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## State Control

### *A Backward Glance*

By FRANCIS NEILSON

I PRESUME IT IS the business of professors of law and sociology to explore the fields of economic and political activity and watch the revolutionary trends and movements that concern the mass of the people. Yet, it is seldom one comes across a book that appeals to a wide circle of readers, which in its unbiased treatment of such subjects bears the hallmark of a detached mind. Now that we are involved in a Constitutional crisis, it behooves us all to know how it has arisen and learn by what steps we have been taken to such a pass that the right of the citizens to their property is questioned by the Chief Executive.

I have been asked many times in recent years to recommend a work that would reveal the changes in political thought so plainly that the ordinary college student would be able to understand it. I know of no such volume. Nevertheless, it would not be difficult for any intelligent person who had lived through the economic and political upheavals since the turn of the century to compile a record of the strange happenings that have brought about wars, constitutional changes, and economic disasters.

One of the reasons why there is no desire on the part of the people to demand such an inquiry is that most of the politicians and nearly all the newspapers have directed the mind of the electorate to particular individuals and their personal associations with what are called un-American activities and not upon the movements that have carried them like straws upon a swift-running stream.

**The Problem and the Desire for a Solution**

AT A TIME of trade depression and increasing unemployment, what is more natural than the thought of impoverished men that there is something basically wrong with the economic system? For them, no statistician is needed to provide columns of comparative figures showing that wealth is unequally distributed. An empty belly is a convincing fact, and a hopeless morrow in the labor market is a prospect which saddens the mind. In this dilemma men seek a solution of their economic problems and are ready to grasp at any political or social nostrum that promises a change for the better.

It is not to be expected that men in such dire straits will question, much less doubt, the efficacy of the remedy they are urged to try. Experience of their grandsires goes for naught. Modern education has given them no information about past industrial crises that would enable them to judge the practical value of the "cures" for their woes.

They know nothing of the mass of literature which deals with the similar industrial conditions after the Napoleonic wars, and the intellectual battles that raged during the lifetime of Proudhon, Bakunin, and Marx.

Such subjects as individualism, anarchism, socialism, and Fabianism have been dealt with in hundreds of volumes since Proudhon wrote *L'utilité de la célébration du dimanche*, which was the precursor of the revolutionary schools of thought.

Therefore, there is no reason for anyone to think that the masses who lend their ears to our propagandists knew much about the "good tidings" of share-the-wealth schemes. The astonishing fact concerning the matter was that university alumni should advocate nostrums that were shattered in debate before they were born. Had they taken the trouble to read the story of the controversies of the propagandist intellectuals of the nineteenth century, the probability is they would have realized that discretion was the better part of revolution. For criteria there were at least twenty upheavals in European States after Napoleon was defeated, which might have served as restraints upon their ardor to plan utopias for wayward men. The books written by the American Fabians during that period revealed superficial notions of what they were advocating and little knowledge of the attempts that had been made to bring the workers into water-tight utopias by setting up governments of theorists and blueprint political architects.

The false reports that came from Russia, after the Treaty of Versailles was signed, led many of our writers astray. These were circulated by partisans, who believed Lenin was a Messiah who would, in time, solve

the age-long problem of the unequal distribution of wealth and abolish involuntary poverty. When Lincoln Steffens came to see me, after his visit to Russia and his famous interview with the leader of the revolution, he told me there were many obstacles to be surmounted but that the future, although it had lengthened away considerably, was bright. Now Steffens, at that time, was no Socialist, but he was ready to ponder seriously any ideas for social betterment, and he accepted the Russian experiment as a necessary test of revolutionary methods to solve economic and political problems of long standing.

There were scores of other men here in the United States who thought as he did, and in the years from 1920 onwards, I did not meet one whose sincerity for drastic reform could be questioned. The only trouble I found about their notions was that none had given much thought to the history of the experiments of the nineteenth century and that their faith in the masses for intelligent action, in their own interest, was not justified.

The men and women I met, during the life of *The Freeman* (1920-24), who thought at all of communism, held only superficial notions of its proposals and conceptions. Few had read the *Communist Manifesto*, and fewer still had read the first volume of *Das Kapital*. Strangely, nearly all these people called themselves Liberals. They were, however, merely half-fledged Fabians, but they did not know it.

#### The Definition of Communism

NOW IN NO CASE that has been tried before a judge and jury, or one investigated by a congressional committee, has the question been raised as to the definition of such terms as Communism and Socialism. Yet, in many instances, the accused have been called Communists and, strange to say, not one so charged, that I know of, has asked for the term to be clearly defined. It would be difficult, indeed, for anyone, in court or out of it, to attach any other sense to the word than that it means a revolutionary movement to overthrow the government.

Sixty years ago, hot gossellers were free to discuss such subjects in the open. At that time I attended many meetings in New York and Boston at which the speakers denounced the government as a capitalistic institution and advocated a change that would bring about a more equal distribution of the wealth. I have heard Johann Most, Tom Mann, and many other socialist orators preach from the *Communist Manifesto* and in the last words of that instrument, call upon the workers to cast off their chains. No one was very much disturbed then by these proceedings, and it would

have been considered absurd if anyone suggested that there were men in the departments of the government who were secretly attempting to overturn it.

There were Communists then who were theorists, but there are no Communists now. For if there is one thing Soviet Russia is *not*, it is that it is not a communist State. This statement may seem strange to the people of this generation because congressional investigations and newspaper men dinned into the public mind an utterly false notion of what communism is, as expressed by *bona fide* State Socialists who took the trouble to formulate a definition that would bear analysis.

Over fifty years ago, when Max Hirsch was collecting his material for his unique work, *Democracy versus Socialism*, he went carefully to work to find a definition that would be accepted by theoretical Socialists. And it was then formulated as follows:

The State shall control all the means of production, distribution, and exchange for the equal benefit of all; and the State shall have power over persons, their faculties and possessions.

It should only be necessary to point out that such a State could not possibly be established. A utopia, in which wealth would be distributed for the equal benefit of all, is not for men, because they are men, no matter under whose rule they exist; moreover, there is no possible way of distributing wealth to men in equal shares. Those who advocated such a system were honest, sincere thinkers, who put it forward as an alternative to the system of an unequal distribution of wealth. It ought not to be necessary to point out that the Socialists themselves have always been the bitterest critics of those who enter the political field, who would try to bring it about increment by increment, and temporize with the catalytic principle.

The student has only to read the works of Philosophical Anarchists and Socialists at the time when Marx published his paper, to realize that the bitterest controversies raged among them for many years as to what gospel should be advocated and the means by which it could be established.

The Russia of today under Stalin is as far from being a communist State as anyone can imagine. There, the wealth is not divided for the equal benefit of all, although the government controls production, distribution, and exchange. It is a system of State servitude. Every person is at the beck and call of the government, and the severest penalties are imposed upon any infraction of its stern laws. The only understandable term for it is complete bureaucratic control. It is red tape, so tough and strong that it can be used as a noose to hang any recalcitrant who objects.

During the days of *The Freeman*, I came in touch with many young men who were dissatisfied with the condition of affairs and who looked for a change for the better, but I did not meet one who had any more knowledge of the difficulties that Lenin had to face than the veriest boy in the student movement. The taint of socialistic thought was evident in so much of their work that I advised one and all to study the books of Socialists and learn from them the many different interpretations of the creed. The information they had came from leaflets, pamphlets, and such papers as *The Masses* and other organs that promulgated notions of Fabianism.

#### Striking at the Constitution

ABOUT THAT TIME, I was invited to a reception at Harvard, given to honor Harold Laski. The reason why I accepted was a desire to meet the translator of Leon Duguit's book, *Law and the Modern State* (New York, B. W. Huebsch, 1919). Laski and his wife were responsible for the translation, but the introduction came from his pen. This work impressed me so deeply by its trend of thought toward revolutionary change that I decided to keep an eye on Mr. Laski and watch for the development of his notions. In his introduction to Duguit's work it is insinuated that the time had come when a change might be made in some of the provisions of our Constitution.

He says: "The very limitation of the much-criticized Fourteenth Amendment only means, as Mr. Justice Holmes has repeatedly emphasized, that legislation must be reasonably conceived, and adopt reasonable means of execution; and since that term is a matter of positive evidence, it is not a gate but a road" (*op. cit.*, p. xxxiii).

This was the first warning I had of what was afoot. Further on in the introduction, Laski says:

. . . The decline of Congress, for instance, like the similar decline of Parliament and the French chamber, is to be interpreted in the light of its inability to cope with the new demands. *We have ceased to look upon historic antiquity as the justification of existence; it is the end of each institution of which we make consistent dissection and enquiry* (*ibid.*, italics mine).

These are passages the ordinary student of jurisprudence might regard lightly because he would not have a deep background of knowledge. To me they were significant pointers, marking a direction that might end in disaster. It is all very well and good, I presume, for theorists to speculate upon expedient changes in a Constitution—those a crisis would call for, but only necessary as ameliorative measures for the duration of the crisis.

However, it is quite a different matter to strike at the fundamentals of such Constitutions as those of England and the United States and transmogrify them completely.

It was not until some years later that I learned about the spade work done by Laski during his visit to Harvard. When the Brain Trust made its appearance in the early thirties, the Harvard disciples of Laski soon revealed the ideas implanted in them by their teacher.

#### The Supreme Court and the Legislative Function

EARLY IN THE SPRING of 1933, there was a great outpouring of works upon the present system of the distribution of wealth and the restrictive canon of the Fourteenth Amendment, which says:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

We had writings by Stuart Chase, Felix Frankfurter, Norman Thomas, Justice Louis Brandeis, George Soule, Justice Benjamin Cardozo, Rexford G. Tugwell, Mordecai Ezekiel, and many others. All of these particular works were devoted to what the authors considered to be necessary changes in our system.

In my book, *Sociocratic Escapades* (New York, Putnam), published in 1934, I was so conscious of the trend toward Fabianism in many of the New Deal supporters that I wrote:

The task which some of the members of the Supreme Court seem to have set themselves is not only hazardous but one which will meet with increasing difficulty for many years to come. It is something quite new for jurists in a constitutional body to form themselves into a commission for investigating social problems; not only investigating these problems, but deciding the courses which should be pursued in remedying the defects of the economic system. It is a novel position for jurists to take up, and one cannot help wondering if those who suggest this change have deeply considered the extraordinary consequences of such an enterprise. Well might students ask if it be the intention of the Supreme Court to usurp the functions of legislative bodies (p. 275).

The part played by Mr. Justice Holmes in this coterie organized by Laski, is quite clearly expressed in some of his opinions. Why he was set on a pedestal as a great jurist, I have never been able to understand, for many times he was swayed by economic and political affairs, remote from

the functions of the jurist. These were concerns of Congress, not the High Court. In his decision in *Truax v. Corrigan*, he wrote:

. . . The denial of the more adequate equitable remedy for private wrongs is in essence an exercise of the police power, by which, in the interest of the public and in order to preserve the liberty and the property of the great majority of the citizens of a State, rights of property and the liberty of the individual must be remolded, from time to time, to meet the changing needs of society.

I do not think it would be possible to find an example of such a declaration in English law. Whatever inequalities Holmes had in mind were matters that concerned the political body. The laws then on the statute books of the United States, if they had been enforced, would have been sufficient to remedy the defects. It would not have been necessary for Holmes, in a judgment from the bench, to ask for the Constitution to be "remolded from time to time." Somehow, Holmes never quite knew the difference between right and privilege, which was the crux of the problem.

Very similar ideas were voiced by other lawyers who were labeled "New Dealers." Justice Brandeis frequently expressed himself in terms not unlike those used by Laski. And, yet, on one occasion he said, "When a court decides a case upon grounds of popular policy, the judges become, in effect, legislators." Indeed, it was part of the New Deal plan to put legislators on the Supreme Court bench.

#### The Gospel of Bureaucracy

WHEN MY BOOKS *Control from the Top* (1933) and *Sociocratic Escapades* (1934), were published, readers informed me they should have the widest circulation. I thought so, too, but the response of the reading public was not felt by booksellers, and only a small clientele showed any interest in them at all. Reviewers scorned to waste ink upon them. They died of neglect.

Still, some old-fashioned lawyers urged me to publish separately, in pamphlet form, the last chapter of *Sociocratic Escapades*, which dealt with the attack of the Laski-Holmes group upon the Fourteenth Amendment. They suggested an introduction to it written by a well-known jurist. Some were canvassed by my friends, but these were so busy they could not find time to write it, although they were convinced it should be done by someone. Nothing further was made of the suggestion, and the matter was dropped.

Then I was asked to write upon economic and political fundamentals. The president of one of our universities thought students should have a

kind of primer in which they would find definitions of economic terms, and references to Constitutional law, ancient and modern, as it was interpreted by famous jurists. In *Man at the Crossroads* (1938) I made an attempt to supply my academic friend with the book he was looking for. It was widely reviewed but there was no great demand for it.

It was difficult for these small efforts, made for the purpose of enlightening the Philistines, to make much impression on readers, because a disastrous trade depression had fallen upon the country, and when the books were published, a Brain Trust went to work to plan a utopia that was to be promoted and fostered by a brand new President whose early orations betrayed the influence of notions sedulously sown by American and British Fabians.

"Soak the rich" was one of the slogans which caught the imagination of the empty purse carriers. Another one was taken from a book, called *A New Deal*, published in 1932, which asked: "Why should Russians have all the fun of remaking a world?"

Books, reviews, speeches, and debates revealed an extraordinary yearning for an administration of Fabians, supported by a Supreme Court of meek and lowly Municipal Socialists. In the *Yale Review*, Spring 1933, Felix Frankfurter said:

. . . The capacity of States to control or mitigate unemployment, to assure a living wage for the workers, to clear slums and provide decent housing, to make city planning effective, to distribute fairly the burdens of taxation—these and like functions of modern government hinge on the Supreme Court's reading of the due process clause.

The outburst of the pent-up longings of the pupils of Laski brought forth works on how to put us all into an economic paradise that amazed the wobbly British Liberals who had infiltrated the ranks of the Labor party. Such well-known writers as Walter Lippmann, George Soule, Adolph Berle, and R. G. Tugwell gave us the gospel of bureaucracy which was preached by professors, parsons, and politicians during the years of 1933–39.

Some of the declarations of the planners of utopia have a strange tendency now to make us wonder if there could have been a time when they were held by the writers. Even as late as May, 1943, Dr. James B. Conant wrote in *The Atlantic Monthly* an article entitled "Wanted: American Radicals" in which he said:

. . . The names of the predecessors of the European radicals are to be found on the lists of the Fabian Society of England of a generation back. The

nearest approach to their ideals is to be seen in the miraculous Russian state. . . .

Surely the head of a university should know that an English Radical was never a member of the Fabian society. English Radicals were opposed to bureaucracy. Their notion was: the less government, the better. It was the economic and political ideals of English Radicals—Priestley, Cartwright, and Paine—that were promulgated by the founders of the Republic.

Well, our Fabians had a merry time of it until the end of the war, when most of them decided to cast off the toga of the great Cunctator, because the Stalinites had become suddenly unpopular. Looking back, it is astonishing to find that no one of importance uttered a warning note, not a word about the danger that threatened to overwhelm us.

There was no Edward Coke to curb our James I. There was no John Taylor of Caroline to remind him that

. . . A constitutional expulsion of a stock-jobbing paper interest, in every shape, out of the national legislature, can alone recover the lost principles of a representative government, and save the nation from being owned—bought—and sold. . . .

There was no Jefferson to pronounce a word of warning. In 1782 the far-seeing Thomas said:

. . . The public money and public liberty, intended to have been deposited with three branches of magistracy, but found inadvertently to be in the hands of one only, will soon be discovered to be sources of wealth and dominion to those who hold them. . . . They [the assembly] should look forward to a time, and that not a distant one, when a corruption in this, as in the country from which we derive our origin, will have seized the heads of government, and be spread by them through the body of the people; when they will purchase the voices of the people, and make them pay the price. . . .

After nearly twenty years of trial and sorrow, we find ourselves in the very chains the Founding Fathers struck from their shins in 1776. The indictments set down in the *Declaration of Independence* are strange to read in this year of grace. There are two worth remembering that bear upon the present condition:

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

So the judgment of Holmes, given in the *Truax v. Corrigan* case, that "rights of property and the liberty of the individual must be remolded,

from time to time, to meet the changing needs of society," has, in practice, landed us back on the Hanoverian shore. That is a political achievement no other State in history performed.

#### Utopia for Fabians

NOW THE MOST SINISTER CHANGES in the Constitution were insidiously brought about by resorting to the old trick of creating an emergency. This I dealt with in *Sociocratic Escapades*. I then asked: "What is an emergency?" After giving the definition of the term and describing the conditions that prevailed from 1929 to 1934, I wrote:

. . . There must be a limit to the duration of a sudden and unexpected crisis, unless one concedes that a political emergency has no end for those who use it for a cloak under which ulterior motives and secret policies are carried into effect (p. 11).

It is difficult to formulate a law that would give a constitutional head of a State such power that he alone would decide when an emergency had arisen and that he could take measures to deal with it without consulting the Congress. For it is not possible to imagine such a model of rectitude and wisdom as one mere man for a task Solomon himself feared to undertake. He had to call upon the Lord to help him: "I am but a little child: I know not how to go out or come in."

In our case, it was not the Lord that helped to give the executive such powers as a Hitler or a Mussolini arrogated; it was Congress, the representatives of a free democracy. It was merely a political expedient purchased by patronage; a party dodge—to use the old phrase for such nefarious practices. Congress shirked its responsibilities for a mess of pottage. One senator publicly declared: "I am for the New Deal because my state has received millions from the national Treasury." Of course! Caesar did the same thing to make himself popular.

The pretext of an emergency for bolstering a crumbling administration is an ancient device and was practiced frequently by Greek and Roman politicians. In *Sociocratic Escapades*, I wrote:

To say nothing of the gold standard emergency, the veterans' emergency, the Muscle Shoals emergency, and the numerous other ones which cropped up in the night before the administration was a year old, we have had the silver emergency, the building emergency, the power emergency, and no one knows how many others will appear upon the political scene before we are many months older. There is no doubt at all in the minds of some people who enthusiastically supported the Roosevelt policies a few months ago, that this is the one and only "emergency" administration that has ever directed affairs in this country . . . (p. 13).

Panic legislation was the order of the day, and the reasons given by the Chief Executive and his myrmidons for the revolutionary measures were so extravagant, so utterly improbable, that the wonder of it was that majorities in the House and Senate were mustered for them. Quintus Fabius Maximus would have broken out in sweat, had he been there to see our Fabians, in and out of the executive mansion, exceeding the speed limit in racing on to destroy the vital provisions of the Constitution.

*The Coming American Revolution*, the title of a book by George Soule, was on the doorstep after twelve months' work in Congress. After the trials and the tribulations of the first term of the Fabian administration, it began to dawn on some people that a real revolution was taking place to save us from an imaginary one. Before the end of the wars in Europe, in the Pacific, in Asia, and other spheres of interest, many of our people contracted hectic fever and found themselves so weakened by the revolution at home and slaughter abroad that they forgot to consider the plight of their minds when peace day was reached. Potsdam caused a relapse so serious that it is now prophesied by political seers that we shall have to fight another war to save the bit of civilization that survived the last one.

The Korean emergency saved us from a trade depression, and postponed, *sine die*, the Russian emergency. Meanwhile, the brave ally of the Kremlin has become a public nuisance, and no Fabian has a word to say in his defense. Quite the reverse! Indeed, many of his ardent supporters have sworn they were never affiliated with the ideals of the hero of Stalingrad. It is a topsy-turvy world we live in, but for changeability, it cannot be compared with the topsy-turvy minds of our Fabians.

Then came a period when many of our quasi-Socialists committed intellectual suicide. In some cases, philosophic hara-kiri was contemplated. I have a list of ten or twelve Fabians, very sanguine New Dealers, who are now qualifying for admission to the Upper House of Torydom.

The investigations into un-American activities have already exposed a sinister attempt by trusted servants of the State to change the system of government. But why did Congress wait until the house was burning before calling the fire brigade? There was evidence enough before the second administration of the Fabians was elected to show that our Guy Fawkeses were all set to put the light to the gunpowder to blow the Constitution to smithereens. The evidence can be found in a score of books published in the period 1933-36. It was not then investigated by Congress because there were emergencies, and the ruling power was Fabian.

Now it may be advanced that it is good political strategy to use expedient measures to gain a principle. The Fabian idea, as expressed by the English writers of that school, is to reach socialism increment by increment. But in the English debates during the General Elections of 1910, it was found that no principle was formulated, and that the conception of the term Socialism was not accepted by those Fabians who were then masquerading as Liberal candidates.

Constitutional Radicals, opposed to bureaucratic government, decided that political Fabians had no principle to declare. Perhaps they knew that taking theory, based upon a principle, into the political arena was not unlike leading an ox into an abattoir.

Trade depressions and wars furnish the opportunities for political Socialists to set up dictatorships. An emergency is an excuse for suspending the provisions of the Constitution, and once Congress abandons its control and surrenders its powers to the executive, it is not likely that the unrestricted ruler will, without struggle, divest himself of the authority he has enjoyed. Power corrupts, and every newspaper reader knows now the infamy of corrupt officials of the State and how low the moral notion of a public trust has fallen since Laski began to inculcate his very young pupils with notions of a utopia for Fabians.

*Port Washington, N. Y.*

### *Cooperatives in the Solution of Monopoly*

A VIVID PICTURE of how the cooperative principle is serving as a bulwark against dictatorship and undesirable monopolies was drawn by Stanley Andrews, Director of the U. S. Office of Foreign Agricultural Relations, before the American Institute of Cooperation at a recent annual meeting.

Saying that he knew of "few developments which strengthened the hands of the masses more than the cooperative principle," Andrews added:

Whether it springs from the nature and attitude of farmers who largely compose them, or whether it is inherent in the philosophy of the cooperative movement, the fact is that the farmer cooperatives have been the last to go down before a dictatorship, and where dictators have been overthrown, farmers and their cooperatives have been the first to take up democracy again.

Probably why we hear so little in Western European countries from farmers about monopolies is that the farms are strong enough to meet monopoly on its own ground. Few, if any monopolies on crops can exist without meeting the terms of the farmers' marketing cooperatives. Likewise, the cooperatives can bring to terms any monopoly in fertilizer or seed distribution.