

# Freedom Under Law

By Robert Bertram

[Printed in The Cresset 16:3 (January, 1953): 21-26.  
Reprinted with permission.]

In a Greyhound bus a few weeks ago the woman behind me said to her partner, and said rather indignantly, “Well, it’s my life and I oughta be allowed to live it the way I want to.” My partner and I looked at one another and chuckled. That was poor taste on our part. We should have stood up and booed.

Presumably what the lady was talking about was, as you say in America, her “rights,” her “freedom.” But if there is any one thing that freedom is *not*, it is irresponsibility. It is not the right to live my life just any old way I please. Indeed that is the one thing a man ought to be free *from*. Freedom has a lot to do with “life” all right, but not with that kind of life.

## **A Freedom for Responsibility**

A man ought to be free for at least two things: to try to live his life for God and his neighbor and, in so trying, to come to the recognition that he cannot succeed. He must have every opportunity to attempt the saintly and the heroic, and every opportunity to find himself, after all, guilty and tragic. To these two minimal human privileges he should be freely entitled. If, beyond that and through the pity of Christ, he is raised to a still higher freedom, then these two things will be reversed and revised. But to the extent that he does not enjoy the higher freedom, he must at least be allowed to enjoy the freedom befitting any noble pagan: the freedom, as we said, first, to do his manly best and, second, to discover that his best can never be good enough.

Does this strike you as a rather dubious freedom? There is at least more freedom here than there is in either immorality or complacency. To these a man has no right. But he does have an unalienable right to do the good or at least to die trying, and an unalienable right to know that he dies defeated. If you and I prevent him from doing the former, we obstruct God’s creativity. And if we prevent him from knowing the latter, we

obscure God's wrath. He has a right to the one because he is God's creature, and a right to the other because he is God's sinner.

It may seem a little unconventional to speak of these two functions – a man's aspiring and his despairing – as "rights." Aren't they rather more like duties and responsibilities? Isn't it more accurate to speak of a man's *duty* to be good than of his *right* to be good? And hasn't he less a *right* to acknowledge his guilt than a *responsibility* to do so? But rights and duties are only obverse sides of the same thing. Insofar as a man resists and withdraws from these two functions of his life under his own steam (and which man doesn't?) they assume the grim character of duties, responsibilities, obligations. But insofar as he is hindered in the performance of these functions by anything or anyone outside himself, they become his rights.

And he surely is hindered, and hindered aplenty. He is continually being distracted both from his moral aspiration and from his spiritual desperation, not only by his own unwillingness, but by a whole environment of bad examples and uncooperative neighbors, unreliable government and an exploiting economy, unedifying recreation and education, and insensitive churches. He is not as free as he should be to face up to the stern duties of life and death. We ought to stand up for his rights.

### **The Curb and the Mirror**

By his rights, we mean something more, his right to improve ethically and religiously and his right to know that he fails and is at fault. Or, speaking theologically, we mean his right to stand under the divine law. This is the law which is calculated both to make him behave and to make him tremble. As the older theologies put it with delicious quaintness, this law is meant both to equip him with "civil righteousness" and to remind him that he fails in the "righteousness which avails before God." Or as any catechumen could tell us, it is on the one hand a "curb" for his sin and on the other hand a "mirror" for his guilt. His sort of freedom then is a freedom to feel this two-pronged law and to let it have its way with him.

Now if we are going to secure, for the man under the law, the maximum practical benefits, then we ought always surround him with a law that is both curb and mirror at one and the same time. A law which ultimately is content to be only the one or only the

other is less than the whole law. Suppose, for example, that a man knows only of obligations which are not stringent enough to drive him to the very limit of his capacities and to penitence; in that case it is likely that his morality and piety will also be exceedingly superficial and pedestrian. Curbs which are not rigorous enough to be mirrors will also not be very effective curbs. To subject a man to that kind of leniency is to deprive both himself and his society of what measure of good he might have achieved. And that is a limitation of his freedom. Or suppose, conversely, that he is called to repentance only in highfaluting theological terms which have no visible connection with those everyday curbs and demands which genuinely needle and shame him; in that case he is apt to think of religious guilt as something very remote from him and from his situation. The mirror which is not at least somewhat meaningful as a curb is not a very relevant mirror. To subject a man to that kind of irrelevance is to deprive him of the frank self-awareness to which all guilty men are entitled. And this is another limitation of his freedom.

One test of a good curb, then, is that it be a good mirror; and if it is a poor mirror then it is a poor curb. Socrates' ethics and religion, some of the noblest in man's history, reach their climax in his plea for self-knowledge. But if he drank the hemlock as blithely as Plato says he did, hardly mindful of the depth of human guilt, and if in his Greek vocabulary there was not even a word for what we call humility, then even Socrates' mirror was inadequate; *and if his mirror, then also his curb*. It is all very splendid for us Americans to emulate, with Jefferson, the life and teachings of Jesus and to respect, with Lincoln, "the right as God gives us to see the right" and to be inspired, with Roosevelt, by I Corinthians 13 and to believe, with Truman in The Sermon on the Mount. And for this curb in our national life there is every reason to be grateful, not cynical – if it weren't that we had forgotten how this same curb, as mirror, stands also in terrible judgment on us, how it drove a Man to the Cry of Dereliction and ought to drive us too to cry for mercy. Unless we let it also expose our guilt we can hardly will that it promote our goodness. And until then, surely, we are less than free.

Conversely, one test of a good mirror is that it be expressible also as a curb; otherwise it will be, for most men at least, simply unintelligible. If a man is going to recognize his own tragic reflection in the mirror of the law, he must hear this law where it

is familiar to him, in the curbs which confront him in his earthly callings. If we call him to judgment simply in the lofty tones of “Thou shalt love the Lord thy God with all thy heart...and thy neighbor as thyself” or “Ye shall be perfect even as your Father in heaven is perfect,” he may nod agreeably but he isn’t likely to feel judged. He will first have to hear the same law spelled out in the more familiar demands of his occupation and of his citizenship, in his all-too-clear responsibilities as family-man and relative and friend, in his myriad inescapable obligations to property, to animals and plants and soil, to the passage of time, to past and future generations, in the unmistakable requirements of his own body and his appetites and his intellect. It is at this level that the law curbs him, and it is here that it will have to mirror his lovelessness and his unfaith. If it doesn’t, he will either ignore his guilt or seek another name (and another meaning) for it from the gutter, the magazines, the psychiatrists. Or, what is worst, in his own wishful optimism he will misconstrue it as a guilt for which he himself might atone, and thus commit The Pharisaic Fallacy. And this too, surely, leaves him unfree.

### **Deterrents**

This ideal balance between curb and rule is of course mighty easy to put down on paper; it is not nearly so easy to put into practice in the rough and tumble of daily living. On paper it might even be spelled out as a very impressive formula for social policy; it is quite another thing to implement that formula in social action. See how easy it is to state the formula: “Any profound program for human improvement must be stringent enough to serve also as a conscience for human evil, and that conscience in turn must always inflict its judgment at the point where men encounter their obligations.” Now that all sounds very nice. But how in the dickens do you make it work in government, or in industry, or in mass communication? Take, for instance, such “programs for human improvement” as our past efforts to contain communist aggression, to clean up vice rackets, to devise quieter machinery for labor-management bargaining, to convert Dick Tracy’s and Captain Video’s fans to something better like **The Cresset** or “This is the Life.” How, pray, do we shape these worthy endeavors into “consciences for human evil?” I’ll bet my bottom dollar they won’t drive more than ten communists or mobsters

of labor bosses or company vice-presidents or comic book fans to their knees in despair. Or, on the other hand, look at some of the really prophetic “consciences” in our culture: Marx and Freud and Ghandi, Kierkegaard and Maritain and Barth. How do we make their sounder judgments intelligible “at the point where men encounter their obligations?” So far these “consciences” are only names for partisans to conjure with. The fine balance of curb and mirror doesn’t seem to be able to get off the hook.

Now if it’s really as impossible as all that, then all our earlier talk about freedom and rights turns out to be pretty vain. But is that impossible? Maybe we’ve deliberately distorted the picture. Perhaps we’ve asked the wrong question. Weren’t we tacitly assuming, just now, that this program, in order to be effective at all, has to affect whole masses of people, and that it has to be achieved through the vast power arrangements of state and the economy and the press, and that it would all have to happen overnight? But this is not a fair assumption to make. To be sure, if the divine law of curb and mirror would operate that way, that would be very fine. But that unfortunately doesn’t seem to be the case.

### **The Free Individual**

And anyway there is still enough truth left in individualism to warrant thinking that it is the individual man, not society, who constitutes the dynamic agent in human morality. Even first-rate sociologists like Talcott Parsons and Robert Merton still believe this and, whether they care or not, I for one agree with them. And there is just as much to be said for the old-fashioned personalism: Where the individual learns his curbs and mirrors most effectively is, not in the impersonal web of mass power media, but in the intimately personal, face-to-face tutelage of the home, the neighborhood, the school, the churches – but especially in the home. Whatever freedom he achieves as a man-under-the-law he achieves through contacts like these. And along with this plea for the individual person goes a plea for the aristocrat. The men in whom the divine curb and mirror have been even relatively effective, and who in this sense are free men, are pretty few and far between. Such a man combines in his own person a humble estimate of his own worthiness before God and a daring willingness to govern and to serve his neighbors. He

is an aristocrat not because he is a well-born man or a wealthy man or even a very intelligent man, but because he is an unusually responsible man.

All the freedoms in the political-economic-social system ought to be oriented toward the finding, the producing, and the using of men like that. And once such a man is discovered – and discovered preferably in his youth by a school system which is geared to look for his kind – he and his family should be liberated by the community from whatever stigma of poverty, precedent or oppression would hinder him from maturing into an able and responsible public servant, in business, politics or the professions. His freedom then is actually the curb of the law. Of course, his entire society ought to be kept free and open and competitive enough to permit such men to rise, but not so free and open that the rights of every Tom, Dick and Harry, moral or immoral, throttle him and deprive them of his service to them. Political and economic liberty, as Rousseau maintained, is justified if it can free the good man for a wider practice of his goodness. As it is, we have too many Commander Queegs.

But the good man's privileged freedom should be meant not only to provide him with exceptional opportunity but also to needle and jog him with exceptionally rigorous obligations. He must be held individually responsible, relieved of all opportunity for buck-passing and renegeing, in a measure which lesser men could not endure. And all this, not only to preserve his neighbors from his possible arrogance and abuse of power, but to provide him personally with plenty of opportunity for penitence. He must be helped to see that, in life as we find it, to be good is penultimate to being guilty. And as he himself matures his obligations should be screwed more and more tightly until his capacities are tensed to the breaking point. And at that moment, then and there, he must connote that the tensile strength of even a good man cannot bear the weight of the divine judgment. So his freedom is also a mirror.

The law's fine balance of curb and mirror is not quite as impossible, then, as we had imagined. Not quite. But still impossible. No man can experience the dizzy freedom of such transcendent expectations and such searching condemnations, unless – either he is broken completely or he is assured of the prospect of a higher, safer freedom. Ideally, therefore, the man most eligible for a life under the curb and the mirror is the man in Christ. He is eligible, not only because he knows the gospel, but also because he

is singularly equipped to know the law. For one thing, he ought to know better than anyone else how great a curb the law must really be if it required such a Passion and a Resurrection as our Lord's to overcome it. For another thing, just as any culprit will confess his crimes if he knows he will be pardoned, so the Christian can bear to confront the mirror because he can see beyond it to his restoration.