

The Oregon Statesman

"No Favor Sways Us; No Fear Shall Ave."
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The Individual and The State

BY CHARLES A. SPRAGUE

There has been a great deal of comment in newspapers and magazines on the decision of the supreme court in the case of *Rossika Schwimmer*, who was barred from citizenship because she said she would not defend this country by force of arms. This comment was enlarged upon when a lower federal court rejected Prof. Douglas C. McIntosh of Yale Theological Seminary because he said he would fight only in what he deemed to be a just war. Offhand opinion was either that the courts were right in barring anyone who wouldn't stand up and fight; or, yielding to the liberal opinion of Justice Holmes in dissent, denounced the majority finding as chauvinistic and autocratic.

The questions involved are far deeper than the specific cases at bar. They were not just whether Madame Schwimmer and Prof. McIntosh qualified under the terms of the naturalization law. These cases provoke the fundamental issue of the relation between the individual and the state and the problem of freedom and authority. The issues concern not only the candidates for admission to citizenship but the rights and responsibilities of persons born into citizenship. How far does power of state reach? There is no sharp border line with signs well posted preventing the encroachment of the one on the domain of the other. Instead it is a shadow zone, not easy to define when the concrete cases come to be decided. It is easy enough to read the "No Trespass" sign; it is not so easy to determine which should prevail when state authority and individual freedom clash.

Blackstone's legal theory of the state was of "a supreme irresistible, uncontrollable authority." Paley declared concerning the power of the state that it "may be termed absolute, omnipotent, uncontrollable, arbitrary, despotic and is so alike in all countries." Such theories were not out of place in view of the origin of the modern state. Arising out of the medieval conception of unity, as Laski says: "The modern state inherits the papal prerogative. It must then, govern all, and to govern all there must be no limit to the power of those instruments by which it acts." Such is the state's own historic conception of its authority. Nor is this conception changed in different types of government. Whether monarchy or oligarchy or democracy the state claim to complete authority is undiminished. The autocratic Stuarts gave place to the equally domineering Parliament. "Vox populi, vox dei" is but another way of democracy's assertion of its right to command on the basis of majority rule. Bills of rights are the popular bulwarks against the exercise of state omnipotence.

The function of the state is social control for the promotion of the common good. Government vested with authority is the outgrowth of social experience as an antidote to anarchy. Order is one of the first necessities of organized society, and order government seeks to assure. Self-preservation against external enemies is a first law of the state as it is of the individual. To maintain order and to preserve its territorial and political integrity state government is vested with sovereign power. That power by general consent may become arbitrary and dictatorial in emergencies threatening the public order or in time of national danger. All states retain the right of conscription during war. They claim authority to command the complete muster of national existence is at stake.

Faced with the question of admission to citizenship those who imposed conditions compromising the authority of the state on such vital matters as its sovereignty in wartime the supreme court held up the bars. While the court might have avoided the issue by admitting Madame Schwimmer on the ground that her sex and age made her ineligible to military service, on the cold issue of limiting the state's authority in wartime it is hard to see how the court could rule otherwise than to adhere to the ancient doctrine of complete state sovereignty. It is not a question of particular individuals, but a delicate and important legal question that is involved. For the court to admit to the full privileges of citizenship those who will not assume the full responsibilities of citizenship would be to threaten the stability of the state whose preservation is the first duty of courts and officers. A state might decide to admit as citizens those who claim the right to withhold military service; but such a modification of policy calls for a legislative and not a judicial act. As David Joyce Hill says in his book, "The People's Government": "In no case will the State, as a State, freely permit its power to be alienated or diminished or brought into question. . . . The State that assumes its own autonomy there-

by ceases to be a State. There must be somewhere a power that is superior to all other powers, and which can command the obedience of all."

The brilliant dissent of Justice Holmes is a compact essay on liberalism in politics. But the moving principle which excites his dissent is not really germane to the issues of the Schwimmer case. We can agree heartily with him when he says: "If there is any principle of the constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us, but freedom for the thought of those that we hate." There is really no question of freedom of thought involved in the Schwimmer case. She is free to think as she chooses, to be a full-fledged pacifist if she chooses. There is no effort to bar her from residence in this country nor from expressing her convictions in this country. The question was not freedom of thought but of admitting to citizenship one who limited the obligations of citizenship. Sinful though war may be, it is a fact which states still must face. Society is not so enlightened, nor the removal from barbarism so complete that the state may in effect announce that non-military military service may only be voluntary. Such a pronouncement would threaten the perpetuity of the state which made it.

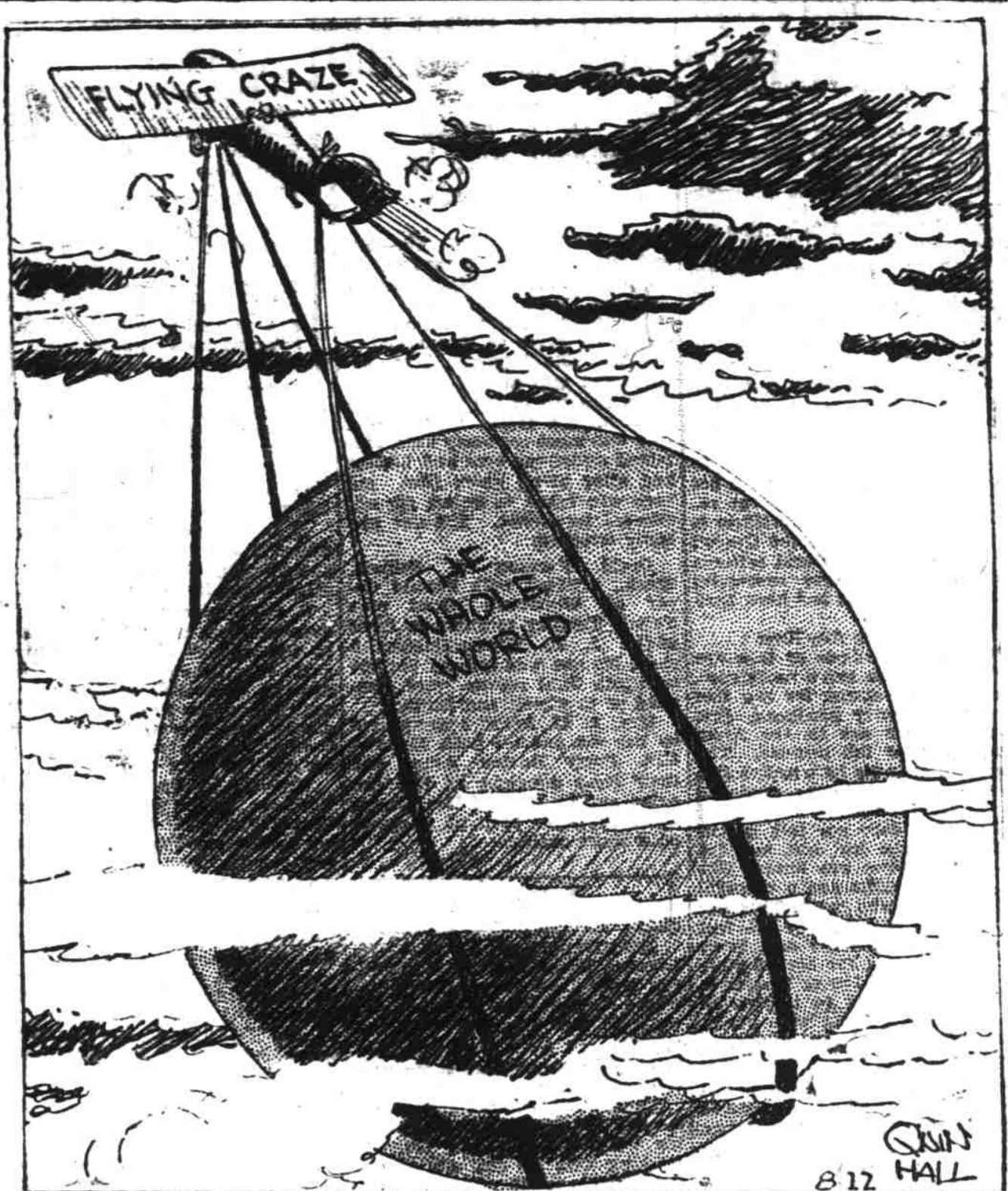
What then becomes of individual freedom? Is it non-existent? Is the state as Paley says "arbitrary, despotic"? Some think so. We do not. Once again it is the problem of defining the zones where individual freedom should prevail. The state is not the equivalent of society. The menace of state power is that it seeks constantly to invade fields where its authority does not belong and should not penetrate. Long ago through guarantees of freedom of worship the state recognized religion as a field where it should not interfere. Likewise in the case of fraternal, lodge, trades unions, commercial organizations, the state permits individual freedom of action, safeguarding only the public order and the rights of others. Growing congestion of population and changing conditions of living have necessitated social regulations and restrictions in matters of public health, prohibition of liquor and drugs, etc., enacted to promote the general welfare. But these are incidental compared with the wide liberty of thought, of expression, of affiliation, of occupation, of movement which are assured to the individual of today.

State power loses much of its threat in the modern state because of the tremendous force of public opinion. Popular approval must back up governmental action, there is nothing done. Real authority still resides among the people whose consent or opposition determines the fate of government. In the very question of war-making the individual citizen has positive voice. When it comes to waging war, if its objects do not commend themselves to the people then the lack of moral support is quickly fatal to any military success.

The political problem of the day is not so much the fact of state authority as the wise control of that authority in the public interest. In the past too much blind reliance was put on the democratic form of government, the people feeling secure if it was a republican form of government. But democracies may be violent and anti-social. Only when a government is responsible to an enlightened public opinion is the public welfare properly safeguarded. To quote from Laski's "Authority in the Modern State": "The state may have the noblest purpose. The objective at which it aims may be unquestionable. But, too, at every moment, it is acting by agents who are also mortal men. The basis of scrutiny becomes at once pragmatic. The foundation of our judgment must necessarily be sought in the interpretation of historic experience. We know, at least in general terms, the aim of the state. We know the degree of its divergence from the ideal. That is why we seek the equation of the ideal and the real. That is why the first lesson of our experience of power is the need of its limitation by the instructed judgment of free men."

While in the present condition of world affairs the state either through its courts or through its legislative division cannot limit its authority in the crisis of war, in actual practice the state can and should respect the conscientious scruples of those already citizens. The traditional practice in this country has been to exempt from military service Quakers, Mennonites and others classed as "conscientious objectors." It is true that in the passion of wartime, during the last war these conscientious objectors were many of them shamefully treated both inside and outside the army camps. Such derision, obloquy

Air Minded



BITS for BREAKFAST

A little more on penology:
The Portland Oregonian in an editorial on last Thursday said: "It will not, however, be necessary to assume that a penitentiary is anything else than just what it is—a place of restraint for those who have forfeited their right to liberty."
The article goes on to say that, however, a penitentiary "should be cleanly and decently maintained, as a measure of common humanity," and that it "should allow for the separation within reasonable limits of individuals in accordance with the nature and degree of their offending. . . . But beyond the requirements of humanity it is not necessary to go. There need be no coddling."
But the constitution of the state of Oregon, in its first article, which is the bill of rights, in the 15th section, says: "Laws for the punishment of crime shall be founded on the principles of reformation, and not of vindictive justice."

The pioneers who framed that document, even in their early days, had a larger and longer vision than the writer of the editorial in the Oregonian. A penitentiary should be more than "a place of restraint for those who have forfeited their right to liberty." Besides being a place of restraint, it should be a place of reformation. A place of rehabilitation. A place of hope. A place of training. A place of education. A place where wages are paid for faithful work, in order to give a stake to the released man for a new start in life, or to allow the man with a family on the outside to hold them together pending the time when he shall be allowed to join them.

None of this is coddling. It is just common sense applied to penology, which quality it has lacked through all the dark ages of the past, harking back to the vindictive principle of an eye for an eye and a tooth for a tooth, the practice of which made cities of refuge necessary. There came a new dispensation. Old things are passing away; but it is taking a long, long time.

There is no coddling in the Minnesota penitentiary at Stillwater, which is more nearly a reformatory than any institution of its kind in the world; which is self-supporting and pays a wage to every worker and has a system of education and a scheme of separation of the classes of inmates. It has the strictest kind of discipline. No military camp maintains a discipline more strict. This is necessary, in order to protect the orderly inmates from the disorderly. Every such institution has a large proportion of its inmates belonging to a class who are not criminals at heart. They are victims of environment; of impulse; of accident or passion. They must be shielded from the acts of desperate and unprincipled and undisciplined inmates.

The Oregonian writer is inapt in his arcaic attitude with regard to the importance of the separation of individuals in prison. "In accordance with the nature or degree of their offending." Modern rules of penology would more sensibly separate them in accordance with the capacity and attitude and fitness of the individuals, without much reference to the nature and degree of their offending. The general rule is to start the beginner in the property equipped prison in a middle class, and to grade him up or down according to his conduct and willingness and ability to observe the rules and take advantage of the opportunities offered him.

Lay Sermons

WEALTH AND DECAY
"Behold this was the iniquity of thy silver children, said, in the land of the living, and their fathers: they were in her and her daughters." Ezekiel 16:49.
Is this the life-cycle of cities and kingdoms: Toll, success, prosperity, idleness, decay? Old Ezekiel thought so about Sodom, long ago by the word of God, and the collapse. Oliver Goldsmith thought so when he wrote in "The Deserted Village":
"Ill fares the land, to hastening ill a prey,
Where wealth accumulates, and men decay."
The phrase "a generation from shirt sleeves to shirt sleeves" expressed the same belief with regard to an individual. Riches are thought to breed idleness and idleness is a sure forerunner of poverty. But this idea dates from the days before trust companies were formed to protect the family fortunes of idle sons and worthless sons-in-law.

A stiff pace for the most impeccable to follow. The other side of the picture is exposed so often in the press,—clones of great families disgracing the name and being prodigal with their substance. It is a good thing to reflect that not all wealthy sons are bums.
A more vital philosophy of living is coming despite the excesses of the jazz age. Recreation, sport, motoring, aviation, keep folk active, and activity is the foe of idleness and shiftlessness. Keeping pace with the times stir even the rich out of slothfulness. The multitude of interests in this complicated thing we call modern civilization keeps rich as well as poor on the alert.
America is building a new age. Are its citizens to be mere tenants of a prosperous era, later to be evicted when rentals accrue, to give place to some more virile people? Such will be their fate unless they can successfully keep prospering and enterprise and moral strength in proper balance. It is not mere piety that is needed, it is an animated, working, practical religion-in-life which is essential for that cultural security and personal and community character which will endure.
Old Ezekiel may have been right about Sodom. It is in the hands of those of the present generation to defeat his formula for national decay; to keep wealth the servant and not the master of

Old Oregon's Yesterdays
Town Talks from The Statesman Our Fathers Read
August 10, 1904
The flax industry has realized another notch in its upward climb, with virtual assurance that another linen mill will be established. Eugene Boise, father of the industry, announced. Annual production of more than 3,000 will be required for its support.
More than a hundred applicants for county and state teaching certificates are meeting at the court house this week to appear before the board of examiners.
The First Congregational church is planning to lay the cornerstone of the new church building which is to be erected at the corner of Liberty and Center streets. The excavation has been made for some time, but unexpected delays have occurred.
Claims totaling \$1149.45 have been paid to Statesman readers by the North American Accident Insurance Co. in less than one year. These claims were paid on the \$1.00 policy issued to Statesman readers.

WE ARE BUYING—
Evergreen
Blackberry
at 4 cents
Paulus Bros. Packing Co.
Corner Trade & High Streets

quaker meeting
now till Aug. 25, each evening at 8:00
speaking by Christian young people
Ed. Harmon, Tacoma
Mary Mills, Newberg
Singing Olive Terrell, Portland
the quakers
local church, Highland at Church
tent on Hazel just off Highland
you come too

Flowing Water
Not Only Turns Millwheels
But is Now Irrigating
Belcrest Memorial Park
Sprinkling of thirty acres of lawn was commenced last week in this beautiful park cemetery. Abundant supply of water is now flowing into "Memory Lake" from the Willamette river.
Many doves are circling over the grounds and cooing in the dove-cotes, significant of Peace and Beauty. The doves are under the care of a specially trained man.
Miniature fountains, flying doves, artistic bird-baths, convenient benches, shrubbery, lawn and beautiful buildings make this cemetery a place of exquisite beauty.
Consider, then, its low cost. Information concerning the easy down payments can be obtained by calling 2205.

Belcrest Memorial Park

Cider Factory to Be Built in City
C. M. Gregory, formerly associated with the Weatherly Ice cream company, has announced that he will establish a cider factory at 1999 North Capital street in the near future. Mr. Gregory will do a wholesale and retail business in cider and vinegar, selling his products under the "Ketchy" brand.