

The Dangers of Contrived Freedom

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THOSE who value individual freedom should reassess the place of the individual within the legal system as a whole, suggests Bruno Leoni in *Freedom and the Law**. It is not a question, he says, of deciding what special "good" legislation we should adopt in preference to "bad" legislation. It is, "a question of deciding whether individual freedom is compatible in principle with the present system centered on and almost completely identified with legislation."

Leoni considers that both Roman and English history teach us a completely different lesson from that of the advocates of inflated legislation in the present age. While many today pay lip service to the Romans and to the British for their legal wisdom, very few realise what this wisdom consisted in, that is, how independent of legislation those systems were in so far as the ordinary life of the people was concerned, and consequently how great the sphere of the individual was in both Rome and England during the very centuries when their respective legal systems were most flourishing and successful.

Both the Romans and the English, Leoni writes, shared the idea that the law is something to be *discovered* more than to be *enacted* and that nobody is so powerful in society, or so righteous, as to identify his own will with the law of the land. Today, both in the Anglo-Saxon countries and in the Continental countries, ordinary legislation and even constitutions and codes are presented not as what the law is as a result of a secular process, but what the law *should* be as the result of a completely new approach and of unprecedented decisions.

Legislation, says Leoni, has come

to resemble a sort of *diktat* that the winning majorities impose upon the minorities. The succumbing minorities in turn adjust themselves to defeat with the hope of eventually winning a majority and being in a position of treating in a similar way the people belonging to the contingent majority of today.

Substituting legislation for the spontaneous application of non-legislated rules of behaviour, Leoni writes, is indefensible unless it is proved that the latter generates some evil that legislation could avoid while maintaining the advantages of the present system.

"This preliminary assessment is simply unthought of by contemporary legislators. On the contrary they seem to think that legislation is always good in itself and that the burden of the proof is upon the people who do not agree."

Leoni's contention is that the implication that a law (even a bad one) is better than nothing should be much more supported by the evidence than it is.

Leoni demonstrates how the current tendency is to identify law exclusively with legislation and written statutes to the neglect of common law, custom, convention, tacit rules and private spontaneous adjustment. He feels it is questionable that legislation should be used merely as a means of subjecting minorities in order to treat them as losers in the field. "It also seems unquestionable that we should reject the legislative process *whenever it is possible for the individuals involved to obtain their group objectives without depending upon the decision of a group and without actually constraining any other people to do what they would never do without constraint.*"

Leoni maintains that blind acceptance of the contemporary legal point of view will lead to gradual

destruction of individual freedom of choice in politics, the market and private life, for the contemporary legal point of view means the increasing substitution of group decisions for individual choices and the progressive substitution of such rigid and coercive procedures as "majority rule" for spontaneous adjustments between individual demands for and supplies of goods and services as well as all kinds of behaviour.

Leoni successively examines the semantic confusions in the words "freedom" and "constraint" and examines the relation of freedom to such concepts as the "rule of law", "equality before the law," and "representative government". He discusses such topics as rent control laws, privileges and immunities granted to labour unions, and the general proliferation of statutory and administrative law.

Freedom and the Law grew out of Professor Leoni's lectures at the Fifth Institute on Freedom and Competitive Enterprise at Claremont Men's College. The current edition is sponsored by the Institute for Humane Studies, Inc., Menlo Park, California.

BRIDGING THE FINANCIAL GAP

THE new London Bridge, to be opened by the Queen on March 16, has taken five years to build at a cost of 5.25 million, the whole of which cost has been borne by the Bridge House Estates Fund of the Corporation of London.

Where does the Fund get its money from? From bequests and gifts of property received by the Trustees over the centuries. Records go back to the twelfth century. The rents from these lands and properties have paid not only for the new London Bridge but for the construction, repair or rebuilding of Tower Bridge and Southwark and Blackfriars bridges as well.

There is a moral here. The more rents received by local or central government, the more expenditure by government at no cost to the taxpayer.

**Freedom and the Law*, Bruno Leoni, Nash Publishing Co., Los Angeles, \$7.50.