

Liberty and government in the New Society by Onofre D. Corpuz

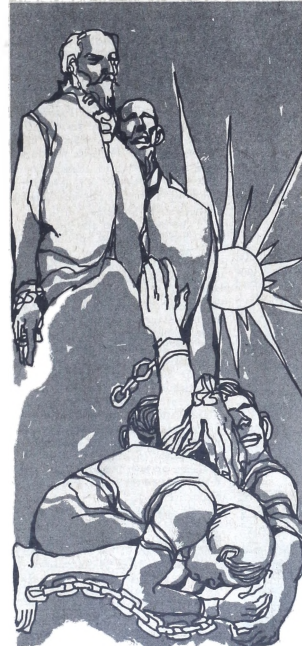
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An overwhelming majority of schooled Filipinos teach and read foreign literature in English, and this language has fatefully conveyed and established in our national life in Anglo-Saxon tradition surviving from the seventeenth and eighteenth centuries.

The conspicuous endurance and power of this tradition in the Philippines are easily shown. Our constitution repeats, virtually verbatim, one of the limitations imposed in the English revolution of 1688 upon William III: "Excessive bail ought not to be required, nor excessive fines be imposed, nor cruel and unusual punishments be inflicted." It is a sure bet that William II could never have imagined that this condition imposed upon him by Englishmen to protect Englishmen's rights almost three centuries ago would be adopted in convention by English-speaking members of a nation of the brown race in Asia. These and other precepts of the Anglo-Saxon tradition are established in Philippine courts today as parts of the rights of accused Filipinos and as part of the fundamentals of justice. When the late Laurel presented his draft bill of rights, largely lifted from an American statute, to the Philippine constitutional convention of 1934-1935, he justified it as an adequate safeguard of Filipino citizens against abuses by their government. This again is a faithful restatement of the Locke-Jefferson tradition.

Even today, many schooled Filipinos cannot conceive of liberty except in terms of the proposition that liberty exists only when governmental authority is curbed or limited. John Locke is certainly the intellectual inspiration of the members of the Civil Liberties Union of the Philippines, whether they be aware of him or not, as he is of the American Civil Liberties Union, both of which regard the bill of rights as the principal, if not the sole, definition of liberty. The civil liberties tradition, in particular, tends to believe that there can be no true liberty except with the broadest possible constitutional and statutory guarantees of the rights of free expression and political dissent.

If we are to create a new society based on a vision of the future, we are bound by our duty to that vision to review and reassess the old concepts that our vision seeks to replace, in order that we not discard sound principles and adopt others of inferior validity.



Let us therefore re-examine the notion of liberty, a fundamental concept in our political education, and assess it in the light of our efforts and aspirations as a nation, to broaden the enjoyment of justice, to enhance our people's welfare, and to secure our future in the New Society.

Let us dispose of one problem immediately. The view of liberty of political liberty, that is, a view that regards liberty only in terms of relations between citizens and the government. This view, so crucial to Locke, secures the welfare of Englishmen against abuses emanating from the monarchy or government. As such, it is a priceless human tradition to which we may properly assent, although it by no means commands universal agreement, especially outside the political perspectives of the western world. It is simply the basic tradition underlying modern constitutional government, which is precisely what is meant by limited government. It is still perhaps the most civilized arrangement ever devised against capricious and arbitrary abuse of political power, so that the imposition of constitutional restraint on government has been adopted by most civilized nations.

But the political liberty that is persuasively justified by Locke conceals a dangerous trap. This is clearly shown by a brief review of its historico-sociological context. It is 1690, and when Locke writes of the people, he by no means refers to the people in our sense, so that the issue of relations between government and the citizens, he was referring to the monarchy on the one hand, and the English aristocracy and upper classes on the other. To Locke it was the life, liberty, and property of the privileged classes of English society, not of all Englishmen, that were endangered by the monarchy and its government. The proof of this is the fact that the constitutional political system that Locke justified included only a small portion of English society. Locke saw no problem in the fact that the middle classes were not yet enfranchised in 1690; it was only in 1832 that English parliamentary reform extended the suffrage to them. The 1867 reform law still excluded English farm workers from the vote. And Englishwomen did not qualify for suffrage until 1918, when electoral reform finally enfranchised them—provided they were at least thirty years old. That the government should represent the people, that the people are sovereign, and that the consent of the governed is the basis of governmental power—all critical elements in Locke's political principles—have meaning in Locke's political thought only because he equated the privileged classes to the people.

It was the same thing, for a long time, in America. The founding fathers proclaimed their conviction that God created all men equal. They pledged that no man be denied the equal protection of the laws, but many of them, including Jefferson and Washington, were slaveowners. Slavery continued to be an institution until the end of the Civil War, protected by the doctrine of political liberty, if inconsistent with the idea of human equality. U.S. blacks remained less-than-equal under the separate-and-equal principle until the historic 1954 decision of the U.S. Supreme Court.

In short, the intellectuals of the Anglo-Saxon tradition during the seventeenth and eighteenth centuries were thinking of the liberty and welfare of the privileged classes, not the liberty and welfare of the people; they were protecting the liberty of the few against the powers of the government. There is no more powerful or respectable justification in western political thought of the oligarchic domination of society than the doctrine of political liberty.

The elitist bias in Locke's "life, liberty, and property" (1690) and in the American founding fathers' "life, liberty, and the pursuit of happiness" (1776) likewise becomes evident once we read these formulations alongside of the French Declaration of the Rights of Man concept of "liberty, equality, fraternity" (1789). The Anglo-Saxon claim to liberty is a special claim, made in behalf of the privileged classes. The French claim to liberty is a general claim to a right inhering in all of mankind, and therefore in every man by humanity alone, uncontaminated by any consideration of estate, race, or other condition created in society. This is why political liberty alone is not enough. Republican government, popular sovereignty, consent of the governed, and democracy have no meaning when political liberty is the possession of the few, and not vouchsafed for all. Liberty, indeed, is debased by those who claim it for themselves without claiming it for all of their countrymen, for then they claim it as a prerogative of birth, or race, or religion, or some other special circumstance, instead of as a universal human right. And this is why no nation can ever be truly free, unless there is equality in the enjoyment and possession of liberty.

Moreover, the view of liberty which regards gov-



ernment as an actual or potential threat to the citizens, and therefore prescribes restraints or prohibitions on government as the answer to that threat, ought not to be pushed to its logical conclusion. The proposition should not be stretched to mean, for instance, that the welfare of citizens is secured only by keeping the government weak. This form of the proposition, paradoxically, undercuts its own force in two important respects. In the first place, the maximum of political liberty in this sense will always be less than the amount of liberty needed for the fulfillment and dignity of persons, either as individual human beings or as citizens in a national society. I will demonstrate this later. In the second place, it is not operationally sound. President Marcos has said, simply and I think validly, that the first duty of government is to govern, and if it is to govern it must govern well, for a government that cannot govern well has no claim to either the physical obedience or the moral allegiance of the people. Worse, a government that is weak and cannot govern well is itself a threat to welfare, for such a government certainly cannot redress wrongs, and therefore cannot promote rights.

Locke's preoccupation with political liberty is quite natural, given the circumstances of the revolution of 1688. It is also quite understandable, given his lack of sociological sensitivity. Quite apart from these, an undue focus on political liberty often tends to confer undue importance upon the method for ensuring it—that is, on the bill of rights. Discussions on the bill of rights, especially judicial decisions, lawyers' briefs, and high school compositions tend to be couched in noble and outspoken language, because the enumeration of rights never fails to suffuse the reader with a reassuring sense of importance and potency. The bill of rights, when read at face value, is a symbolic mantle of protection available to the humblest and the highest in society, against which the vast and awesome powers of government cannot prevail. From here arises the view that the bill of rights is the primary, if not the exclusive, source and guarantee of our liberty, security, and welfare.

(To be concluded)