LAW AND POLITICS

The Henry Sidgwick Memorial Lecture
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THERE is much to commend the institution of an annual namesake Lecture as a means of keeping fresh among us the memory of our departed masters. It ensures that each year one person at least, the chosen lecturer, shall give some thought to the life and work of the great man under whose auspices he is to speak; and his audience, too, if he is fortunate enough to have one, will for a passing hour recall the merits of him who is gone if only to compare them with the shortcomings of the speaker on whom his nominal mantle has fallen. Many such memorials have been founded in our Universities but in no instance more fittingly than in that of Henry Sidgwick, for it was in the lecture room that his incomparable gift of exposition found its most congenial atmosphere. In his case the appropriateness of this annual commemoration is enhanced by its association with Newnham College, itself an imperishable monument to his chivalrous crusade and under whose roof he spent the last and happiest years of his life.

Already the generation which knew Sidgwick has passed away in the thirty-five years which have elapsed since his death. The lecturer of to-day belongs to the next generation. But as in pious duty bound I have not failed to read the admirable Memoir of his life which we owe to his brother and his wife. I read it not only in

order to be able to picture what manner of man he was, as he appeared to those who knew him best, but also in order to recapture, if I could, the intellectual mood of his day, to appreciate the nature of the problems which then confronted the thinker, and to estimate the measure of success which he achieved in their solution.

Fortunately we have still with us one of those who knew Sidgwick intimately. In his altogether delightful volume of reminiscences entitled *For my Grandson*, Sir Frederick Pollock tells us that "Henry Sidgwick was a born philosopher, ardent in the pursuit of truth, capable of sacrificing worldly advantage to his conscience, yet always judicious and abhorring dogmatism to the point of enjoying suspense of judgment for its own sake....In speculation he was sceptical, in action cautious but not timid." In a later passage he says of Sidgwick and Jackson, whom he describes as "the leading captains of modern and ancient philosophy" during his residence at Cambridge, that "they taught younger men to seek for themselves and to seek with an exacting conscience". And then he adds these words, so characteristic of the learned expositor of Spinoza: "Even if you consider philosophy merely as an intellectual game, there is no fun in playing with people (including yourself) who fudge their conclusions."

This is the testimony of one who saw and heard Sidgwick. But we, who are unhappily confined to the written record, can well confirm it, for it is just this spirit of conscientious candour and courageous diffidence which is exhaled not only from his more intimate diaries and letters but also from his published writings. In describing, in a moment of self-examination at the age of twenty-six,

"that particular aggregate of psychological phenomena" which he called himself, he exclaimed: "For my part, I have determined to love the Ideal only." To that dedication of his spirit he remained true to his last breath.

Now it may seem more than a little odd after this preamble that in choosing a topic for this year's lecture I should have selected a subject so arid and so apparently alien to Sidgwick's genius as *Law and Politics*. What right have lawyers and politicians, those noisy and mercenary persons, to invade these quiet cloisters? But in truth I have ample justification, for Sidgwick all his days was intensely preoccupied with this very theme of my choice, as those can best testify who, like myself, have studied his great work on *The Science of Politics*, that "heavy book" as he not unjustly characterises it. Let there be no mistake, however. I do not use the word "politics" in the sense in which it is so often used by chairmen of public meetings who reassure their audiences by informing them that the cause they are met to promote has nothing to do with politics. It is remarkable, by the way, how invariably this announcement is greeted with applause when one reflects how vitally the happiness and prosperity of everyone of us are concerned in the conduct of our Government. But of course the disclaimer is always understood to refer to party politics in the sinister and derogatory sense of that expression, and this aspect of politics, which Sidgwick once described as a "blind free fight", was as distasteful to him as it would be out of place for a person in my judicial position to discuss it.

No. What interested Sidgwick supremely, and what must always be of interest to every thinking citizen, was politics in the sense of the science of associated humanity.

He was essentially a moral, rather than a metaphysical philosopher. Hence he treated politics as a branch, indeed as the main branch, of ethics. There are no doubt problems of ethics which affect the individual and the individual only and which would exercise the mind of the solitary denizen of a desert island in the conduct of his daily life. But most of the problems of ethics, and certainly the most vexed ones, concern our relations with our fellow-men. Few of the moral virtues could be practised by us if there were no other human beings towards whom they could be exhibited.

It is easy to see the pathway by which Sidgwick was led from ethics to politics. Most of us have traversed it, though some of us in the opposite direction. For politics in the scientific sense is the art of organising and managing human beings in the associations into which they are brought by their common membership of a city, a nation, or some larger social unit. This art, inasmuch as it has to deal with human beings endowed with moral consciences, cannot confine itself merely to economic or disciplinary regulations. It must ultimately concern itself with the fundamental considerations of ethics.

The very first sentence of Aristotle's *Politics* takes one at once into the moral sphere. "Seeing", he says, "that every State is a sort of association and every association is formed for the attainment of some Good—for some presumed Good is the end of all action—it is evident that as some Good is the object of all associations, so in the highest degree is the supreme Good the object of that association which is supreme and embraces all the rest, in other words of the State or political association." Observe that the word "Good", the key word of ethics,

occurs no less than four times in that opening paragraph.

Thus the moral philosopher sooner or later cannot escape from the consideration of political science. The human being who is the subject of his study is a social being, whose activities for good or for evil are in large measure determined for him by the society in which he lives, and that society in turn derives its character from its political constitution. True, politics may be said to deal rather with the setting than with the substance of the moral life, with the conditions under which the citizen lives rather than with the ethical quality of his individual life. But the interaction between the citizen and the political medium in which he lives is so close and constant as to affect his moral nature profoundly. And so the moral philosopher finds himself discussing politics—in their ethical aspect, no doubt, but with a full appreciation of the truth that the extent to which the individual can attain the ideal of the moral life is deeply affected by the character of the social organisation, in other words, of the political system, under which he lives. It is difficult, as Sidgwick indicates, to sort out the elements in social life which may properly be called political because they are so intimately combined with the other elements. Still, it is possible to make at least a theoretical analysis of our social life and to isolate for special study its political components.

What Sidgwick sought was to give precision to our political concepts as a contribution to the art of moral government, and he defined the scope of his study as being "concerned primarily with constructing, on the basis of certain psychological premises, the system of

relations which ought to be established among the persons governing, and between them and the governed, in a society composed of civilised men as we know them". While not a few of the questions to which he addressed himself in pursuing this study now seem to us somewhat dimmed by the distance which we have so swiftly travelled since his day, Sidgwick's discussion of the proper functions of Government remains still full of instruction and guidance for us. To his treatment of this topic Professor Marshall paid the tribute of saying that it was admitted to be by far the best thing in any language. For us to-day it has a special value for it furnishes us with the wisdom of a singularly balanced mind on what has become the cardinal problem of political science, which when Sidgwick wrote was already beginning to come into prominence; I mean the conflict which has since grown so acute between Individualism and State Socialism—to use his own terms—as rival theories of civil government. The economic doctrine of *laissez-faire*, the doctrine that enlightened self-interest if left to itself best conduces to the social well-being of the community, had held sway in this country since the time of Adam Smith and was still cherished by many adherents of one of the great political parties with almost religious fervour. With them it was a far greater achievement to secure the repeal than to secure the enactment of a statute. But already there were ominous signs of change and presumptuous hands were already being laid on the ark of the covenant. "It is universally recognised", says Sidgwick, "that the present drift of opinion and practice is in the direction of increasing the range and volume of the interferences of government in the

affairs of individuals." So he wrote some forty years ago. I wonder what would have been his comment on our legislation of the past two decades! In the ninety-second chapter of his great work on the American Commonwealth, Bryce describes the inception of a similar process in the United States. More and more the main issue in political science has come to be—not whether the State should intervene at all in the regulation of our daily lives but where the frontier line ought most wisely to be drawn between the province of State activity and that of individual enterprise. On all hands it is now recognised that the policy of *laissez-faire*, which gave us no doubt our industrial and commercial supremacy but also gave us our slums and many other attendant evils, must give place to a new regime. The contest has now shifted to a new ground on which those who are all for State regimentation do battle with those who defend what they regard as the rightful strongholds of individual initiative. The definition of the sphere of government has become the main preoccupation of the student of political science. We have travelled far since Tom Paine —that early champion of the people's rights—proclaimed that "The more perfect civilisation is, the less occasion has it for government...it is but few general laws that civilised life requires".

This changed attitude of mind has come about not only through a revulsion from the old theory and its attendant evils, but also as a consequence of the increased complexity of modern life. Politics are concerned with the regulation of the contacts of human beings with each other, and the enormous changes which have come about in the mechanism of life have infinitely increased these

contacts and consequently the necessity for their regulation. Let me quote side by side a passage from Sidgwick's *Science of Politics* and one from the Archbishop of York's broadcast lecture on "Faith and Freedom" on 30 May last. "It is easy", says Sidgwick, "to see how new occasions for this kind of interference may continually arise: either because the mischief in question has been increased or newly introduced through the closer massing and more complicated relations of human beings which the development of industry and civilisation brings with it; or because mischiefs of long standing have been unveiled by the increased insight of advancing science, or possible remedies hitherto unknown have been pointed out." In my parallel passage from the Archbishop, His Grace declares that "with the development of centralisation which the new means of communication have made possible and the growth of planning which mass-production has made necessary it has been natural that the State should invade spheres hitherto left to voluntary effort".

The same insight which enabled Sidgwick to discover this new movement of political thought enabled him also to perceive its dangers. He recognised that a crowded world cannot safely be left to its own devices and that in such a world a certain amount of what we now term social legislation is essential to the preservation of the liberty of the individual. Such measures, he saw, may promote rather than diminish freedom. This is essentially true. I am not less but more the captain of my soul in a city which is well sewered, well paved, well policed, and free from slums and the diseases they breed, and in which the education, the health and the

welfare of my fellow-citizens are promoted by sensible measures.

But the defect of all social policies, as Sidgwick saw, is their tendency to run to extremes, and now we hear on all sides a warning that if we do not take heed we may wake up some fine morning to find all our liberties gone, overwhelmed by a mass of legislation which by depriving life of all its individual initiative will rob it of all its happiness and interest. Just as the unrestrained policy of *laissez-faire* wrought many evils which we are now slowly redressing with much cost and labour, so there is a risk that the opposite policy may in turn bring in its train no less, though different, evils, if not vigorously guarded.

That serious alarm as to the present trend of political thought is entertained in many quarters is manifest, and the danger which is threatened is danger to our liberties. "Freedom, our traditional treasure, is threatened," says the Archbishop of York, "how can it be saved?" Before me as I write lie the writings of four authors, nurtured in very different pastures, who have discerned the same impending menace. First I open a book which hails from the land of the free, entitled *The Challenge to Liberty*. There I find ex-President Hoover impelled to vindicate the cause of liberty in his country with almost passionate eloquence against the encroachments of regimentation. His opening words are: "For the first time in two generations the American people are faced with the primary issue of humanity and all Government—the issue of human liberty." No less trenchant language is employed elsewhere by my friend the President of Columbia University. But Europe is evidently in no

better case, for here is General Smuts, in his Rectorial Address on "Freedom" at St Andrews University, telling us that: "In many if not most European countries the standard of human freedom has already fallen far below that of the nineteenth century. Perhaps I do not exaggerate when I say that of what we call liberty in its full human meaning—freedom of thought, speech, action, self-expression—there is to-day less than there has been during the last two thousand years." Let us come nearer home. The third of my books is entitled *The New Despotism*, and here I find the Lord Chief Justice of England once more buckling on the armour of Sir Edward Coke and, in the sacred cause of the Rule of Law, offering battle to that ancient foe of freedom—the executive. And finally in one of the last of his public utterances, when at the Royal Institution last April he traced the history of *Liberty under the Common Law*, my lamented colleague Lord Tomlin, with the studious moderation which characterises the utterances of Lords of Appeal, permitted himself "a sigh over the ever increasing tendency, due perhaps to the ever increasing complexity of modern life, to limit in so many fields the freedom of action of the individual" and ventured still "to proclaim the importance above all else of the freedom of the mind, to recall that through the history of our law's development... there runs a romantic thread of passionate attachment to freedom of thought and speech and to maintain that only when that freedom is accorded and in the atmosphere created by it, can the mind of man develop and display its finest flowers". Such quotations from such responsible leaders of thought in very diverse spheres—and I could multiply