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Blasted Are the Meek, When Bullies Are Blessed*

By THE HONORABLE ROGER J. TRAYNOR**

In an age that worships youth and regards advancing years as backward, it may seem unduly forward for an old resident of this planet to cross a time barrier and address wordly-wise newcomers as if he were their equal. Tuned in as you are from infancy to history in the making, free as you are to expand your minds with sound and light from every direction, there is little doubt that you are as adult as I am, even though you are younger. Perhaps you will agree, however, that I am also as adult as you are, even though I am older, because each advancing year serves to screen finer the significant elements in successive globs of global events. There is nothing like perspective as a means of survival; then events can blow our minds without blowing them to pieces or inflating them to a dream state where any relation between our chimeras and the real world is strictly cumulo-cirrus.

We of different age groups have much to learn from one another. So I have learned, since saying farewell to the responsibilities of the Chief Justiceship of California to become a roving law

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teacher. Across the country, those of military age are preoccupied with advancing at last to an age of peace. For the first time that goal seems at least plausible, though war and not peace has been the usual lot of humankind. For the first time enough people young and strong enough to go to war are also privileged enough, thanks to an abundant materialistic society, to envisage making a rewarding life for themselves, in addition to making a living. Few people would quarrel with such a vision. There should now be an abatement of the chronic quarrels between generations, which darken their shared vision, on such superficial matters as fleeting fashions in apparel or scalp decorations or the quirks of speech that mark the provincialism in time of each generation. In truth, seeming rebels are sometimes the image of the conformist parents they profess to renounce, the same breed of sheep in wolf's clothing, in their groupy demeanor and speech.

We have learned in the law to get at the truth by narrowing the issues. It is a waste of time to take issue categorically with old people or middle-aged people or young people merely because some of them are excessively arrogant or visionary in outlook. Arrogance and foolishness are not determined by the date on which a person was born. The wrathful purple prose of some elders against any new scene is matched by the strawberry statements and other multi-flavored frozen puddings of aging youths, whose gratuitous paragraphs on sex and violence often seem calculated to boost sales as much as their manhood. Whatever their sensational appeal, most of them are doomed to eventual oblivion at Credibility Gap or Yawning Gulch. Even when reasoning people discard dripping diatribes, however, there remains a narrow issue of real concern. The time has come for all people to see as they really are, as bullies or calculating aspirants to political power, the purported new leaders who have found themselves a soft life as diehards, riding such good causes as peace.

At one time the dominant leaders were those who bullied the meek into viewing with alarm any and all changes on the fragile spaceship we occupy for a lifetime. I have not listened meekly in earlier years to such contemporaries, who were going to pot on the status quo. Neither have I been listening meekly in recent years to their direct descendants, who are going to poppy-seed on non-negotiable demands. The new bullies and the old, motivated by a common craving for lordliness, have a hard headstart on the meek. The new aspirants to power have improved on the rituals of blunt old kings. They have popularized fraternal handgrips and chants of power for the people, taking shrewd advantage of the meek who yearn for bit parts as campfollowers. As crowd scenes grow larger, the leaders become haloed.

It seems therefore timely to advance the thesis, validated more by experience than booklearning, that bullies adept at riding good causes threaten to ride them to destruction unless we raise voices

of reason effectively against them. Blasted are the meek, when bullies are blessed.

The bullies are well situated to exploit good causes. Good causes have a particularly strong appeal when there is some realistic hope of their success. In the main, if far from universally, no generation has been so generously endowed by a free society with education and material goods to resolve the problems that measure our distance from an ideal society. The very luck that fosters their idealism also makes them vulnerable to exploiters.

Hence a skeptical question attends recent chapters of the struggle to improve the lot of man and at the same time, of women. Will idealism so easy to come by as in our land vindicate itself in the long struggle that tests endurance? Will the bullies who are riding today's good causes be the ultimate victors or, if not, will they bring about a resurgence of old bullies? In particular, will law students privileged to have an American legal education, generally recognized as the best in the world, use their education effectively against the evil that is a chronic condition of life? Will they have the endurance to deliver those who are rendered meek by misery or their own cravenness, from bullies aspiring to a blessed power that will be above the law?

This note of skepticism looks to the day after tomorrow, which may at first seem as remote as did the man in the moon the day before yesterday. Meanwhile demagogues with a vested interest in power urge us to act now or never, at any cost, to right the wrongs in fields far or near. I plead only that you not embark rashly on violence, or condone the violence of others, or their cynical manipulation of our democratic processes, lest you hasten the reign of bullies versed in wronging rights on a massive scale. Maybe we can better understand our special responsibilities as lawyers, in the righting of wrongs, if we consider the consequences of irresponsible violence or calculating drives to power, purportedly for a good cause, from the perspective of the generation that will succeed yours, that of your own children, and the generation that preceded mine. Though they are a century apart, they are not many lives apart. You and I bridge the time gap between them.

It may be timely to tell you of a great historian, born in the nineteenth century, whom I came to know in the twentieth. Gaetano Salvemini, whose work even young historians among you may know, lived through times at least as turbulent as our own. A moving tribute to him by Iris Origo in the *New Republic* issue of October 21, 1957, is of such extraordinary relevance to your own lives that I am impelled to give it new currency here. It is also

phrased in such clear and beautiful language that it sets an example for lawyers whose obligation it is to use words honestly and well. Every name, place, and date vibrates with the life of the times. Consider the excerpt that follows:

Born in Molfetta in the Puglia on September 8, 1873, Salvemini completed his studies in Tuscan—on a scholarship of 56 *lire* a month. At 18 he published his first essay—a review of an ecclesiastical history—and was paid 18 *lire* for it. (“We did not count then in *lire*,” he said later, “but in steaks. 18 *lire*, 36 steaks.”) Subsequently, for more than 60 years, he taught history in the Universities of Messina, Pisa and Florence, and in the years of his political exile at Harvard. In 1955 he was awarded a doctor’s degree at Oxford and the international prize for history of the Accademia dei Lincei. His first works were concerned with the medieval history of Tuscany; then followed his works on *Mazzini*, *The French Revolution and The Question of the Adriatic*, and in 1946 *The History of Italian Foreign Policy from 1871 to 1915*. In 1911 he founded and directed with such collaborators as Luigi Einaudi, Gino Luzzatto, Giustino Fortunato, the Weekly *L’Unita*, which up to 1920 was the organ of the best liberal and socialist thought of the younger generation and was the first paper to tackle objectively and concretely the problems of the “Mezzogiorno.” From its first beginnings he was in conflict with Fascism. Arrested and tried in 1925 for publishing (together with Carlo Rosselli and Ernesto Rossi) the clandestine anti-Fascist paper *Non mollare*, he was granted provisional liberty and escaped to France, but was deprived of his chair at the university and, in the following year, of his Italian citizenship. There was nothing left for him but to go on living in exile—first in France and England, then in America, where he held from 1934 to 1948 the chair of “Italian Civilization” at Harvard. When at last, after the end of the War, he came home—and only those who saw him in his years of exile know how deep, in spite of all the kindness he received abroad, was his nostalgia for his own country and his own people—he occupied his old chair of history in Florence, his first lecture beginning with the words: “We were saying in the last lesson. . . .”

Salvemini brought his lessons home to our own children when he visited with Madeleine and me in Berkeley in the forties, still only yesterday in memory. He delighted in singing the Marseillaise with our youngest son Stephen, and then cautioned him not to take the bloodshedding words seriously. “*Non mollare*,” he said; “don’t ever give up, when you have a good cause. But always your weapon must be the pen, not the sword. The sword is not the weapon of a brave man.”

“Could I be brave all alone, if something happened to my parents and brothers?” asked Stephen.

“You would not be alone,” said Salvemini. “I will keep writing for you, so there will always be at least two of us against the bullies. Who knows, maybe there will sometimes be even three or four. What an army that would be, at least four with sharp pens!”

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We who knew Salvemini in his years of exile knew how long and hard he fought. In his intense commitment to humanity as well as to scholarship he set an example for the children of coming centuries as well as our own. Iris Origo has summarized his legacy to us as movingly as his life, in these words:

By temperament a rebel, an agitator and a moralist, he knew his true *métier* to be that of historian. But indeed the two personalities were fused. His passionate belief in democracy and his attitude to social struggles had its roots in his early studies of self-government by the people in the Tuscan communes; his defense of oppressed peoples and his adherence to the Pan-Slav movement, in the Mazzinian dream of a United Europe. For indeed, this was how he believed that *history* should be used. "The goal which a young man should aim at, who is studying history without intending to become a historian"—he wrote 50 years ago to the mother of a young student—

"is in my opinion to prepare himself for civilized life. . . . The pupil who studies history as I would wish would come out of my hands less intolerant, less Jacobin, less violent than before; he would not attribute all the evils of Italy to Giolitti, nor all those of Russia to Nicholas II; he would be neither reactionary nor revolutionary; he would perhaps be capable of sacrificing some of his own privileges to avoid greater sacrifices in the near future. . . ."

Like many another who found refuge here, Salvemini rejoiced in the great freedom of our country. The base of that freedom is a legal system that has afforded more protection against tyranny to more people than perhaps any other country in history. From my own life as a judge, I can bear witness to the openness and fairness of our judicial procedures. Foreign visitors to our courts never cease to be amazed at the irony of a legal system that affords such meticulous protection to the very demagogues who denounce it.

That irony is compounded when bullies not only exploit good causes to give a gloss of credibility to irresponsible lies, but also intimidate normally reasonable men into echoing the lies. I honor the traditions of my sturdy country that encompass a tolerance for irresponsible statements as a price to be willingly paid for an open society. Given that openness, I mince no words in stating my own view that it is irresponsible for anyone to echo such demagogic nonsense as the proposition that one group or another in this country cannot get a fair trial, when he is well aware that no country in the world has done more to insure fair trials. They confess cravenness who rationalize such statements as no more than strategic *Amens* to placate rabble-rousers, a pouring of oil on troubled

waters. The consequences of pouring oil on troubled waters are as lamentable for society as for the ecology.

The unholy combination of bullies and the cowards who placate them is particularly sinister because their theatrics, purportedly on behalf of striking down one alleged injustice or another, in the end threatens the freedom and justice that so many of the meek still beatifically take for granted. Consider the consequences, for example, of the current vogue for equating the most cynical or brutal lawbreaker with Antigone. Both have broken the law, we are told, for a higher law. I have no quarrel with Antigone, who made a fairly persuasive case for giving her brother decent burial in defiance of an arbitrary order issued by Creon that was itself a violation of established custom. I cannot yet be bullied into believing, however, that brutes are on the same high plane of lawbreaking when they take a live judge into their custody and attach a shotgun around his neck, when they bomb a building in which people are working, or when they stone at random, in the name of social justice, the windows of shopkeepers who are hardly the proximate cause of social injustice. The Greeks have a word for such guerrillas, but it is not Antigone.

Antigone had more than the courage of her convictions when she disobeyed the established order. She had also the courage to accept the consequences of her civil disobedience. This liberated woman was not engaging in child's play at other people's expense. Moreover, hers was an act of desperation. She had no freedom to become a conscientious objector to Creon's order. She had no other way of opposing Creon, no vote of her own against him, no elected representative to counter his power, no lawyers to plead for a generous interpretation of a tyrant's edict, no lawyers to plead the extenuating circumstances of her decision not to comply. She was condemned to be buried alive, not released on bail or her own recognizance until such time as she could bargain her plea down to a slight miss of demeanor. Her heroism was distinguished not only by the nonviolence of her unlawful act but also by her courage to face the penalty, however savage, and to let that final compliance evince her profound belief in law itself, whatever its aberrations.

There is an even more significant element of her heroism that distinguishes her from either the publicity-seeking street actors who build up every scene along their way or the anonymous alley cats who destroy everything in their path. There was nothing in Antigone's defiance of the state that wreaked injury on innocent people. She was a woman who understood the agony of creating life and the madness of destroying it to no purpose. She would not have understood the mock heroics of the bullies who ride good causes.

It should hardly be necessary to explain that my own declaration against such bullies is not to be interpreted as a declara-

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tion against the good causes that they exploit. It should hardly be necessary to declare my own belief that the cause of peace in our time, for example, is one that merits truly heroic efforts from us all. Not so long ago I took it for granted that anyone whose lifelong work involved a constant concern with law and justice would find it unnecessary to pledge allegiance to peace with a clenched fist or make other public announcements to let people know he cared.

So confused has communication become, however, amid the cynical caterwauls of self-styled public saviors, that it has come to prove necessary even amid seemingly rational groups to supplement any critique of the caterwaulers with an oath that I am not now, nor have I ever been, a warmonger or an imperialist or a racist. Why should I be when people all over the world, and of every conceivable group, bear such startling resemblance to one another in their occasional saintliness, their recurring villainy, and their perennially bumbling humanity?

This ritual over, there may be need of still another, a statement of why I think the time has come to focus on today's social problems without an endless recounting of the sins of the fathers, grandfathers, and distant kin. Since there is not a person alive, from Alaska to Zambia, whose ancestors were all paragons of virtue, the game of *Mea Culpa* can be played all the way back to original sin, but it is a great waste of time when there is so much real work to be done. Moreover, there have been enough impressive gains in social justice in recent years to give hope of many more, despite the woe-cryers. Among many people, there is at least a will for consensus rather than cleavage on the salient interlocking issues of the day, the far distant war that consumes our resources and the domestic needs that cry for them. There is a new yearning for moral values to give meaning to material gains. There is even a chance that we may be able to turn to good social purpose the growing interest in participatory democracy, once it has emerged from its kicking and screaming infancy. There may be some healthy changes in our political life as more women come into office; and all Heaven could break loose if ever the peaceful troops of the League of Women Voters advance squarely on the Pentagon to ask well-reasoned questions about anything that appears to be at sixes and sevens.

There is also some ground for hope that the growing participation of the young, not only in political life but also in work groups such as bar associations, will at least invigorate the democratic process. What an army it would be, young lawyers across the country armed with pens, who could do battle against such basic ills of the

democratic process as the chilling costs of elections, the feverish pace of campaigns, the tired blood of seniority systems in legislatures, and the delusions of grandeur of occasional newcomers in such halls who use them as bases of power for disrupting a democratic society. There could be a continuing review of bureaucracy in action, of the excess fat of certain bureaus and the anemia of others. There could be intensive critiques of government budgets. Who knows, there could even be in time a rational draft of equitable tax laws that would accelerate the depreciation of loopholes. Never have there been more challenges to young lawyers, or more high roads open to them along which they can confront those challenges peacefully and effectively.

There is always something to militate against such a rosy vision. Along the lowroads where the hawkers of social justice are flourishing, they are pushing hard for a power other than reason. My pessimism on this score may be explicable to you only if you envisage your life for the span of the next thirty years, which will take you to the year 2000, as I envisage it in the perspective of the last thirty years. I know something of your idealism and rejoice in the opportunities you will have to make it effective. I also know that thirty years is a long march in time, and many falter along the way. I wish I could be sure that you will have enough endurance not to lose the race to the traffickers on the low roads. Already they seem to have enough condonation, if not support, from well-meaning people to engender misgivings in those of us who have known like traffickers in the past.

In my own long march, it has often seemed as if I were reaching forward to speak with you because, as some contemporaries have put it critically, I have alas been ahead of my time. Now your contemporaries are speaking to me, and some of them are saying cavalierly that the ends of social justice justify the means even of bul- lies. Sometimes they add, with no little admiration, that guerrilla tactics work more swiftly than reason.

I cannot dispute that they sometimes do, when viewed only over a short run. It is less the evil efficiency of guerrilla tactics than the naive condonation they sometimes receive that gives cause for pessimism. Only because I have been writing for you all these years in the lawbooks, have I undertaken in recent times to ask you also to heed some lessons from history. We need not go all the way back to the good cause of the French Revolution, when bloodshedding tactics worked so much more efficiently than reason that the final triumph went to Napoleon. We need retrace back only thirty years or so. In those years I heard all the tall tales of guerrilla tactics and how admirably they worked. Mussolini, once a young Socialist colleague of Salvemini's, brightened the social scene of Italy with blackshirts. Hitler found his opportunity in a long depression; he enlisted countless nice young people to respond with joy and strength to the gleam of social justice in his eyes and to report

any disrespectful remarks of their elders to the state. Stalin introduced us to the wonders of a trial where the accused abjectly pronounced his *Mea Culpas*, a legal process notably swifter than our own.

All this history literally came home to me. Over the years we received men and women of reason who had fled Europe to find refuge in the United States. In those years, when many people of good will condoned the new leaders who reportedly were liquidating social problems, we talked with people whose families had been liquidated. Experience does leave its scars. Were some miracle-worker to descend upon me tomorrow and announce that he would wave his sword for universal social justice, but with no questions asked or answered and an obligatory framework of Great Creon and his thoughts spreading across the walls of every kitchen and bedroom, I would not be overcome with admiration at the swiftness of it all. I would begin thinking of what would be ahead until the year 2000 and beyond, the long stretch of perfect social justice and no soul you could call your own. I would think about what life would be like with Great Creon, Senior or Junior, hovering close by as a giant saintly presence to bless every beautiful relationship and also the soup of the day. I would look at all the nice young people who appeared to be finding joy and strength in his holiness, and I would speculate that they would not find their own identity again in their lifetime or mine. Then perhaps I would take up a pen and write some old friend in a far-off trouble spot where social justice was fortunately still not quite perfect. Perhaps I would be allowed to teach history there.

As we were saying in the last lesson:

Blasted are the meek when bullies are blessed.