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CHAPTER SIX

Something More Comfortable: A Fitting Conclusion

That the Thought-forms, Space and Time, wherein, once for all, we are sent into this Earth to live, should condition and determine our whole Practical reasonings, conceptions, and imagings – seems altogether fit, just, and unavoidable.¹

Carlyle accepts that the formal frames of the world are bound to condition our image of the world and to determine the practical ways in which we imagine ourselves in it. Those formal frames include dress and law. What Carlyle does not accept is that such forms should usurp ‘pure spiritual Meditation’ on ‘the wonder everywhere’. As he writes elsewhere in *Sartor Resartus*:

. . . a Cause-and-Effect Philosophy of Clothes, as of Laws, were probably a comfortable winter-evening entertainment: nevertheless . . . Let any Cause-and-Effect Philosopher explain, not why I wear such and such a Garment, obey such and such a Law; but even why *I am here*, to wear and obey any thing!²

Carlyle anticipates one of the major challenges facing law and dress today, which is how we can accommodate an individual’s deeply held philosophical or spiritual principles within the workaday practices of the world. Of course, it is not a new problem. Socrates died for it. Probably the most famous instruction on the subject is Jesus’ counsel that we should ‘give to Caesar what is Caesar’s, and to God what is God’s’.³ How shall we know what is Caesar’s and what is God’s? Jesus’ advice is to look to the matter at hand and to consider what face appears in it. Caesar’s image is on the coin, so

¹ Thomas Carlyle, *Sartor Resartus: The Life and Opinions of Herr Teufelsdröckh* (1833–4) (Boston: James Munroe and Co, 1836), Book III, chapter 8.

² *Ibid.*, Book I, chapter 5.

³ Mt. 22.21.

that belongs to Caesar. God's image is on the human heart, so that belongs to God. How, then, should we respond when the State requires us to dress or undress in a certain way? Which face do we see in the fabric of the State's command? Carlyle identifies the problem of accommodation, but he offers little in the way of advice, except that we should seek to look through all artificial fabrications in order to see spiritual reality. In this concluding chapter, I will consider how in practice it might look and feel if we were to attempt to achieve, and if we were actually to achieve, a 'comfortable fit'.

The first thing is to correct our understanding of the notion of 'comfortable fit'. There can hardly be a phrase in the English language that is so diametrically opposed to its original etymological sense. For most of us a comfortable fit denotes clothing that is so much like a second skin that we are almost wholly unaware that we are wearing it. On that understanding, a comfortable fit is something that makes us feel relaxed. The actual etymological sense of 'comfort' is that it should strengthen us (to comfort is to supply 'with strength': *con-fortis*), and when something is 'fit' for us it should present us with a well-matched struggle (as in the phrase 'a fitting opponent'). A comfortable fit, in the etymological sense, is a struggle that strengthens. When clothes are a comfortable fit, they are not so loose that they accommodate us effortlessly and neither are they so tight that they constrain us unhealthily. Clothes that are a comfortable fit, such as a bespoke pair of shoes, suit us so well that we are improved by wearing them and they are improved by being worn by us. It is nevertheless a struggle to find such clothes, and very often it is a struggle to squeeze into them at first. This is a metaphor for our struggle to fit into society and to find accommodation in the formal frames that such cultural orders as language, architecture, dress and law impose on us. If we feel no struggle in society, it cannot be that the shape of society fits us perfectly. It can only be that we have lost our own sense of shape or, which is much the same thing, that we have become desensitized at those points where we ought to be feeling the squeeze that comes from pressure to conform. It is to criticize the type of self-indulgent person who feels no struggle in the effort to accommodate themselves within society, that the novelist Mr Popular Sentiment (a character in Trollope's *The Warden*) depicts the villain of one of his populist novels as someone who wears 'huge loose shoes' to accommodate his deformed feet.⁴

4 Anthony Trollope, *The Warden* (London: Longman, Brown, Green and Longmans, 1855), chapter 15. (Trollope's 'Mr Popular Sentiment' was intended to parody Charles Dickens.)

The problem of finding a fit is exacerbated by the difficulty of finding the form of the civil face that confronts us and the contours to which civil authority requires us to conform. Accordingly, the first task of this book has been to reveal the cultural connections between law and dress that surround us everywhere but are concealed, camouflaged or otherwise invisible to us. Before I became a legal academic, I qualified as a practicing lawyer. In the first week or two of my training period with the law firm, one of the partners kindly drew me aside to offer a friendly word of advice. He had noticed that in my dealings with the partners of the firm I had been ‘rather overfamiliar’, by which he meant ‘insufficiently deferential’. That this was his actual meaning was made clear in the peculiar turn of phrase with which he cautioned me. Smiling, still kindly, he informed me that ‘we are not in the army . . .’; then, slowly and deliberately, he tapped his left shoulder with the fingers of his right hand, ‘but there is invisible braid on these shoulders’. I hadn’t signed up for this, but I struggled on, continually alert to the forces that are always seeking to compel conformity to concealed codes. I wonder if that partner in the law firm ever struggled within the skin of his professional suit.

We should be swift to judge ourselves and slow to judge others.⁵ The architectural threshold was an ancient site of judicial judgment and the personal threshold of dress is the site at which we judge others and at which we ourselves are judged, whether or not we offer ourselves up for judgment. Emmanuel Levinas has written a great deal on the ethical dimension of face-to-face encounter. I read him to say that when we are presented with the face of another we should not oppose it and impose upon it, but that we should attempt to appreciate it. He writes that ‘the face presents itself and calls for justice’ (*‘le visage se presente et reclame justice’*),⁶ and, even more dramatically, that the ‘face of the other is the first expression and its first word is “thou shalt not kill”’ (*‘son visage, est l’expression originelle, est le premier mot: “Tu ne commettras pas de meurtre”*).⁷ It is interesting in this regard that Liela Ahmed’s survey of Muslim women’s reasons for wearing the veil revealed that for some of them it ‘functioned as a way of signaling a

5 On the relation between time and the process of judgment, see Julien Etxabe, *The Experience of Tragic Judgment* (Abingdon: Routledge, 2012).

6 *Totalité et Infini: essai sur l’extériorité* (1961), 4th edn (The Hague: Martinus Nijhoff, 1984), p.270.

7 Ibid., p.173. See, further, Steven Hendley, *From Communicative Action to the Face of the Other: Levinas and Habermas on Language, Obligation and Community* (Landham, MD: Lexington Books, 2000). Jeffrey Bloechl (ed.), *The Face of the Other and the Trace of God: Essays on the Philosophy of Emmanuel Levinas* (New York: Fordham University Press, 2000).

call for justice'.⁸ The legal philosopher John Rawls argues that the exercise of just judgment requires that we should imaginatively conceal ourselves from ourselves behind a 'veil of ignorance' through which we are unable to discern the extent to which others share our gender, our race, our creed or any of our other particular qualities and interests.⁹ Putting an interesting spin on this, I. Bennett Capers proposes '[s]omething akin to Rawls in drag',¹⁰ when he argues that judges (including all of us) should imaginatively cross-dress others in other clothes, and ask how our appreciation of a person might change if they were of a different gender, race, creed and so forth.¹¹ Cross-dressing was prohibited in ancient Israel.¹² Perhaps cross-dressing, judicially imagined, is the justice to supplement that law.

We might accept that civilized social life requires that we should judge others as if they were other than they are, or judge others as if they were ourselves. We might be less ready to accept that we have a duty to judge ourselves. We might subscribe to the Millsian view that we are all sovereign and free to do as we like, provided that our conduct does no harm to others. If we think that way, what kind of a society are we imagining for ourselves? Is it one in which each is free to indulge himself or herself right up to the point at which the law can prove harm to others? Would the sense of respect in such a society extend at all beyond respect for the face of law? Should an individual's freedom to fashion themselves be absolute within the bounds of legality, or does freedom entail direct responsibility to respect each other?

Consider, again, the example of the female who insists on presenting herself topless in public in a modern city. In most jurisdictions, the reasonable onlooker would disapprove of such behaviour. Not, perhaps, out of any personal objection or prudish outlook, but because of the sense that in a society which recognizes great freedom to self-fashion, it is down to each one of us to govern (i.e. to 'dress' or 'order') ourselves appropriately. This state of affairs can be contrasted with England in the late sixteenth

8 Liela Ahmed, *Quiet Revolution: The Veil's Resurgence, from the Middle East to America* (New Haven and London: Yale UP, 2011), p.211.

9 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), chapter 3, part 24.

10 I. Bennett Capers, 'Cross Dressing and the Criminal' *Yale Journal of Law & the Humanities* 20.1 (2008), p.23.

11 Jimmy McGovern's television drama *Accused* tells the story of a transvestite who appeared in the dock 'in drag' with a view to presenting a more true face to the court. (Series 2 Episode 1 'Tracie's Story' [Dir: Ashley Pearce], BBC television, 2012). I am grateful to Catherine Wooldridge, one of my students, for bringing this scene to my attention.

12 See Deut. 22.5.

century, when, despite contemporary puritanism, contemporary reports identify a fashion among women to go topless in public.¹³ Arguably, it was the very fact that dress was officially governed by laws which made people feel so free to liberate themselves within the letter of those laws (a law that prohibits a woman from wearing fine furs cannot, on a strict reading, touch her freedom to wear nothing at all). Today, choice of dress is not restricted by formal rules. If we wish to adorn ourselves in nothing but purple silk, nothing but our purse and peer pressure can stop us. In terms of modes of dress, we are all monarchs now. It is therefore incumbent upon us to govern ourselves with respect for others. A monarch's freedom should not be turned to tyranny.

Recall how King Gilgamesh grew tyrannical because he had all the rights and freedoms of a king, but lacked all restraint. Enkidu, who was the king's equal in strength, was sent to be his adversary. He provided a fitting match for the king and thereby rendered the king fit to rule. It is written that 'they that wear soft clothing are in kings' houses'.¹⁴ Enkidu can be said to have fitted Gilgamesh to a dress more suitable for a king – a suit of struggle. Enkidu provided the comfortable fit that the king required. He resisted and restrained Gilgamesh where the king could not resist and restrain himself. Gilgamesh and his kingdom were strengthened as a result. The notion that struggle (especially with wild or 'uncivilized' nature) produces moral growth was taken up in Greek philosophical thought and recurs as a theme in Greek art. For example, part of the ornamentation on the Parthenon of the Acropolis depicts civilized nature struggling with untamed wildness in the form of Lapiths wrestling with Centaurs.¹⁵ The theme also emerges in other areas of Greek endeavour, including sport. In ancient Greece when two men wrestled, as Gilgamesh and Enkidu wrestled, they wrestled naked. Why they did so is not clear, but perhaps there was a sense that the restraining, civilizing order of dress was otiose where the civil project was being so perfectly progressed through the fitting match of sporting adversaries.

What each of us wants as an individual citizen of the State is for the laws of the State to accommodate us as carefully as they can. If a rule is too strict

13 For a useful discussion, see Valerie Traub, *The Renaissance of Lesbianism in Early Modern England* (Ann Arbor: University of Michigan, 2002), chapter 3.

14 Mt. 11.8 (King James Version).

15 It is strangely fitting that the struggle for those stones – the so-called Elgin marbles – is ongoing to this day, although it remains to be seen if progress will proceed from the realization that there is something of the civil and the Centaur on both sides.

and rigid to accommodate the contours of our particular person, we hope that the rule might be modified and moulded a little, so that we can live with it without having to break the law or break ourselves. When we talk about desiring law that is modified or moderate in this sense, what we are requesting, in fact, is that individual agents of the law – those who make it and enforce it and facilitate it – will acknowledge their own humanity and in so doing acknowledge ours. We are asking them to question the routines they follow – we are asking them to sit uncomfortably in their suits. If we have such hopes of the individuals who make up the face of the law, would it not be hypocritical to have no similar aspiration for ourselves? At the time of writing, the BBC website carries a page on the status of the Islamic veil in European countries. The first line makes the point that European States ‘have wrestled with the issue of the Muslim veil’. The least we can ask of ourselves, if we wish to go veiled or naked, is that we should wrestle with the problem of fitting in and consider the challenge in terms of individual responsibilities as well as individual rights. Instead of standing on our right to wear such and such and demanding that the face of the law should be made to accommodate us, should we not struggle to squeeze ourselves, as far as we may, to the shape of the society that surrounds us? There will come a point beyond which we cannot bend our principles without breaking them, and we should not press beyond that point: ‘Everyone knows where his own shoe pinches.’¹⁶ We should, though, feel the pain of approaching that point. This is the true meaning of a comfortable fit.

‘No symbolic code can fully cover something so infinitely malleable and changeable as the human being.’¹⁷ That statement was made in the context of dress, but it applies just as well to law. Indeed, the problem of how to fit or fashion general rules to the particular form of a human individual and to the facts of their particular case has been a recognized feature of law since ancient times.¹⁸ Georg Simmel sees the same essential struggle in dress and in law:

The whole history of society is reflected in the striking conflicts, the compromises, slowly won and quickly lost, between socialistic adaptation

16 Trollope, *The Warden*, chapter 13.

17 William J. F. Keenan, ‘Introduction’, *Dressed to Impress: Looking the Part* (Dress, Body, Culture) (Oxford and New York: Berg, 2001), p.26.

18 So far as law is concerned, that effort has the name of ‘equity’. See Gary Watt, *Equity Stirring: The Story of Justice Beyond Law* (Oxford: Hart, 2009).

to society and individual departure from its demands . . . It becomes self-evident that there is no institution, no law, no estate of life, which can uniformly satisfy the full demands of the two opposing principles. The only realization of this condition possible for humanity finds expression in constantly changing approximations, in ever retracted attempts and ever revived hopes.¹⁹

The truth we are searching for to make sense of our social life is not a naked truth hidden from our gaze, or the shows of truth that civil authority thrusts before our eyes. The truth we seek resides rather in the fact that law and dress will always confront us so long as we are social and civil beings; more than this, the truth resides in the struggle which must be our constant response to that confrontation.

19 Georg Simmel, 'Fashion' *International Quarterly* 10 (1904), pp.130–55, 131.