Judges Against the Rule of Law

by Theodore Dalrymple

It is seldom, said Hume, that we lose our liberty all at once: rather, it is nibbled away as a mouse nibbles cheese. Perhaps the same might be said of the rule of law, especially in countries such as Britain where it has been long established and people take it for granted, as if it were a natural rather than an achieved phenomenon.

One of the enemies of the rule of law is sentimentality. Both a jury and now a judge have found that if protesters break the law for what the jury or the judge considers a supposedly good cause, they can be rightfully acquitted in the name of freedom of protest.

In 2020, young protesters in Bristol toppled a fine century-and-a-quarter-old statue of Edward Colston, a late seventeenth

and early eighteenth merchant of the city, and threw it into the city's harbour. Colston endowed institutions in the city, and at least some of his money came from the slave trade. The action of the protesters was clearly criminal, but they were acquitted by a jury because their action was supposedly idealistic. Vandalism in the name of ideals has always been a popular pastime, of course, and the aesthetic contribution of the statue to the city was not mentioned in the subsequent debate on the matter.

More recently, six doctors and a nurse have been acquitted by a judge of obstructing the highway after they were arrested for blocking Lambeth Bridge in London. The judge who acquitted them said "I was impressed by the integrity and rationality of their beliefs. Their evidence was deeply moving."

The doctors and nurse were demanding that the use of oil be halted, and no more exploration for it and other hydrocarbons be carried out. Of course, they believed that they were helping to "save the planet," but what they did was clearly illegal and likely to prevent their fellow-citizens going about their business in a normal fashion.

The *Lancet*, a medical journal that frequently exudes self-righteousness despite the fraudulent papers that it is sometimes fooled into publishing, claimed that "There is some evidence that disruptive or radical non-violent actions are successful in garnering public attention for a cause." There is nothing there with which a Nazi could disagree.

"Protest, like this one, is like attempting to shock a failing heart, in the hope that it will change its rhythm," said one of the doctors involved in the protest after the acquittal. "Thankfully, today the court recognised that right to protest."

One can only hope that the doctor is more precise in his thinking about his patients. Blocking a highway is nothing

like shocking a patient for a clear and definable reason. Even if the cause were a good one, it is possible that the "shock" applied would have the opposite effect from that intended, namely a hatred of the cause which had so inconvenienced the public.

The judge was impressed by the integrity and rationality of the beliefs and intentions of the protestors: but did he hear arguments against their point of view? Did he hear that, in the present context, they and people like them might have contributed to the danger this winter of old and poor people dying of cold because they could not afford heating—that is, if such heating were still available? (Some years ago, the *Lancet* published an article suggesting that seventeen times as many people died of excess cold as of excess heat.) Did he hear of the fact that Britain contributes very little to the anthropogenic warming of the atmosphere—supposing that such warming were an established fact—and that to add to the financial burdens of British industry increased the risk of it relocating elsewhere, to the detriment and impoverishment of the country? Did he learn how the electricity was to be generated for tens of millions of battery-powered vehicles, and the environmental costs of providing batteries, and the infrastructure to make it possible—and so on and so forth?

Besides, it was obviously not the right to protest that was at issue. There are many public spaces in London where protests can be held without blocking the highway. No one would deny the doctors and nurse their right to protest, even if they were entirely in the wrong about what they were protesting about. The right to protest was not at issue: it was the illegal obstruction of the highway.

Moreover, it is easy to imagine a protest that the judge would not have allowed. Suppose instead of protesting against oil, the protestors had protested against the arrival of half a million immigrants into Britain in a single year (as has happened). Suppose that they had alluded to the pressure this

put on an already overcrowded housing market; that if they found work, they might very well depress wages, or if they failed to work they would in effect exact forced labour from the rest of the population to pay for their upkeep; that the health service would face an additional burden that it could ill-afford to face; that communities in which the immigrants gathered might not welcome their arrival and would be changed without anyone having wished it, an affront to democracy. Even if these arguments were wrong or only one-sided, they would be rational and might be advanced with perfect sincerity. Is it likely that the judge would have acquitted those who used them of obstruction of the highway? Even if he wanted to do so, he would have been too afraid because of the reaction of right-thinking people.

In other words, the judge saw his role not as enforcing the law as it (quite reasonably) stood, but as licensing certain people to be exempted from its provisions. It was his job to decide what a good or a bad cause was, and how good a cause had to be before protestors might illegally inconvenience their fellow-citizens with impunity. By claiming to be "moved" by the criminals' evidence, he was removing the blindfold from the statue of justice and putting weights in her balance: one law for the people he liked and another for those that he didn't.

The *Lancet* is in accord with this view of the law, which is no law at all. Probably a good proportion of the intelligentsia is in accord with it too, which means that the hold on its mind of the rule of law, by which all people are held to the same standard, is very loose if it exists at all. In the long run, if this trend continues, the result can only be a war of each against all.

First published in *Law and Liberty*.