Let us pledge our own lives to this courageous concept of the American dream.