



ADVANCE SHEET– OCTOBER 16, 2020

President's Letter


In this issue, in a period distinguished by the vandalism of public monuments, we include three essays on the value of historical perspective to the law. The first is the preface by Philip Kurland to his five-volume collection of American and English writings on the federal Constitution and its first twelve amendments, which contrasts with simplistic discussions of 'originalism' on the one hand and 'the living constitution' on the other.

The second is a speech by Judge Learned Hand on "Sources of Tolerance" delivered in 1930.

The third is a large portion of the preface by former Prime Minister Harold Macmillan to the first of his six volumes of memoirs, unusual in its tribute to the medieval origins of many present values.


In this issue, we introduce a new feature: the text of a memorable Supreme Court opinion, which can be an opinion of the court, concurrence, or dissent, American or English, distinguished for its substance, its prose style, or both. For this issue we include the dissenting opinion of Justice Robert Jackson, joined by his frequent ally Justice Frankfurter, in what is in point of style perhaps the most "Jacksonian" of all his opinions, that in *Shaughnessy v. Mezei*, 345 U. S. 206 (1953).

George W. Liebmann








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Thank You

In a recent issue of the *Advance Sheet*, there appeared an article entitled “Bar Library Membership: Now More Than Ever.” It set forth a myriad of reasons why a membership made sense and how vital support of the Library was at a time when so many firms and lawyers were experiencing economic hardship and dependent upon the Library in a way that some had not been for years.

The response to our appeal was significant, far beyond what we could have hoped for. The call was heeded with former members returning to membership and others becoming members for the first time. While for some it was a wise economic move, for others, it was a decision to help others, their fellow lawyers.

For the Library, for those others, thank you. It means so very much.

Joe Bennett

The Founders' Constitution

Edited by
Philip B. Kurland
and
Ralph Lerner

VOLUME ONE
Major Themes

Introduction

This is an anthology of reasons and of the political arguments that thoughtful men and women drew from, and used to support, those reasons. We believe that those reasons and political arguments have enduring interest and significance for anyone who purports to think about constitutional government in general and the Constitution of the United States in particular. For those who know in advance that thought is at bottom reducible to interest, or who regard political argument as synonymous with ideology, such a belief is at best naive. Yet we venture to assert that that belief is not merely personal or idiosyncratic, however quaint it might appear. For our belief in the continuing relevance of the Founders' Constitution and of the arguments that centered on it is itself based on reasons.

It would, however, be foolish and obstinate to deny that many teachers, students, and practitioners who might examine these assembled writings would be disposed—indeed powerfully disposed—against the premise of this work. They too would have their reasons. Common usage and custom now casually equate thought and ideology, neither caring nor wishing to strike out the sense of tendentious, partisan argumentation implicit in the latter term. Political argument, it is asserted, is apologetics for something deeper, something material, something concealed. “What’s he really after?” people ask, certain that the visible argument is only discreet drapery. One would have to have lived very little in the world not to know that political life is suffused with pleasant-sounding nonsense parading as grave argumentation. The sound rule, then, would seem to be: in case of doubt, doubt.

Beyond this fundamental skepticism lies another set of misgivings that work against taking these arguments of yesteryear seriously. By immersing ourselves in seventeenth- and eighteenth-century documents and arguments, we are in effect seeking to recover an "original understanding" of those who agitated for, proposed, argued over, and ultimately voted for or against the Constitution of 1787. Such an effort at recovery might be faulted on at least three grounds. The first and most obvious misgiving concerns the historical effort itself: we have no way of recovering the intentions of a widely scattered and long-since-dead generation of political actors. Being utterly dependent on the chance survival of arguments committed to paper, we are left in the dark concerning whatever else was thought but not said, said but not written, written but not saved, saved but not found. Needless to say, we are almost utterly in the dark about the manner in which arguments were made or received: the wink, the look of disgust, the detection of sophisms, are rarely matters of record and most often are matters of fanciful speculation by the reader. Very seldom indeed, then, can we speak with

simple confidence of what this or that provision meant for eighteenth-century Americans.

Even speaking of such an aggregation as a whole may be suspect. Notwithstanding the glowing account of “one connected, fertile, wide spreading country” as the providentially designated inheritance of “a band of brethren” (John Jay, *Federalist*, no. 2), America might better be seen as a collection of highly diverse, discrete settlements, more intimately acquainted with England than with one another, more closely tied to their ancestral home (three months’ sea voyage away) than to their neighbors. Under these circumstances the search for a single state of mind is unhistorical, however gratifying to the historical investigator. That diversity, moreover, characterized the individual states perhaps as much as the aggregation. And, as is usually the case, the least favored, least educated, least prominent portions of the population were the least heard and the least likely to be heard two hundred years after the fact. As a record of reasons and arguments, then, a collection of surviving paper is necessarily slanted.

Finally, the effort to recover past ways of thinking may be, in this instance, simply irrelevant, excusable perhaps in historians of a certain persuasion, but of little or no practical import. For does not the effort presuppose something like a coherent, guiding intention, and is not that given the lie by the fact that the Philadelphia Convention had to truck and barter, compromise and fudge, down to the bitter end in order to have any constitution at all to propose to the people? Were not the leading advocates of the Constitution disappointed and even disgusted by various features they were obliged to accept? Given the many concessions to expediency that marked the proceedings, is it not preposterous to look for and expect coherence, clarity, and consistency? Furthermore, even were a coherent political argument to be discovered, what great weight would it have? The fears and hopes of a generation some of whose members could still recall agitation over the Stuart Pretender can have little bearing on the fears and hopes of a generation preoccupied with ICBMs and entitlement programs. If the Constitution is to be a viable instrument of governance, then, it must (as it has to a great degree) cut itself free from its eighteenth-century moorings. The thought of the Founders, even to the extent it is discoverable, may be curious, even at times amusing or maddening, but it cannot be binding.

These are some of the reasons—by no means trivial, and certainly current and persistent—that might incline the holder of this volume to wish to conserve time and energy and read no further. Yet we think that to act on that inclination would be a mistake, if our own experience is any guide. Prompted neither by antiquarianism nor by simple

piety, we have come to discover pleasures, second thoughts, and better understanding in matters that we once believed we understood tolerably well. We are loath to dangle before the reader yet another promise that the crooked will be made straight and the rough places plain; we promise, rather, complexity and complication. The simplistic truisms (clipped coinage if ever there was such) that pass for good currency today may be detected more readily for what they are by a timely recourse to the source, the reasonings of the political actors themselves. Any fair-minded reader can discover that those actors—politicians, land speculators, philosophers, village-pump orators, historians, ordinary and not-so-ordinary lawyers, common folk with little or no schooling, statesmen with analytical powers developed through long study and closely observed experience—that all those are people whose thoughts are worth knowing better. Far from being struck by their simplemindedness or paranoia, we are impressed rather by their political literacy, the vigor and the articulateness of their arguments, and the absence of condescension from their complex, even sophisticated, reasoning. The level of their public political discourse is simply remarkable.

All this, however, speaks to pleasure and the surprise of being pleased. It does not reach the core of the objections or misgivings outlined above. Can one discover what was intended? Can one trust what one does discover? Does it matter?

Some things can be discovered. There is an original understanding about a number of constitutional provisions. There is the possibility of discovering how a particular concept or institutional arrangement developed, growing clear and simple or (alternatively) unclear and complex. None of such discoveries admits of unequivocal demonstrative proof, but students of history and of the law usually have settled for probable causes, and the record assembled here affords the possibility of making quite a few such cases.

What weight to give to such nondemonstrative arguments is a harder question. It is impossible to presume that one has at hand a fair sample of all the arguments, all the considerations, that entered into a position or into the decision to adopt a position. Yet we do have more than the precipitate of unknowable private reasons and private decisions. Because the largest decisions were necessarily public—to propose, to support or oppose, to vote—and because those public occasions were repeated—in the Philadelphia Convention, in the press, in the courthouses and taverns where the politically relevant part of the people met and argued, and in the state ratifying conventions—there was a good opportunity for a broad range of arguments to be put forth and to leave some traces. Then, too, the larger issues stirred by the events leading up to the proposal and adoption of the Constitution were hardly novelties of 1787–88 and in many cases not even novelties of 1774–76. Self-government in America dates from the earliest charters of the seventeenth century. The practical and theoretical issues that vexed contemporary British political life and thought were not alien to American readers of Sidney and Locke, Cato and Montesquieu, Blackstone

and Burgh. The issues, accordingly, were familiar, the occasion pressing, the participants attentive and broadly informed, and the resulting public debate vigorous, full, and open. Twenty-two months elapsed between the Annapolis commissioners' call for a full convention and New York State's ratification of the Constitution. Just about everything that had to be aired was aired and, more often than not, aired forcefully and well.

Granting the possibility of all this leaves still unanswered the most difficult question: what difference does it make? In one sense, none. Clio's career in the courts has left her and the courts rather the worse for wear. Courts have had a hard enough time taking yesterday's legislative history seriously; it would be fatuous to expect very much direct effect from researches into a more remote and ambiguous record.

In another sense, very much might be hoped for. The duration of the eighteenth-century debates, the quality of the participants, the wide-ranging considerations that were raised, the high degree of self-consciousness that attended the proceedings: all made for a singular moment, an occasion of rare interest and value for discovering anew the foundations of a complex political and economic order. To the extent that the Constitution still matters—as a framework, as a statement of broad purposes, as a point of recurring reference, as a legitimation of further developments, as a restraint on the overbearing and the righteous—to that extent it is worthwhile to try to enter into that world of discourse. The Founders prided themselves almost never on their lineage and rarely on their wealth, but rather on their reasonableness. It is worth taking note of the candor and quiet confidence that could state matter-of-factly: "My motives must remain in the depository of my own breast: My arguments will be open to all, and may be judged of by all" (Alexander Hamilton, *Federalist*, no. 1). That self-presentation might be deemed naive, perhaps hypocritical, possibly irrelevant. But after all is said, there remain the arguments, the reasons, remaining to be examined, weighed, and judged.

Only those for whom reasons have no standing or value will casually cast these aside. But such perhaps are not to be counted among the readers of books. Those who read only to be confirmed in their views will find some, but not much, recompense in these pages; a judicious sampling here and there will do. But those who would run the risk of being vexed into further reflection will find their patience tried—and sometimes rewarded. It was a world of the leisurely essay, the hour-long sermon, a great hunger for the printed word, and a discerning appreciation for good argument. People are apt to savor slowly what they most enjoy, and the generation of the Founders had a great taste for political discourse.

Recurring, then, to these sources of the Founders' Constitution is a precondition for being able to see that Constitution whole: the reach—and limits—of their aspirations, the preoccupations of the day and of the morrow, the principles which they chose and shaped and thought worth preserving and bequeathing. By these they wished to be judged; and as if to guarantee that they would be so judged (to the extent that mortals may guarantee any-

thing), they were assiduous record-keepers, preservers of documents, copiers of correspondence. The archivist-founder is a founder who invites his successors to scrutinize his principles and acts. It was and remains a standing invitation.

Confronted, however, with the sheer bulk of surviving materials, the successor might well regard the invitation less as an offer one cannot refuse than as an offer one dare not accept. At times it seems there is altogether too much irrelevant chaff to winnow. At other times the recurrence of nearly identical arguments tends to drain even the best of their force. One risks in turn being overcome by tedium or being cloyed. Our editorial selection has been guided by an awareness of those risks and by a clear sense of the use and limits of this collection.

We mean to present arguments of yesteryear that are worthy of reexamination and reconsideration today either because they were weighty then or because they are still telling or might yet lead to further reflection on the problems under discussion. In the finest cases, of course, all three considerations hold and the gulf of the intervening centuries disappears altogether. But whether the reader's immediate interests are historical or theoretical or practical, he is likely to find at hand a broad array of nontrivial reasons.

Here then is a sample of intelligence focused on the problems of establishing and maintaining free popular government, drawn from the two centuries between the beginnings under the early Stuarts and the end of the Marshall era. The earlier bound might not seem to require any justification: the earliest beginnings of American self-government were undertaken by Elizabethans, Jacobeans, Cavaliers, and Roundheads. The later bound is more problematic: why should the documentation of the Founders' Constitution go as far as 1835, or for that matter stop there? The short answer is that the debate did in fact continue beyond ratification, beyond the debates in the First Congress, beyond the turmoil over the Neutrality Proclamation and the Alien and Sedition Acts. The preoccupation with intentions and meanings was intense in the second generation as well—John Quincy Adams, Joseph Story, John C. Calhoun, Abraham Lincoln, come immediately to mind. But perhaps it is enough to say that some

of the most extraordinary Founders were marked by extraordinary longevity. They lived long enough to observe and judge the fruits of their labors well beyond the events of '87: in the cases of John Adams and Jefferson thirty-nine years, of Jay forty-two, of Marshall forty-eight, of Madison forty-nine. Whether the same voices always spoke with the same accents is not our immediate concern. But it is a material fact that founders of this stature were in a position to supply a gloss to their earlier words and deeds. Their accounts of what they meant to do, however qualified and judged by their successors, clearly enjoy a special standing in the study of American constitutionalism.

Having said all that, however, we must own that this anthology, bulky as it is, omits much of importance and very much of interest. The complex politics of ratification can be perceived only dimly in these selections. The complex dynamics of the Philadelphia Convention—the barely averted collapse, the near-misses, the bluster and bluffing, the hard listening, the give-and-take—can barely be perceived in a nonsequential selection; for that the *Records of the Federal Convention* remain indispensable. Finally, it would take another kind of study to recover the social and economic setting in which thirteen dissimilar and distant states managed to mitigate their fears and jealousies and particular dreams, coping with diversity and distrust within their several borders even while overcoming to some measure diversity and distrust in the Union as a whole.

If these are questions and issues that are not central to this collection, it is not because we judge them trivial. Indeed, relative to the questions and issues that *are* central to this collection, these are hardly neglected by current scholarship and current curricula. What does strike us as sadly neglected is the Constitution itself, seen as the precipitate of hard thinking (and, yes, hard bargaining) by men of remarkable intelligence and seriousness. This collection is intended to make it easier for their intelligent and serious successors of today to come to see that for themselves. In the process, we hope, the Founders' reasons will be reexamined and their questions reconsidered, and their hope that among a self-governing people liberty and learning would support each other will come closer to fulfillment.



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SOURCES OF TOLERANCE*

HON. LEARNED HAND

I am going to ask you to go with me, not into questions which have direct relation to the law or to government, but to those which concern the mental habits of our people, since these, indirectly at any rate, in the end determine its institutions. This is not an easy, maybe it is an impossible undertaking, but at any rate, nobody can very effectually challenge what you say about such vague things, and you are exempt from the need of citation—blessed exoneration to a judge. It may be worth discussion, if only for discussion's sake. At least it can serve to bring out differences of opinion.

By way of prelude may I then ask you for a moment to go back in our country for nearly a century and a half? We were substantially a nation of farmers; towns were few; cities, as we should now rate them, did not exist. Life was, as we like to believe, simple. Maybe it was not so in fact, for simplicity depends rather on one's inner state of mind; but at any rate it was less pressed and hurried; people did not think so much about how complicated they were, and less dissipated their attention.

The political notions of the time were divided into two contrasting groups which it has been the custom to associate with the

*An address delivered in Philadelphia, June, 1930, before the Juristic Society, a group of younger members of the bar whose aim is to stimulate interest in the academic aspects of the law.

great names of Jefferson and Hamilton. It is easy to associate Jefferson's ideas with those of Rousseau, from whom on the outside they seem to have been drawn. This, as I understand it, is wrong, but he had drunk deeply at the springs of Physiocracy, and in any event he believed in the basic virtue of mankind, once set free from artificial restraints. He found his ideal in a community of independent families, each intrenched in its farm, self-subsistent, independent, needing no regulation, and tolerant of little interference, especially by government. Those who invoke his name today must be shocked at his scorn of the mob of mechanics and artisans, whose turbulence and separation from some particular plot of earth, unfitted them in his eyes for sharing in the Good Life. A nation in which information, or what passes as such, can be instantaneously sent from one end to the other, in which the craving for conformity demands uniformity in belief, which for that reason wears the same clothes, reads the same print and follows the same fashions, amusements and conventions, would have seemed to him scurvy and sordid. He would have found little in the America of today to justify that Utopia of which he had dreamed.

The extraordinary richness of his own nature, his omnivorous interest in all the activities of man, no doubt colored his picture of a life on the land; yet it also enabled him to transmute into a rosy ideal the dumb aspirations of his people, and so they looked to him for their leadership for a quarter of a century after his accession to power, and if we count Jackson as his dubious disciple, for that much longer. Clearly there was something in his outlook which responded to the needs of those among whom he lived.

Hamilton was a horse of another color, always an exotic, succeeding in his statecraft only because of the disorders which immediately followed the Revolution; whose genius needed the cloak of Washington beneath which his real work was hid for near a century. He was no Utopian; he did not believe in the perfectability of human nature. Government was a combination of those interests in the community which collectively would be irresistible; a combination resting upon self-interest. When he secured the passage of the Constitution, it was by means of such

a combination; the landed class, the manufacturers and the public creditors. In the doubtful contest for ratification, as Beard has shown, it was these votes which eventually won, and it was under the aegis of Washington that he managed to carry on for those critical eight years. With the constant movement of the frontier westward, the underlying, but less articulate, aspirations of a rural people finally asserted themselves, after Adams had run off Hamilton's momentum.

The animosity between the two men was well founded and inevitable. They represented, and we are right still to take them as our most shining examples of, two theories of human society: that which demands external control, that which insists upon the opportunity for personal expression. Jefferson's victory seemed to him to be the sanction of all that the Revolution had implied; the liberation of a free people from the domination of greed and corruption, opening vistas of human felicity not theretofore known on earth. For its fuller expression he was willing, forced by a sad necessity, to sacrifice his constitutional scruples and forever compromise his party by the acquisition of Louisiana. To Hamilton, Jefferson's accession was the beginning of the end, the last step in a plunge towards anarchy. The squalid political quarrel for the domination of the rump of Federalism which ended in his death, had for him a deeper significance than the leadership in a party then apparently writhing to dissolution. The Eighteenth Brumaire was five years past, and though the Coronation at Notre Dame was still some months away, recent events already foreshadowed it. In the final breakdown of that Jacobinism which he and his associates thought certain and early, the need would arise for some transatlantic Bonaparte to gather the shreds of society, and build a state upon surer foundations than that weak instrument in which at heart he had never really believed. To prevent Federalism, the sacred chalice, from passing into the obscene hands of a turncoat and a traitor was worth the chance that cost him his life.

Each man would have said that he was the champion of liberty, and each would have been right. To one the essential condition of any tolerable life was the free expression of the individ-

ual, the power to lead his life on his own terms, to enjoy the fruits of his industry, to garner the harvest of his hands and brain, without subtraction by a horde of office-holders, locusts who laid waste the land and spread the venal doctrine of their right to eat what others had sown, the blight, the virus, of a society of honest men, enjoying the earth which God, at least in this blessed country, had patently spread out for their satisfaction. The other saw in all this no more than the maunderings of a toxic dream. What was the assurance of man's capacity to deal with his own fate? Was it not clear that virtue and intelligence among the sons of Adam was as rare as physical prowess, indeed much rarer? Liberty could not rest upon anarchy; it was conditioned upon an ordered society, in which power should rest where power should be, with the wise and the good, who could be at least presumptively ascertained as those who in the battle of life had already given some signs of capacity. It was an empty phantom to assume some automatic regulation by which without plan and direction public affairs manage themselves. The concerns of a great people are not all individual; they have collective interests without which their life can scarcely rise above that of savages, each shifting for himself, without comfort, security or the leisure which alone makes existence endurable. Jacobins might bawl of liberty, but really they meant no more than the tyranny of their own domination over the mob.

Placed as we now are, with an experience of over a century behind us, we can say that the future was apparently to justify Hamilton as against his great rival. Our knowledge of the ways of Nature, our command of her energies and the materials which she has set so freely at our hands, has made it no longer possible to think of a society of families, isolated and non-communicating, each weaving its own fate independently of the rest. We have fabricated a nexus of relations which makes even rural life impossible as Jefferson understood it. The motor, the airplane, the telephone and telegraph, the radio, the railroad, the linotype, the modern newspaper, the "movie"—and thrice horrible, the "talkie"—have finally destroyed it. Liberty is irretrievably gone in any sense that it was worth having to him. A farmer must have

complicated machinery; he depends upon markets thousands of miles away; he will win by a crop shortage in India, and lose by a fall in industrial shares. He must "listen in" on Amos an' Andy, have camping places in the National Parks and tour in the Ford in winter. So be it; I welcome his larger life, but it has its price; he is tied to all men, as all men are tied to him, in a web whose threads no eye can follow and no fingers unravel.

Nor would there still be many, though doubtless some there are, who would deny that government must be the compromise of conflicting interests, as Hamilton supposed. While there lingers in political platforms and other declamatory compositions the notion that each man, if only he could be disabused of false doctrine, would act and vote with an enlightened eye to the public weal, few really believe it. We know well that an objective calculus of human values is impossible, and if it were available, would be so thin and speculative that men would not accept it. For any times that can count in human endeavor, we must be content with compromises in which the more powerful combination will prevail. The most we can hope is that if the maladjustment becomes too obvious, or the means too offensive to our conventions, the balance can be re-established without dissolution, a cost greater than almost any interests can justify. The method of Hamilton has had its way; so far as we can see must always have its way; in government, as in marriage, in the end the more insistent will prevails.

Liberty is so much latitude as the powerful choose to accord to the weak. So much perhaps must be admitted for abstract statement; anything short of it appears to lead to inconsistencies. At least no other formula has been devised which will answer. If a community decides that some conduct is prejudicial to itself, and so decides by numbers sufficient to impose its will upon dissenters, I know of no principle which can stay its hand. Perhaps indeed it is no more than a truism to say so; for, when we set ourselves this or that limitation, religion for example, we find that we wince in application. Who can say that the polygamy of the Mormons was not a genuine article of that faith? When we forbade it in the name of our morals, was it not an obvious subterfuge still to

insist that we recognized religious freedom? Should we tolerate suttee? If we forbid birth-control in the interest of morals, is it inconceivable that we should tax celibacy? We call that conduct moral about whose effect upon our common interest we have unusually strong convictions. We do not hesitate to impose this upon those who do not share our views; and tolerance ends where faith begins. Plato may have been right about the proper relations of the sexes; we should not allow his experiment to be tried. I do not see how we can set any limits to legitimate coercion beyond those which our forbearance concedes.

And yet, so phrased, we should all agree, I think, that the whole substance of liberty has disappeared. It is intolerable to feel that we are each in the power of the conglomerate conscience of a mass of Babbitts, whose intelligence we do not respect, and whose standards we may detest. Life on their terms would be impossible to endure; of their compunctions we have no guarantee. Who shall deliver us from the body of this death? Certainly there was a meaning in Jefferson's hatred of the interposition of collective pressure, though he extended it to so much of what we now accept as government. We may believe that his emphasis was wrong; that it required a great war eventually to clear away the centrifugal tendencies that underlay it; but shall we not feel with him that it is monstrous to lay open the lives of each to whatever current notions of propriety may ordain? That feeling was the energy that lay back of the first ten amendments to the Constitution which were really a part of the document itself. Impossible though they be of literal interpretation, like a statute, as counsels of moderation, rather than as parts of our constituent law, they represent a mood, an attitude towards life, deep rooted in any enduring society.

Jefferson thought that they could be made to prevail by weakening the central power, but he was too astute an observer to rely upon political device alone. It was in the social, not in the political, constitution of his society that real security lay. For it was impossible to sweep a community of small eighteenth century farmers with mob hysteria. His dislike of cities was in part at any rate because they were subject to just such accesses. He did

not, and he could not, see that time was to make rural life as susceptible to moral epidemics as the city mobs which he feared and mistrusted. He set his faith upon isolation and isolation in the end has failed him. The shores are no longer studded with rows of solid columns to break the waves of propaganda; they are not studded with anything whatever, and the waves sweep over them without obstacle and run far up into the land. The question I wish to put before you, which all this introduction is to prepare, is this—which I trust you will forgive me for putting in colloquial form—how far is liberty consistent with the methods of the modern “high-power” salesman? If it is not, what is to be done about it? Being Americans, we are not likely to agree that nothing can.

It has always interested me to read of the observations of those patient anthropologists who associate intimately with our cousin, the chimpanzee. I know a woman who endured the embrace of her son’s pet for two hours, lest if disturbed in its caresses it might furiously strangle her. Devotion could scarcely ask more. We may learn much of ourselves from what are now, I believe, called the “conduct patterns” of the anthropoids, but it will not interest me so much as if the study could be of the herds. What I want to know is, why we have become so incurably imitative. I can improvise reasons, but you know how worthless that kind of anthropology is, so I shall spare you. But you will agree about the fact I fancy; you will agree that ideas are as infectious as bacteria and appear to run their course like epidemics. First, there is little immunity, nearly all individuals are susceptible, so that the disease spreads like a prairie fire. Next, a period where the curve of infection, as the pathologists say, remains level; this may last a long time. Last a decline of the curve which, so far as is known, nothing can check. The virus has lost its potency, or some immunity has established itself in a wholly mysterious way.

Ideas, fashions, dogmas, literary, political, scientific, and religious, have a very similar course; they get a currency, spread like wildfire, have their day and thereafter nothing can revive them. Were the old questions ever answered? Has anyone ever proved or disproved the right of secession? Most issues are not decided; their importance passes and they follow after. But in their day

they rack the world they infest; men mill about them like a frantic herd; not understanding what their doctrines imply, or whither they lead. To them attach the noblest, and the meanest, motives, indifferent to all but that there is a cause to die for, or to profit by. Such habits are not conducive to the life of reason; that kind of devotion is not the method by which man has raised himself from a savage. Rather by quite another way, by doubt, by trial, by tentative conclusion.

In recent times we have deliberately systematized the production of epidemics in ideas, much as a pathologist experiments with a colony of white mice, who are scarcely less protected. The science of propaganda by no means had its origin in the Great War, but that gave it a greater impetus than ever before. To the advertiser we should look for our best technique. I am told that if I see McCracken's tooth-paste often enough in street cars, on billboards and in shop windows, it makes no difference how determined I may be not to become one of McCracken's customers, I shall buy McCracken's tooth-paste sooner or later, whether I will or no; it is as inevitable as that I shut my eyes when you strike at my face. In much the same way political ideas are spread, and moral too, or for that matter, religious. You know the established way of raising money for the School of Applied and Theoretical Taxidermy. One employs a master mind in group suggestion, with lieutenants and field workers. The possible "prospects" are bombarded with a carefully planned series of what for some unknown reason is called "literature," leaflets, pictures, pathetic appeals, masterful appeals, appeals to patriotism. Shall American animals suffer the indignity of inadequate stuffing, having themselves given their lives to the cause? Will not you as a loyal American do your bit too; they having made the last supreme sacrifice? Taxidermy is a patriotic duty; are you for taxidermy? If not, you are against it, a taxidermical outlaw at best, at worst a taxidermical Laodicean. Brother, show your colors, join some group, at all costs join, be not a non-joiner, a detestable, lily-livered, half-hearted, supercilious, un-American, whom we would exile if we could and would not pass if he sought entrance.

I submit that a community used to be played on in this way, especially one so large and so homogeneous as we have become, is not a favorable soil for liberty. That plant cannot thrive in such a forcing bed; it is slow growing and needs a more equitable climate. It is the product, not of institutions, but of a temper, of an attitude towards life; of that mood that looks before and after and pines for what is not. It is idle to look to laws, or courts, or principalities, or powers, to secure it. You may write into your constitutions not ten, but fifty, amendments, and it shall not help a farthing, for casuistry will undermine it as casuistry should, if it have no stay but law. It is secure only in that *constans et perpetua voluntas suum cuique tribuendi*; in that sense of fair play, of give and take, of the uncertainty of human hypothesis, of how changeable and passing are our surest convictions, which has so hard a chance to survive in any times, perhaps especially in our own.

There are some who, looking on the American scene, see remedy in trying to introduce and maintain local differences. Especially in matters of government, let us be astute to preserve local autonomy, not to concentrate all power in our capital. There are reasons enough for this in any case, but as a relief from the prevalent mood it seems to me a delusion. That served very well in Jefferson's time; it will not do today. We cannot set our faces against a world enraptured with the affluence which comes from mass production; and what has served so magically in material things, is it not proved to be good for our ideas, our amusements, our morals, our religion? The heretic is odious in proportion as large industry is successful. Rapidity of communication alone makes segregation a broken reed; for men will talk with one another, visit one another, join with one another, listen collectively, look collectively, play collectively, and in the end, for aught I know, eat and sleep collectively, though they have nothing to say, nothing to do, no eyes or ears with which to enjoy or to value what they see and hear. You cannot set up again a Jeffersonian world in separate monads, each looking up to heaven. For good or evil, man, who must have lived for long in groups, likes too much the warm feeling of his mental and moral elbows in touch with his neighbors'.

Well, then, shall we surrender; shall we agree to submit to the dictation of the prevalent fashion in morals and ideas, as we do in dress? Must we capture surreptitiously such independence as we can, "bootleg" it, as it were, and let the heathen rage, the cattle mill, the air resound with imperious nostrums which will brook no dissidence? Maybe it will come to that; sometimes I wonder whether to be a foe of war, for example—which might be thought a blameless disposition—is not a stigma of degeneracy. Again I have pondered on what it is to be a Bolshevik, and once I learned. There was a time when Congress thought it could reach the salaries of my brothers and myself by an income tax, until the Supreme Court manfully came to our rescue. A judge of much experience was talking with me one day about it; I was wrong enough in my law, as it afterwards turned out, and disloyal enough in temper to my class, to say that I thought the tax valid. "Do you know anything about it?" he asked with some asperity. "No," said I, "not a thing." "Have you ever read Taney's letter?" "No," said I again, for I was innocent of any learning. "Why, they can't do that," said he; "they can't do that, that's Bolshevism." And so it turned out, to my personal gratification, since when, freed from that Red Peril, I have enjoyed an immunity which the rest of you, alas, cannot share. Far be it from me to suggest that there are graver thrusts at the structure of society than to tax a Federal judge. Properly instructed, I have recanted my heresy, and yet there hangs about "Bolshevism" a residual vagueness, a lack of clear outline, as of a mountain against the setting sun; which only goes to show, I suppose, that a fundamentally corrupt nature can never be wholly reformed.

As I say, we may have to lie low like Bre'r Rabbit, and get our freedom as best we can, but that is the last resort. Perhaps if we cannot build breakwaters, we may be able to deepen the bottom. The Republic of Switzerland is cut into deep valleys; it has been a traditional home of freedom. Greece is made in the same way; to Greece we owe it that our civilization is not Asian. Our own country has not that protection; and in any event, of what value would it be in these later days, when Fords climb Pike's Peak and Babe Ruth is the local divinity at once in San Diego and

Bangor? But what nature has not done for us, perhaps time can. I conceive that there is nothing which gives a man more pause before taking as absolute what his feelings welcome, and his mind deems plausible, than even the flicker of a recollection that something of the sort has been tried before, felt before, disputed before, and for some reason or other has now quite gone into Limbo. Historians may be dogmatists, I know, though not so often now as when history was dogma. At least you will perhaps agree that even a smattering of history and especially of letters will go far to dull the edges of uncompromising conviction. No doubt one may quote history to support any cause, as the devil quotes scripture; but modern history is not a very satisfactory side-arm in political polemics; it grows less and less so. Besides, it is not so much the history one learns as the fact that one is aware that man has had a history at all. The liberation is not in the information but in the background acquired, the sense of mutability, and of the transience of what seems so poignant and so pressing today. One may take sides violently over the execution of Charles the First, but he has been dead a long while; the issue is not bitter unless we connect it with what is going on today. Many can of course do this, but that in itself requires considerable knowledge of intervening events, and those who can achieve a sustained theory are almost entitled to their partisanship, in reward of their ingenuity. After all, we can hope only for palliatives.

With history I class what in general we call the Liberal Arts, Fiction, Drama, Poetry, Biography, especially those of other countries; as far as that be possible, in other tongues. In short, I argue that the political life of a country like ours would get depth and steadiness, would tend to escape its greatest danger, which is the disposition to take the immediate for the eternal, to press the advantage of present numbers to the full, to ignore dissenters and regard them as heretics, by some adumbration of what men have thought and felt in other times and at other places. This seems to me a surer resort than liberal weeklies, societies for the promotion of cultural relations, sermons upon tolerance, American Civil Liberty Unions. I know very well how remote from the possibilities of most men anything of the kind must be, but good tem-

per, as well as bad, is contagious. And today in America vast concourses of youth are flocking to our colleges, eager for something, just what they do not know. It makes much difference what they get. They will be prone to demand something they can immediately use; the tendency is strong to give it them; science, economics, business administration, law in its narrower sense. I submit that the shepherds should not first feed the flocks with these. I argue for the outlines of what used to go as a liberal education—not necessarily in the sense that young folks should waste precious years in efforts, unsuccessful for some reason I cannot understand, to master ancient tongues; but I speak for an introduction into the thoughts and deeds of men who have lived before them, in other countries than their own, with other strifes and other needs. This I maintain, not in the interest of that general cultural background, which is so often a cloak for the superior person, the prig, the snob and the pedant. But I submit to you that in some such way alone can we meet and master the high-power salesman of political patent medicines. I come to you, not as an advocate of education for education's sake, but as one, who like you, I suppose, is troubled by the spirit of faction, by the catch-words with the explosive energy of faith behind them, by the unwillingness to live and let live with which we are plagued. It is well enough to put one's faith in education, but the kind makes a vast difference. The principles of a common pump are in my opinion not so important politically as Keat's Ode on a Grecian Urn, to crib a phrase from Augustine Birrell.

May I take an illustration nearer to the field with which you are especially concerned? I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not

gather figs of thistles, nor supple institutions from judges whose outlook is limited by parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which makes it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined.

This is only an illustration of the much wider question of our political life at large. I submit that the aim is not so fanciful as it may seem; though at the moment I agree the outlook is not promising. Young people are not much disposed to give their time to what seems like loose browsing in the past. Though there are signs of a turn, of the significance of the insignificant, I shall try no forecast. All I want to emphasize is the political aspect of the matter, of the opportunity to preserve that spirit of liberty without which life is insupportable, and nations have never in the past been able to endure.

Jefferson is dead; time has disproved his forecasts; the society which he strove to preserve is gone to chaos and black night, as much as the empire of Ghengis Khan; what has succeeded he would disown as any get of his. Yet back of the form there is still the substance, the possibility of the individual expression of life on the terms of him who has to live it. The victory is not all Hamilton's, nor can it be unless we are all to be checked as anonymous members regulated by some bureaucratic machine, impersonal, inflexible, a Chronos to devour us, its children. We shall not succeed by any attempt to put the old wine in new bottles; liberty is an essence so volatile that it will escape any vial however corked. It rests in the hearts of men, in the belief that knowledge is hard to get, that man must break through again and again the thin crust on which he walks, that the certainties of today may become the superstitions of tomorrow, that we have no warrant of assurance save by everlasting readiness to test and test again. William James was its great American apostle in modern times; we shall do well to remember him.

Surely we, the children of a time when the assumptions of even the science of our fathers have been outworn; surely we

ought not to speak in apocalyptic verities, nor scourge from the temple those who do not see with our eyes. All the devices of our ingenuity, all our command over the materials of this earth, all the organization and differentiation of our industry and our social life, all our moral fetiches and exaltations, all our societies to ameliorate mankind, our hospitals, our colleges, our institutes,—all these shall not save us. We shall still need some knowledge of ourselves, and where shall we better look than to the fate of those who went before? Would we hold liberty, we must have charity—charity to others, charity to ourselves, crawling up from the moist ovens of a steaming world, still carrying the passional equipment of our ferocious ancestors, emerging from black superstition amid carnage and atrocity to our perilous present. What shall it profit us, who come so by our possessions, if we have not charity?

WINDS OF CHANGE

1914-1939

HAROLD MACMILLAN

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Prologue

I HAVE started to write this book on 4 August 1964, the fiftieth anniversary of the outbreak of the First World War. This fearful conflict, to be followed within a single generation by a second, of even greater magnitude and duration, set in motion forces, in every part of the globe, which have led to the most far-reaching revolution in recorded history. We are still too near to these events to grasp their full implications. Yet, in these convulsions, the old world has perished and a new world has been born.

Fifty years ago, the great European nations still enjoyed the traditions or cherished the hopes of imperial power.

For myself, I can just recall what was the zenith of our imperial fabric, and of the structure of which the Queen-Empress was the apex. It was the Jubilee of 1897. If my recollection of the Queen is dim, even although fortified by constant repetition in the nursery, I have a clear picture in my mind of the endless procession of troops, of all races, with an infinite variety of uniform, led by Captain Ames, the tallest officer in the British Army. In 1914 all these diverse forces were available, without question, to the support of British power and interests.

Perhaps, in the inter-war period, there was a growing realisation of the inevitability of a process of transformation in due course. Yet we still used to sing, without embarrassment, the hymn of the ever-widening Empire, on whose bounds the sun never set.

Today, when the major European Powers have either shed their responsibilities or merged them in a wider and looser association, these dreams have vanished and these concepts seem to the modern generation either incomprehensible, or distasteful.

Meanwhile, throughout the world, another revolution has been occurring, to which the two wars gave tremendous impetus—a

revolution of which I am reminded, as I write these words, by the great jet airliners roaring overhead to Gatwick Airport, or by the stream of cars on the country roads, replacing the clop and jingle of the horse-drawn traffic of my childhood. The vast changes wrought by the development of science and technology have permeated every aspect of life. The lights that were going out all over Europe in August 1914 had flickered in dark slums as well as shone in brilliant assemblies. Today, the rays of applied science have brought to the humblest homes an illumination of widespread comforts and conveniences, undreamt-of in the first decade of the century. Yet they have also brought new and terrible fears, with soulless means of mass destruction from which our fathers would have shrunk in horror as well as amazement.

Though technology has greatly facilitated the social revolution which is one of the most striking features of the last fifty years, it has not been the only agent. In contrast to the excessive individualism, the 'devil take the hindmost' philosophy of the nineteenth century, there has developed a sense of collective responsibility, of caring for the human family, in some ways more akin to medieval ideals. When an archbishop could speak of Communism as a 'Christian heresy', he revealed how far we had come from a generation that was content to sing of 'the rich man in his castle, the poor man at his gate', and complacently ascribe to the Almighty sole responsibility for their respective estates. To most people in Britain, because it affects their lives so closely, the coming of the Welfare State is perhaps the most marked of all the changes that the last fifty years have brought. Yet in this new growth of collectivism, the finer aspects of the individualism of the Reformation, the freedom of personal decision, initiative, and responsibility, have not been forgotten. Indeed, much of the controversy in domestic politics has been generated by the fruitful interaction between these two philosophies.

With this change in social attitudes has come a new era in economic thinking. The years between the wars saw the decay of the old Liberal doctrine of *laissez-faire*. There began to grow in most impartial minds the idea that some form of effective partnership must be formed between the State and those concerned in production, distribution, and even exchange. The most extreme form of

reaction from orthodox theory—that is, Marxist Socialism—was not seriously put forward even by the Labour Party. Yet to those Tories who had delved into their party's history and brooded over its philosophy, it was clear that the traditional principles, fiscal and economic, of Toryism had been weakened since 1886 by Whig and Liberal recruits. In the Liberal Party, Asquith and his more 'moderate' followers were faithful to the classical economic doctrines; yet the vital force and strength which Lloyd George brought into play before the First War had left their mark. As the international situation darkened in the thirties and rearmament became essential, these problems of the relations between Government and industry became more acute and more urgent.

For Britain, two world wars have meant the outpouring of her wealth on such a scale that from the leading creditor nation of the capitalist world, she has become, at least in the short term, a constant and embarrassed debtor. Nothing has altered more since my youth than the relative strength of the British economy. In those days, the mysteries of exchange, balance of payments, inflation or deflation, the size of reserves, the rate of growth, were carefully hidden from the vulgar gaze. They played little or no part in the political controversies of the day. They were scarcely referred to even by the serious part of the Press, and altogether neglected by the popular journals. Most businessmen spent their lives without thinking about them at all. If they exported their products, they did so for profit and not under the impulse of an officially inspired export drive.

Already before the Second World War, the emergence into public discussion of the question of money, which was fiercely debated with almost theological fervour by economists and politicians in the twenties and thirties, marked a profound departure from the prevailing atmosphere of the years before 1914, when the business community, broadly speaking, did not concern itself with the workings of the monetary system. But in the inter-war years, especially after the effects on Britain of a return to gold with an overvalued pound, and on all the capitalist world of the general collapse of the credit structure in 1929–31, problems which had long been regarded as academic became cruelly practical. Men began to question the sanctity of a monetary faith which appeared to condemn them to

poverty and unemployment, when the unused resources were so great and so apparent. 'Starvation in the midst of plenty' became a popular slogan to describe this paradox.¹

All these are still lively issues. The question of the proper relationship between the State and industry and commerce is still debated, sometimes on a theoretical and sometimes on a practical basis. In spite of the great achievements of the various international systems for the improvement of credit, and the arrangements to prevent the recurrence of a general slump being precipitated by the difficulties of particular countries, we are all aware that the question has not been finally resolved. The debate continues; plan after plan is still being put forward. Although up to now the world has escaped disaster—partly, perhaps, because of the general acceptance that capitalist society must expand or die—yet we live with our fingers crossed, and if we are honest are forced to admit that we have not yet found the true answer. The basis of credit still does not match the potentialities of production. The risk remains.

My first volume carries the story through one war to the beginning of another. For most of us, the greater part of this period appeared full of hope and confidence. In spite of difficulties, we did not doubt that knowledge, inspired by enthusiasm, would lead us to the right solutions. It was only in the last few years that we seemed to be drifting, as in a Greek tragedy, to a catastrophe that we could foresee, but could do little either to forestall or to prevent. I was elected to Parliament in 1924, and with two short intervals remained a Member until the dissolution of 1964. During the vital years, therefore, that this first volume will describe, I was able to watch the development of events from the back-benches of the House of Commons. Although I was never a member of any administration until that formed by Churchill in 1940, I knew many of the leading figures and took some part in most of the great controversies. Subsequent volumes will cover the Second War and the post-war years until my resignation from the office of Prime Minister in October 1963.

My personal entanglement in the unfolding of this great drama

¹ This phrase was curiously anticipated in a letter from Dundas (later Lord Melville) to Lord Spencer, written on 28 October 1800. He refers to 'The fallacy that the people are by artificial means obliged to starve in the midst of plenty'.

began by being small and ended by being substantial. Although it will be necessary to describe in some detail, especially in the later volumes, many events in which I had increasing responsibility, it is not my purpose to make this book an apologia; but rather, as one of the few old enough to have been born before the great cataclysm and to have survived into this strange new world, at once so distracting and so exhilarating, to tell a story which may be of interest not only to my contemporaries—of whom, alas, few now survive—but also to those young and middle-aged men and women who have lived through certain acts and scenes but have not been witnesses of the whole.

Horace Walpole, in one of his letters, makes the complaint about the difficulty of contemporary reporting:

It is one of the bad effects of living in one's own time that one never knows the truth of it till one is dead.

Nevertheless, the spectator does see something, even of the current game. Churchill, in the preface to the first volume of his history of the Second World War, uses these words:

I have followed, as in previous volumes, the method of Defoe's *Memoirs of a Cavalier*, as far as I am able, in which the author hangs the chronicle and discussion of great military and political events upon the thread of the personal experiences of an individual.¹

This is a system equally suited to one who does not aspire to be an historian, but who is engaged on the humbler task of recording his own period. My chief purpose has been to describe events as they struck me or as they affected my life. At the same time I have tried to paint my limited picture against the tremendous background of the Fifty Years Revolution.

The years of my childhood, boyhood, and even adolescence, were years in which the imperial authority of Britain based on sea power was still unchallenged—or, at any rate, unshaken. Our own parents and teachers had their roots in a century in which the British Navy had for a hundred years kept the peace of the world; in which, with

¹ Winston Churchill, *The Second World War*, vol. i: *The Gathering Storm* (London, 1948), p. vii.

the exception of the Crimean War, which made but small impact on the lives of great nations, there had been no European war involving Britain; in which the Concert of Europe had operated, in spite of many minor and some major difficulties, in preserving peace and allowing adjustments to take place in the relative strength of nations, including their colonial ambitions, without serious conflict. It was a period in which the great majority of intelligent people, whether Conservative or Liberal, felt that gratifying progress was being made in the solution of internal political and social problems, and that such progress would continue without serious upheavals. It was an age in which, with certain temporary set-backs, then as afterwards considered inevitable in any economy, there had been a remarkable increase in the production and even distribution of wealth, both at home and overseas. After the first fluctuations and confusions which followed the Napoleonic Wars, the international gold standard had been successfully established and maintained. Neither excessive deflation nor excessive inflation had proved serious menaces. Unemployment in periods of depression, though harsh in its effect, was normally remedied in periods of expansion. In any event, the general view was that a certain measure of human suffering was, like poverty or sickness, inevitable. The stirrings of the social conscience had of course made considerable effect upon thinking people. The Liberal Government of 1905, under the dynamic influence of Lloyd George, the true successor to Joseph Chamberlain, the Radical reformer of the eighties, gave what seemed to many a somewhat strident expression to these feelings. Yet only a few reactionaries regarded this as heralding revolution. Reform, even what seemed radical reform, never shook the confidence of the capitalist structure of society. In general, most of us young men at school or university felt that both as regards external and internal policies, the world would probably go on more or less as before. If we were optimists, we expected a steady advance towards the greater happiness of mankind. Even if we were more sceptical and perhaps increasingly alarmed by various examples of German chauvinism, none of us had any inkling of the nightmare world into which we were soon to be plunged. Alas! this was not to be true of our children, a generation later.

The First World War rudely shook, if it did not yet altogether overthrow, the undisputed leadership of Europe and European nations. A civilisation based originally upon the Mediterranean had spread out from century to century until, in their own minds at any rate, and largely accepted by the rest of the world, the predominance of Europeans was taken for granted. The First World War did for Europe what, on a minor scale, the Peloponnesian War did for ancient Greece. The civilised nations, or those who claimed superior civilisation by virtue of which they ruled a large part of the rest, tore themselves apart in a bitter and prolonged internecine struggle. With a certain insensibility, the Allies (the Central Powers would no doubt have done the same had they possessed the means) recruited very large numbers, running into hundreds of thousands, of Africans and Asians, including Chinese, to watch this operation. At the end of the war, the economies of almost every country in Europe were partially destroyed. They had suffered casualties amounting to many millions of dead and maimed. The ancient monarchies were overthrown; Russia, with its vast population and huge potential, had undergone complete revolution in its social order and structure; Austria was dismembered and sinking; France, Italy, Belgium, had all undergone heavy losses, and internal weaknesses soon manifested themselves. Germany itself, although spared the horrors of invasion, had suffered in manpower, in wealth, and in cohesion. Towards the end of the war the United States had—at least temporarily—abandoned the policy of isolationism, pursued for so many generations, and entered the conflict with decisive result. The predominance of Europe seemed, therefore, gravely threatened, if not altogether at an end.

From the economic point of view, Europe, with its vast inflation of money and its huge debts, found itself in a desperate position; and from that entangling net few nations could extricate themselves except by repudiation. The old automatic self-balancing system of international finance seemed to be hopelessly shaken. Many prophesied that the centre of all financial and economic authority would soon pass to the United States.

So far as Britain's overseas Empire was concerned, the colonial system emerged comparatively unimpaired. The armies of the vast

subcontinent of India played a great part in support of Britain. In spite of difficulties inherent in the development of India's self-consciousness and gradual progress towards self-government, there seemed no cause for immediate alarm. The great Dominions—Canada, Australia, New Zealand, South Africa—under notable leaders, were able to establish their full independence, an indication of which was their separate signing of the peace treaties.

In Britain, the war-time slogan, 'Fit to fight, fit to vote', enabled the most radical Reform Bill of all those in history to be passed without opposition. There thus came into being something approaching universal suffrage, which had been demanded so vehemently over a hundred years before, but resisted through three Reform Bills. This change, hardly noticed at the moment, brought with it for the first time women's suffrage, and although the final stages were not completed until 1928 or even 1948, yet for practical purposes, after the First War Parliamentary democracy took the place of the Parliamentary aristocracy or oligarchy which had been dominant in the eighteenth century and for most of the nineteenth.

But people still thought of 'pre-war' as 'normal'. It was the main effort of Whitehall, the City, the business world, and the trade unions to return to the well-trodden ways. Even in the purely political world, moderation prevailed. The mood of the Right was traditional; that of the Left, even under pressure, constitutional. Large-scale and continuous unemployment, with the poverty and distress entailed, and the bitterness and despair engendered, was confined to certain areas of the country. There was much talk about Russia's example and much comradely exchange of messages; but in fact there was no real danger of the British people of whatever social class being attracted by the Russian example. Communists, then as now, were generally to be found among the higher intelligentsia.

Thus, while the people were almost stunned by the magnitude of their war experiences, huge social and political changes went through almost unperceived. In Britain, as indeed in Europe as a whole, the first years after the war did not wholly reveal what had taken place. Everything on the outside seemed to be much the same. The decision of the United States, by the refusal to join the League of Nations, to revert to isolationism caused satisfaction rather than

alarm to many people. Although the League was gravely weakened, and perhaps—had we known it—doomed by this action, its work went on with moderate success and high hopes. In this country, as in many, the active supporters of the League comprised all parties, and certainly the most intelligent members of all parties. Partly by the efforts of the League machinery, partly by the restoration of international trade and money, and partly, no doubt, as a result of large-scale American loans, the first half of the post-war period was actually one of remarkable recovery throughout Europe as a whole in the face of grave difficulties. This fact is often forgotten or overlooked today. We think and speak of the terrible conditions of the inter-war years; but, in fact, up to the collapse of 1929, the first ten years after the war showed a notable resilience in the Old World, coupled of course with boom conditions in the New. But the catastrophe could not be delayed beyond a few years; and from the financial and trade collapse of the late 1920s and early 1930s there followed ineluctably the series of events which paved the way to the Second World War. When the economic and financial crash came, with total repudiation of internal debt by countries like Germany and Italy, Europe began to move along the road which led to ruin. Yet to many in Britain and France, the rise of Mussolini and even the triumph of Hitler were overshadowed by fear of Russia, still in the early mood of aggressive Communism.

From 1924, when I first entered the House of Commons, up to 1935, the year of Mussolini's invasion of Abyssinia, my chief interests and those of my closest friends were in internal problems. In the Parliament of 1924 to 1929, before unemployment had developed on a massive scale, it was rather with the symptoms of distress and economic maladjustment—the human aspects—that we concerned ourselves. But as the Depression deepened and the unemployment situation worsened, we became increasingly concerned in the promotion of some radical cure. Our inspiration in the study of the first was Disraeli, whose appeal to youth is still irresistible; for the second we were naturally excited by the Keynesian doctrine, which was beginning to spread outside the ranks of economists to all those interested in practical policies.

Later, the rise of Hitler and the growing insolence of the Nazi

and Fascist dictatorships caused me to turn more and more to foreign affairs, and brought me into closer sympathy and contact with Churchill and corresponding distrust of the official leaders of my party. On the declaration of war, on 3 September 1939, Churchill and Eden joined the Government. But they could not preserve it. When the full blast of the storm burst over Europe in May 1940, Chamberlain fell and gave way to Churchill. When Churchill offered me, and I accepted, a junior post in his Ministry, my sixteen years as a back-bencher came to an end. Some years later, at the end of a tiring day, Churchill kept me up late in desultory conversation, largely consisting of denunciation of Hitler. I suppose I showed lack of interest and a desire to go to bed. 'What's the matter with you,' he demanded, 'do you approve of Hitler?' 'No, Prime Minister,' I replied, 'but at any rate you and I owe him something. He made you Prime Minister and me an Under-Secretary. No power on earth, except Hitler, could have done either.' I thought he would explode with rage; but after a moment or two, that wonderful smile we all so loved came over his face. 'Well,' he admitted, 'there's something in that.'

Naturally, during the war years the minds and energies of all of us, whether in humble or more responsible posts, were occupied by the tremendous struggle—first for survival; then for victory. The daily round of duty kept us so fully occupied with our immediate tasks that it was difficult to trace the larger issues that were emerging. Nevertheless, some of the essential features of what I have called the Great Revolution of these fifty years were beginning to show themselves. At the Ministry of Supply we had hurriedly to organise the whole of British production for a single purpose. How profoundly I wished that some of the plans for the better organisation of production and the more effective relationship between Government and industry had matured during the wasted years. Yet, by improvisation and co-operation, in spite of baffling and frustrating delays, the task was effectively achieved within two or three years. Even in the midst of the daily pressure I could not but see that the relations between Government and industry must take a new turn after the war. The old detachment must be replaced (as I believed), not by 'the nationalisation of all the means of production, distribution, and exchange',

but by a true and effective partnership. I learnt, too, another lesson: the British financial system could not have stood the strain, standing alone without allies, by dependence only on its own resources and those of the British Empire, vast as these were. The provision of American aid in the shape of Lend-Lease saved us from something like disaster. Even before the Americans entered the war, Anglo-American co-operation was the pivot on which immediate military resistance and eventual recovery depended. The Prime Minister, Churchill, grasped this from the very first. It was largely by his personal efforts that America, while officially neutral, gave us all the assistance possible short of war. I shared at any rate one great advantage with Churchill of having an American mother; so I also could rejoice as our two countries were drawn ever closer to each other.

My first period, therefore, in the Ministry of Supply underlined lessons which I had been trying to learn in the inter-war years. First, the necessity for a sound national economy based on full partnership between Government, management, and labour. Secondly, the need for any country, however strong, to rest in times of crisis upon the aid of others. Independence and interdependence—two sides of the same coin. The Americans, wisely remembering the injury done by the burden of war debts after the First War, instituted the Lend-Lease system, which was in fact a loan which would never claim repayment. But the third lesson grew stronger in my mind as the months went on. The reversion of America into isolation after the First War, coupled with the economic and social effects of wild devaluation throughout Europe, brought about those movements which, even had the democratic countries shown greater courage and prevision, might still have led to the Second World War. On Anglo-American co-operation, since for the time being Europe was down and out, the winning of victory and the construction of peace must primarily depend.

I was given the opportunity of testing this faith and applying it in practice in the two and a half years that I served as Minister Resident at Allied Force Headquarters, starting in Algiers and ending at Naples. As the war proceeded, I was inevitably conscious of a change in status between the two Allies. Britain had stood alone, and alone had borne the whole weight of the Nazi and Fascist attack.

We had raised and deployed immense forces. We had fought and lost many battles, but won some decisive victories. Nevertheless, I could not but realise the growing disparity between our countries in terms of wealth and military power. The partnership which must win the war and preserve the peace could not be based upon equality of strength. It must be founded on deep respect and understanding, the memory of trials and tribulations shared and a determination to work closely together in the years of peace in support of the ideals which we held in common. Nothing that has happened since, in spite of difficulties and disappointments, has changed my view on this prime objective of British policy.

These years following the Second War were dominated by the emergence of the deep division between Russia and the countries under her control and the Western Powers. Unlike the aftermath of the First War there was no great Peace Congress, no Versailles Treaty, no comprehensive effort on the part of the victorious Powers to settle the outstanding problems of the world. The East-West rupture precluded any such procedure. The second rape of Czechoslovakia—unhappy country, destined to be seized first by the Nazis and then by the Communists—led to the formation of a defensive military alliance, including the United States and almost all the countries of Western Europe.

Of all the manifold changes that have taken place in the last two generations, the story of Russia is the most arresting. I remember the summer of 1914, when the hearts of many were stirred by the mysterious rumour that ran through Britain: 'The Russians are coming. They have been seen in Scotland, with snow on their boots!' Strange, if heartening, illusion! Then, three years later, the fall of the ancient Tsarist system; the tragic interlude of Kerensky; the struggle for power ending in Lenin's domination; the Russian military collapse with its effect upon the Western Front, allowing the transference of Germany's eastern armies to France and Belgium to launch the offensive of March 1918, which came within an ace of achieving victory before American forces could become effectively deployed. In these few years Russia was destined to pass violently from childhood to manhood. She has had no adolescence.

After the war, and during the years before the Second War, our

policies towards Russia were hesitant and ambivalent. First came the phase of active but ineffective armed intervention on behalf of the White Russians, a policy violently disputed in the Coalition Cabinet, where it was warmly opposed by Lloyd George and strenuously advocated by Churchill. Gradually Britain accepted the fact of the Communist Revolution, and unofficial agents were interchanged. MacDonald followed this in 1924 with *de jure* recognition of the Communist régime, and the exchange of Ambassadors. But his attempts to achieve a further *rapprochement*, by negotiating a trade treaty and a loan agreement, were unpopular and contributed to the downfall of the first Labour Government. In the election of 1924, the episode of the Zinoviev Letter,¹ revealing the subversive activities of Russian propaganda in Britain, proved embarrassing to the Labour Party and of corresponding benefit to the Conservatives. In 1927, in the Parliament that followed, the Home Secretary, Joynson-Hicks, authorised a police raid on the London offices of Arcos, the Russian State trading organisation. Nothing very much came of it; in Lord Vansittart's words, 'We discovered what we already knew—that Russians were engaged in espionage and subversion'.² But there was sufficient indignation to lead to the rupture of diplomatic relations. These were, however, restored by the Labour Government in 1929.

In 1934—an event of major significance—Russia joined the League of Nations, of which she remained a member until 1939, when she was expelled for aggression against Finland. While represented by Litvinov, Russia acted, or, thanks to his skilful diplomacy, appeared to act, as a convinced supporter of the principles of the League. 'Peace is indivisible'—this famous phrase found a ready response, not least in Britain.

'The more Russia is made a European rather than an Asiatic power, the better for everybody.'³ This observation, although made by Balfour in a different context and before the Revolution, is still relevant and should be the fixed purpose of all Western diplomacy. But the men who held power in Britain during the vital years from the rise of Hitler in 1933 to the outbreak of the Second World War

¹ See below, p. 152. ² Lord Vansittart, *The Mist Procession* (London, 1958), p. 344.

³ Blanche Dugdale, *Arthur James Balfour*, vol. ii (London, 1936), p. 437.

were obsessed by a deep suspicion, not altogether undeserved, of Russian policy. One can only speculate to what extent a more forthcoming attitude on the part of the British Government, during Litvinov's term of authority, might have changed the course of history. But with the fatal hesitations of those years, Britain discouraged France at a time when a combination of Britain, France, and Russia might have served to deter Hitler and his gang. Even after Munich, when there was still a chance, the negotiations with Russia were pursued feebly and without any real sense of urgency.

Then came war, and later the sudden turn of events when the Germans, flushed with their conquests of France, Holland, and Belgium or, perhaps, in disappointment at their failure to crown these by the defeat of Britain, turned eastwards. Churchill did not hesitate a moment. From that day until the end of the war, every possible help was given from the West to Russia. Yet the alliance for waging war, and the generous assistance which we and the Americans provided, could not bring our fundamental policies much closer. The Americans, whose politics are more affected by emotions than those of more sophisticated peoples, certainly became ardent Russophiles. At the Yalta meeting, Churchill was almost left out in the cold through Roosevelt's mixture of weakness and vanity. Roosevelt flattered himself that he could outmanoeuvre Stalin by his skill or make him a victim of his charm. With the growing increase in the material power of America and its contribution to the war effort compared with our own, Churchill found himself in a weakened and unhappy position. I remember an episode at the Cairo Conference in 1943, some fourteen months before Yalta, which left a great impression on my mind. The Prime Minister and I had been dining with the President at his villa. We drove back rather late to the house lent by Mr. Chester Beatty to the British Government. As we sat over a last drink before going to bed, Churchill suddenly looked at me and said, 'Cromwell was a great man, wasn't he?' I replied, 'Yes, sir, a very great man.' 'Ah,' he said, 'but he made one terrible mistake. Obsessed in his youth by fear of the power of Spain, he failed to observe the rise of France. Will that be said of me?' This thought dominated his strategic purpose and led to the compilation of the greatest of all his appeals to the President,

in June 1944—in a vain attempt to stop the futile move into southern France of troops that could as easily have landed in south-east Europe and reached a point hundreds of miles east of the line on which the Iron Curtain was soon fatally to descend. Nor did Churchill abandon his efforts in the concluding stages of the campaign.

In the early years after the war, while the United States and Britain were the sole possessors first of atomic and then of nuclear power, there was overwhelming strength on the Western side. When the Russians themselves developed nuclear power on a massive scale, the situation was radically changed. The altered balance of power in the world; the new and terrible armaments; and the long-term obligations into which sovereign States have entered, the complete reversal of the policies followed by British Governments during generations: these indeed constitute revolutionary changes. It would have been inconceivable to anyone in the days before the First War that we should join a twenty years' alliance and, as a result, institutionalise our defence policy, as we have done in N.A.T.O. Many wise heads were shaken in alarm, even on the conclusion of Lord Lansdowne's pact with France in 1904, culminating in the 'Entente Cordiale'. Statesmen like Lord Rosebery felt that this entanglement would lead inevitably to conflict with Germany. The staff talks in which we subsequently engaged bound us morally in 1914. But they were not known to Parliament or the public. They were only communicated to the Cabinet in 1912. What a vast revolution to find ourselves no longer in full command of our foreign and defence policies in relation to the threat from the East! It has sometimes amused me to hear the arguments of those who objected to closer political and economic association with Western Europe, yet seemed to forget that we had already pledged our lives and our very being in the field of mutual defence. The reversal of the traditional policy of the United States was equally complete.

In the period of the two Labour Governments—1945 to 1950 and 1950 to 1951—there was a large measure of agreement between the two main parties on the major questions of foreign policy, but on internal issues there was naturally strenuous debate. On what might be called social questions there was general acceptance of the

policies as regards the Health Service and other developments of improvement, which were clearly necessary for the new democracy to enjoy. Even in the stress of war, during the Coalition Government, preparations had been made for some of these advances, for instance by Butler's Education Act, as well as by Lord Beveridge's famous Report, the herald of the Welfare State. It was rather in the field of economic and financial policy that the political battle was fought. The Labour Government seemed wedded to a policy of controls, harassing and no longer necessary. A siege economy is essential in a siege, but it ought, in the Conservative view, to be relaxed after the siege is raised. Expansion; the release of the energies of individuals; the emergence of enterprise and effort, whether private or public; the determination to allow the whole strength of the nation to be put behind the creation of wealth and its distribution: all these seemed much more worthy themes than the prevailing restrictionism. Moreover, a handling of our financial affairs which resulted in a series of crises, including devaluation, in spite of immense dollar loans, seemed to us indefensible. No doubt, like all Oppositions, we pressed our points hard and sometimes unfairly hard. When historians deliver judgement at leisure, it will be possible to strike the balance. At any rate, here again we were all, in all parties, moving in a world that would have seemed incredible before the First World War and even between the wars. Wider distribution of wealth; the raising of the standard of the people in material comforts and opportunities; the determination to satisfy their spiritual ambitions by the provision of ever-increasing educational facilities; the ready acceptance of the care of the old and those who had fallen by the wayside, by humanising the pre-war systems of relief: all these radical developments, not merely of purpose but of performance, were approved by both parties. Politicians might differ on the means and methods, but they shared common aims. Unlike the period between the wars, especially the periods after the great slump, there have been none of the bitter feelings which massive unemployment and poverty created. Disraeli's 'Two Nations' have grown gradually but steadily into one.

On the formation of his last administration in October 1951, Churchill asked me to take the department charged with the hous-

ing of the people. It was my task to fulfil the pledges which he and his colleagues had given at the preceding election. I held this post until October 1954—about three years. In October 1954, in a reshuffle of the Cabinet, I was appointed Minister of Defence, and held that office until April 1955, when, on Churchill's retirement and on the formation of Eden's pre-election Government, I became Foreign Secretary. My tenure of the Foreign Office was short, not more than eight months, but it covered the period in which the Austrian Peace Treaty was signed and the first summit meeting was held. These months gave me my first opportunity to see the leading Soviet figures, Bulganin, Khrushchev, and Molotov, at close quarters. It was also during this period that the Burgess—Maclean incident broke out to a glare of publicity, and it was my duty as Foreign Secretary to discuss in the House of Commons the problem of how far security could be used to override the liberties of citizens in a free society, a subject to which I was to revert as Prime Minister in still more painful circumstances. Yet even these troubles have their humorous side. I remember, for instance, the head of one of the security departments coming to me one morning, his face wreathed in smiles. 'I've got him, sir. I've got him. I've been after him for months; now I've got him.' I looked particularly gloomy, at which he said, 'Aren't you pleased, sir?' I answered, 'Not at all. When a good keeper kills a fox, he buries it quietly and tells his master nothing about it. He certainly doesn't hang it up outside the kennels. Your spy', I continued, 'will have to be paraded before the Courts, Parliament, and the Press. There will probably be a Special Tribunal to review the efficiency of your service, and your success will lead to the Government's embarrassment and perhaps its downfall.' Such are the strange contradictions of security in a democratic system.

In December 1955 I became Chancellor of the Exchequer and introduced in 1956 my only Budget, which included plans for the first Premium Bonds. Before the time came for the Budget of 1957 I found myself transferred, by a series of wholly unexpected accidents, from No. 11 to No. 10 Downing Street.

It was in the summer of 1956 that Nasser's seizure of the Suez Canal brought about a situation of intense crisis. I remember well

the mood in which the House of Commons, regardless of party, met this dictatorial threat. In Mr. Gaitskell's words, 'It is all very familiar. It is exactly the same that we encountered from Mussolini and Hitler in those years before the war.' The Prime Minister kept me in close touch with his plans throughout those anxious months. I shared to the fullest extent responsibility for all the decisions, all the more because I was one of the circle of colleagues whom the Prime Minister particularly consulted. I still feel that, had it not been for the injury caused by lack of understanding between the British and American Governments, we could have got through without undue difficulty. The threat to stability in the Middle East was no illusion, and when, during my Premiership, it became necessary for Britain to give military assistance to the political security of Jordan, American troops, by a strange new twist in the Eisenhower-Dulles foreign policy, were landing in the Lebanon.

Eden's ill health, to the sorrow and almost despair of his colleagues, forced him to resign on 9 January 1957. I succeeded him as Prime Minister four days later. The early months were a period of great anxiety in and out of Parliament. There was little opportunity to do more than try to analyse the major issues which confronted us as a nation. In my different offices I had dealt with specific aspects, but not with the whole complex. I recognised the great revolution which the two wars and their aftermath had caused. I realised that the old society had passed away and a new order, with all its dangers but with all its hopes, was painfully emerging. As soon as I felt the Government reasonably secure, I began to study, with the help of my own staff and with my closest colleagues, the whole vast problem of how best to grasp the opportunities and counter the dangers that this new world afforded. For the rest of my period as Prime Minister, with the occasional interruptions of minor if troublesome issues, these fundamental questions occupied my thoughts and energies. The greater part of the last volume of this book will be devoted to the degree of success and failure which we met in trying to cut our way through an intricate and often baffling tangle.

First, there was the British economy. Britain's overseas investments were largely disposed of in the First War. To the extent that they had been rebuilt between the wars they had once more to be

sacrificed. Britain, so long a creditor country, had become largely a debtor country. Meanwhile, the situation of America was correspondingly reversed. Moreover, within six years, the huge American loan to Britain of £1,000 million had been spent, leaving the interest and redemption to be met by future generations. One devaluation had become necessary, and towards the end of 1951 another was threatening. Of course, this did not in any way weaken the fundamental power of the British people to produce, to work, to invent, to strive. Indeed, as a result of two wars, the labour force had been significantly increased by the great expansion in the employment of women. If hours were shortened and holidays increased—and very properly so—enormous technological progress had placed machine-power at the disposal of industry and agriculture, on a scale undreamt-of hitherto. The capacity to produce wealth had therefore been multiplied many times; but so had the need for imports of all kinds to feed the rapacious demands of modern production and consumption. The revival of agriculture, the victim of nineteenth-century industrialisation, certainly alleviated the position from the exchange point of view. Nevertheless, an island very highly populated in relation to its size, possessing few raw materials, and ambitious to achieve an ever-rising standard of living, can only do so by a combination of exertion and restraint.

Above all, the rise in costs and prices and very heavy demands for capital, both at home and in the overseas countries for which we have a traditional and moral responsibility, have emphasised the insufficiency of the reserves which were left to us at the end of the Second War. Even the most strenuous efforts cannot result in an accumulation of reserves at a sufficient rate to match the increasing volume of business. In a word, post-war Britain has been and is 'trading beyond its means'. This situation, familiar through many generations to individual businessmen, can be remedied by a successful entrepreneur through recourse to banking accommodation or by raising fresh capital on the market. A nation cannot readily do the same.

The dilemma, therefore, that has faced us since the war, and will continue to face us, is persistent and haunting. If, on the one hand, we go forward at the maximum speed which the resources of

machinery and manpower available are able to sustain, this almost inevitably leads to larger imports and a growing divergence between exports and imports—in other words, an unfavourable trade balance. If, on the other hand, we reduce the speed of advance, we risk under-employment of our resources, both of men and material. In this dilemma lies the origin of what was contemptuously termed the 'Stop-Go' system. I remember one Member of Parliament accusing me of using alternately the brake and the accelerator. I was tempted to inquire how else anyone could be expected to drive on a crowded road. A policy of using both at the same time, which has since found some favour, seems somewhat bizarre.

Nevertheless, in spite of some irregularity in the rate of progress in the economic field, the almost incredible improvement in the life enjoyed by the British people cannot be challenged. Indeed, it is now difficult to cast one's mind back to the period immediately following the war, still more to the inter-war period. In every item that goes to make up the national standard of living—food, clothing, housing, health, holidays, educational facilities, and all the rest—there is so great a gap between the conditions of people today and those of past days that the young are unconscious of it and even the old can scarcely grasp it. If there have been occasional fluctuations and set-backs, we must not exaggerate them. To use a famous phrase of Macaulay's, 'Now and then there has been a stoppage, now and then a short retrogression; but as to the general tendency, there can be no doubt. A single breaker may recede; but the tide is evidently coming in.' Indeed, so successful was our policy that a new line of attack was begun by the Opposition and taken up by some armchair critics, generally in well-to-do circumstances themselves. It was said that by the 'Affluent Society' we had debauched our population; by making them prosperous, it was claimed, we had undermined their moral fibre. Remembering the passionate debates of thirty or forty years before, I could not help being somewhat surprised by the novelty and unexpectedness of these accusations. Of course, material prosperity can be used or misused. It can be the foundation of a fuller life, opening up new prospects to every individual in the country; or it can be temptation to wantonness and folly. But, recalling the old days—the slums and the poverty, and the unemploy-

ment, or the state of my constituency in Stockton when the works were closed and men, willing and able to work, walked aimlessly up and down the streets, to the tune of 30 or 40 per cent of the population, hopelessly looking for a job—I did not sympathise with these peevish complaints. On the contrary, I felt sincerely grateful to have been spared to see so great a change and, under Providence, to have been allowed to play some minor part in bringing it about.

One of the products of the technological revolution has been immensely to complicate the practical problems of defence. Even in the so-called 'conventional' weapons, the progress of science and technology moves with such inconvenient rapidity that it is very hard to devise and stand by consistent programmes. In the sphere of unconventional weapons, the problems are multiplied. The passing of the McMahon Act in the United States was a grievous blow to the development of the independent British deterrent, and I took up with President Eisenhower the question of its amendment. By his efforts, the Act was amended, thus allowing interchange of information to be resumed, saving us an incalculable amount both of money and of time and enabling us to produce an effective deterrent weapon on our own account, with all its implications on the strategic and political strength of our country. The problems associated with 'Blue Steel' and 'Blue Streak', with 'Skybolt' and 'Polaris'—to name only the most important—all of them requiring difficult decisions of economic and strategic importance, are further examples of the intricacy and costliness of defence in the twentieth century.

Startling as have been the changes in our financial and economic position and in the needs of our national defence and the means of meeting them, there has been no more remarkable development in any sphere than in the story of the British Empire and Commonwealth. Pessimists would describe it as the liquidation of the British Empire; optimists might view it as the transformation of a colonial and imperialist system into a Commonwealth of free and independent nations. Certainly, we can roll up the old maps of my youth in which a quarter or more of the globe was painted red, covering not merely the countries of British descent like Canada and Australia and the Crown Colonies governed by direct colonial rule, but also the territories like Egypt and the Sudan under *de facto* if not *de jure*

British control. Perhaps the most dramatic way of describing the rapidity of these changes is to be found in the membership of the Conference of Commonwealth Prime Ministers. The first over which I presided was in 1957; the last in 1962. At the first there were ten Prime Ministers or their representatives present; at the last, sixteen. In 1965 no fewer than twenty-one nations had a claim to be represented. The 'winds of change' had indeed blown to some effect.

The process began in 1925, when the Dominions Office came into being and, as a result, the channels of communication between the Governments of Canada and the other Dominions ceased to be through the Governors-General and were transferred to the respective High Commissioners. Further changes were given legal and constitutional sanction by the Statute of Westminster. By the time the Second War broke out, the old Commonwealth (to use a convenient term)—Canada, Australia, New Zealand, South Africa—were in fact independent nations, though closely bound together with each other and Britain by blood, tradition, and sentiment, and above all by a common allegiance to the Crown. Between the wars the process of constitutional development was steadily pursued in India, Burma, and Ceylon, and the first steps were taken in many if not all of the Crown Colonies. Some of these, like the West Indian territories, enjoyed ancient constitutions concentrating power on the white populations. The process of enlargement of the franchise was, however, already at work. The India Act of 1935 marked a further stage forward. In all of the controversies of the time, it was generally agreed that the ultimate end to be reached must be Dominion status or virtual independence. Argument was concentrated not so much on the final purpose as on the means and pace of its achievement.

After the Second War independence was granted to India, not alas to the unified subcontinent over which Britain had presided for so many generations, but to each part of a divided India. It was accompanied by tragic loss of life on a hideous scale, and has left behind it many unsettled problems between the two emergent nations, India and Pakistan. But it was done; and it could not in the view of most informed opinion have been much further delayed, although the change could perhaps have been brought about with less confusion and suffering.

The next and decisive alteration in the old conception of Empire or Commonwealth followed rapidly. For the direct allegiance to the Crown was substituted recognition of the Monarch as Head of the Commonwealth. It was agreed also as a consequence that the emergent nations could if they wished adopt a republican form of constitution. This concession having been made—and, in my view, rightly so—to India and Pakistan, it could hardly be denied to other countries as they reached independence.

The next question which commanded our attention was that of the relations of Britain and Europe. During our period of Opposition from 1945 to 1951, Churchill had launched at The Hague the European Movement, which resulted in the creation of the Council of Europe and thus helped to restore Western Germany to the family of democratic and peaceful countries. Ernest Bevin, the Labour Foreign Secretary, was not unfavourable to the main purposes that lay behind the unity of Europe, although it would not be unfair to say that neither he nor the Foreign Office were enthusiastic about its new institutions. At Churchill's request I took a considerable part in the European Movement at its foundation; but the Conservative Party, like the country, had its anxieties and reservations. I shall never cease to blame myself that I did not, even from my comparatively junior position in the Cabinet, raise as a matter of high principle the question of Britain joining actively at least in the preliminary talks which ultimately led to the Treaty of Rome. It was of course discussed; but the views both of the Foreign Office and the Treasury, as well as the Board of Trade, were all hostile, largely on technical grounds. The Foreign Secretary, Eden, was doubtful, if not opposed to the concept. Churchill was Prime Minister. But either from age or unwillingness to precipitate what might have caused a major conflict in the Government and thus put at risk the urgent problems of internal reconstruction which it fell to us to carry out with a slender majority, he accepted without much resistance the general verdict. Moreover, in launching the European Movement, Churchill always had in mind the moral renaissance of Europe rather than any clear organisational system. Certainly, he gave his full support to Eden's efforts to rescue the European Defence Community, and thus to allow the rearmament of Germany with

French approval. It is strange to remember, in view of what has happened since under de Gaulle's leadership of France, that Britain felt obliged to undertake heavy military obligations in Europe, in order to satisfy French opinion, still suspicious of Germany as a military partner in the Alliance. These obligations we have since been able somewhat to reduce, but they are treaty undertakings, and both onerous and long-dated. Once again, as so often in her history, Britain has given much and received little in return. About Europe, regrets still haunt me. I was so fully occupied with my own office, which combined the conduct of complicated legislation with the largest administrative job I had ever undertaken, that although I wrote to Churchill to protest, I did not press the issue. The considerations I have stated are, alas, excuses, not valid reasons. I can only comfort myself that I could not, even with the help of the few colleagues who shared my view, have had any hope of getting my way. I could only have contented myself with the sense of rectitude following a resignation on a matter of principle.

When I became Prime Minister, the first months were heavily engaged in other matters, but I soon decided, with the approval of the Cabinet, that we must undertake a negotiation to see how far a plan could be made by which Britain and other Powers in Western Europe not included in the Six could co-operate with the European Economic Community, by the creation of an industrial free-trade area for Western Europe. At one time it looked as if we should succeed, but the French Government finally prevented this, although their colleagues in the Six would probably have proved agreeable. We therefore set about the organisation of the European Free Trade Association—that is the seven countries of Western Europe outside the Six. This has been of great value of itself, and much progress has been and is being made for the increase of trade between the countries concerned. Our next step, with the approval of our E.F.T.A. colleagues, and in full consultation with the Commonwealth, was a formal application for the United Kingdom to join the Six. Long negotiations in Brussels followed. Finally, at the beginning of 1963, the French Government imposed their veto. This was a cruel blow. But neither my colleagues nor I should regret that we set out upon this adventure. Nor do I feel that the events of

January 1963 are the end of the story. They are, perhaps, only the end of a chapter.

When the Conservatives returned to power in 1951, the East-West split dominated all foreign politics. The Iron Curtain seemed impenetrable. During the years of the last Churchill administration, my friendship with the Prime Minister made me not infrequently a confidant of new ideas forming in his mind, and I knew how unwilling he was to rest content with the complete deadlock that had settled down between East and West. This outlook was not only creating a grim and dangerous division between the two sets of nations, including the allies or satellites of the principals of the two groups, but its evil effects spread to every country of the world. The so-called neutrals, or those who tried to keep themselves (in the jargon of the day) 'non-aligned', were subject to the pressure of propaganda of the active contestants. Sometimes, it is true, they could obtain positive advantages by setting off one group against the other. But as a whole the life of the world was either paralysed or poisoned; nor did there seem any way of breaking through this wall of steel. All this made Churchill anxious and restless. He had a strong desire to begin at least some probing operation, and I remember that in the spring of 1953, not long before his illness, he was anxious that some initiative should be taken. His famous speech in May of that year gave public utterance to his hopes. Although it was somewhat coldly received in official quarters, here and overseas, yet it made a deep impression on public opinion all over the world. Churchill was thus the author of the concept of the 'summit meeting'. It fell to Eden to bring about the first of these, which was held at Geneva in the spring of 1955. Although, in a sense, the meeting of Heads of Government and the subsequent conference of Foreign Secretaries were disappointing, yet I felt that they had at least achieved some useful contacts. I attended both of these, as Foreign Secretary, and although the formal discussions were fruitless, our long unofficial conversations seemed to me not altogether barren.

Soon after I became Prime Minister, I made up my mind that Churchill's initiative, which Eden had followed up, must, when the occasion seemed more promising, be renewed. In the summer of 1958 I had an opportunity to ventilate some of my thoughts in talks

at Washington and Paris, and in the autumn of the same year at Bonn. At that time, Moscow had moved from a purely negative to a threatening position over the question of Berlin. In the late months of 1958 I determined on visiting Moscow, and arrangements were made for an invitation to be extended to me. I informed, although I cannot honestly say that I consulted, our allies. President Eisenhower did not much like it, but wished me good luck; President de Gaulle was sceptical; Chancellor Adenauer was offended. But this British initiative was certainly widely welcomed by the smaller Powers and by neutral opinion. As soon as the visit was over I went again to Paris, Bonn, and Washington, my chief purpose being to bring all the pressure I could upon the Heads of these States to agree or acquiesce to a new summit meeting. After many months, I succeeded. Alas! the U2 incident resulted in the total failure of this conference almost before it began, and the hopes of the world were cruelly dashed.

In following years, in spite of some improvement in East-West relations, there hung over the whole world, like a dark cloud, the unresolved threat to Berlin. To this was to be added the Cuba crisis, in 1962. For one hectic week, the provocative action of the Russians in introducing nuclear missiles into Cuba seemed dangerously near provoking a fatal conflict. President Kennedy spoke on our special telephone every day—sometimes two or three times a day—and I had no hesitation in giving him full encouragement and support. He and I were both convinced that the Russians would not force the issue in Cuba. But what about Berlin? In the event, the world passed unscathed through a dark and perilous period, short but agonising. Indeed, we were soon able to take up again, with some hope of success, the question of nuclear tests.

After the Russians had broken in the summer of 1961 with a massive and spectacular series of explosions the unofficial moratorium which had lasted two years, it was imperative for the West to maintain the equilibrium of nuclear technique and power. Accordingly, an Anglo-American series took place on Christmas Island.

But I did not abandon the idea of reaching an agreement to ban the tests. In the end, fortified by the growing acceptance of the fact that underground tests were not of major importance, either from

the point of view of any injury to the health of the inhabitants of the earth or from that of a major breakthrough in the nuclear art, both the President and I accepted, although with reluctance, the Russian willingness to discuss an agreement confined to banning atmospheric tests. Even then there were many pitfalls. Up to the last moment I feared there would be a fatal 'slip 'twixt the cup and the lip'. It so happened that the first news of the agreement having been finally signed reached me from Washington. President Kennedy rang me up himself on our private telephone at five o'clock on the afternoon of 25 July 1963. Here at last was something achieved on the long road to peace and better understanding.

I have set out the main issues which dominated my thoughts and those of my colleagues during all these years. All resulted in one form or another from the fundamental changes brought about in the world and in Britain's position by the two wars and their consequences. I now come to the last—our relations with the United States. This formed a thread running through all the others, since in all the United States was involved for good or ill. In the economic field, American policies at home and overseas affected us at every point. An American recession had corresponding ill effects upon our exports to America; a boom helped us. Their tariff arrangements were vital to us, both as applied to their own tariffs and to the influence they had upon the tariffs of other countries. Their credit policies and the contributions that they made to the recovery of the world, first through the Marshall Plan and then through various forms of aid, coupled with their membership and support of the various international organisations for widening the basis of credit, were of supreme importance. In defence, apart from the question of the exchange of nuclear information, which we were able to resolve, we were broadly agreed. The United States was involved in all the alliances, N.A.T.O., C.E.N.T.O., and S.E.A.T.O. Their practical aid was shown by the large number of American troops serving overseas. In Europe, their sympathy with our plans for European unity was important, since any form of free-trade organisation, whether E.E.C. or E.F.T.A., must have its effect upon American interests. In our policies towards Russia, the Americans of course played the major part in defence through their nuclear strength. In

plans towards a *détente* or a test agreement, they held the key, and similarly in the long, dreary, and hitherto ineffective struggle for disarmament.

Partly from my own birth, partly from my sympathy and close connections with Americans throughout my life, in war and peace, I firmly believed that the peace and prosperity of the world depended upon close co-operation between Britain and the United States. That is still my view; but I have never thought that this should involve any abandonment of vital British interests or undue deference to American opinion. Nevertheless, on the occasions when Britain and America have let themselves, for whatever reason, be separated, disaster has generally followed. For example, the Suez tangle was largely due to the devious and obstructive policies followed by Secretary of State Dulles. Happily, after that date, when new and menacing issues arose, as over Jordan and the Lebanon, or the off-shore islands and Formosa, or in South-east Asia, our relations with America were so good that our influence could during my term of office be exerted to the full.

The American people, very much like the British people, are torn between two emotions. One part of their heart and mind looks back to the past; the other is always straining forward to the future. The old isolationism has died hard. The Russian and now the Chinese menace, like the German aggression in two wars, has helped to make it out of date. None the less, there is always the tendency to slip back. Similarly, the generous and noble sentiments which have taken the form of Marshall Aid and widespread assistance to all the countries of the world, are paralleled by the tradition of protection, the power of pressure-groups, the shipping policy with its subsidies and restrictions, and the sometimes discreditable treatment of foreign tenders for important contracts nominally open to the world. In the same way, American anti-colonial sentiment, often embarrassingly pressed on countries like Britain, who were already following their own well-thought-out plans for creating by stages a free Commonwealth of self-governing nations, was often very hard to submit to, especially when it took the form of an unhelpful attitude in the United Nations. One sometimes felt tempted to remind our ally that they were only just beginning to face their own racial

problem, growing daily more acute. Nevertheless, I have always found it very easy to deal with my American friends, whether officially or unofficially, on the basis of absolute candour. I was fortunate in my relations with two Presidents. For Eisenhower I had a sincere affection and deep respect, based on experience of his fairness and generosity throughout the Mediterranean campaign. He treated me, in our many meetings, as an old and trusted colleague. With President Kennedy, I formed an immediate and intimate friendship. We met frequently, and were in constant touch by letter, telegram, and telephone. His death only a few months after his visit to my Sussex home was to me a grievous personal loss. It was a disaster for the whole world.

To sum up, as my story unfolds, it will be found that Anglo-American co-operation was an essential thread running through the whole tangled skein.

There will be many other incidents and crises at home and overseas that I shall have to deal with in the course of these volumes. My Premiership ended suddenly, and unexpectedly, as it had begun. It began with Eden's serious illness. It ended with my own. Churchill, during the period of our Opposition from 1945 to 1951, was in the habit of entertaining his colleagues in the Shadow Cabinet to fortnightly luncheons at the Savoy Hotel. At one of these there was brought in a rather equivocal and shapeless pudding, which he viewed with some distaste. He called the waiter, 'Pray take away this pudding. It has no theme.' I have always remembered this incident—a warning to authors as well as to cooks. This Prologue—if I may so term it—attempts to set out my theme.

SHAUGHNESSY, DISTRICT DIRECTOR OF IM-
MIGRATION AND NATURALIZATION, *v.*
UNITED STATES *EX REL.* MEZEI.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT.

No. 139. Argued January 7-8, 1953.—Decided March 16, 1953.

An alien resident of the United States traveled abroad and remained in Hungary for 19 months. On his return to this country, the Attorney General, acting pursuant to 22 U. S. C. § 223 and regulations thereunder, ordered him permanently excluded without a hearing. The order was based on "information of a confidential nature, the disclosure of which would be prejudicial to the public interest," and on a finding that the alien's entry would be prejudicial to the public interest for security reasons. Because other nations refused to accept him, his exclusion at Ellis Island was continued for 21 months. A federal district court in habeas corpus proceedings then directed his conditional parole into the United States on bond. *Held*: The Attorney General's continued exclusion of the alien without a hearing does not amount to an unlawful detention, and courts may not temporarily admit him to the United States pending arrangements for his departure abroad. Pp. 207-216.

(a) In exclusion cases, the courts cannot retry the Attorney General's statutory determination that an alien's entry would be prejudicial to the public interest. Pp. 210-212.

(b) Neither an alien's harborage on Ellis Island nor his prior residence in this country transforms the administrative proceeding against him into something other than an exclusion proceeding; and he may be excluded if unqualified for admission under existing immigration laws. P. 213.

(c) Although a lawfully resident alien may not captiously be deprived of his constitutional rights to due process, the alien in this case is an entrant alien or "assimilated to that status" for constitutional purposes. *Kwong Hai Chew v. Colding*, 344 U. S. 590, distinguished. Pp. 213-214.

(d) The Attorney General therefore may exclude this alien without a hearing, as authorized by the emergency regulations promulgated pursuant to the Passport Act, and need not disclose the evidence upon which that determination rests. Pp. 214-215.

(e) The alien's continued exclusion on Ellis Island does not deprive him of any statutory or constitutional right. Pp. 215-216.

(f) The alien's right to enter the United States depends on the congressional will, and the courts cannot substitute their judgment for the legislative mandate. P. 216.

195 F. 2d 964, reversed.

In a habeas corpus proceeding, the Federal District Court authorized the temporary admission of an alien to this country on \$5,000 bond. 101 F. Supp. 66. The Court of Appeals affirmed that action, but directed reconsideration of the terms of the parole. 195 F. 2d 964. This Court granted certiorari. 344 U. S. 809. *Reversed*, p. 216.

Ross L. Malone, Jr. argued the cause for petitioner. With him on the brief were *Solicitor General Cummings*, *John F. Davis*, *L. Paul Winings* and *Maurice A. Roberts*.

Jack Wasserman argued the cause and filed a brief for respondent.

MR. JUSTICE JACKSON, whom MR. JUSTICE FRANKFURTER joins, dissenting.

Fortunately it still is startling, in this country, to find a person held indefinitely in executive custody without accusation of crime or judicial trial. Executive imprisonment has been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. The judges of England developed the writ of habeas corpus largely to preserve these immunities from executive re-

straint. Under the best tradition of Anglo-American law, courts will not deny hearing to an unconvicted prisoner just because he is an alien whose keep, in legal theory, is just outside our gates. Lord Mansfield, in the celebrated case holding that slavery was unknown to the common law of England, ran his writ of habeas corpus in favor of an alien, an African Negro slave, and against the master of a ship at anchor in the Thames.¹

I.

What is our case?² In contemplation of law, I agree, it is that of an alien who asks admission to the country. Concretely, however, it is that of a lawful and law-abiding inhabitant of our country for a quarter of a century, long ago admitted for permanent residence, who seeks to return home. After a foreign visit to his aged and ailing mother that was prolonged by disturbed conditions of Eastern Europe, he obtained a visa for admission issued by our consul and returned to New York. There the Attorney General refused to honor his documents and turned him back as a menace to this Nation's security. This man, who seems to have led a life of unrelieved insignificance, must have been astonished to find himself suddenly putting the Government of the United States in such fear that it was afraid to tell him why it was afraid of him. He was shipped and reshipped to France, which twice refused him landing. Great Britain declined, and no other European country has been found willing to open its doors to him. Twelve countries

¹ *Sommersett's Case*, 20 How. St. Tr. 1; 2 Campbell, *Lives of The Chief Justices*, 418; Fiddes, *Lord Mansfield and The Sommersett Case*, 50 L. Q. Rev. 499.

² I recite facts alleged in the petition for the writ. Since the Government declined to try the case on the merits, I think we must consider the question on well-pleaded allegations of the petition. Petitioner might fail to make good on a hearing; the question is, must he fail without one?

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of the American Hemisphere refused his applications. Since we proclaimed him a Samson who might pull down the pillars of our temple, we should not be surprised if peoples less prosperous, less strongly established and less stable feared to take him off our timorous hands. With something of a record as an unwanted man, neither his efforts nor those of the United States Government any longer promise to find him an abiding place. For nearly two years he was held in custody of the immigration authorities of the United States at Ellis Island, and if the Government has its way he seems likely to be detained indefinitely, perhaps for life, for a cause known only to the Attorney General.

Is respondent deprived of liberty? The Government answers that he was "transferred to Ellis Island on August 1, 1950, for safekeeping," and "is not being detained in the usual sense but is in custody solely to prevent him from gaining entry to the United States in violation of law. He is free to depart from the United States to any country of his own choice." Government counsel ingeniously argued that Ellis Island is his "refuge" whence he is free to take leave in any direction except west. That might mean freedom, if only he were an amphibian! Realistically, this man is incarcerated by a combination of forces which keep him as effectually as a prison, the dominant and proximate of these forces being the United States immigration authority. It overworks legal fiction to say that one is free in law when by the commonest of common sense he is bound. Despite the impeccable legal logic of the Government's argument on this point, it leads to an artificial and unreal conclusion.³ We must

³ Mr. Justice Holmes, for the Court, said in *Chin Yow v. United States*, 208 U. S. 8, 12-13:

"If we regard the petitioner, as in *Ju Toy's case* it was said that he should be regarded, as if he had been stopped and kept at the limit of our jurisdiction, 198 U. S. 263, still it would be difficult to say that

regard this alien as deprived of liberty, and the question is whether the deprivation is a denial of due process of law.

The Government on this point argues that "no alien has any constitutional right to entry into the United States"; that "the alien has only such rights as Congress sees fit to grant in exclusion proceedings"; that "the so-called detention is still merely a continuation of the exclusion which is specifically authorized by Congress"; that since "the restraint is not incidental to an order [of exclusion] but is, itself, the effectuation of the exclusion order, there is no limit to its continuance" other than statutory, which means no limit at all. The Government all but adopts the words of one of the officials responsible for the administration of this Act who testified before a congressional committee as to an alien applicant, that "He has no rights."⁴

he was not imprisoned, theoretically as well as practically, when to turn him back meant that he must get into a vessel against his wish and be carried to China. The case would not be that of a person simply prevented from going in one direction that he desired and had a right to take, all others being left open to him, a case in which the judges were not unanimous in *Bird v. Jones*, 7 Q. B. 742. But we need not speculate upon niceties. It is true that the petitioner gains no additional right of entrance by being allowed to pass the frontier in custody for the determination of his case. But on the question whether he is wrongly imprisoned we must look at the actual facts. *De facto* he is locked up until carried out of the country against his will."

⁴ Testimony of Almanza Tripp, an immigration service official, before the Senate Subcommittee on Immigration on February 15, 1950, included the following:

"Now, when we have a case of that sort, where central registry contains something derogatory of that nature, I do not believe we should make a finding of admissibility until it has been disproved. But the evidence that they had in central registry would not be sufficient for our Service to exclude by the normal board of special-inquiry proceedings, because those proceedings must be conducted in

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The interpretations of the Fifth Amendment's command that no person shall be deprived of life, liberty or property without due process of law, come about to this: reasonable general legislation reasonably applied to the individual. The question is whether the Government's detention of respondent is compatible with these tests of substance and procedure.

II. SUBSTANTIVE DUE PROCESS.

Substantively, due process of law renders what is due to a strong state as well as to a free individual. It tolerates all reasonable measures to insure the national safety, and it leaves a large, at times a potentially dangerous, latitude for executive judgment as to policies and means.⁵

After all, the pillars which support our liberties are the three branches of government, and the burden could not be carried by our own power alone. Substantive due process will always pay a high degree of deference to congressional and executive judgment, especially when they concur, as to what is reasonable policy under conditions of particular times and circumstances. Close to the maximum of respect is due from the judiciary to the political departments in policies affecting security and alien exclusion. *Harisiades v. Shaughnessy*, 342 U. S. 580.

Due process does not invest any alien with a right to enter the United States, nor confer on those admitted

a manner in which they could not be subject to attack in a court of the United States.

"You may say that it is unfair to the applicant not to give him that protection, but you must remember that the applicant is an applicant. He has no rights. . . ." (Hearings before the Subcommittee on Amendments to the Displaced Persons Act, Senate Committee on the Judiciary, 81st Cong., 1st and 2d Sessions 665.)

⁵ Cf. *Korematsu v. United States*, 323 U. S. 214.

the right to remain against the national will. Nothing in the Constitution requires admission or sufferance of aliens hostile to our scheme of government.

Nor do I doubt that due process of law will tolerate some impounding of an alien where it is deemed essential to the safety of the state. Even the resident, friendly alien may be subject to executive detention without bail, for a reasonable period, pending consummation of deportation arrangements. *Carlson v. Landon*, 342 U. S. 524. The alien enemy may be confined or his property seized and administered because hostility is assumed from his continued allegiance to a hostile state. Cf. *Ludecke v. Watkins*, 335 U. S. 160; *Zittman v. McGrath*, 341 U. S. 446, and 341 U. S. 471.

If due process will permit confinement of resident aliens friendly in fact because of imputed hostility, I should suppose one personally at war with our institutions might be confined, even though his state is not at war with us. In both cases, the underlying consideration is the power of our system of government to defend itself, and changing strategy of attack by infiltration may be met with changed tactics of defense.

Nor do I think the concept of due process so paralyzing that it forbids all detention of an alien as a preventive measure against threatened dangers and makes confinement lawful only after the injuries have been suffered. In some circumstances, even the citizen in default of bail has long been subject to federal imprisonment for security of the peace and good behavior.⁶ While it is usually applied for express verbal threats, no reason is known to me why the power is not the same in the case of threats inferred by proper procedures from circumstances. The British, with whom due process is a habit, if not a written

⁶ 18 U. S. C. § 3043; cf. Criminal Code of New York, 66 McKinney's Consolidated Laws, Tit. II, c. II, § 84.

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constitutional dictum, permit a court in a limited class of cases to pass a "sentence of preventive detention" if satisfied that it is expedient for the protection of the public.⁷

I conclude that detention of an alien would not be inconsistent with substantive due process, provided—and this is where my dissent begins—he is accorded procedural due process of law.

III. PROCEDURAL DUE PROCESS.

Procedural fairness, if not all that originally was meant by due process of law, is at least what it most uncompromisingly requires. Procedural due process is more elemental and less flexible than substantive due process. It yields less to the times, varies less with conditions, and defers much less to legislative judgment. Insofar as it is technical law, it must be a specialized responsibility within the competence of the judiciary on which they do not bend before political branches of the Government, as they should on matters of policy which comprise substantive law.

If it be conceded that in some way this alien could be confined, does it matter what the procedure is? Only the untaught layman or the charlatan lawyer can answer that procedures matter not. Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied. Indeed, if put to the choice, one might well prefer to live under Soviet substantive law applied in good faith by our common-law procedures than under our substantive law enforced by Soviet procedural practices. Let it not be overlooked that due process of law is not for the sole benefit of an accused. It is the best insurance for the Government itself against those

⁷ Criminal Justice Act, 1948, § 21 (2).

blunders which leave lasting stains on a system of justice but which are bound to occur on *ex parte* consideration. Cf. *Knauff v. Shaughnessy*, 338 U. S. 537, which was a near miss, saved by further administrative and congressional hearings from perpetrating an injustice. See *Knauff*, *The Ellen Knauff Story* (New York 1952).

Our law may, and rightly does, place more restrictions on the alien than on the citizen. But basic fairness in hearing procedures does not vary with the status of the accused. If the procedures used to judge this alien are fair and just, no good reason can be given why they should not be extended to simplify the condemnation of citizens. If they would be unfair to citizens, we cannot defend the fairness of them when applied to the more helpless and handicapped alien. This is at the root of our holdings that the resident alien must be given a fair hearing to test an official claim that he is one of a deportable class. *Wong Yang Sung v. McGrath*, 339 U. S. 33.

The most scrupulous observance of due process, including the right to know a charge, to be confronted with the accuser, to cross-examine informers and to produce evidence in one's behalf, is especially necessary where the occasion of detention is fear of future misconduct, rather than crimes committed. Both the old proceeding by which one may be bound to keep the peace and the newer British "preventive detention" are safeguarded with full rights to judicial hearings for the accused. On the contrary, the Nazi regime in Germany installed a system of "protective custody" by which the arrested could claim no judicial or other hearing process,⁸ and as a result the con-

⁸ Hermann Göring, on cross-examination, made the following statements:

"... [T]hose who had committed some act of treason against the new state, or those who might be proved to have committed such an act, were naturally turned over to the courts. The others, however, of whom one might expect such acts, but who had not yet committed

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centration camps were populated with victims of summary executive detention for secret reasons. That is what renders Communist justice such a travesty. There are other differences, to be sure, between authoritarian procedure and common law, but differences in the process of administration make all the difference between a reign of terror and one of law. Quite unconsciously, I am sure, the Government's theory of custody for "safekeeping" without disclosure to the victim of charges, evidence, informers or reasons, even in an administrative proceeding, has unmistakable overtones of the "protective custody" of the Nazis more than of any detaining procedure known to the common law. Such a practice, once established with the best of intentions, will drift into oppression of the disadvantaged in this country as surely as it has elsewhere. That these apprehensive surmises are not "such stuff as dreams are made on" appears from testimony of a top immigration official concerning an applicant that "He has no rights."

Because the respondent has no right of entry, does it follow that he has no rights at all? Does the power to exclude mean that exclusion may be continued or effectuated by any means which happen to seem appropriate to the authorities? It would effectuate his exclusion to eject him bodily into the sea or to set him adrift in a rowboat.

them, were taken into protective custody, and these were the people who were taken to concentration camps. . . . Likewise, if for political reasons . . . someone was taken into protective custody, that is, purely for reasons of state, this could not be reviewed or stopped by any court." He claimed (though the claim seemed specious) that twenty-four hours after being put in concentration camps they were informed of the reasons and after forty-eight hours were allowed an attorney. "But this by no means rescinded my order that a review was not permitted by the courts of a politically necessary measure of protective custody. These people were simply to be given an opportunity of making a protest." 9 International Military Tribunal Proceedings 420-421 (March 18, 1946).

Would not such measures be condemned judicially as a deprivation of life without due process of law? Suppose the authorities decide to disable an alien from entry by confiscating his valuables and money. Would we not hold this a taking of property without due process of law? Here we have a case that lies between the taking of life and the taking of property; it is the taking of liberty. It seems to me that this, occurring within the United States or its territorial waters, may be done only by proceedings which meet the test of due process of law.

Exclusion of an alien without judicial hearing, of course, does not deny due process when it can be accomplished merely by turning him back on land or returning him by sea. But when indefinite confinement becomes the means of enforcing exclusion, it seems to me that due process requires that the alien be informed of its grounds and have a fair chance to overcome them. This is the more due him when he is entrapped into leaving the other shore by reliance on a visa which the Attorney General refuses to honor.

It is evident that confinement of respondent no longer can be justified as a step in the process of turning him back to the country whence he came. Confinement is no longer ancillary to exclusion; it can now be justified only as the alternative to normal exclusion. It is an end in itself.

The Communist conspiratorial technique of infiltration poses a problem which sorely tempts the Government to resort to confinement of suspects on secret information secretly judged. I have not been one to discount the Communist evil. But my apprehensions about the security of our form of government are about equally aroused by those who refuse to recognize the dangers of Communism and those who will not see danger in anything else.

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Congress has ample power to determine whom we will admit to our shores and by what means it will effectuate its exclusion policy. The only limitation is that it may not do so by authorizing United States officers to take without due process of law the life, the liberty or the property of an alien who has come within our jurisdiction; and that means he must meet a fair hearing with fair notice of the charges.⁹

It is inconceivable to me that this measure of simple justice and fair dealing would menace the security of this country. No one can make me believe that we are that far gone.

LEGAL
SPECTATOR
&
MORE

Jacob A. Stein

WORRY

One of the principal functions of any lawyer anywhere is to worry; he has to worry about deadlines, about blunders, about thoroughness of research, about that possible case not unearthed that can knock him off his pins.

Roy A. Redfield

Lloyd Paul Stryker, the author of *The Art of Advocacy* (1954), is described on the cover of the book as a man whose clients included judges, district attorneys, political leaders, and prominent figures in the world of government, business, and society, and as one of New York's top-flight trial lawyers.

Despite Mr. Stryker's standing in the profession, he stated he had the constant worry of every practicing lawyer: I need a new, good case. Stryker said that even the most successful advocates have their long, dry spells. A constant lawyer's worry. When will I get a new, good case?

Another constant lawyer's worry is overhead. We are going through a period where overhead is equivalent to the Cold War

armaments race. If a competitor buys new computers, we buy new computers. If a competitor puts in expensive oriental rugs, we put in expensive orientals. If the competitor puts in the malachite-top conference room table, we go malachite. Not to get ahead, but just to stay even. In a legal arms race, all we can do is stay even. It is the suppliers who profit.

Another constant worry is that of the associate who is waiting to see if she makes partner. Those who don't make partner can assuage despair by considering what is happening these days to new partners. The new partner learns that a partnership is defined as an agreement among partners to share not only profits but also losses. Therefore it is appropriate for the senior partners to inform the new partner of the threatened default of the bank loan and the threatened withdrawal of the firm's very profitable merger section. If the withdrawal takes place, it will be impossible to pay the rent. The new partner finds she has a whole set of new worries.

Each new case brings its unique worries, worries that come and go with the case. Is the client who sits before me one of those who will give me trouble? This client, in response to my request for documents, puts on the desk a stack of old letters held together by a rubber band. Each letter is stapled to its envelope. I grow apprehensive. Here are the telltale signs of persecution mania. Will each letter I send the client be stapled to the envelope for future use against me? Will I be part of the general conspiracy of people who claim they mailed letters when in fact no letter was mailed?

I take the letters, pull off the envelopes, and boldly throw the envelopes in the trash. As I do so, I tell the client about a lawyer I once worked for and how his persecution mania interfered with his competence. He wasted his client's money by pursuing shadows and false leads. I tell the client that I don't want a file cluttered

up with envelopes. Although I have seen cases turn on what was in a letter, I have never seen a case that turned on the envelope. If the client does not leave during the envelope destruction ceremony (some have), the ceremony bonds the client and me. Now he understands we shall not waste our time discussing convoluted conspiracies in which the president of the United States, the FBI, and the CIA have joined to assist the plaintiff bank that wants the client to repay the loan.

Each case brings its own set of facts to worry about. I return to Mr. Stryker:

The really difficult problem in the preparation of the case is to learn what the facts are, and no matter how long or conscientiously you work, you will never know them all. The law seldom decides the issue, the facts do; and as contrasted with the ascertainment of the facts, the law is relatively easy to discover. There are a hundred good researchers of the law to one who has a genius, I may say a nose, for the discovery of the true facts.

Not only do I need to get the facts, I need to organize them in a chronology. In time the chronology itself becomes a fact. It shows what is going on when an important action was taken. It discloses hidden motives. What were the financial pressures at the time? What was worrying the parties? What happened just before and just after the important events? Who wanted what and when? *Cherchez le greed.*

Occasionally a client appears with a problem that must be solved or the client is ruined. What to do? Each choice leads to new worries. Several separate lines of evil are ready to pounce and at the same time. But I also know that evil as well as good is

unpunctual and often fails to keep its appointments. And I find that a discussion with another lawyer is comforting. In such discussions I often learn I missed an essential point in the analysis. My concentration on one issue blinded me to another. After a sufficient period of worry, things mature in the mind and one choice appears better than others. It is acted on. Then another set of choices appears and the cycle repeats itself.

I have noticed that when the worries pile up they are dispelled by taking action. Action starts up excitement. I make a new action list and I get to work, checking off item by item. I keep repeating to myself that a person who does not worry is unfit for the practice of law. The lawyer's function is to worry and to get paid for it. That's the deal, so don't worry about it.

Jacob Stein took part in the Bar Library Lecture Series on January 21, 2009 with a presentation on "Perjury, False Statements & Obstruction of Justice." Generous with his time, Mr. Stein was generous in other ways as well as indicated by the language in the preface to the third volume of *Legal Spectator* from which the following was taken. Mr. Stein wrote "This book is not copyrighted. Its contents may be reproduced without the express permission of, but with acknowledgement to, the author. Take what you want and as much as you want." The works featured in the *Legal Spectator*, originally appeared in the *Washington Lawyer*, the *American Scholar*, the *Times Literary Supplement*, the *Wilson Quarterly*, and the ABA Litigation Section's publication. I want to thank Bar Library Board of Director Henry R. Lord for his time and efforts in reviewing the writings of Mr. Stein for inclusion in the *Advance Sheet*.

Travels Without Charley

I am not sure I have ever mentioned it, but the aforementioned Charley, who this occasional travel column is named after, is our family dog, a King Charles Spaniel. Whenever we want to give him a boost in confidence, we tell him that he is the leader of our pack. To be honest, though, when you meet Charley you begin to question how all dogs, this one in particular, could be descended from wolves.

On a recent mini-vacation to the Poconos, my wife and I decided to visit the Lakota Wolf Preserve, located in Columbia, New Jersey, about a half hour away from where we were staying. There were four separate packs there consisting of Arctic, British Columbian and Timber wolves. Each pack was housed in a separate, spacious, wooded enclosure. It was an amazing, I daresay, awe inspiring experience.

Tours take place twice daily, one at 10:30 a.m. and the second at 4:00 p.m. For the most part, unlike the animals residing in zoos, the twenty-four residents of the Preserve do not have to put up with the noisy, nosy creatures that the wolves hear are descended from apes. The owners of the Preserve have a statue of St. Francis of Assisi at the front gate, and you truly get the feeling when you are on the tour that they are imbued with Francis' love of at least this particular one of God's creatures.

If you are ever in the area, I strongly recommend that you pay a visit to the Preserve. One word of advice though. Parking is not at the Preserve, but at a location near to it. Depending upon when you arrive, you can take a shuttle or walk. They will tell you it is about a half mile up a slight incline. In reality, however, it is just under a mile and the slight incline, well, I thought we were on one of those rock walls. Shuttle please and a little oxygen if you happen to have any.

Joe Bennett

