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The Development of Citizenship on the End of the Nineteenth Century

I shall be running true to type as a sociologist if I begin by saying that I propose to divide citizenship into three parts. But the analysis is, in this case, dictated by history even more clearly than by logic. I shall call these three parts, or elements, civil, political and social. The civil element is composed of the rights necessary for individual freedom, liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. The last is of a different order from the others, because it is the right to defend and assert all one's rights on terms of equality with others and by due process of law. This shows us that the institutions most directly associated with civil rights are the courts of justice. By the political element I mean the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body. The corresponding institutions are parliament and councils of local government. By the social element I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in the society. The institutions most closely connected with it are the educational system and the social services.¹³

In early times these three strands were wound into a single thread. The rights were blended because the institutions were amalgamated. As Maitland said: 'The further back we trace our history the more impossible it is for us to draw strict lines of demarcation between the various functions of the State: the same institution is a legislative assembly, a governmental council and a court of law ... Everywhere, as we pass from the ancient to the modern, we see what the fashionable philosophy calls differentiation.'¹⁴ Maitland is speaking here of the fusion of political and civil institutions and rights. But a man's social rights, too, were part of the same amalgam, and derived from the status which also determined the kind of justice he could get and where he could get it, and the way in which he could take part in the administration of the affairs of the community of which he was a member. But this status was not one of citizenship in our modern sense. In feudal society status was the hallmark of class and the measure of inequality. There was no uniform collection of rights and duties with which all men - noble and common, free and serf - were endowed by virtue of their membership of the society. There was, in this sense, no principle of the equality of citizens to set against the principle of the inequality of classes. In the medieval towns, on the other hand, examples of genuine and equal citizenship can be found. But its specific rights and duties were strictly local, whereas the citizenship whose history I wish to trace is, by definition, national.

Its evolution involved a double process, of fusion and of separation. The fusion was geographical, the separation functional. The first important step dates from the twelfth century, when royal justice was established with effective power to define and defend the civil rights of the individual such as they then were on the basis, not of local custom, but of the common law of the land. As institutions the courts were national, but specialised. Parliament followed, concentrating in itself the political powers of national government and shedding all but a small residue of the judicial functions which formerly belonged to the Curia Regis, that sort of constitutional protoplasm out of which will in time be evolved the various councils of the crown, the houses of parliament, and the courts of law'.¹⁵ Finally, the social rights which had been rooted in membership of the village community, the town and the guild, were gradually dissolved by economic change until nothing remained but the Poor Law, again a specialised institution which acquired a national foundation, although it continued to be locally administered.

Two important consequences followed. First, when the institutions on which the three elements of citizenship depended parted company, it became possible for each to go its separate way, travelling at its own speed under the direction of its own peculiar principles. Before long they were spread far out along the course, and it is only in the present century, in fact I might say only within the last few months, that the three runners have come abreast of one another.

Secondly, institutions that were national and specialised could not belong so intimately to the life of the social groups they served as those that were local and of a general character. The remoteness of parliament was due to the mere size of its constituency; the remoteness of the courts, to the technicalities of their law and their procedure, which made it necessary for the citizen to employ legal experts to advise him as to the nature of his rights and to help him to obtain them. It has been pointed out again and again that, in the Middle Ages, participation in public affairs was more a duty than a right. Men owed suit and service to the court appropriate to their class and neighbourhood. The court belonged to them and they to it, and they had access to it because it needed them and because they had knowledge of its affairs, But the result of the twin process of fusion and separation was that the machinery giving access to the institutions on which the rights of citizenship depended had to be shaped afresh. In the case of political rights the story is the familiar one of the franchise and the qualifications for membership of parliament. In the case of civil rights the issue hangs on the jurisdiction of the various courts, the privileges of the legal profession, and above all on the liability to meet the costs of litigation. In the case of social rights the centre of the stage is occupied by the Law of Settlement and Removal and the various forms of means test. All this apparatus combined to decide, not merely what rights

were recognised in principle, but also to what extent rights recognised in principle could be enjoyed in practice.

When the three elements of citizenship parted company, they were soon barely on speaking terms. So complete was the divorce between them that it is possible, without doing too much violence to historical accuracy, to assign the formative period in the life of each to a different century civil rights to the eighteenth, political to the nineteenth and social to the twentieth. These periods must, of course, be treated with reasonable elasticity, and there is some evident overlap, especially between the last two.

To make the eighteenth century cover the formative period of civil rights it must be stretched backwards to include Habeas Corpus, the Toleration Act, and the abolition of the censorship of the press; and it must be extended forwards to include Catholic Emancipation, the repeal of the Combination Acts, and the successful end of the battle for the freedom of the press associated with the names of Cobbett and Richard Carlile. It could then be more accurately, but less briefly, described as the period between the Revolution and the first Reform Act. By the end of that period, when political rights made their first infantile attempt to walk in 1832, civil rights had come to man's estate and bore, in most essentials, the appearance that they have today.¹⁶ 'The specific work of the earlier Hanoverian epoch', writes Trevelyan, 'was the establishment of the rule of law; and that law, with all its grave faults, was at least a law of freedom. On that solid foundation all our subsequent reforms were built.'¹⁷ This eighteenth-century achievement, interrupted by the French Revolution and completed after it, was in large measure the work of the courts, both in their daily practice and also in a series of famous cases in some of which they were fighting against parliament in defence of individual liberty. The most celebrated actor in this drama was, I suppose, John Wilkes, and, although we may deplore the absence in him of those noble and saintly qualities which we should like to find in our national heroes, we cannot complain if the cause of liberty is sometimes championed by a libertine.

In the economic field the basic civil right is the right to work, that is to say the right to follow the occupation of one's choice in the place of one's choice, subject only to legitimate demands for preliminary technical training. This right had been denied by both statute and custom; on the one hand by the Elizabethan Statute of Artificers, which confined certain occupations to certain social classes, and on the other by local regulations reserving employment in a town to its own members and by the use of apprenticeship as an instrument of exclusion rather than of recruitment. The recognition of the right involved the formal acceptance of a fundamental change of attitude. The old assumption that local and group monopolies were in the public interest, because 'trade and traffic cannot be maintained or increased without order and government',¹⁸ was replaced by the new assumption that such restrictions were an offence against the liberty of the

subject and a menace to the prosperity of the nation. As in the case of the other civil rights, the courts of law played a decisive part in promoting and registering the advance of the new principle. The Common Law was elastic enough for the judges to apply it in a manner which, almost imperceptibly, took account of gradual changes in circumstances and opinion and eventually installed the heresy of the past as the orthodoxy of the present. The Common Law is largely a matter of common sense, as witness the judgement given by Chief Justice Holt in the case of *Mayor of Winton v. Wilks* (1705): 'All people are at liberty to live in Winchester, and how can they be restrained from using the lawful means of living there? Such a custom is an injury to the party and a prejudice to the public.'¹⁹ Custom was one of the two great obstacles to the change. But, when ancient custom in the technical sense was clearly at variance with contemporary custom in the sense of the generally accepted way of life, its defences began to crumble fairly rapidly before the attacks of a Common Law which had, as early as 1614, expressed its abhorrence of 'all monopolies which prohibit any from working in any lawful trade'.²⁰ The other obstacle was statute law, and the judges stuck some shrewd blows even against this doughty opponent. In 1756 Lord Mansfield described the Elizabethan Statute of Artificers as a penal law, in restraint of natural right and contrary to the Common Law of the kingdom. He added that 'the policy upon which the Act was made is, from experience, become doubtful.'²¹

By the beginning of the nineteenth century this principle of individual economic freedom was accepted as axiomatic. You are probably familiar with the passage quoted by the Webbs from the report of the Select Committee of 1811, which states that:

*no interference of the legislature with the freedom of trade, or wit the perfect liberty of every individual to dispose of his time and of his labour in the way and on the terms which he may judge most conducive to his own interest, can take place without violating general principles of the first importance to the prosperity and happiness of the community.*²²

The repeal of the Elizabethan statutes followed quickly, as the belated recognition of a revolution which had already taken place.

The story of civil rights in their formative period is one of the gradual addition of new rights to a status that already existed and was held to appertain to all adult members of the community - or perhaps one should say to all male members, since the status of women, or at least of married women, was in some important respects peculiar. This democratic, or universal, character of the status arose naturally from the fact that it was essentially the status of freedom, and in seventeenth-century England all men were free. Servile status, or villeinage by blood, had lingered on as a patent anachronism in the days of Elizabeth, but vanished soon afterwards.

This change from servile to free labour has been described by Professor Tawney as 'a high landmark in the development both of economic and political society', and as 'the final triumph of the common law' in regions from which it had been excluded for four centuries. Henceforth the English peasant is a member of a society in which there is, nominally at least, one law for all men'.²³ The liberty which his predecessors had won by fleeing into the free towns had become his by right. In the towns the terms 'freedom' and 'citizenship' were interchangeable. When freedom became universal, citizenship grew from a local into a national institution.

The story of political rights is different both in time and in character. The formative period began, as I have said, in the early nineteenth century, when the civil rights attached to the status of freedom had already acquired sufficient substance to justify us in speaking of a general status of citizenship. And, when it began, it consisted, not in the creation of new rights to enrich a status already enjoyed by all, but in the granting of old rights to new sections of the population. In the eighteenth century political rights were defective, not in content, but in distribution—effective, that is to say, by the standards of democratic citizenship. The Act of 1832 did little, in a purely quantitative sense, to remedy that defect. After it was passed the voters still amounted to less than one-fifth of the adult male population. The franchise was still a group monopoly, but it had taken the first step towards becoming a monopoly of a kind acceptable to the ideas of nineteenth-century capitalism—a monopoly which could, with some degree of plausibility, be described as open and not closed. A closed group monopoly is one into which no man can force his way by his own efforts; admission is at the pleasure of the existing members of the group. The description fits a considerable part of the borough franchise before 1832; and it is not too wide of the mark when applied to the franchise based on freehold ownership of land. Freeholds are not always to be had for the asking, even if one has the money to buy them, especially in an age in which families look on their lands as the social, as well as the economic, foundation of their existence. Therefore the Act of 1832, by abolishing rotten boroughs and by extending the *franchise* to leaseholders and occupying tenants of sufficient economic substance, opened the monopoly by recognising the political claims of those who could produce the normal evidence of success in the economic struggle.

It is clear that, if we maintain that in the nineteenth century citizenship in the form of civil rights was universal, the political franchise was not one of the rights of citizenship. It was the privilege of a limited economic class, whose limits were extended by each successive Reform Act. It can nevertheless be argued that citizenship in this period was not politically meaningless. It did not confer a right, but it recognised a capacity. No sane and law-abiding citizen was debarred by personal status from acquiring and recording a vote. He was free to earn, to save, to buy property or to rent a house, and to enjoy whatever political rights were attached to these

economic achievements. His civil rights entitled him, and electoral reform increasingly enabled him, to do this.

It was, as we shall see, appropriate that nineteenth-century capitalist society should treat political *rights* as a secondary product of civil rights. It was equally appropriate that the twentieth century should abandon this position and attach political rights directly and independently to citizenship as such. This vital change of principle was put into effect when the Act of 1918, by adopting manhood suffrage, shifted the basis of political rights from economic substance to personal status. I say manhood' deliberately in order to emphasise the great significance *of* this reform quite apart from the second, and no less important, reform introduced at the same time—namely the enfranchisement of women. But the Act of 1918 did not frilly establish the political equality of all in terms of the rights of citizenship. Remnants of an inequality based on differences of economic substance lingered on until, only last year, plural voting (which had already been reduced to dual voting) was finally abolished.

When I assigned the formative periods of the three elements of citizenship each to a separate century - civil rights to the eighteenth, political to the nineteenth and social to the twentieth - I said that there was a considerable overlap between the last two. I propose to confine what I have to say now about social rights to this overlap, in order that I may complete my historical survey to the end of the nineteenth century, and draw my conclusions from it, before turning my attention to the second half of my subject, a study of our present experiences and their immediate antecedents. In this second act of the drama social rights will occupy the centre of the stage.

The original source of social rights was membership of local communities and functional associations. This source was supplemented and progressively replaced by a Poor Law and a system of wage regulation which were nationally conceived and locally administered. The latter—the system of wage regulation—was rapidly decaying in the eighteenth century, not only because industrial change made it administratively impossible, but also because it was incompatible with the new conception of civil rights in the economic sphere, with its emphasis on the right to work where and at what you pleased under a contract of your own making. Wage regulation infringed this individualist principle of the free contract of employment.

The Poor Law was in a somewhat ambiguous position. Elizabethan legislation had made of it something more than a means for relieving destitution and suppressing vagrancy, and its constructive aims suggested an interpretation of social welfare reminiscent of the more primitive, but more genuine, social rights which it had largely superseded. The Elizabethan Poor Law was, after all, one item in a broad programme of economic planning whose general object was, not to create a new social order, but to preserve the existing one with the minimum of essential change. As the pattern of the old order dissolved under the blows of a

competitive economy, and the plan disintegrated, the Poor Law was left high and dry as an isolated survival from which the idea of social rights was gradually drained away. But at the very end of the eighteenth century there occurred a final struggle between the old and the new, between the planned (or patterned) society and the competitive economy. And in this battle citizenship was divided against itself; social rights sided with the old and civil with the new.

In his book *Origins of our Time*, Karl Polanyi attributes to the Speenhamland system of poor relief an importance which some readers may find surprising. To him it seems to mark and symbolise the end of an epoch. Through it the old order rallied its retreating forces and delivered a spirited attack into the enemy's country. That, at least, is how I should describe its significance in the history of citizenship. The Speenhamland system offered, in effect, a guaranteed minimum wage and family allowances; combined with the fight to work or maintenance. That, even by modern standards, is a substantial body of social rights, going far beyond what one might regard as the proper province of the Poor Law. And it was fully realised by the originators of the scheme that the Poor Law was being invoked to do what wage regulation was no longer able to accomplish. For the Poor Law was the last remains of a system which tried to adjust real income to the social needs and status of the citizen and not solely to the market value of his labour. But this attempt to inject an element of social security into the very structure of the wage system through the instrumentality of the Poor Law was doomed to failure, not only because of its disastrous practical consequences, but also because it was utterly obnoxious to the prevailing spirit of the times.

In this brief episode of our history we see the Poor law as the aggressive champion of the social rights of citizenship. In the succeeding phase we find the attacker driven back far behind his original position. By the Act of 1834 the Poor Law renounced all claim to trespass on the territory of the wages system, or to interfere with the forces of the free market. It offered relief only to those who, through age or sickness, were incapable of continuing the battle, and to those other weaklings who gave up the struggle, admitted defeat, and cried for mercy. The tentative move towards the concept of social security was reversed. But more than that, the minimal social rights that remained were detached from the status of citizenship. The Poor Law treated the claims of the poor, not as an integral part of the rights of the citizen but as an alternative to them as claims which could be met only if the claimants ceased to be citizens in any true sense of the word. For paupers fortified in practice the civil right of personal liberty, by internment in the workhouse, and they forfeited by law any political rights they might possess. This disability of disfranchisement remained in being until 1918, and the significance of its final removal has perhaps, not been fully appreciated. The stigma which clung to poor relief expressed the deep feelings of a people who understood that those who

accepted relief must cross the road that separated the community of citizens from the outcast company of the destitute.

The Poor law is not an isolated example of this divorce of social rights from the status of citizenship. The early Factory Acts show the same tendency. Although in fact they led to an improvement of working conditions and a reduction of working hours to the benefit of all employed in the industries to which they applied, they meticulously refrained from giving this protection directly to the adult male - the citizen *par excellence*. And they did so out of respect for his status as a citizen, on the grounds that enforced protective measures curtailed the civil right to conclude a free contract of employment. Protection was confined to women and children, and champions of women's rights were quick to detect the implied insult. Women were protected because they were not citizens. If they wished to enjoy full and responsible citizenship, they must forgo protection. By the end of the nineteenth century such arguments had become obsolete, and the factory code had become one of the pillars in the edifice of social rights.

The history of education shows superficial resemblances to that of factory legislation. In both cases the nineteenth century was, for the most part, a period in which the foundations of social rights were laid, but the principle of social rights as an integral part of the status of citizenship was either expressly denied or not definitely admitted. But there are significant differences. Education, as Marshall recognised when he singled it out as a fit object of state action, is a service of a unique kind. It is easy to say that the recognition of the right of children to be educated does not affect the status of citizenship any more than does the recognition of the right of children to be protected from overwork and dangerous machinery, simply because children, by definition, cannot be citizens. But such a statement is misleading. The education of children has a direct bearing on citizenship, and, when the state guarantees that all children shall be educated, it has the requirements and the nature of citizenship definitely in mind. It is trying to stimulate the growth of citizens in the making. The right to education is a genuine social right of citizenship, because the aim of education during childhood is to shape the future adult. Fundamentally it should be regarded, not as the right of the child to go to school, but as the right of the adult citizen to have been educated. And there is here no conflict with civil rights as interpreted in an age of individualism. For civil rights are designed for use by reasonable and intelligent persons, who have learned to read and write. Education is a necessary prerequisite of civil freedom.

But, by the end of the nineteenth century, elementary education was not only free, it was compulsory. This signal departure from *laissez faire* could, of course, be justified on the grounds that free choice is a right only for mature minds, that children are naturally subject to discipline, and that parents cannot be trusted to do what is in the best interests of their children.

But the principle goes deeper than that. We have here a personal right combined with a public duty to exercise the right. Is the public duty imposed merely for the benefit of the individual because children cannot fully appreciate their own interests and parents may be unfit to enlighten them? I hardly think that this can be an adequate explanation. It was increasingly recognised, as the nineteenth century wore on, that political democracy needed an educated electorate, and that scientific manufacture needed educated workers and technicians. The duty to improve and civilise oneself is therefore a social duty, and not merely a personal one, because the social health of a society depends upon the civilisation of its members. And a community that enforces this duty has begun to realise that its culture is an organic unity and its civilisation a national heritage. It follows that the growth of public elementary education during the nineteenth century was the first decisive step on the road to the re-establishment of the social rights of citizenship in the twentieth.

When Marshall read his paper to the Cambridge Reform Club, the state was just preparing to shoulder the responsibility he attributed to it when he said that it was 'bound to compel them [the children] and help them to take the first step upwards'. But this would not go far towards realising his ideal of making every man a gentleman nor was that in the least the intention. And as yet there was little sign of any desire 'to help them, if they will, to make many steps upwards'.

The idea was in the air, but it was not a cardinal point of policy. In the early nineties the London County Council, through its Technical Education Board, instituted a scholarship system which Beatrice Webb obviously regarded as epoch-making for she wrote of it:

In its popular aspect this was an educational ladder of unprecedented dimensions. It was, indeed, among educational ladders the most gigantic in extent, the most elaborate in its organization of 'intakes' and promotions, and the most diversified in kinds of excellence selected and in types of training provided that existed anywhere in the world.²⁴

The enthusiasm of these words enables us to see how far we have advanced our standards since those days.

¹³ By this terminology, what economists sometimes call “income from civil rights” would be called “income from social rights”. Cf. H. Dalton, *Some Aspects of the Inequality of Incomes in Modern Communities*, Part 3, Chapters 3 and 4

¹⁴ F. Maitland, *Constitutional History of England*, p. 105

¹⁵ A. F. Pollard, *Evolution of Parliament*, p. 25

¹⁶ The most important exception is the right to strike, but the conditions which made this right vital for the workman and acceptable to political opinion had not yet fully come into being.

¹⁷ G.M. Trevelyan: *English Social History*, p. 351

¹⁸ City of London Case, 1610. See E.F. Heckscher *Mercantilism*, vol. I, pp. 269 – 325, where the whole story is told in considerable detail.

¹⁹ *King’s Bench Reports* (Holt), p. 1002

²⁰ Heckscher, *Mercantilism*, vol. I, p. 283

²¹ *Ibid.*, p. 316

²² Sidney and Beatrice Webb, *History of Trade Unionism* (1920), p.60

²³ R.H. Tawney, *The Agrarian Problem in the Sixteenth Century* (1916), pp. 34-4

²⁴ *Our Partnership*, p. 79

