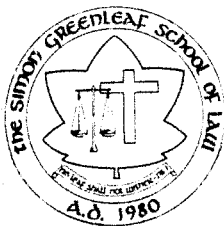


the Simon GREENLEAF



LAW REVIEW

**A Scholarly Forum of Opinion Interrelating
Law, Theology & Human Rights**

**featuring
in this number**

**Lord Chancellor Hailsham on his Conversion and the
Truth of Christian Faith**

The City of Babel: Ancient & Modern

Law, Politics & the Social Sciences — A Troubled Trinity

**Critical Reviews of Berman's *Law and Revolution*,
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the University***

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ACADEMIC YEAR 1984-1985

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THE SIMON GREENLEAF LAW REVIEW
A Scholarly Forum of Opinion Interrelating
Law, Theology & Human Rights

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**EDITOR'S
INTRODUCTION**

EDITOR'S INTRODUCTION

While much of American legal education continues to reflect the "balkanized" character of the legal profession in this country (each state with its own bar examination and particular jurisprudence), the Simon Greenleaf School of Law has, from its beginning, set its face against parochialism. Simon Greenleaf's perspective is international, as reflected in its annual summer session at the International Institute of Human Rights, Strasbourg, France; in the welcome its graduates receive at the University of Essex, England, for higher master's and doctoral study; and in the designation of Simon Greenleaf for the advanced training of the membership of the New Zealand Apologetics Society.

The Simon Greenleaf School of Law is particularly appreciative of the English legal tradition, not only because it constitutes the historical foundation of American jurisprudence but especially because of the powerful influence of the Gospel on its greatest practitioners. Thomas More, Matthew Hale, William Blackstone, Thomas Erskine: such names represent both the flavor of English jurisprudence and the dynamism of Christian faith. Today as well, the most outstanding luminaries of English law stand for the faith once delivered to the saints: Lord Denning, president of the Christian Lawyers' Fellowship; Lord Diplock, one of the most active members of the Temple Church — and Lord Hailsham, a portion of whose autobiography receives its first American publication in this issue of the *Simon Greenleaf Law Review* by his special permission.

Lord Hailsham has twice held the highest office open to a lawyer in England: that of Lord Chancellor. A recent interview article about him in the Inner Temple magazine *Pegasus* (No. 5 [1984]) is worth quoting *in extenso*:

The role of the Lord Chancellor in the English Constitution makes demands of the highest order on the men who hold the office. Straddling as it does the three limbs of the constitution, it requires a combination of developed political skills with the traditional detachment of a holder of high judicial office. The present Lord Chancellor is a man who has had great experience both as a politician and as a lawyer.

Lord Hailsham's political career began in 1938 when, as Quintin Hogg, he was elected M.P. for Oxford city. Returning from active service in Palestine and Syria at the end of 1942 he took up his seat in the Commons and distinguished himself as an eloquent mover for party political initiative as one of the leading lights of the Tory Reform Group. Along with Lord Hinchbrooke and Lord Thorneycroft, he was instrumental in having the Beveridge Report (which laid the foundation of the Welfare state) accepted in principle by the Conservative leaders. As the young politician of 1942 he readily admits that his motivation was . . . "not to go back to the poverty of the 1920's and 1930's." However his political heyday was undoubtedly between the years of 1956 to 1964 which saw him hold such diverse offices as First Lord of the Admiralty (1956-57) and Minister of Education (1957) through to Minister for Science and Technology (1959-64) and Minister with special responsibility for Sport (1962-64) as well as a myriad of other posts. However, Lord Hailsham told us that "It hadn't occurred to me until well on in 1955 that I was going to have any political career, I was devoted entirely to the Bar".

Lord Hailsham's legal pedigree is immaculate, and he always intended to follow in his father's footsteps: "I always wanted to be a barrister. I've always been devoted to law." Like many of his legal contemporaries, Lord Hailsham came to the Bar via a Classics degree at Oxford, where he obtained a double first in 1930. In 1932 he was called to the Bar as a member of Lincoln's Inn. After the war and the landslide victory of the Labour party, Lord Hailsham returned to practise, taking silk in 1953 and becoming a Bencher of his Inn in 1956. In 1975 he served as Treasurer. He has had two periods as Lord High Chancellor 1970-74 and since 1979. . . .

We asked Lord Hailsham whether he could proffer any advice for the young common lawyer.

"Take legal scholarship very seriously. I never found any odd bit of legal knowledge useless during the whole of my life. (A) You must know your law; (B) You must be trusted both by your colleagues at the Bar and by the Judges. If the Judges don't trust you, you'll never win your cases. If you insult or hurt a colleague at the Bar he'll remember it for twenty years and use it against you whenever he can. Never take advantage of another person's mistake. You want to exploit deliberate mistakes to the utmost, but never an inadvertent mistake. That is wicked, foolish and short-sighted."

But above all, it is the trust of the Judge which must be won and kept if an advocate is going to be successful. Lord Hailsham emphasized this: "If Counsel has the Judge's ear as a good legal scholar and a man who never misleads a Judge he will be serving his client better than a man who's a bit faster!"

Sound advice for all lawyers, young or old.

And not just "sound advice," but a typical reflection of the high moral principles with which Lord Hailsham operates as a "twice-born" Christian believer (to use William James' phrase). As a youth, Hailsham told the Headmaster of Eton that it was nonsense to talk of the soul or survival after death. But the Hound of Heaven pursued him and like his contemporary C. S. Lewis he was "compelled" to enter God's Kingdom by the philosophical and evidential force of Christian truth. Of the details of this conversion *Law Review* readers will be privy in the pages that follow.*

Suffice it to add here only that Lord Hailsham continues unabated his active life as a Christian judicial statesman: the September 25, 1984 *Times* carried his letter rapping the knuckles of

* We cannot resist cataloging a few of the stimulating subjects touched on by Lord Hailsham. Be sure not to miss his remarks on: Jesus as a historical fact (p. 29), the erroneous reasoning of Professor Trevor-Roper (pp. 32-33), miracles and resurrection (p. 38), the problem of evil (pp. 40-42), the church (pp. 43-44, 48), vs. spiritualism and Scientology (pp. 50-51), the joyous Christ (pp. 55-56), the new man (p. 57), vs. suicide (pp. 60-61), human rights (pp. 63-65), vs. secular humanism (pp. 65-67).

the liberal Bishop of Durham, and the October 12 issue quoted from his Churchill Memorial Lecture of the night before in Luxembourg: "Good housekeeping is no substitute for ideals. One cannot reach the stratosphere by pulling remorselessly at one's own bootstraps."

* * *

The selection from Lord Hailsham's *Door Wherein I Went* is appropriately followed by an essay on "The Development of Civil Trial by Jury in England and the United States in Light of Lord Hailsham's *Hamlyn Revisited*."

Three jurisprudential essays are then offered to the reader: a critical treatment of the late Scandinavian legal realist Alf Ross, researched in the Simon Greenleaf Library's Ross collection (comprising numerous books which personally belonged to Ross, with his hand written annotations); "The City of Babel: Ancient & Modern" by Professor Raymond B. Marcin of the Columbus School of Law of the Catholic University of America; and "Law, Politics & the Social Sciences — A Troubled Trinity" by Virginia C. Armstrong, Ph.D., of the Department of Political Science at Hardin-Simmons University. Both Professor Marcin and Dr. Armstrong are distinguished members of Simon Greenleaf's international Board of Reference.

A strong review section evaluating publications in law & theology, Christian apologetics, and human rights concludes this issue: *in nomine Jesu*.

J. W. M.



22nd November, 1983

Dr. John Warwick Montgomery Esq.,
Dean,
The Simon Greenleaf School of Law,
2530 Shadow Ridge Lane,
Orange,
CA 92667,
United States of America.

Dear Dr. Montgomery,

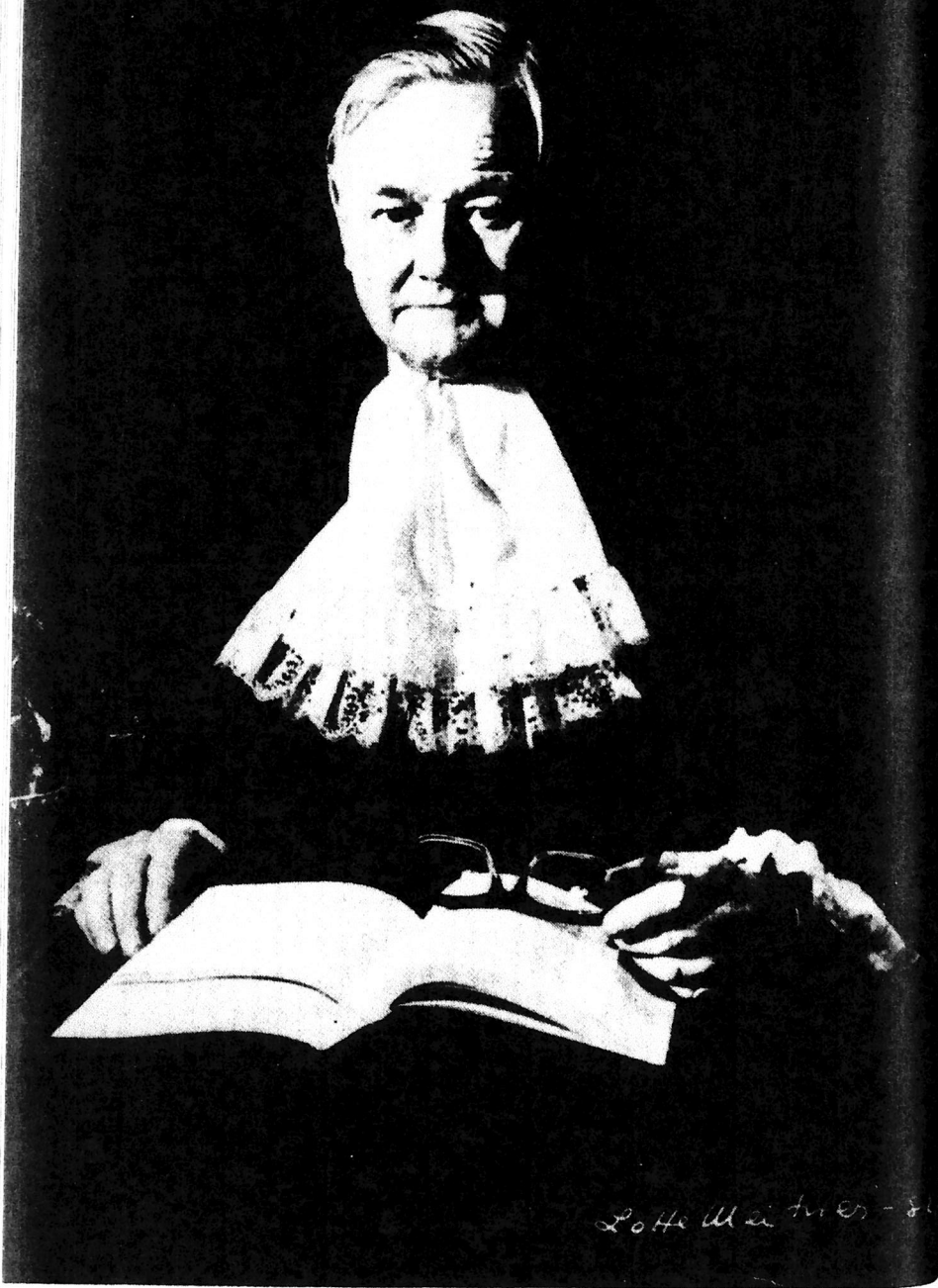
Thank you for your letter of 8th November 1983 to my predecessor David Staff.

I have spoken to the Lord Chancellor about your request and he is entirely content for you to reprint a brief section from his autobiography in next year's number of The Simon Greenleaf Law Review.

He has asked me to thank you for your courtesy in approaching him in this way.

Yours sincerely,
Richard Stcate

Richard Stcate
Private Secretary



LORD HAILSHAM

THE DOOR WHEREIN I WENT

COLLINS

ST JAMES'S PLACE · LONDON · 1975

The door wherein I went

This is a book largely about philosophy and religion. As I only have a first degree in philosophy acquired laboriously nearly forty-five years ago and none in theology, it may well be asked why I am writing it. I do not deceive myself into thinking that I am a particularly good man. I have had no blinding revelations to describe, and no sudden religious conversion. I am one of those condemned to live this life in the discipline of darkness, and therefore in doubt, in faith but without certainty.

It is more conventional, and perhaps more profitable, for ageing politicians to publish a volume of autobiography or reminiscences. At least I am sure that this, for me at least, would be a mistake. I have been trained to a profession which is taught that it is wrong to give other people away, and I am sure that it would be foolish to give myself away even if I had such entertaining memories as David Niven, or such exciting adventures as Winston Churchill to recall. Any autobiography I wrote would thus inevitably be lacking alike in spice and candour.

Moreover, and I must confess this at once, I have always wished to write a book of this kind after I had reached an age when I had leisure to do so, and it is now clear to me that it must be written soon, or else it will never be written at all. It seems to me that I have one gift which makes me the richer for its possession, and others of my contemporaries the poorer for its lack, and I would like to share it with all who can do so. It is that I have genuine and coherent and related views about life and its meaning which give me sense and direction in all I do, consolation in misfortune, and courage when tempted to despair. These views would not do these things for me at all if I did not believe them to be true. Their utility and their

relevance have not been sought or contrived for their own sake, but derive solely from my conviction about their truth, so far as abstract convictions of this kind can ever be described as accurate and true.

I do not claim any credit for this. Indeed, at first blush, I think it requires a little justification. For very little of it is original. I was brought up as a member of the Church of England by Christians who, though by no means saints, believed and practised their religion. I owe many of my political convictions, and certainly my adhesion to the Conservative Party, to my father, and my lifelong devotion to the law and the legal profession also to him. At the end of the day, I find myself surprised rather than self-satisfied that, after so many doubts and difficulties, after so much discussion and argument, and a life full of incident, it looks as if I am leaving by the door wherein I went. My world is a coherent whole, but is a possession which I have inherited, not one which I have built for myself by my own brains, or my own brilliance. I think it is the better for this, but one sobering doubt remains. Amongst all the various opinions open to men, and the almost infinite number of permutations amongst them, and in an age of almost incredible confusion and change, the mathematical chances against my being right in all my views or even a significant proportion of them would seem to be almost astronomical. But the same, I suppose, would be true of any set of opinions, original or selective, coherent or syncretistic. Despite their largely inherited character, at least these are my own, and I desire to give some account of them before I die.

Come to think of it, I believe I would have to set them down even if they never had a reader other than myself. It is not, I think, either mawkish or unhealthy at the age of 68 to begin to prepare one's soul for death. We do not think enough about death nowadays. But we never quite forget about it, since we know that, at the end of the corridor, Azrael awaits us all. The beginning of such a self-examination must be an enquiry about one's own beliefs. Mine are here.

2

The Unknown God

I am quite sure that the centre of all my life, the thing which gives coherence to the rest of it, and purpose to the whole, is my belief in God. I had better explain first of all what I mean by this, and why I think it reasonable to hold this belief. But this involves a series of quite separate enquiries, some of them autobiographical, some expository. I want first of all to explain that I do not regard the belief which I am trying to describe as necessarily corresponding to the childhood picture of a heavenly father, looking down from the sky, pardoning or punishing our offences, and granting or refusing our petitions. It is not so much that I regard this view as false, for there is a sense in which I shall be saying that I think it true, or rather the nearest approach to truth of which we are capable. But I do regard it as totally inadequate. What I am first of all saying is something which I believe about reality. No doubt the human personality is the thing in our experience which gives us more than anything a clue to the existence and nature of the divine. It could hardly be otherwise, since the human personality is to my mind by far the most sophisticated and interesting thing we know. But the idea of God is infinitely more mysterious and baffling than that. What I am trying to say is something about the Universe itself. I am trying to say that it is not self-explanatory and that however much we learn about physical nature or human history it cannot, in principle, become self-explanatory. It is not simply that we shall never know enough about the present state of the Universe to give it the coherence and sense which I believe it has. It is that in principle it cannot be known or understood in this way. I believe, in fact, that this is implicit in all the theories of the modern scientists. Some hold that the world began with a 'big bang'. According to this view, at

some infinitely distant moment of past time, a solid object of infinitely heavy density exploded in some fashion and its fragmented parts are even now disappearing and parting from one another at incredibly high and probably accelerating speeds and will continue to do so till the end of time, whatever time may mean. Others hold the view that the present state of the universe is based on the continuous creation of new matter constantly appearing, quite literally, out of nothing. I do not seek, in my ignorance, to speculate which of these two theories is the more, or less, plausible. I only say that each postulates a universe which is not self-explanatory. The first cannot answer the question what happens before the big bang; the second cannot answer the question what brings the new matter into being. These questions are not merely unanswered. They are in principle unanswerable. But they only lie at the beginning of the list of unanswerable conundrums which the human intellect is bound to ask. Take, for instance, the speed of light, one hundred and eighty-six thousand miles per second (or whatever the right figure is, for it does not matter what and I am not going to look it up). We are assured by the scientists that it follows from the theory of relativity that nothing faster can possibly exist in principle. This is by no means self-evident. But when we ask the scientist why he asserts this, what he says in effect is that, since everything which is observed usually requires light in order that it may be observed it is not possible in principle to observe anything which goes any faster than light. The underlying hypothesis of this is, that only that which is observable exists, and that what is not in principle observable is not in fact in existence. I am inclined to think that this is true of the physical universe, though I am told now that a new generation of scientists is beginning to make observations and measurements which can best be explained on the hypothesis that certain movements take place which are in fact faster than the speed of light. I do not think that this affects the nature of the argument. For, whilst I accept that it may be true that the field of science, its terms of reference as it were, are circumscribed by the proposition that only that exists which can be measured or observed, the proposition itself is one which cannot itself be measured and cannot itself be observed, and is therefore one which cannot be true of all being and if it is asserted as such becomes immediately self-contradictory. In the last resort, unless

one accepts from the outset the fact that the universe is not self-explanatory, the position of the scientist is as intellectually indefensible as that of the savage who believed that the world was supported on a giant tortoise. 'And by what is the giant tortoise supported?' asked his questioner. 'By an enormous elephant,' was the answer. 'And by what is the elephant supported?' Puzzlement, followed by: 'Don't ask silly questions.' The philosopher, however, 'is, I believe, bound to ask the questions, if only to show that the hypothesis, although it may be sound, is not in principle an explanation of all that is. A rather clever man once told me that philosophy is about those questions which children insist on asking and adults insist are silly and should not be asked.

But, of course, this is not the only kind of thing which has to be explained. Quite apart from the observable phenomena of nature there is the existence of life, the origin of which remains as obscure, or perhaps more so, than any of the facts of the inanimate universe. When I was a boy it was seriously being propounded that life on this planet was brought here, say on a meteorite, from an extra-terrestrial source. This, of course, may or may not be true. But it no more explains the origin of life than the existence of a strange bird in my garden is explained on the hypothesis that it flew in from next door. Nowadays it is more popular to explain the origin of life from an evolutionary chemical development of the heavier atoms and molecules assumed to exist in the primeval oceans, and this of course may also be true. But in so far as life includes consciousness, which in its higher forms it undoubtedly does, the theory no more explains what requires explanation than the fact that my body contains carbon, hydrogen and oxygen atoms explains either the existence of the French language or my ability to talk it. In other words, the world is not self-explanatory if only because there is consciousness in it.

But the problem becomes more baffling still if we ask ourselves the questions we are bound to ask about some of the human experiences which we describe by the generic term 'value judgements', that is, judgements we make about things, people, or actions, by way of praise or blame, saying 'good' or 'evil', 'just', 'righteous', 'beautiful', 'ugly', 'cruel', 'right', 'wrong', or 'true' and 'false'. This must involve a universe in which some kinds of experience or reality

transcend the bounds of what one can describe as verifiable, measurable, or observable. We know that the universe contains these judgements and the people who make them. I am not, at the moment, seeking to dispute with those who claim that these are merely emotional noises amounting to no more than statements of like and dislike, pleasure or pain, although, as will emerge at a much later period of the discussion, I believe that such people are talking nonsense. The fact is that the universe which contains such judgements or emotions and the people who make or feel them is not self-explanatory, and that any explanation that we seek of such experiences must account for them, and be itself above and outside them. In a paradoxical sense, aware that, at this stage, I am doing no more than apply a label to an unknown, I choose to call this unknown, and in a sense unknowable, factor, God. My belief in It, or Him, whatever It or He may be, is grounded in my scepticism and not in my credulity. Our ancestors said the same thing when they spoke of God as the first cause. But in one sense this phrase is too restricted, and in another it is misleading. The next question is how, if this 'God' is unknown and, in a sense, unknowable, you can claim to find such value in belief in Him, and how indeed you can know Him at all. This requires a separate enquiry, into the nature of knowledge itself.

3

The Tree of Knowledge

I have not always been a Christian, nor even believed in God. At the age of 23, when I sat down to write my Logic paper in Greats, the school at Oxford of Ancient Philosophy, and History, I certainly had no such beliefs, and had not possessed them for years. I possessed, I think, a kind of belief in duty, a sort of categorical imperative imposing obligations of honesty, courage and kindness, though not, I am almost sure, of chastity. But this was based on no sort of religious belief, nor any rational idea about the universe. There had been no exact moment when my belief in religion had failed, but the point at which I realized acutely that it had wholly disappeared was the day upon which my mother died.

I was at Eton, and I was 17 years of age. It happened that I was in bed with influenza. My brother, Edward Marjoribanks, came into the room, unexpected and unannounced. 'I have bad news for you,' he said, 'Mother died this morning.' She had died of a stroke, and I had not expected it. Nothing quite so awful, indeed nothing really awful at all, had happened to me before, for mine had been a fairly protected childhood. In the afternoon the headmaster came in to comfort me. He was a gentleman, and a Christian. He sought to console me with talk about the after life. I was discourteous. I suddenly realized that I did not believe a word of what he was saying, and I told him so. I said that I believed that when we died we were nothing. 'Like the animals,' I said, for good measure. He was angry and went away.

I did not openly break with the Church. There was my father to consider, and I loved him. Moreover there were other relatives and friends who would have been upset at my apostasy had they known of it. So I drifted in a world in which there was no God, doing more

or less as I liked, but devoted to my scholarship, my work, and my ambitions. I did not cease to mourn my mother. But I was not unhappy, and when I had got to Oxford, the excitements of the social life, the Union, of which I became President, undergraduate politics, and the schools carried me along without a great deal of time for reflection. I had lost my religion, but I was wholly absorbed in the world and I was not aware that anything serious was missing.

So imagine me sitting down to a three-hour paper, on what was described as 'Logic'. It was in fact the most general philosophical paper of all and most of it was about the theory of knowledge. Looking back on it I realize now that the generation to which I belonged was a remarkable one. We were almost the last generation of Oxford undergraduates to study Greats before the works of Wittgenstein rose over the scene like a chariot of fire. Gilbert Ryle was my tutor, but he had not yet written his book about the ghost in the machine. Freddie Ayer was my younger contemporary, but I do not suppose he had then begun the studies which have since made him famous. Professor Joachim was still lecturing in New College on objective idealism. The English books on philosophy which we were told to read included Bosanquet and F. H. Bradley, whose style made a greater impact on me than his opinions. Even now, in my political speeches, I sometimes borrow his splendid prose: as, for instance: 'It ill becomes the parents of a monster to blame it for following the laws of its being.' Ayer, and Hampshire, Berlin, Austin and Dummett were creatures of the future. I had studied Plato and Aristotle, particularly Plato's Republic and Aristotle's Nicomachean Ethics, each of which I must have read sixteen times at least. I had read, and attended lectures on, Descartes and the English empiricists, Locke, Berkeley and Hume. I had read, in translation, Kant's *Critique of Pure Reason*, and Norman Kempster's book on its teachings. I knew, broadly speaking, of Hegel and his writings, without having studied them, and I knew of Broad, Russell, Cook Wilson, and went to the lectures of Professor Prichard, whose essay in *Mind*, 'Is Moral Philosophy founded on a mistake?' seemed to me the last word in destructive criticism.

The logic paper lasted three hours, and we were supposed in that time to write answers to three, or perhaps four, questions out of about eleven or twelve. I scribbled hard in my illegible hand, and

when time came to show up my answers I found that I had answered no more than two questions and part of a third. I was in despair. I passionately desired a first class, like my brother Edward, and if this sort of progress was all that I could make, I thought I had not a chance. Yet I had filled three whole manuscript books of the paper provided for candidates.

A very odd thing had happened to me in this examination. I had entered it, as I believed, exceptionally well prepared, and there were few of the questions I could not have attempted except the one or two designed for candidates interested particularly in music or the arts. But the strange thing was that I had only attempted to answer two of the questions about which I thought I knew so much. Most of the time I had spent in attempting to answer a question about which I knew nothing, and about which in fact I knew rather less than this. It was a question about mysticism, which I was ignorant enough to equate with belief in God. It was this strange episode in my intellectual history which, I believe, proved the turning-point in the slow recovery of my Christian faith.

I must now explain why the question interested me so much, and why the attempt to answer it proved such a milestone in my intellectual life. The fact is that, for a very long time, Western philosophers had been preoccupied with the question how can we be sure of anything. At the end of the Middle Ages men believed on the whole that we knew everything that we did know by a process of deductive reasoning, and the various modes in which these deductions could logically be made were all catalogued and labelled by the various modes of the syllogism. It was, of course, all nonsense, but argumentation about it formed a beautiful and coherent system of study based on Aristotle's *Organon*, which had been rediscovered after having been first lost for centuries and for a time known only through Latin and Arabic translations. The syllogism, however, must have a premise, or premises, and so long as it was believed that both the Bible and the Church were infallible and inspired sources of revealed truth, it did not seem altogether absurd to demonstrate a wide range of propositions by deriving them from scriptural or patristic texts or from other sources of apparently reliable information.

But suppose that the Bible or the Church be not an infallible source of knowledge, at least on secular subjects, where do matters

stand then? How can we be sure of anything except our own existence, whatever that may mean? The answer is that the question is an unreal one because we not only do not, but in principle cannot, discover anything new or important by purely deductive reasoning, since so-called deductive reasoning is really no more than an analysis or rearrangement of things already known by some other means. It is, at best, a method of demonstration and argument, a means of conveying to, or convincing others of, the truths we know, or believe we know, and not a means of discovering truth at all. But the fact is that this was not immediately apparent and, to a great number of people who have not reflected at all deeply about philosophical problems, it is not immediately apparent today. And so a variety of solutions came to be proposed. We can be sure of our own existence, and so can, as it were, work outwards from that. *Cogito ergo sum*. We can be sure of our sense data, and so discover new facts from the variety of our visual and other sensory experiences. But what are these, and how do we know that they are real, and, if we can know this, how can we establish the nature of the reality to which they correspond? The English empiricists proposed answers to all these questions, increasingly ingenious, but all in vain. By the time of Hume it became apparent that all this had failed, and that on these lines all that was really intellectually respectable was a universal scepticism. I feel myself that there was less superficiality than is generally alleged in Johnson's refutation of Berkeley's theory of subjective idealism. 'Sir, I refute it thus' (kicking a stone). For if this is indeed the conclusion, it is surely true that common sense does refute it thus, even when it does not trouble fully to understand it.

Bacon, one of three Lord Chancellors - the other two being Haldane and Thomas More - to be considerable philosophers, achieved a European reputation by pointing out that the nascent natural science of his time achieved its already substantial discoveries by a process other than deduction. Following Aristotle, he called it induction (*ἐπαγωγή*), but, realizing that he was breaking new ground, he called his work the *Novum Organum*, the new *Organon*, thus directly challenging the great original which, since its re-discovery, had so long dominated European thought. The new doctrine derived its label from the fact that, as Bacon pointed out,

science evolved its discoveries by generalizing from specific observations instead of deriving particular truths by deduction from more general principles. Unfortunately it was soon replied that the mere enumeration of the recurrence of specific events failed to provide a logical justification for the kind of prediction about the occurrence of future events which is both the basis and the chief glory of modern science. 'It ought to cause you increasing surprise,' as H. W. B. Joseph of New College used to tell his pupils when they tried to convince him that Newton had been able to infer the law of gravity by watching apples repeatedly fall to the ground. The uniformity of natural laws, due to the operation of cause and effect, cannot be inferred from any number of past occurrences unless the observer of these already has a belief in the existence of general laws of this kind and, since this belief can only itself be based on past experiences, the inference on which it depends must derive from some insight into the actual nature of things which does not depend simply on the enumeration of particular instances, however frequent, or however widespread, any more than it depends upon deduction from general principles, separately given and established by some other means.

The first philosopher who correctly diagnosed this basic sickness of Western philosophy was the Prussian Protestant Immanuel Kant, who labelled the problem that of discovering the justification for 'synthetic *a priori* propositions'. In the end he related the solution of the conundrum to the existence of God by means of the 'categorical imperative' he divined in moral judgements about right and wrong. In this, I believe, he saw a good deal further than he knew, and certainly a great deal further than he said, but, first, it is necessary to see a little further into the history of the philosophy of thought than was achieved in the middle of the eighteenth century.

It is significant that, outside the small group of Western philosophers whose evolving thought I have been trying to describe, the question which I have asked has not often been discussed. The Eastern philosophers, of whom, at the time of my logic paper so long ago in 1930, I had scarcely heard, have not thought of the problem as a problem at all. It was specifically the constantly increasing and rapidly accelerating increase in the body of knowledge as the result of what is broadly called natural science that finally forced the question on human consciousness. So long as the general

corpus of knowledge remains more or less constant there can be no real bother about the nature or the routes by which we can expect to acquire it. In fact, we can learn it from books or from teachers, although we may convince ourselves that we come by it in some other way, and the tests which we have to apply are really tests by which we can judge the general reliability of the authors and the extent to which their views can be verified or justified logically. But, in a dynamic situation, with knowledge growing exponentially all the time, and new facts and new theories pouring in faster than we can digest them, we are really forced to ask ourselves what we can be said to know, how we can be said to know it, and what are the processes of thought by which this vast influx of new ideas and new facts can be assimilated, arranged systematically, and accepted or rejected as true or false.

It was about this time that the system known as objective idealism came into being. Whether, in a sense, Kant can be described as its first exponent need not be discussed here. Although it is incredible, and although I had already found it so by the time I was writing my logic paper, it is, I still think, one of the most marvellously subtle constructions of the human intellect. More than this, it was the point at which Eastern and Western philosophy most closely converged, and I believe at one point it has unravelled an important clue. Knowledge grows. It evolves like a species. It grows like a plant. It is like a tree. Whatever the relation between appearance and reality, between sense datum and the physical world, the inner structure of knowledge, following its own laws, laying down its own principles, develops like a living thing. This is because, if not itself a living thing, the subjects in which it grows are in fact living beings. The earlier objective idealists wrote before Darwin or, if not before Darwin wrote, at least before Darwin had been fully understood and assimilated. Thus Hegel developed the theory of knowledge into something which has come to be called a dialectic, thesis, antithesis, synthesis, a theory still embalmed, like a fly in amber, in the writings of Karl Marx, who claimed to have 'stood Hegel on his head'. There is nothing so simple as this about it. Like Topsy, knowledge grows. The process of verification, of elimination of possible alternatives, and rejection of hypotheses which do not fit subsequent experiments is infinitely complex, and its relation to reality different in kind

from that conceived of by the objective idealists. But none of this could exist, knowledge could not exist, beliefs could not exist, falsity and lies could not exist, if there did not also exist a power in the human intellect to spark directly across the gap which forever exists between knower and the object known. This means that it is for ever false that that only is significant or true which is capable of proof or disproof by experiment. Indeed, if anyone sets up the proposition that that only is true or significant which is capable of proof or disproof by experiment, he is guilty of self-contradiction, since the proposition which he has just asserted is itself a proposition incapable of such proof or disproof.

All this, or something like it, unrolled from my pen as I wrote my answer on mysticism, which, in my ignorance, I thought meant the same thing as belief in the existence of God, and, as I wrote, it seemed to me that a new world was opening before me. If this was indeed the truth about knowledge, of course nothing was as yet proved by this truth about anything. But the way was open. The road was clear which I had thought completely blocked by heaps of stone. If there was no reason why an intelligent man should believe in God, there was clearly no reason why he should not. If there was no reason why he should attach any particular content to the value judgements of right and wrong, beauty and ugliness, justice and injustice, truth and falsity, there was equally no reason why human experiences of each, the existence of which is undeniable, should be downgraded to the status of the purely subjective, nor any reason why all human experiences of the same subject matter should be given an equal value, the saint's insights made no better than those of the criminal's, the philistine's equated with the aesthete's, that of the tone deaf lumped with the musician, even though, unlike the judgements of science, they be incapable of verification.

Years later, when I was Minister for Science, I thought I acquired a certain confirmation of the viewpoint I have just expressed. It happened that I was in a position to talk, on more or less intimate terms, with a number of eminent persons who, in various disciplines, had made significant contributions to knowledge in the field of natural science and to read the descriptions of their discoveries by several others. Incidentally, the difference between those who are

admittedly first class in their own field, and those who are not, lies very often precisely in this, that the first are able to give a coherent account, in lucid terms, of what they are trying to do, and what they believe, whilst the others are not. This is not always true, for Darwin, a genius if ever there was one, was once described by a contemporary as having processes of thought which he was as incapable of describing 'as an aboriginal'.

But as I spoke with them I found that with those who were able to describe the process of discovery there was always an element akin, at the moment of discovery, to aesthetic appreciation, which sometimes reflected itself in the language which they used either in describing their own invention or discovery or in praising those of others. A theory, afterwards verified, is described as 'elegant' or 'simple'. There is, at it were, as there was for Archimedes, a moment of Eureka. There is a sudden illumination, when facts, which up to that moment have to be arranged in a meaningless or unduly complicated pattern, assume a simpler, and more elegant, shape. It was precisely this which in the end, and when it was confirmed by observation of the stellar parallax, made the theory of Copernicus more acceptable than that of Ptolemaic astronomy. There is an element in all true knowledge in which the mind of the knower leaps like a spark across a void to an intimate and direct contact with reality itself.

My enunciation of this opinion in my logic paper made no immediate difference to my life. I was not better, indeed for a time I suppose I became marginally worse, than I was before. But life was never quite the same again, for it had become clear to me, and whatever doubts or difficulties I may have had, the clearness of that vision has never wholly left me, that it is possible rationally to believe in things which a man may neither touch nor see, in objective values which are neither verifiable nor mere emotive noises. At this stage I was not a Christian. I was not even a theist. But my scepticism had become so deep that it had undermined even my unbelief.

4

Natural Law

My formal education began at the age of five before the First World War, when I was sent to a pre-prep school in Rosary Gardens. It continued through governess, private school, college at Eton, Christ Church, private tuition and a correspondence course at the law, until I was called to the Bar in 1932 and finally began to earn my own living. By that time, if one accepts the educational assumptions on which all this was based, I must have been one of the best educated young men in the country. But what were these assumptions and what were they worth? If I am to give any account of my intellectual and spiritual furniture today, I must put down something about them. But, before I do so, I must emphasize one lasting result which has remained with me all my life, and carried me through my days of irreligion without lapsing into any but a few of the irregularities revealed, for instance, in Evelyn Waugh's diaries. Indeed, until I read of them long afterwards I remained unaware that most of it was going on. I claim no credit for this, for the characteristic I am about to describe is not a virtue. But it saved me a lot of bother and, it may be, my widowed father a lot of heartache. I was, and am, a slave to my work. I acquired, and have retained, an almost unlimited capacity to absorb information, great power of concentration, and meticulous habits of scholarship, marred only by the occasional carelessness caused by the speed at which I work. I was academically exceptionally gifted, and being intensely ambitious and competitive by nature, made full use of this gift. Moreover being extremely clumsy and unathletic, although robust and healthy, I had no other field in which to excel.

I am almost the last person in public life to have pursued to the full the classical course which sustained the Church, the Civil

Service, and generally the governing class in this country between the Reformation and the period between the wars. What I went through from the age of 8 (or rather 7, for that was when I started Latin) until the age of 23 seems now so bizarre that it requires description. From about ten until the age of 23 the Latin and Greek languages and culture formed the staple of my instruction, taking precedence of English, French, History, mathematics, science, and everything, perhaps, except the Scriptures. It would be a mistake to exaggerate the limitations imposed by this. When I took the school certificate I obtained distinctions in all these other subjects including advanced mathematics, and, I think, at least two scientific subjects. Moreover, both Latin and Greek cultures, being at the root of modern European society and literature, have an uncanny way of anticipating, and illustrating, modern political and social questions. Still, it remains a paradox that so much effort and so much money were pumped into teaching me the language, the history, the philosophy, and to a lesser extent the art and sociology of a bygone age, the last flicker of whose active life went out in Western Europe when St Augustine, Bishop of Hippo, died besieged by the Vandals in North Africa in the first years of the fifth century. Every week, from the age of 10 until I finished with Honour Moderations in 1928, I would show up a copy of Greek verses, and a copy of Latin verses, a copy of Greek prose and a copy of Latin prose, each designed to reproduce the classical styles of the best period, and each week I would be expected to translate from the originals passages of Greek and Latin tragedians, comedians, historians and philosophers. But it was a pagan culture that was being instilled into me by this means. I knew nothing of the fathers of the Church after the fifth century, nothing of medieval Latin, and had scarcely met a Jew or a Roman Catholic except in the most casual kind of way. From about the age of seventeen onwards my own agnosticism was something of a secret sickness, to be kept very much to myself and not to be paraded in public for the scandal it could cause to those I loved. It was also a sickness to which I was completely indifferent. Life was too interesting and too full of promise to make me unhappy about anything of this sort.

It would be a mistake to regard this education as devoid of moral content. To begin with, the classical authors are full of material

extolling civic virtue and patriotism, courage in war, and public service in time of peace. For this reason I have never been particularly patient with those who do not admire these virtues as much as I. I was as fully identified with the heroes of Marathon and Salamis as with those of Agincourt, Trafalgar, or Waterloo, and, as almost all my early education between 8 and 12 took place in the highly charged atmosphere of the First World War, there was nothing to counteract these influences in a gentler sense. I am not, on the whole, sorry for this. The ancient world has much to teach us about the dangers of social disintegration and permissiveness, of treachery and cowardice. The Greek and Latin cultures, with their literature, live on as expositions of natural virtue, and I feel at the end of the day that a very great deal of what I possess of value derives from this non-Christian but extremely relevant source.

I see that in describing the moral content of the classical authors I have used the term 'natural virtue'. At the time I am speaking of I would not have used the description although I believed in the thing. At that time words like 'nature' or 'natural' had much the same effect upon me as Hermann Goering once said was produced on him by the use of the word 'culture'. At the use of 'nature' or 'natural' I would reach for my dialectical six-shooter and spray the offender and his language with verbal bullets.

This was because the words 'nature' and 'natural' are used in so many inconsistent senses. 'Doing what comes naturally' can cover almost any kind of moral obliquity and permissiveness. Indeed, since we are all inhabitants of the natural world, there is practically no sort of action, good or bad, which cannot, in some sense, be described as natural. In another context, 'nature' and 'natural' have come to be contrasted with 'contrived' or 'artificial'. Thus, in relation to law, it could be said that slavery was against the 'natural' law although it was permitted and enforced by the positive law of individual nations, and even by the embryonic international law insisted on by the community of all nations.

These considerations have given 'nature' and 'natural' a bad name amongst philosophers and lawyers. Nevertheless I have come in time to believe that 'natural' in another, if closely related, sense is an indispensable term for those who wish to understand the human condition when applied to nouns like 'law', 'justice', or 'morality.'

I therefore feel entitled to use the words 'nature' and 'natural' to describe the value judgements to which one can come by the unaided use of reason, unassisted by divine revelation or by the authoritative pronouncements of any particular group. Of course, if it so be that value judgements are only emotive noises which people utter to describe their subjective likes and dislikes, I have nothing more to say. Natural justice, and natural morality, must be discarded along with all judgements about beauty and ugliness, about good and bad, right and wrong. But I do not believe that value judgements are of this kind. Of course I accept that opinions on these questions differ, and that there is no objective test by which the philistine's opinion can be shown to be demonstrably less reliable than that of the artist, or that of the saint about morality, or the professional judge in matters of justice more reliable than that of those to whom the subject is a matter of little or no interest. This does not worry me at all. Once you have accepted that observation, measurement and verification are not the only marks of significant truth it need not worry one that parts of experience involve assessments of value which do not involve measurement, and that a consensus, where it exists between those who have studied and experienced a subject in detail, should be accepted in preference to a casual or ignorant assessment of the same matter by others who are either insensitive or indifferent to the subject. In the republic of learning and taste, there may indeed be no room for privilege of wealth or birth, but there need be no nonsense about equality, for this republic at least is not a democracy.

Given the meaning I have sought to give to them, natural justice, natural morality and natural law seem to me to be indispensable, and related, conceptions in any civilized society. I am aware that two of these phrases, natural justice and natural law, are commonly used in the courts and by writers on jurisprudence with different and more specialized connotations. In the courts, natural justice means primarily acting fairly but without regard to the technical rules of evidence and procedure imposed by any state or other system of positive law. In practice this very largely boils down to two main rules, namely the obligation on any quasi-judicial body to hear both sides of a case before delivering judgement upon it, or even privately forming a concluded opinion, and the obligation of any judge not to have any interest in or bias about the subject matter of a dispute,

and more especially any interest not known to and accepted by both parties. I am not using the expression 'natural justice' in this specialized meaning. The expression 'natural law' is also commonly used by writers on jurisprudence to describe rules of law which exist in some imaginary ideal world by reference to which the rules of actual law in any given society fall to be judged. I believe this to be a mistaken, even a misguided, way of seeking to express a truth which I am trying to describe in terms of another theory about value judgements.

This theory which is really fundamental to the view I am trying to expound is that value judgements in general, and value judgements about morality and legal obligation in particular, do have an objective value, analogous to, and not different in kind from, the sort of judgement we make about works of art or scenes of natural beauty. It is true that, in these matters, there remains an element of subjectivity, in that, as we say, not all tastes are identical, and even amongst experts insights also differ. But this is not to say that there is no difference in quality between the judgement of an expert in his own field and the untutored judgement of someone who views a subject for the first time, and perhaps with indifference. The mere fact that there is no common standard, other than experience and love for the subject, by which these judgements are to be assessed, does not seem to me to be a reason for disputing their objective validity.

I find evidence in support of this opinion in the extraordinary extent to which sages and religious philosophers throughout all history tend to converge about judgements of this kind. It is, of course, not at all true that the ethics of a high-minded Greek philosopher, let us say, Aristotle, are identical with those of a Christian saint, let us say, Saint Francis of Assisi, or the author of the *Imitation of Christ*. I will come back to this basic difference when I approach more closely the central subject of this book, which is Christianity itself. It is equally not true to say that the ethics of, say, Buddhism, Judaism, Christianity, Islam, Confucianism are identical. They are not. But it is surprising how much they tend to converge.

When my grandfather and namesake, the founder of the Polytechnic, died in 1903, there was found an unfinished letter on his desk which was evidently being written to one of his boys who had con-

fessed to have religious doubts and difficulties. I do not now recall the exact terms in which it was couched, but they made a profound impact on me when I first read them, and they exactly illustrate what I am trying to say. The letter read something like this:

'For ever truth is better than falsehood, beauty than ugliness, justice than injustice, kindness than cruelty. These few truths, believe me, are worth more than half the creeds.' In other words, there is a morality inherent in the human condition which seeks to articulate itself into general guide lines, like 'Honour thy father and thy mother', 'tell the truth', 'love your country', 'do not commit adultery', 'do not commit murder, steal or lie'. They are, of course, no more than guide lines, true, as Aristotle says, only 'generally, and therefore with exceptions which are always difficult to express or limit. But we disregard general rules of this kind at our peril, and if we accept them and live by them we find that we are living in accordance with the judgement and the precept of the noblest amongst mankind.

I call all this 'natural morality' because it can be arrived at by the exercise of the natural faculties and does not require any direct revelation from on high to validate it, nor any human authority to give it force. In this it differs from the supernatural morality taught by the Sermon on the Mount, the supreme self-sacrifice demanded at times of the Christian, but not because the latter contradicts natural morality. Christ came to fulfil 'the law' (that is, the natural morality prescribed by the Decalogue and protected by the ritual observances of the Jews) and not to destroy it. If one is tempted to doubt the existence of this kind of morality one only need reverse the precepts of the Decalogue, or the generalizations of my grandfather's letter, and then see what kind of a nonsense one gets into. It is impossible seriously, even for a Hitler, to say 'Forever falsehood is better than truth, cruelty than kindness, ugliness than beauty, injustice than justice'. That is why the Devil (whoever or whatever he may be) always tries to deceive his victims by sophistries, pretending that the particular wickedness is not what it seems to be, or is a means to a higher end, or is some special or exceptional case.

When one comes to consider the basic nature of legal or political obligation, it seems to me that the conception of natural morality is absolutely indispensable. It is obvious to us (at least I hope it is)

that the purely formal definition of law stated by the nineteenth-century writers on jurisprudence, 'Law is the command of the ruler', leads straight to the concentration camp and to the gas chamber. It is, in fact, indistinguishable from Hitler's definition: 'Das ist Recht was dem Führer gefällt.' One is only entitled to interfere with the freedom of another in cases where it is arguable that that other is already under some obligation to do or to refrain from doing the sort of thing that a proposed law imposes as a duty under penalty or prohibits.

This, of course, is not to say that all moral duties ought to be enforced by law. In many cases no obvious social consequences flow from the non-performance of moral duties. In many other cases enforcement can only be achieved by methods more repulsive than the original wrong. It only means that there must be a relationship of some kind between law and morality, however much the relationship is tempered by the need for freedom (itself a moral concept) or by practical considerations of common sense.

I do not wish to elaborate this in the present discussion. I only wish to conclude this chapter with the philosophical point to which it has been leading up. As I have said, I do not think there was ever a point in time, even at my most irreligious or immoral, when I questioned the existence and objective validity of value judgements in general or moral judgements in particular. I regarded the latter as a kind of categorical imperative, not directly related to any external criterion, such as utility, nor on any particular view of the world, still less to religion. I derived them, or rather my continued belief in them, after I had cast off the religion of my childhood, more from my classical education, and the ancient authors than anything else, in private morals more perhaps from Aristotle and Plato, and the derivative philosophical works of Cicero or Seneca, than the Bible, and, in public morals, more perhaps from the terrible analysis of the consequences of class warfare outlined in Thucydides and from the obvious facts of contemporary society in the world between the wars, the unemployment, the bitterness and the strife, than from any specifically Christian source.

Nevertheless there came times, more particularly after my answer to the question in the logic paper, when I came to ask myself as the philosopher Kant had previously done in his *Critiques of Pure and*

Practical Reason, what kind of a universe it could be in which for ever:

'Truth is forever better than falsehood, justice than injustice, beauty than ugliness, kindness than unkindness.'

I found myself saying that such a universe could not be only a fortuitous combination of indestructible atoms, or a ghostly ballet of unearthly categories. I found myself believing more and more insistently that somewhere enthroned in the very nature of being, behind the physical world which is itself not self-explanatory, behind the moral world which appears so divorced from physical science, there was Intelligence and Goodness, and Love, which we can dimly apprehend only on the analogy of our own feeble intelligences, and loves, and our own, often imperfect, striving after goodness. For now we see through a glass, darkly, and not face to face. In other words, I was becoming a Theist, and I was being forced into a Theistic position by intellectual rather than purely emotional considerations.

As I am not a person with a really sophisticated appreciation of art or music I have not based my argument so much upon the appreciation of beauty as upon ethical considerations. But there is one field in which I find that my appreciation of aesthetic beauty is not far behind that of the experts, and that is scenic and natural beauty. There have been times when I have almost cried for joy at the sight of a landscape, particularly in the mountains, Chillon Castle from the lake of Geneva with the Dents du Midi in the background, the Blumlisalphorn from the Oeschinensee, the Aiguilles Rouges and Mont Blanc from the Buet. I could go on enumerating these scenes almost indefinitely for page after page by examples both from the British Isles and elsewhere. But the point I want to make is simply that these insights into the sheer beauty of the world can, I think, have nothing whatever to do with man's evolution from the animal kingdom. They have, to use the technical language of Darwinian theory, no survival value whatever that I can see. In the field of morals it is, I think, arguable that the insights that we, on this view, mistake for evidence of the Divine, are really only inherited instincts acquired by the human race during its evolutionary development, things which, although they do not benefit the individual as such, assist the survival of the species, by enabling groups to form and

last in associations, children to be protected during their vulnerable years, and so on. I do not think this is right, but it is an argument which is at least plausible to some extent. I do not think this is true of beauty whether man-made or natural. I cannot think what survival value has to do with my enjoyment of the view in the Coolins or from the Domhütte, or viewing a wood full of bluebells or a field full of daffodils, or the colour of the feathers on a cock pheasant, or enjoying the merry tunes of Arthur Sullivan, or Shakespeare's poetry. But, of course, if man is not only an animal, what is he? And what is the Factor in the Universe which explains his value judgements? Am I wholly foolish in thinking of It as He, and having thought of It as He, am I altogether fatuous in bowing to the ground and saying: 'Thou'? This, at any rate, is the point from which I started, and, however much during subsequent years I have doubted or fallen off, it is to this to which I return in the end. To me it is the vital clue.

5

My Religious Upbringing

In the state of mind which I have been trying to describe there was, and is, no religious content whatever. I had had no experience which could be described as spiritual by any stretch of the imagination. I did not immediately resume any religious practices. I did not immediately seek to amend any irregularities in my life. I simply found it impossible to accept the intellectual basis of materialism, and because I had never been brought into contact with any other religious or metaphysical beliefs than the Anglicanism in which I had been educated, at that stage it did not occur to me that there were options other than a fairly colourless Christianity and the agnosticism into which I had drifted as the result of the loss of my religious faith.

This now seems to me so surprising that I think it requires explanation. This involves some description of the religious background with which I was left when my formal education was complete. I never knew either of my grandfathers. Quintin Hogg, the founder of the Polytechnic, died in 1903, before I was born, a victim of one of the early gas geysers, which poisoned him with carbon monoxide whilst he was having a bath. My other grandfather, my mother's father, died in his native Tennessee when my mother was a little girl of 4, four years after the war between the states, in which his health had been undermined. Both my parents were conventionally devout, but not, I think, profoundly religious. My grandmother, Alice Hogg, was a Scots Presbyterian and a saint. She knew the Bible better than anyone I have ever met and she knew it from cover to cover. She was by far the greatest and most loving woman I can remember ever having known. Unfortunately she died of a painful cancer when I was 10. My brother Neil and I were, I

think, her favourite grandchildren, but her early death meant that she left little beyond her memory behind her, though I still have a little book she gave me called *Daily Light on the Daily Path*, containing some mixed texts for every day in the month. This particular form of piety did not, and does not, appeal to me. My Nanny was a High Church Anglican, of melancholy disposition. She taught me the Church Catechism, the Lord's Prayer, and the Apostles' Creed, and to say grace at meals and prayers nightly. My schoolmasters taught me the Bible regularly, in the Authorized Version, which gave me a profound love for its magical English, and a considerable knowledge of its contents. This knowledge I improved and turned to good use at Eton when I competed for, and won, the Wilder Divinity Prize. At Eton we also read the Acts of the Apostles in Greek, and two of the Gospels (Mark and Matthew) in the same language, again for the Wilder prize. I read the history of the first four centuries of the Church, and English Church History from the conversion of our Saxon ancestors to a little after the Norman Conquest. Apart from Latin hymns, prayers and graces which we recited at College Prayers and dinner every Sunday, we made no acquaintance with the Medieval Church unless, which I was not, we were history specialists. Preparation for confirmation, although undertaken conscientiously, left little mark on my mind, and from my confirmation onwards I had little spiritual guidance or instruction, except what I acquired at compulsory chapel. Owing to my loss of religious faith I acquired little new at Oxford, except what I required to know about Christian origins for the purpose of my special period of Roman history, and this, so far as I remember, finished with the accession of the Emperor Hadrian. Thus the house was swept and garnished and devoid of a tenant.

Consider me then reflecting about the universe in a purely philosophical mood after I had reached that stage of scepticism which disbelieved even its own unbelief. By this time materialism was rejected as a philosophy, and objective idealism had never seemed to be a starter. Nevertheless I had come to believe that the very essence of the universe must contain that which explained and gave sense both to the fact of consciousness and the objective validity of value judgments, both moral and aesthetic. Because consciousness itself is intrinsically subjective, at least in so far as it presupposes the exist-

ence of subjects, that is, personalities, I had come to regard my Unknown God as both Immanent and Transcendent. I thought of him as immanent in the sense that it was necessary for him to underlie the existence of every fibre even of inanimate material, and transcendent because only a transcendent being can be possessed of personality in the same sense as, but on an infinitely higher level than, the human beings with whom I was familiar. In so far as I believed my Unknown God to be transcendent, I was, I suppose, almost consciously making God in the image of man, but without his defects. But I was not guilty of anthropomorphism, because I regarded him as immanent, something of which human nature is wholly incapable. It was, however, wholly foreign to my thinking to regard my Unknown God as somebody or something to be feared or loved, still less as someone with whom to carry on some sort of a dialogue, and it did not occur to me that this divine explanation, be it adequate or inadequate as an explanation, was ever trying to get in touch with me, or that I should consciously endeavour to get in touch with him. He was a postulate, and nothing more, a conception which I found intellectually necessary to make sense of the universe of which I was a part.

This position is so intellectually arid, and so unstable that it could not last, and it did not last for more than a comparatively brief period. It is, however, strange that I cannot at all remember either when, or by what steps, it began to give way to something more positive. I suppose this was because it never was quite so precise and definite as it sounds now that I have written it down, and that the steps by which I arrived at something different and more permanent represent a continuous process of experience rather than a series of dramatic moments.

In a sense, this process has never really become completed, nor I suppose will it ever be finished and completed this side of the grave. But at any rate, by the time I was elected a fellow of All Souls College in 1932 I was beginning again to go to church, or rather to churches, for I discovered a considerable variety to choose from even within the Anglican communion, and to say prayers at night, and occasionally during the day when something especially distressed or perplexed me, and these habits have continued more or less regularly ever since.

Whilst I am quite unable to describe the logical steps which led me on, I am certain that two factors influenced me more clearly than any other. The first was my encounter with the Christ of the Gospels. The second was my gradual appreciation of the living Church, both in history and in the liturgy and language of the Book of Common Prayer, and in the persons of various friends and relatives of different Christian denominations. Before I describe these, however, I think I should make one further purely logical point. It is that it is surely incredible, if there happens to exist anywhere in the universe an Entity of the type I have been trying to describe, that He, She, or It (for it must in one sense be indifferent what gender is used) should not have some communication with the rational human beings whose existence and value judgements provide the main reason for supposing it to have a real being. Such a relationship of communication would either have to be direct, as it would be in experiences definitely mystical, or mediated, as would be the case where the communication became known through the experiences of others, or by the experience of events in the world or in one's own inner field of consciousness. My own experiences obviously belong to the latter class unless, of course, the sheer joy of living and loving, and knowing the external world, the kind of ecstasy I have tried to describe in my appreciation of mountain scenery, or what is experienced in moments of profound emotion, whether of distress or joy, can be said to have an element of the mystical in them. I sometimes think they have, but this can never be known except to those who have had unequivocally mystical experiences. It seems therefore safe to group all normal states of mind whether deriving from books or communication with others, or whether the products of our own inner life, as being natural, and, if divine in origin, then mediated through the natural order.

The Christ of History

The Communist world teaches an extremely simple view of Jesus of Nazareth. According to the Communists he simply did not exist. It is not that they disbelieve in the Virgin Birth, the Resurrection, or the feeding of the five thousand or other miracles. It is not, as the Talmud says, that he was the illegitimate son of a Roman soldier called Pandera or Panthera. Communists teach that there was no such person as Jesus at all. He was a Sun myth, like Mithras, or perhaps a rain god like Quezalcoatl. He is the unperson to end all unpeople. It might be possible to ignore this view as too absurd to be taken seriously were it not for the fact that so many people must be growing up to believe just this. There is a second reason why I feel I must now examine this view with some care. It is that the Regius Professor of Modern History - no less - Professor Hugh Trevor-Roper, has expressed in print a modified version of this opinion, which is that though the existence of such a person as Jesus is certain and that it may be reasonably accepted that he suffered under Pontius Pilate, we know practically nothing else about him. Therefore, before I set out to meet the Christ of the Gospels, I must first logically, though this is chronologically out of place in the chronicle of my thoughts on the subject, set down my reasons for rejecting both versions of this modern heresy.

It is a mistake to believe that the Roman Empire was not very fully documented with civil service files. It is a pure fluke that we possess the correspondence between Pliny the Younger and the Emperor Trajan when Pliny the Younger was Governor of Bithynia, and not loads of other contemporary correspondence from the files of the Colonial Office in Rome. I very much doubt whether Pontius Pilate would not have sent some account of the transactions cul-

minating in the Crucifixion to Tiberius, especially after the Jewish notables had hinted at a charge of high treason against him. Be that as it may, it is clear enough from the pagan historians that the Emperor Nero attempted to blame the fire at Rome on a Christian conspiracy, and one of these historians, Cornelius Tacitus, states expressly that the Christians accused in this way were the followers of one Christus who was 'put to death in the reign of Tiberius' (*imperitante Tiberio supplicio afflictus est*). It would be absurd to credit Tacitus with accepting uncritically any Christian account of the matter when, as a leading figure in Roman public life, he had the imperial archives to draw on, and regarded the Christian religion as a 'disastrous superstition' (*exitiabilis superstitio*). The fire of Rome is, of course, a well-known historical event which took place only thirty or forty years after the Crucifixion. Tacitus was writing in the reign of Trajan within a hundred years of the Crucifixion, and in his youth must have spoken to many leading Romans who remembered the fire. I say nothing of the persistent and probable legend that the Flavius Clemens, a member of the Imperial House quite certainly known to Tacitus who was put to death for adhering to a 'foreign superstition' in the reign of Domitian during Tacitus's manhood, was a Christian, and perhaps connected with the author of the epistle of Clement, which is still extant. Nero's Palace, the remains of which are uncovered, contains a strange scribble on the walls of the servants' quarters. This consists of the picture of a figure with a donkey's head hanging on a cross with the words underneath, in Greek, 'Alexander (no doubt a fellow-slave's name) worships his God'. The Christians were perfectly well known in the reign of Trajan and at least as early as the reign of Nero. Pliny writes about them from Bithynia. Marcus Aurelius, a little later, writes disparagingly of their contempt of death as due to obstinacy and not the true indifference of the philosopher. It is wholly inconceivable that if their founder about sixty or seventy years before Trajan had never existed or had never been crucified, someone, Greek, Roman or Jew, would not have said so. One might as well cast doubt on the existence of General Booth.

Nevertheless, there is no doubt that Jesus was something of an unperson by the time Tacitus, and Pliny and their contemporaries, Josephus and Suetonius, were writing. Josephus, who fought on the

Jewish side in the Jewish wars, afterwards surrendered to Titus and Vespasian, took the imperial name of Flavius and wrote a history of his times. In that history he mentions John the Baptist and James, both of whom were related to Jesus, but in the final edition of his work omits all reference to Jesus himself. This is quite clearly deliberate, since it is quite unthinkable that he was not very well acquainted with the history of Christianity and its relevance to Judaism. Whether the early editions of his work (of which there had probably existed at least one) were equally silent I am not so sure, since a good many people have accepted as authentic several direct references in the old Slavonic translations which may come from this earlier version. But be that as it may, the argument from silence cuts the other way. There was a certain amount of deliberate silence, but it was not complete, and the facts were known. Jesus had suffered under Pontius Pilate in the reign of Tiberius and had given rise to a popular movement which was illegal and was a considerable nuisance to the authorities, and had been used as a scapegoat by Nero at the time of the fire.

There is a fashionable tendency to discount the Christian sources. I cannot do the same. Writing about twenty years after the Crucifixion, St Paul describes in unequivocal language the broad facts of the existence of Jesus, his death by crucifixion and his reputed resurrection. One can of course discount the latter as miraculous and therefore suspect, and one may place on one side Paul's own references to his strange experience on the road to Damascus as of the same kind. After all, you may say, he also claims to have been carried up to the seventh heaven. But you cannot discount, twenty years after the event, his reference to the founder of his movement who, he says, was seen after his death by five hundred people at once, some of whom he claims to have interviewed. You may disregard what they say as incredible. You are unlikely to be right if you deny the existence of the man. If he were writing now, in 1974, St Paul would be referring to the early fifties, just after my father died on 16 August 1950. If I said that I had seen my father after his death (which of course I did not), even if I were deceiving myself, it would be rather odd if someone told me he was a solar myth.

If I were arguing the case of Christian origins in full, which, at this stage of my argument I am not, it would be at this point that I

would draw attention to the obvious and close connection between the writings of St Paul and those of the author of the Acts of the Apostles and therefore of St Luke's Gospel, and, because the author of the latter obviously made copious use of the earlier Gospel according to St Mark (whoever wrote that) with that Gospel as well. It really does not do, simply as a matter of historical criticism, to divorce St Paul from the Gospels and assume that nothing which was written in the Gospels which he does not expressly mention was known to him. This is particularly unlikely because the author of the Acts of the Apostles, and therefore the author of St Luke (since they were manifestly the same person) incorporates as part of the text some reminiscences in the first person of his adventures in St Paul's company over a substantial period of time. The most obvious explanation of this is that, at the time of publication, the identity of the author and his personal participation in certain of the events described was notorious and perfectly well known to the readers for whom the book was intended, but even if this explanation be not accepted, the connection between St Paul and the author is so obvious that the conclusion for which I am arguing must follow. This is that, going back to a period about twenty years after the date of the Crucifixion there is a continuous written tradition confirming that of secular writers establishing the historicity of Jesus of Nazareth, and the existence of a cult depending for its inspiration upon belief in his resurrection after crucifixion and held together by the ceremony of Holy Communion which, whatever else it does, was intended from the first to perpetuate the memory of the events described in the consecration prayer, an extract from which appears in one of the earliest of St Paul's writings.

I have set out these facts at length because it is a necessary logical stage in the argument. There was a person called Jesus. He had a group of followers who have a continuous existence from about A.D. 50 or A.D. 55 onwards and have left written records ever since, maintaining a cult whose central ceremony is especially designed to preserve the memory of certain events connected with him and alleged to be historical. The existence of this cult, and the crucifixion of its founder, are adequately attested by secular writers of a period at which the true facts must have been available and known. The way is therefore open to enquire whether we know anything and

if so what about the original teachings of the man who gave rise to the movement.

I have not dealt so far with a subsidiary argument used by Professor Trevor-Roper because I do not myself attach any importance to it. This is that the extant manuscripts of the New Testament are comparatively late, the very earliest dating from the fourth century A.D., that is, at a minimum, about three hundred years after the events described. This point is an invalid one for a great variety of reasons. The first is that it altogether overlooks the extreme meticulousness with which, before printing, the copiers of ancient manuscripts preserved the integrity of the text they were copying. This is true both of pagan and religious writers. The Massoretic text of the Hebrew Old Testament, for example, depends upon manuscripts, the earliest of which was, until recently, of the eleventh century A.D. or thereabouts. But its basic integrity has not only never seriously been questioned but has recently been amply vindicated by the discovery among the so-called Dead Sea Scrolls of an almost complete text of Isaiah. The truth is that both Old and New Testament scriptures and for that matter the works of a wide range of secular authors are amply confirmed by quotations from a wide variety of sources outside their respective holograph versions, by translations of whole books, by criticisms and references in other authors and, occasionally, by the accidental preservation and rediscovery of actual fragments, like the Dead Sea Scrolls, or the fragment of papyrus, now in Geneva, containing a few lines from a second-century manuscript of St John's Gospel, presumably written within a century of the original autograph.

The second reason which renders the argument invalid is a fact about fakes of all kinds which I learned myself in the course of a case I did in which there was in question the authenticity of a painting purporting to be by, and to be signed by, Modigliani. This painting, as the result of my *Advice on Evidence*, was shown to be a fake by X-ray evidence. But in the course of my researches I was supplied by my instructing solicitor with a considerable bibliography concerning the nature of fakes of all kinds and how to detect them. There was one point made by the author of one of these books which is of direct relevance to the point I am discussing. Although fakes can often be made which confuse or actually deceive contemporaries

of the faker, the experts, or even the not so expert, of a later age can invariably detect them, whether fraudulent or not, because the faker cannot fail to include stylistic or other material not obvious to contemporaries because they are contemporaries, but which stand out a mile to later observers because they reflect the standards, or the materials, or the styles of a succeeding age to that of the author whose work is being faked. This is true of pictures and statues and, though less obviously, of written works.

Now, within very few years of the writing of the Gospels, an immense Christian literature grew up about the life, the manners, the family, the childhood, the nature, and the alleged miracles of Jesus of Nazareth, some orthodox, some manifestly heretical, some even conceivably containing elements of authenticity. Some of these have been known for a long time. Some have been disinterred during my lifetime. Some go back to the second and third centuries A.D. Some, no doubt, are still waiting in the sands of Egypt for some future scholar to discover, and some may even now be awaiting transcription and translation. They are as different from the authentic tradition as chalk is from cheese. The authentic books fit into a particular time slot in history (say from 50 to 100 A.D.) and into no other. The fact is that we can be as certain of the historicity of Jesus as we can about the historicity of the poet Catullus or Marcus Lepidus, or the Rabbi Hillel. But we can be sure of relatively little about him. We do not know exactly when he was born and, although we know the manner of his death, we do not know exactly when he died. An immense literature has grown up in which the authors seek to disentangle his teaching from legendary and miraculous accretions added by the pious imaginations of his followers. But it is unreasonable to doubt the historicity of the man, or the historical continuity dating back to his immediate circle of friends in the movement he founded.

The Christ of the Gospels

My next task, after the digression of the last chapter, is to discuss the question how much we know about Jesus, granted, as I have now argued that we must allow, that such a person existed, was put to death under Pontius Pilate, and gave rise to a continuous movement originating in the activities of his circle of friends immediately after his death, and that the claims and activities of this movement includes the assertion that he had risen and had been seen alive after his execution, the enactment of a ceremony designed to perpetuate these propositions, and the wholly unverifiable claim that these events, if they did take place, had a cosmic significance in the history of the human race.

I will begin with an analogy, not, I think, altogether far-fetched. We know, *pace* my friend Leslie Rowse, relatively little about Shakespeare. We have his will. We have references, contemporary or near contemporary, in the literature of the period to his existence. We have various contemporary documents about his parents, his baptism and his marriage. But we have no complete biography.

Above all, we have his works. We know so little about him that there exists at least one society dedicated to the proposition that they were written by somebody else. Like Leslie Rowse, I personally regard this last theory as nonsense. But from one point of view it hardly matters. There is a sense in which all true works of genius are self-authenticating. We can argue about textual obscurities. We can argue about which plays, or even what parts of the plays, are properly canonical and which are apocryphal. We can condemn some passages as carelessly written or even as bad. But at the end of the day nothing will destroy the central fact that, at the end of the sixteenth century and in the first few years of the seventeenth,

an author was at work of transcendent poetical and dramatic genius whose work tells us, from one point of view, at least as much about himself as one man can know about another.

One must not, of course, carry analogies too far. The Gospels are small in volume in comparison with the plays of Shakespeare, and much that is in them is repetitious. Even the whole New Testament canon is less in volume than Shakespeare's works, and the greater part of it does not even purport to come from the mouth of Jesus of Nazareth. Not one written word of his has come down to us; indeed, the only reference to his writing at all that I know of is the doodling he did in the dust when they brought to him the woman taken in adultery, though I must say I regard as naïve the suggestion I have read somewhere based on the absence of such writings that he could not write at all. His intimate knowledge of the scriptures alone precludes this possibility.

But the point I am making is that so long as one approaches the matter without examining the authenticity of the miraculous element in the New Testament, much of the language attributed to Jesus in the New Testament is self-authenticating in exactly the same sense that Hamlet is self-authenticating, or Catullus's poems about Lesbia are self-authenticating. Incidentally, these last have come down to us from a single manuscript since lost, accidentally found in the Middle Ages, bunging a wine barrel in a cellar in Verona. There is a sense in which I do not require proof of the authorship of the Sermon on the Mount, or the principal parables, or indeed many of the paradoxical or outrageous stories in the Gospels. They are in themselves proof that at the relevant time in Palestine a religious teacher existed whose words make such an impact on the ears of a hearer that they are best-sellers, box-office winners on stage and film to this day twenty centuries later, and it is the power exerted by these stories and sayings which made such an impact on me when I began to return to the Church of my upbringing and which have held me ever since, however much I might try to escape from them. Incidentally, there is at least no Baconian theory about the Gospels. Who was the author of these remarkable utterances? There is only one candidate in the field. No one suggests that they were the work of Caiaphas, Judas Iscariot, or even Pontius Pilate. Either they were uttered by him to whom they are attributed,

namely Jesus of Nazareth who, according to Tacitus, was known as Christ and suffered under Pontius Pilate, or these flowerings of religious and moral genius were the product of some anonymous author who has wholly disappeared from history and left no trace behind, except these words, which have been unaccountably and, on this hypothesis, quite wrongly, attributed to the crucified Jesus by the very men who sought to perpetuate his memory. There may be, and indeed are, many things in Christianity difficult to swallow, but I cannot allow that the belief that the main sayings attributed to Jesus are rightly attributed is among them.

8

The Christ of Theology

Up to this point the argument I have been trying to present yields a somewhat arid form of Unitarianism coupled with a belief in the historicity of the man depicted in the New Testament and a fairly warm appreciation of the sayings attributed to him. I suppose that a good many people have got this far in their meditations and have got no further. The views expressed are logically and historically defensible. But there are two difficulties in your way if, having got thus far, you seek to end your journey at this point. The first encountered, both logically and, so far as my own experience is concerned, also the first chronologically, is that it is impossible to disentangle the Christ of history from the supernatural elements in the stories recorded about him, or wholly to disregard the fact that, whatever his critics, past or present, may have thought, or may still think about him, this was not what he thought, or what he seems to have said, about himself. On the assumption, which I think by now I am entitled to make, that the Gospels are, or at least contain, a story about something which actually happened, Jesus seems to have made claims about himself which no ordinarily good or sane man could possibly make. I will not elaborate this argument, because to do so would involve an essay in New Testament scholarship well outside the boundaries which I am setting myself in writing this book. Suffice it to say that I have made the attempt myself and reached the conclusion I have stated. But what is more important, others better qualified than I have been trying to do this very thing for more than a century and, though individuals have believed that they have had a measure of success, what is certain is that none has succeeded for long in convincing the learned world as a whole of the correctness of their own solution. No doubt there are many

elements in the Gospel story which are in themselves unlikely or incredible and may well be pious fictions. But nobody can agree a complete list of which these passages are and, in the last resort, the whole endeavour is bound to fail, since the composition of the Gospels and the transmission of their contents to subsequent generations was due to the unshakeable belief of the followers of the Christian cult in the alleged fact of the empty tomb, and the reality of the physical resurrection, which for them at least had been authenticated by witnesses of the post-resurrection appearances. These, of course, if accepted in any form, are the biggest miracle and the biggest obstacle to faith of all.

There is thus no point in getting rid of a selection of the miracles as unhistoric if, at the end of the day, you are bound to swallow, or reject *in toto*, the assertion that in about A.D. 30, give or take a year or two, a man physically rose from the dead. The historical Christ was a person about whom this claim was asserted and, at least in the form in which they have come down to us, this is how the writings about him, from the earliest of the epistles to the latest of the Gospels, have always presented him. What is more, and even if we disregard what he is alleged to have said about the resurrection appearances, this is how, broadly, he seems to have thought of himself. He did not regard himself simply and solely as a mere man.

But there is another and more directly philosophical reason why I found it impossible, having got so far as I have described, to stop where I was. In the last analysis, the gap between man and God is unbridgeable, except to the extent to which God chooses to make himself known to man, and this can only be done by some sort of communicated experience, mediated through the flesh. We may, in an abstract kind of way, theorize about the nature of the universe as much as we choose and, as a result of this, may come to a more or less coherent view of Deity as the ground of our being, and the philosophical first cause which explains both the physical facts and the value judgements which lie at the root of human experience.

We may regard this Deity, this *être suprême*, as we choose, either as inherent reality contained in and underlying all existence, or as a transcendent entity somewhere outside and beyond the realm of experience. But in neither event do we know anything about him, and the mystics, who claim to have been somehow in direct contact

with the Deity, come back talking only of experiences which have to be translated into physical metaphors like light or water, or into contradictory propositions which break down into nonsense the moment they are taken literally. Paganism, of course, is crammed with deities who were, or became, men or gods who are, or themselves possess, divine sons and daughters. Athena was born fully-armed from the head of Zeus, with another of Zeus's innumerable children, Hephaestus, acting as a midwife armed with a hatchet. Zeus himself was the son of Cronos whom he slew, and Cronos was the son of Uranus whom he castrated. Mithras was something less than God and more than man. Adonis was man become God. There have been divine saviours in Egyptian mythology, male and female, in the Greek mysteries, in the religions of American Indians, and in Hindu mythology alike. Some people seem to find the analogies with the Christian Christ so uncomfortable as to be positively subversive of any faith in Christ, so like, in a sense, he is or seems to be to those admittedly imagined beings. I do not myself so find it. Man does not seem to be able to live without religion and religious practices and beliefs, and even when he comes to regard God as a Unity, and all the various pagan or animistic beliefs as imperfect attempts to find and rationalize the ground of all being underlying natural forces and phenomena, he must still clothe his religious experience with language, and such language, because it is metaphorical and draws on analogies, seems to deny the very unity which it only seeks to describe. If God does communicate with man, this communication needs must, at some stage, take on something of this character in order to manifest itself at all. I do not therefore find it disturbing to find Christ exhibiting the requirements of man's limitations if he be the only begotten son of God (whatever is intended by the expression 'begotten' or 'son' in the same context). On the contrary, I find these other, and mythological, expressions of deity in some ways as pointers to the reality of Christ, if Christ is indeed the manifestation of the Divine that I now take him to be.

But at the heart of all the mysteries of life is the mystery of evil. By itself, pain is a thing I can accept. It is, in fact, the only way in which a living physical animal remains alive. It is preserved precisely because it feels pain whenever it damages itself, or allows itself to be damaged. At my private school there was a boy who, from some

physical disorder, was unable to feel pain in the sense that the rest of us did. Both we and he had to be warned against subjecting him to the physical experimentation which youthful curiosity on all our parts naturally prompted. I often wonder what became of him in adult life, but I doubt if he can still be alive and well. In itself, pain is a useful biological danger signal inseparable from the physical existence of a conscious being. As such it causes me no worries at all.

But evil, though it is often associated with the existence and causation of pain, is a horse of a very different colour. It shakes my whole being with helpless rejection. I once did a case in which my function was to defend a young mother who had beaten her little daughter, aged two or three, to death. I could not open the papers without shaking with sobs because I knew that inside the papers lay the photographs in colour of the beautiful little body, desecrated in death, with all the marks of the blows upon it. And I read in the evidence, happily among the statements not given in court, how the little being just before she died, said the heart-breaking words: 'I'm sorry, Mummy.' She was, and is, as I believe, a saint, and her forgiveness was divine.

I feel the same way about evil of all sorts, real or fictional. When, in the autumn of October 1969, I saw the ruined homes in Belfast, burned out by my own fellow-citizens and fellow-Protestants out of sheer hatred of the occupants, I was deeply moved with horror and rejection, and all the cruelty and suffering which has gone on there since has only intensified my feelings on the subject. I will not, if I can avoid it, read stories of violence, or attend films or plays, or look at programmes which portray evil. This is not because I believe such portrayals damaging to the soul, although I think they are, but simply because they hurt me too much. How can a good God permit such dreadful things to happen, I ask myself helplessly, and I am not really comforted by the beautiful rhetoric of God's final speech to Job out of the whirlwind, since nothing really reverses or obliterates evil, though it may compensate for it. The one thing which keeps me sane and well-balanced in such moods of black despair is the memory of Christ's passion, his shameful conviction, his cruel mishandling, his slow death, and the ultimate hopelessness of his cry of dereliction from the opening words of the twenty-

second psalm, and the belief, which I have as a Christian, that this was not simply the despairing cry of a good man, shamefully abused, but a matter of cosmic significance, a statement that God the invisible, the Creator, the ground of all being, without body parts or passions, enters into human suffering with us, and somehow agonizes in all our private Gethsemanes. I know, of course, that this must necessarily be folly to the Greeks, who can visualize a God in human form well enough, as did Euripides when he visualized Dionysus in the *Bacchae*, but cannot visualize a God in suffering. I know too that to Jews and Moslems this seems not merely folly but blasphemy for they cannot visualize a God who, within a single being, can somehow be more than one person. I am not sure what Buddhists make of it, since their religion, like mine, seems based on a rejection of evil as it emerges in the form of suffering, but their smiling Buddha, though he has emerged from a world of suffering, does not seem to me to be involved in it to quite the intense degree of my crucified and risen Lord.

However, the only point of all this is that I do not find a purely unitarian view of God by itself acceptable in a world in which there is so much suffering and so much injustice. There seems to me to be no other way in which God can make himself known to man in an unjust and suffering world save by showing him to be involved in all our experiences, in grief as well as joy, in the appreciation of beauty, in human relationships of friendship and love and parenthood, in weariness and pain, in despair and hope. It is the paradox of Christianity that we predicate this of an omniscient, benevolent and omnipotent creator. Such a view is to some folly, to others a stumbling-block. To all it must involve both paradox and mystery. To the Christian, however, it is based upon a fact of history, and though it does not explain evil, at least it makes it bearable.

Whilst I am on this subject I might as well add that you do not get out of your philosophical troubles arising out of the fact of evil by rejecting God. For, as I have tried to point out before, the real problem is not the problem of evil, but the problem of good, not the problem of cruelty and selfishness, but the problem of kindness and generosity, not the problem of ugliness, but the problem of beauty. If the world is really the hopeless and meaningless jumble which one has to believe it to be if once we reject our value judge-

ments as nothing more than emotional noises, with nothing more in the way of objective truth than a certain biological survival value for the species rather than the individual, evil then presents no difficulty because it does not exist. We must expect to be knocked about a bit in a world which consists only of atoms, molecules and strange particles. But how, then, does it come about that we go through life on assumptions which are perfectly contrary to these facts, that we love our wives and families, thrill with pleasure at the sight of a little bird discreetly dressed in green and black and white, that we rage at injustice inflicted on innocent victims, honour our martyrs, reward our heroes, and even, occasionally and with difficulty, forgive our enemies, and do good to them that persecute us and spitefully use us? No, it is light which is the problem, not darkness. It is seeing, not blindness. It is knowledge, not ignorance or error. It is love, not callousness. The thing we have to explain in the world is the positive, not the negative. It is this which led me to God in the first place. It is this which leads me to think that I know something about his activity in the world through the Christ of history.

9

The Living Church

I have said that there were two factors which led me on from the kind of philosophical acceptance of the divine into a more positive involvement with Christianity. The first, which I have been trying to describe as dispassionately as I can, was my encounter with Christ, both as a historical fact and as a philosophical conception. But the second was my encounter with the Church. At first sight, the history of the Christian Church is not a matter of edification. At the most favourable level, the divine light of the Gospels and the epistles seems to have given place in a matter of a generation or two on the one hand to endless squabbles about unverifiable points of doctrine which continue to divide Christians to this day, and on the other to a mass of pious fables and superstitions, bogus miracles and fake relics, all or most commercially exploited, which have persisted almost continuously from sub-apostolic times, to the *bon-dieuserie* of shops and shrines which can still be seen all over the Christian world. But this is the least part of it. The cruelties and persecutions, the civil wars and blind hatreds, the *autos da fé*, the burnings and rackings, the hangings, the drawings and quarterings, the anathemas, the inquisitions, the pogroms, the crusades, the sackings, the holy wars, are not, one would think, good advertisements for the divine society, inspired by the Holy Spirit, against whom we are expressly told the gates of hell shall not prevail, that it is to guard the keys, that its judgements are to be endorsed by the heavenly courts, and which arrogantly seeks to spread and perpetuate its doctrines from Greenland's icy mountains to India's coral strand. Although Gibbon's account of the matter can hardly be said to be either accurate or fair, there is enough genuine material available to provide hostile copy for a hundred Secular Societies and, even if

one forgets all this, the amount of sheer and self-contradictory nonsense which emerges from clergy and ecclesiastically-minded laymen on the radio and television when they talk about secular and political subjects is enough to damp the ardour of the most spiritually-minded of devotees. It is not enough to say that the same can be said of the history of most other organized bodies of human beings whether secular or religious, Jews, Moslems, Hindus, Buddhists, Communists, Fascists, and so on. The Church claims to be something special, and it is not enough for it to excuse its appalling record by saying that it shares human faults with other human organizations. It is there to redeem humanity and not to share its failings.

This, however, is not the Church, contact with which has helped to give my life stability and coherence. The great difference, it seems to me, between Judaism and Christianity, which is either an offshoot or the fulfilment of Judaism, and almost every other religious philosophy except Islam (which is largely derivative from Judaism and Christianity) is that other religions are circular, whereas Judaism and Christianity are rectilinear in their fundamental approach to human destiny. Adonis dies, and revives, Demeter is banished and let out on leave every year with the turn of the seasons. India has adopted the wheel as her symbol, and both Hinduism and Buddhism, which seems to me a rationalization of Hinduism, regard the recurring nature of life as at the centre of things. The Buddha smiles serenely because he has escaped from the squirrel's cage of existence into nirvana but, so long as we are in it, for life after life the cage goes round and round. The same sort of conception is found at the end of Plato's *Republic*; although in its recurrent incarnations the soul may mount higher and higher (or for that matter sink lower and lower) and, in one sense, the wheel turns into a spiral staircase, the ultimate bliss is to be out of it altogether. I do not deny the profundity of the myth, though the whole doctrine of Karma and reincarnation, undoubtedly a serious attempt to introduce an element of justice and order into a seemingly unjust and disorderly universe, seems to me to be incredible and, if not incredible, sadly unattractive and productive of melancholy. The recurring nature of the seasons, and the longer and greater circles of the heavenly bodies envisaged by pre-Copernican astronomy, undoubtedly corre-

spond to a genuine reality. But this account of the universe, and the Divine, which gives the ultimate destiny of the human soul as a resolution into nothingness, not merely involves a basic pessimism but seems to me to postulate a relationship between soul and body, between the spiritual and material which is contrary to experience. I do not believe the soul can be extracted from one physical container and inserted into another. The nature of our human existence is shot through with material factors. We are not body and soul, and we are not brain and mind. Nor are we body only, with a computer in the brain. We are made as individuals but any philosophy which seeks to explain our individual existence must neither seek to deny the reality of the spiritual or the physical, nor so to separate them entirely from one another that one can be taken away from the other and continue to exist as if relatively little had happened. It is for this reason that I find the whole Christian doctrine of immortality difficult to swallow, but the more spiritual forms of oriental religion seem to me to be harder still. I do not believe that I ever was, or can ever become, a chaffinch, or that a chaffinch, in some subsequent existence, can be rewarded for its excellence as a chaffinch by becoming a human being.

The rectilinear view of human destiny postulated by Jews, Christians and, I would think, Islam seems to me to receive some confirmation from the physical world of experience and scientific observation. Although spatial relationships are in principle reversible, the time sequence is not. One of the few quotations surviving from the lost works of the Greek tragic poet Agathon is a phrase which says, in effect,

One thing at least God never knew -

How what is done, once done, to undo.

Although there is a sense in which this can be disputed there is a sense in which this is true, and as true as when it was written. Indeed, according to the second law of thermodynamics, the whole universe appears to be running down something like a clock and will require, at a given point of time, to be rewound somehow, unless, of course, the theory of continuous creation (to which I have already referred in another connection) supplies a sort of self-winding mechanism. The same appears to be true of the principle of evolution. Though our own complex bodies and those of bees and

wasps, reptiles, elephants and birds may have evolved out of amoeba, there seems relatively little support for the view that they can evolve back again into unicellular organisms.

The weakness and the strength of the view of history postulated by Judaism, Christianity and Islam is that they were formulated at a time when the time scale of human existence on the planet seemed so abbreviated that it seemed not altogether fatuous to date the creation of the world on an October afternoon in 4004 B.C. Other calculations were possible, but the scale was approximately the same. With archaeology putting early civilizations as old as 6000 B.C. and palaeontology dating the age of the human species in terms of millions rather than thousands of years, it is clear that a different kind of philosophical outlook is essential and, in particular, the idea that the whole human race has to be baptized and converted before it can be saved appears more ridiculous than ever. Nonetheless the theory that life is not a perpetually recurring cycle but a progression of some sort from some sort of beginning to some sort of end seems to me to hold the field against all other attempts to rationalize history and experience.

In this world I find myself a member of a society and it is with the life of that society and my re-involvement with it that I am at present concerned. It bases itself on an historical fact, the life and death of Jesus of Nazareth, and an historical assertion, namely his resurrection and ascension (whatever these phrases may mean). I call the first a fact, because, for reasons I have given, I regard the existence of Jesus and his crucifixion under Pontius Pilate as historically certain in the same sense and almost to the same degree as the Battle of Hastings or the Battle of Cannae. I call the second an assertion, because, although, as I have tried to establish, the tradition is continuous to a period at which contemporary witnesses spoke, there is no escaping the fact that none of the witnesses were independent. The Crucifixion was public; the resurrection appearances were all private, and with the exception of Paul on the road to Damascus, confined to followers and friends of the crucified master. This necessarily gives their testimony a different character, though it may be nonetheless trustworthy for that. The Church is a missionary and worshipping society existing in time, and basing itself on this fact and this assertion. Were either of these two historical events

proved not to have happened in any sense, the Church ought to disappear and, I think, would do so, though many of the Christian melodies, pictures, buildings and writings would presumably endure for a time by virtue of their aesthetic or ethical value, which cannot seriously be disputed. Their importance may not be unique, but it is at least as important as Chinese porcelain, Greek art, or Islamic architecture.

But the essence of the Church is its claim to the possession of the Holy Spirit, and its dogmatic assertion that this spirit, whatever may be meant by the phrase, is divine, indeed part (though the word used in orthodox theology is 'person' and 'part' is inappropriate) of the Godhead itself. Obviously the doctrine of the Trinity can be presented as a paradox or, as Moslems and Jews would put it, a blasphemous fable undermining the integrity of monotheism, or as orthodox Christians are bound to put it, as a mystery, that is, I suppose, to describe in language something for which language is inherently inadequate. Nonetheless, on a somewhat less sophisticated level, it need not present the same difficulties. All monotheistic religions must think of God in three ways, as God the Creator, underlying all existence, God the Redeemer, demanding and making possible the return of man to communion with God, and God the Inspirer of words, thoughts and actions in man as the result of that communion. The Christian Church is unique in its formulation of the doctrine, its systematization of it, its arguments about the precise use of technical terms like 'substance', 'essence', 'person' and 'begotten', 'created', 'procession', and so on, and in their alleged relation to historical events. But I do not find it unique or particularly obscure in developing a threefold description of divine activity.

For all the case which can be made out against the Church I do not find it false or even paradoxical to say that it did redeem and transform the ancient world and, when that world was overcome by the barbarian invasions, that it did save and preserve not merely the Christian heritage but the tradition of civilization and law through the Dark Ages, and the Middle Ages, to the Renaissance and the modern world, and, whether its religious or historical basis be true or false, that it has remained constant in its protest against the ugliness, cruelty and oppression of the modern age. Whatever can be said fairly against its alliance with authoritarian regimes, new or

old, it remains true, in my experience at least, of the events of my lifetime that the moment a society consciously begins to reject Christianity and its values and, for whatever reason, begins pursuing the opposite, the most startlingly evil practices appear once more to emerge from dark corners and flap their hideous wings abroad.

But it is not, as a matter of fact, in its corporate witness that I find the activity of the spirit most convincing. It is the contact between the spirit and the individual which seems to me to show the most spectacular results. How much of what is now taken for granted in what is good in society owes its original inspiration to a consciously Christian motivation, even where the work has been subsequently overtaken, and taken over, by the apparatus of the modern state. Wilberforce was motivated by Christianity when he set about his campaign to end the slave trade. Florence Nightingale's original motivation was Christian, and the source of her expertise when she first sought to revive the almost forgotten craft of nursing was a teaching order of nuns where the art had been kept alive. Our whole system of education, public and private, our network of hospitals, our social security system itself, have each a clear origin in Christian foundations and, whatever can be said against much of the theorization, and much of the practice which they embodied, the motivation which underlay them was good and, in origin at least, the practice was disinterested. The Christians have been pioneers of good works throughout their history. They have been the originators, and secular society has largely caught up with their efforts, made good their deficiencies of scale, and corrected their faults. No one who has studied the ancient world can get very far without being horror-struck with the hurricane of libido, lust, cruelty and greed of which Jung spoke, and those of us who have an increasing contact with the post-Christian society in which we live are disturbed to find the very same features reproducing themselves under widely differing political systems, in almost exact proportions as the spirit ceases to be cultivated, and the life of the spirit lived.

10

The Utility of Christianity

I have said already that I could not accept the utility of a religion that I did not believe to be true. I do not consider that it can really be beneficial to believe nonsense, and, even if I found it consoling to deceive myself, I do not think it would be possible for me either to seek or find consolation where I did not think there was truth. The capacity of the human mind for self-deception is almost infinite, and I fully accept that many people have found great consolation in varieties of belief which I personally find unsatisfactory. Indeed, one of the great obstacles to my own religion has always been that I was uneasily aware that the absence of the possibility of verifying many of my own conclusions left me wide open to self-deception myself.

Once, however, one comes to accept the truth of Christianity for reasons which, while obviously falling short of demonstration, nonetheless can be defended as rational, and once one attempts to practise Christianity at least as a working hypothesis forming a rational basis of a life style, one is entitled to reflect upon its usefulness or otherwise as a guide to practical life. I have already made it plain that I do not think it spells out a totally new morality. I do not think it overthrows natural morality in the sense in which I have tried to define the term. Nonetheless it would be an odd sort of religion which, though true, was of no practical value, and the object of what I have now to say is to reflect upon the uses to which it can legitimately be put. Such a series of reflections can serve two purposes. The first is to show that Christianity, so far from being in opposition to the experience of mankind, confirms it. The second is to show that in fact it provides an intellectual basis without which certain values universally accepted to be worth retaining would be wholly absent

from human thinking. I will describe the advantages to be obtained from being a practising Christian under two heads. The first discusses the advantages to be obtained in the conduct of one's life as an individual, the second the intellectual foundation which Christianity can provide for a solid and progressive society.

There is, however, one preliminary remark which requires to be made. All Christians regard their religion as in some sense unique, and as uniquely true. But for the purposes of the present discussion this is not quite so. Christianity must take its place amongst other systems of belief, with all of which it has some points of resemblance and some of difference.

I feel, therefore, that I ought to begin by saying something about my attitude to these other systems since there would be no answer to potential criticism if I did not seek both to explain why I do not hold other beliefs myself, and why the fact that other people do hold them does not frighten me off my own quite as much as it used to.

There are certain beliefs and practices that I actively distrust. Among them is Spiritualism, and such elaborate modern organizations as Scientology. The first I distrust because I think the evidence against it is overwhelming. I quite realize that there are things which happen to which I can offer no rational explanation except perhaps conscious fraud. But the sheer banality of the alleged utterances from beyond the veil leads me to suppose that whatever be the explanation it is not that the dead are seriously trying to communicate with us. There have been times, I confess, when I was young, when I experimented with such things as table-turning. It would be quite wrong to say that I got no results. I could never quite persuade myself that the results I did get were not the product of deception on the part of one or more of my collaborators, or else perhaps some honest but nonetheless natural emanation from my own, subconscious mind or theirs. But if there was anything more, and I was not wholly convinced that there was not, it was, characteristically, not very intelligent, not very benevolent, and not very nice. So that I gave the whole thing up as undesirable. Since those days I have once or twice attended a more formal spiritualist service conducted by a professional medium, and I formed very much the same conclusion from what I saw or heard. Neither the information vouchsafed through the medium nor the gradual steps by which the

information became available seemed to me to be convincing. If it had a supernatural source, which at the time I rather more than doubted at the services I actually attended, the triviality of the information supplied was such that I could only assume that the loved ones concerned were either unusually stupid in their lives, or had undergone a serious degeneration after they had crossed over. I quite realize that many people have found great consolation in messages which they have received and I would hate to hurt them by anything I say or write. Nevertheless, the only advice I can give to the bereaved who may be tempted to try spiritualism is to keep clear of it.

I also accept that there are certain systems of belief, like Scientology, which as those who practise them also testify, bring them great consolation. I am reluctant to criticize them in detail for much the same reason. I simply say that I do not find their philosophical conceptions adequate to support their theories and that the factual bases on which they claim to have produced good results on individuals do not seem to me to be fully substantiated.

It is quite otherwise when I examine the great world religions or the different variations on the Christian theme held by different branches of the Christian faith. It is true, of course, that Buddhism postulates, at best, a kind of Deism, and that the differences between Moslem and Jew, between Jew and Christian, and between the various brands of Christianity, Orthodox, Protestant and Roman Catholic, are obvious for all to see. Oddly enough, however, it is not the differences between them which impress me so much as the points of resemblance. All reject materialism as a satisfactory explanation for the totality of things. In one terminology or another, all assert the supremacy of the moral law in human affairs and its relation both to the religious experience of mankind and the spiritual entity underlying all reality and, even in matters of a detailed moral code, the points of identity in practical precept, between Jew, Moslem, Buddhist, Christian and Confucian seem to be much more striking than the differences. When one reflects that what we are concerned with is a series of value judgements, in principle not verifiable, I find the total testimony of civilized mankind in morals and metaphysics at least as impressive as the kind of unanimity which also exists about such matters as natural beauty or artistic excellence.

When I go into a synagogue, I do not find myself shocked by the implicit denial of the Incarnation. On the contrary, I find myself immensely edified and uplifted by the majesty and beauty of the Hebrew prayers and acts of worship in their English translation, quite apart from the Old Testament scriptures and other beliefs which Jews and Christians have in common. Of course my feeling of unity with the various Christian denominations is all the greater. I am not particularly tempted to become, say, a Roman Catholic or a Presbyterian, but I can join in the services of both without becoming conscious of any loss of loyalty to my own communion. It is not that I find the differences unimportant. It is that I am actually strengthened in my own beliefs and practices by finding that they are not at all unique, but form one of a group of related and not dissimilar opinions.

Having said all this, and having said that I do not find it possible in general to spell out of my Christianity any general rules of conduct other than those of natural morality, I feel I must say something a good deal more positive about what my religion has meant to me in the actual conduct of my life.

The first thing I must mention is the feeling of confidence I receive that when I am obeying, or seeking imperfectly first to identify and then to obey, the dictates of conscience, I am not doing something which is plain silly. I am not just deceiving myself. I am, on the contrary, acting in co-operation with something or rather someone at the heart of the universe itself, some Entity which enjoys the beauty of the sunlight, and the stars of heaven, and the sheen on the feathers of a bird, or the qualities I admire and love in my family and my children, even as I enjoy them myself. This means a great deal more than an impersonal Deism. It implies a Creator. I am, of course, aware that the whole appreciation of natural beauty and love is something which I possess in virtue of my body, and that God, of course, is something outside and beyond the physical, and that therefore the relationship between God and his physical creation is altogether outside my comprehension. But the belief that he is there sustains me on my journey as nothing else can. I do not believe that, in the ordinary course, he tells me what to do in particular situations, or that he will help me as a politician or an advocate to map out right courses in my political or professional life. On the contrary, I believe

that he has set me in this world to develop my own judgement of good and evil in the light of his universal presence, and that he will not supernaturally intervene in the ordinary course of events, except in the sense that everything that takes place for good comes in one way or another from God. But when I see beauty or seek justice, or try to do right things or avoid evil things I am consciously assisted by the belief that the things of good repute are not just vain imaginings of my own, but correspond to something deep in the heart of the universe itself.

When Pompey invaded the Jewish temple, it is related that he was astonished to find there no image like those of Zeus or Apollo or Athena in the Greek or Roman temples with which he was familiar. The concept of idolatry is of course rather an unreal one to one who has always worshipped in the Protestant tradition, although I am not in the least shocked by the presence of religious pictures, or icons, or statues in churches, and I find the Stations of the Cross an aid rather than otherwise to devotion. But the real idolatry that one has to avoid nowadays has nothing whatever to do with statues or pictures. It is what one worships in one's heart that counts. In the innermost shrine of the soul there must be nothing to compete with God, neither family, nor friends, nor country, nor party, nor wealth, nor profession, nor reputation. The essence of Monotheism is the preservation, empty and inviolate, of the innermost sanctuary of the soul, so that God and God only is there, and God, and God only is worshipped. It is true that a present companion to a Christian is always Our Lord himself, present in the body as a human being and endowed with every human faculty, present in the sanctuary in virtue of his divine nature. But he is not worshipped as an idol, because there is nothing in this temporal world which can take the place of God in the empty shrine.

Some years ago, when the *Daily Sketch* was still a newspaper, I was asked to contribute to a series of articles entitled 'If Christ came back now', and I ultimately agreed to do so. In the main, the outcome of the series was predictable. The Left-Wing parson was saying how the good Lord would go out amongst the poor and the afflicted doing good, and how he would be rejected by the Establishment, and how various useful suggestions would be made by him, and vested interests would in the end get the better of them all, and so on.

The Jesuit predictably, and from his point of view reasonably, made the point that Christ had never left the world. He was present in the Church, and in the Sacrament, and the question what he would do if he came back should be rephrased to ask what was he in fact doing here and now.

I found myself agreeing with a great deal of all this, but thinking on somewhat different lines. Like the Jesuit, I thought the question itself an unreal one. Christians believe that the human life of Jesus of Nazareth took place at the moment of history precisely and uniquely fitted for the work which he had to do. To talk, therefore, of his being born into the twentieth century is basically as artificial and unreal as to talk of his having been born into the Stone Age. Jesus was as much a man of his time and place as any other, and the moment at which he was to be born was unique precisely because it was God's will that he should be born then and there and never anywhere else.

But this led me to face a far more difficult question which, in the end, was the question I sought to answer in my article. It was not the question asked, but it was, I ventured to think, the real riddle underlying the question asked. It was this. The picture we all have of Jesus is coloured through and through with the knowledge of what happened to him at the end of his life and after. It is seen through the dark glass of his remembered passion. He is the man of sorrow, acquainted with grief, by whose stripes we are healed. Alternatively he is the risen Lord, gracious, triumphant, appearing to his astonished friends as the victorious conqueror of death. But this is precisely the knowledge that his contemporaries did not have during his ministry. Indeed, it is related that when he sought to disclose to his friends what was likely to happen they simply did not believe him.

This led me to ask myself, as if I had never asked the question before, a somewhat different question. What exactly was Jesus like to meet? If one had been a fellow-guest when he asked himself to dinner with Zacchaeus, or when he was eating with the Pharisee, what sort of a man would one in fact have seen and spoken to? What was his conversation like? Having asked this question, I looked at the Gospel again, and quite suddenly a new portrait seemed to stare at me out of the pages. I had never previously thought of a

laughing, joking Jesus, physically strong and active, fond of good company and a glass of wine, telling funny stories, using, as every good teacher does, paradox and exaggeration as among the most effective aids to instruction, applying nicknames to his friends, and holding his companions spellbound with his talk. And yet, it is a very odd thing that one does not think of him in these terms. Granted that we are told to think of him as having every perfection of human nature, do we not ordinarily regard a sense of humour and high spirits as among the most desirable attributes a man can have? How then can we suppose that he did not have them? As I reflected upon this, I came to the conclusion that the first thing we must learn about him is that we should have been absolutely entranced by his company. Jesus was irresistibly attractive as a man. The man whom they crucified was intensely fond of life, and intensely vital and vivacious. He did not wish to die. He was the last person to be associated with suffering. They called him a winebibber. They abused him for the company he kept. What was it, do you suppose, that kept Mary at his feet when Martha was scurrying about getting the dinner? Was it a portentous commentary on Holy Scripture? I feel sure that it was simply that she found his company actually enthralling. When one begins to think of it, can one see anything but fun in calling the two enthusiastic brothers 'Sons of Thunder', or impetuous, chivalrous, heroic, but often blundering Simon, the Rock? Is there no hint of humour in the foolish virgins, or the unjust steward, or the camel who finds it impossible to get through the eye of a needle, or the comparison of the speck of dust and the great beam in the eye, or the picture of wicked old Tiberius getting back the penny with his ugly old face on it, or the mustard plant likened to a tree, or the trade unionists who complain at the end of the day that someone else has got by with only an hour's work for the whole day's wage? Once one reflects about this, the picture of Jesus suddenly comes to life. The tragedy of the Cross was not that they crucified a melancholy figure, full of moral precepts, ascetic and gloomy. He was not John the Baptist, and the Baptist acknowledged this. What they crucified was a young man, vital, full of life and the joy of it, the Lord of life itself, and even more the Lord of laughter, someone so utterly attractive that people followed him for the sheer fun of it, someone much more like the picture of

Dionysus in a Greek mosaic than the agonized and broken figure in a medieval cathedral, or the Christos Pantokrator of an orthodox monastery. The man of sorrows acquainted with grief was in himself and before his passion utterly and divinely joyous. The twentieth century needs to recapture the vision of this glorious and happy man whose mere presence filled his companions with delight. No pale Galilean he, but a veritable Pied Piper of Hamelin who would have the children laughing all round him and squealing with pleasure and joy as he picked them up.

When I am asked about the utility of Christianity I must point to the consolations of living your life in the companionship of this person who commands your love and adoration precisely because having been through it all and sympathizing with it all he cheers you up and will not have you sad. Your shame at your own misdoings, and shortcomings, your sense of awe and fear of the divine majesty, your broken heart in the presence of sickness and bereavement melts in the presence of this person into the sheer wonder and delight which the happiness of his presence excites. The empty shrine shows the negative virtue of monotheism. Its counterpart is the magical personality of the most lovable young man that was ever born of woman and walked the earth.

There is a third consolation of Christianity about which I am reluctant to write because it is both intimate, and therefore embarrassing, and difficult to explain, and therefore unconvincing. I will call it the consolation of the indwelling spirit. My ancestors who, until one was excommunicated for marrying a Church of Ireland parson's daughter, were Quakers, would have called it, I think, the inner light.

There are two sides to this, the life of prayer and the life of conscience. I will describe the latter first. I know I must have shocked, perhaps even scandalized, many people by writing first that Christianity did not in fact create a new morality or seek to override the morality of the Decalogue or the Old Testament prophets, or indeed morality generally as thought out and practised by the common conscience of mankind, and, secondly, that God does not in the ordinary course tell you what to do in a given situation, but that on the contrary he actually wishes you to work out your own salvation according to the talents and the intelligence he has given

you. This doctrine would indeed be shocking were it not for three interrelated qualifications to which I will now give some attention.

The first is that, though the Sermon on the Mount does not in fact create a new morality overriding the old, it does create a new dimension to the existing morality by pointing out the importance which the motivation by love, or its opposite, hatred, has on the determination of human conduct, both by influencing what men actually do and in determining the moral value of what they do even when they appear to do the same thing. The corrosive importance of hatred and bitterness in human affairs, the sublime effect of generosity and self-sacrifice, the dangerous nature of the predatory instinct, are not directly related to moral or immoral conduct in the sense that everybody who hates his neighbour kills him, or that everybody who lusts after his neighbour's wife goes to bed with her, or even that everyone who does a generous act or patiently puts up with injustice acts wisely or rightly. But the influence of these motives on human conduct and human worth is the point which is being made.

The second thing is that anyone who has decided to take the Christian life seriously will begin by questioning himself seriously about his own life and conduct, and will begin to think furiously about the value judgements of right and wrong, virtue and vice which he has been making. He will become a man who suddenly and persistently develops a sort of craze for virtue, as a child will develop a passion for collecting stamps, or a young man or woman develop a feeling for music or pictures. He will want to know much more about the nature of virtuous living than the ordinary people he sees around him. He will begin to study the Bible, Old Testament and New, with a fresh interest. He will go to church and hear sermons and take part in the acts of worship which, almost all of them, contain new and absorbing insights into the whole content of a serious and Christian life. Thus, although Christianity only develops thoughts and insights which are asserted elsewhere, though perhaps with less inspiration than in the Christian literature, he will, as he goes on, acquire an understanding of virtue and morality which is infinitely more cultivated, coherent and sensitive than that of the average man, and will penetrate much more deeply into the subject.

Christianity will make him a new man. Though it will not teach

him a morality which differs from the value judgements of others, it will develop the natural moral sense with which all men are endowed exactly as the study of music will develop the natural appreciation of musical sounds with which all or most men are endowed.

At this stage I must say something about the life of prayer which, to my mind, is crucial to the whole matter. I do so with great hesitation because I am extremely conscious of the fact that I am a very bad prayer (I mean a man who prays) indeed. I am not even in the gifted-amateur class. I lack both the concentration and the perseverance which a good exponent of the art will need to show. My prayers are only too apt to be mere repetitious formulae, or naïve and childish orisons of the God-bless-Mummy-and-Daddy variety. If they were not, I would, no doubt, have become a very much better man than I am. What I say, therefore, is only worth writing down to the extent that it may help people who know even less than I do, how a beginner may think about the subject sensibly.

The first point to make is that once you have come to the conclusion that there does exist a Person or rather an Entity transcending Person at the heart of the universe some sort of prayer life is inevitable, and automatic. It is unthinkable that, having reached this point, one should not at least attempt to communicate. When one does seek to communicate one finds at once that one's first thought is not to ask for something. Endless articles are written about the question whether prayer is answered as if prayer was a sort of spiritual penny-in-the-slot machine which would automatically deliver a bar of chocolate every time one operated the machinery, or a sort of letter to Father Christmas which one posted up the chimney. But, in point of fact, it does not happen like that at all. Indeed, half the time I find my prayers are wholly wordless. It consists in a sort of feeling of spiritual sunbathing, turning oneself towards the spiritual light and allowing it to revive the spirit, like the sunlight on a flower, or a mother's smile on the child. Of course, this does not happen every time. There are terrible periods of emptiness and darkness. But it happens sufficiently often and it is sufficiently real to be infinitely worthwhile. There are moments of simple adoration and thankfulness for all the beauty and glory in the world, the goodness of other people. There are moments of horror at the

suffering of men, of agony at one's own suffering, of misery and self-accusation at one's past misdeeds or present inadequacy. Ask for things? Why, yes, of course. Obviously if one's mind is troubled about this or that, when one collects one's thoughts and submits oneself to the presence of the Divine, the desire of one's heart comes bubbling forth. There is no difficulty about that. It may be this or that. It may be comfort for oneself that one wants, or something good for somebody else. It may be a purely material good. It may be relief from pain or sorrow. It may be courage or endurance that is needed. The important thing is to hold it up to the light and submit it to the Divine presence and the Divine power. Words come if words are needed, but a great deal of what one does when one is praying is wordless. Moreover, if like me you find concentration and long bouts of prayer impossible or difficult, it is much better to make no bones about it. Little and often has much to be said for it. There is no difficulty about praying in a motor car or in a railway carriage or, for that matter, in the dentist's chair. There is no particular posture in which prayer is impossible, although a regular spell of kneeling twice a day in a closed room with no one else about is obviously desirable. The important thing is not to agonize about it, but to do whatever comes naturally, and I find it does come naturally if one does not try to force it. If by any chance one finds that there are too many distractions, or if, for any reason, one discovers as frequently one does that one is not aware of any subjective feeling of the Divine presence, it is better not to worry, but not to desist. Regular habits in prayer are essential only because there are these long periods in which the Divine presence seems to be withheld, and in which nonetheless some act of submission to the Divine will seems necessary and called for. Otherwise as and when the thought comes to one is often the best time and occasion. Each man must be his own teacher in such matters. I know of no other way, and no guarantee of success. All I can say to those who have given up the habit of prayer is that they should try to resume it and go on trying.

Before I move to the social utility of Christianity there is one other point I feel bound to make concerning its utility to the individual. More than once in my life I have had cause to reflect on the wisdom of the Greeks embodied in one of the two inscriptions inscribed in Apollo's shrine at Delphi. *Meden Agan* - nothing too

much; everything in moderation. There is some reason to think that the Greeks had more need of this advice than most people. Their ebullient spirit was forever boiling over into different varieties of excess. To some extent, I believe, a Christian is more easily able to be proof against excess than the ebullient Greek of pagan times. He is bound to regard, to adopt Kipling's phrase, those two impostors, triumph and disaster, with some degree of caution. I do not use the phrase Stoicism, because I do not think the truly Christian attitude to either is properly one of the indifference prescribed by the Stoic philosophy, and because it seems to me that all the pagans missed the significance and failed to appreciate or perhaps even identify the Christian virtue of humility. Nonetheless I believe that the Christian religion does to some extent proof the believer both against excessive elation at success and undue depression at what is called failure. It is in fact a specific both against arrogance and against bitterness and despair. No Christian dare think of himself as a success if he contemplates seriously any of his shortcomings. Equally no Christian will think of himself as a failure if he reflects upon the love of Christ for himself.

I am moved at this stage to add a footnote about suicide. I had thought of remaining reticent on the subject, but I am impelled to write about it in the hope that at some time someone will read, and heed, my words. My dear brother Edward committed suicide, and there is a sense in which I have never recovered from the blow. He was in every way a delightful person, brave and talented beyond the lot of man. He rowed for Leander, was President of the Oxford Union, earned and received a Double First, was M.P. for Eastbourne, the author of at least one best-selling book, and a rising member of the Bar. He could not have failed, had he lived, to play an important, perhaps even a decisive, part in the history of the country. He killed himself one spring day in our home in Sussex with my 20-bore shotgun which, when I had been a little younger, had been my most prized possession. I will not waste time discussing what led him to do it, except to say that the last phase was insomnia, or to say why I have never failed to blame myself without mercy for my failure to prevent him doing it. I only write this in order to express my profound and passionate conviction that suicide is always wrong if only for the misery it inflicts on others. Bereavement is one thing.

The pain at bereavement is the price we pay for love, and high as that price is, it is not one which one grudges paying when bereavement is suffered. But bereavement by suicide is something altogether different and leaves an incurable wound. If only Edward had known the pain he was inflicting on us all who were left behind, and the ceaseless and incurable self-condemnation we all felt so that even now forty years later I cannot bear the burden of it, he would never have done what he did and, if by reading this some other unhappy family may be saved from woe so intolerable, this book will not have been in vain. As it is, Edward is in the hands of God, and no doubt he is wholly forgiven, since if our poor natures can wholly forgive him as we do, how much more will the infinite compassion of the Saviour take him to his arms. But suicide is wrong, wrong, wrong, and Christians were amongst the first to recognize the fact. Their spiritual insight is to be recognized as among the proofs, as well as the consolations, of Christianity.

The Social Utility of Christianity

Having now discussed the subjective value to myself of Christian belief and practice, I would like to point out its relevance to the establishment of a civilized and ordered society. In doing so, I am putting Christianity and the system of belief it offers as one amongst a class of world religions. Many of the advantages I claim will be common to one or more of these other religions. Some perhaps are offered by Christianity alone or by Christianity to a greater degree than others. For the purposes of the present discussion, I do not mind which is which. I am engaged on an exposition of my own beliefs. For reasons I have already given, I am strengthened and not weakened in my own beliefs if and in so far as I find that they are not in fact unique but are shared by other representatives of civilized mankind.

The origin of civil obligation has long puzzled political philosophers. We did not choose to be born. Yet each child born into the world finds himself growing up in a system of authority among people who claim to exercise authority over him. At first these are parents, or those who happen to be in the position of parents. From time to time other authorities obtrude themselves on his notice, more especially the political authorities of the society he lives in, whether they are known by a specific name such as King, or by some generic title such as the State. The common characteristic of them all is that they demand allegiance and respect even though the man or woman has not chosen them himself and does not agree with what they propose to do with him. This, stated otherwise, was what Rousseau had in mind when he propounded the paradox that though

born free (I do not know what he meant by this, since it is evidently false) man was nevertheless everywhere in chains (a proposition which, even when he wrote, was at the best a gross exaggeration). His own, and subsequent, attempts to justify or rationalize a political philosophy manifestly failed. There never was a social contract of the kind he envisaged, and, if there had been, it would never have been binding on any save its original authors. The real problem is to justify the use of compulsion by one human being or one human group on another. The utilitarian principle - the greatest happiness or good of the greatest number - clearly provides no answer, since it makes no allowance for the rights of the individual. Participation in the machinery of government by the individual provides no answer since his own will can always be overridden by more powerful or more numerous neighbours. Majority rule provides no answer since majorities can be and often are wrong and as tyrannical as minorities or individuals. What is needed is an explanation of rights which are universally acknowledged to exist both in the individual and the State, and some guidance of what these rights are and what is to happen when there is a conflict of interest. Originally, and until it was seen to be nonsense, the divine origin of society, and of its titular head, was taken for granted, except by a rebellious minority. It never had any intellectual justification, but at least it asserted what everyone knew to be true, namely the individual had rights and the State, in whatever form it had developed, also had rights over him.

It is worthwhile saying at the outset that the problem only arises to those who recognize both propositions. To those who maintain that the King, the majority, the class, the party, the Union is answerable to nobody, or 'only to God', which for this purpose means the same thing, or to those who maintain, at least in theory, the desirability of a purely anarchical society there can be no problem. This is why, on the whole, the nature of civil obligation has been more debated in the West, where there is a long tradition of freedom and a respectable jurisprudence even under authoritative governments, than in the East, where the will of the ruler has been more constantly asserted and the right of the conqueror more frequently accepted.

In the end, however, if we are to seek for a rational explanation of things this is a problem which demands a rational exposition.

My thesis is that Christianity offers such an explanation and the philosophy of the universe which it implies is in fact part of the explanation which it offers.

The answer lies in two propositions about the nature of man. The first is that he is the possessor of free will, that is, he really can, within limits, originate new action, and is thus a first cause. The second is that the value judgements which he makes, and in particular the value judgements about morality and justice, are not mere emotional noises but have an objective validity about which reasoned argument can turn and which respond to something real rooted in the nature of humanity and in the universe itself. There could be no place for law, nor for the sanctions of law, nor political authority if training a man were not different in principle from training a dog or donkey. No doubt there could be sticks and carrots, and in that sense rewards and punishments. But there could be no appeal to reason, and none to justice. There would be no such thing as justice. It is only in a world in which there is morality, and that morality is binding on rulers and ruled alike that there is any room for a jurisprudence in the true sense of the word. This is the world which is asserted by religious belief, and in particular by the world religions. It is, I believe, for this reason that any attempt by the politician to drive religion out from his philosophy has always led to one thing, which is man's almost total inhumanity to man. In the end the utilitarian and individualistic philosophies of the nineteenth century led to the 'wail of intolerable serfdom' spoken of in Disraeli's novels. I need not say to what the collectivist philosophies of the twentieth century have led. The fires of Belsen still stink in our nostrils, and the oppressions of Communism, or the criminal lunacies of the lesser dictatorships, still exist in too poignant a form. It is a belief in man as a creature made in God's image, to use the poetic language of the Old Testament, which forms the protection of man from the extremities of indifference or oppression. It is the objective validity of morality as proclaimed by the sages of all nations which explains and justifies the perpetual tension, the endless dialogue, between individuals and minorities on the one hand and the State on the other, between freedom and authority, between liberty and law. In other words it is the free will and the rationality of the individual, the dignity of the individual, in tension with the

moral responsibility of the individual which explains and justifies the writings of the political authors, the debates in Parliament, the regulations made by Ministers, the treaties concluded between sovereign communities, the demand for freedom, and the necessity for law which constitute the history of the West, and ultimately of all mankind. The fact that these things are not measurable, calculable, or verifiable explains much, perhaps all, of the argument. But the fact that they remain objective realities proves that the argument is not about nothing. A law which does not appeal to the rational in man is no better than a stick or a carrot applied to a donkey, by whomsoever or whatsoever it is passed. A liberty or a civil right which does not explicitly or implicitly recognize responsibility to a morality which transcends the right is a mere arrogant assumption, based on selfishness and nothing else. Law and freedom are, therefore, not enemies but friends, not opposites but co-ordinates in a world in which man is a responsible creature with free will and a reason capable of understanding the difference between good and bad. Only, I believe, the world religions, of which Christianity is the one I am discussing, provide a rational working hypothesis of what this is all about.

I am aware, of course, that this bears only indirectly upon humanism, which was the fashionable doctrine opposed to Christianity, indeed to any religious view of the world, in the 1960s, though I fancy that it has fewer adherents in the harsher and more unforgiving climate of today. I am myself in one sense a humanist in political matters. The very word brings back memories of the Renaissance of classical culture which ushered in the modern world. I do not regard humanism in itself as hostile to Christianity. Erasmus, the first of the Renaissance humanists, was also the author of devotional literature, and died in the bosom of the unreformed Catholic Church. In its original meaning, humanism, it seems to me, brought back an element of much-needed common sense into the aesthetics, morals and politics of medieval Christianity. Amongst other things, it taught that, whatever other relationship there may or may not be between law and morality, a direct correspondence there cannot be. In its nature, law is concerned with the social consequences of external behaviour. It is limited by public standards, by the available methods of enforcement, by the need to reconcile

divergent social goods. With many of these practical limitations morality is not concerned, or not concerned in the same way, whilst, by contrast, morality is concerned a great deal more with motivation than with consequences and more with individual virtue than with its effects. But in so far as humanism purports to pretend that it can do without religion altogether in the social, the moral, the political, or even in the aesthetic field, I think it fails completely to carry conviction. To begin with, it seeks to operate without a metaphysic of any kind and, for reasons I have already discussed, I consider the possession of some metaphysical beliefs unavoidable if we are to hold a rational view of the universe. Moreover, although many of the propositions or values of the humanist are either founded on Christian ethics or indistinguishable from them, the failure to offer any rational philosophy which renders their practice reasonable tends to make humanism an ethic of enlightened selfishness, suitable for the well-to-do, but unsuited to conditions of adversity wherever these are to be found.

When it comes to establishing ethical rules which are consonant with the dignity of man and his spiritual longings, I find humanism sadly lacking. I have never myself underwritten the traditional Roman Catholic teaching on divorce, contraception, or abortion in its entirety. But each in its own way is admirable; if for nothing else, in its unswerving assertion of the dignity of man, and his profound need to behave in a dignified, devoted and un-squalid fashion. Take abortion, for instance. Common lawyers have never taken the view that the child within the mother's womb is to be treated as possessing exactly the same rights as a separate human being with an independent existence. If they did, it would follow that the termination of a pregnancy, even to save a woman's life, is juristically the same thing as the murder of a child. But at the other end of the scale, I find it impossible to deny that the embryo in the mother's womb is a form of human life and, as such, to be revered both by the mother herself and by the doctor who treats her. It is quite another thing again to seek to define the circumstances in which the termination of a pregnancy is a crime, when it is a sin, and when it is permissible as the lesser of two evils. I do not seek here to answer these questions. But I cannot answer them without taking into account the holiness and worshipfulness of human life, whether in the mother

or the unborn child, and, in so far as humanism leads one to treat human beings as if they were just animals and nothing more or, for that matter, to treat animals as if they were just chattels and nothing more, it seems to me to fall down precisely because it degrades humanity and even animal life in the proper scale of values. Human beings are both other than animals, and despite their animal nature more valuable than animals, just as animals are both other than and more valuable than mere chattels despite their physical and material nature. In so far as humanism asserts the importance of this world in morality and art and ethics and politics, I find myself its ally. One should not be for ever looking over one's shoulder to consider one's prospects in the next world, still less to consider the next-worldly prospects of others. But in so far as humanism seeks to exclude from any practical conclusions in life's conduct a religious outlook, or to limit itself to a view of human beings or animals which does not allow for a religious outlook, I find it wholly wanting, and its failure seems to me to be complete, both in the philosophical field and in its inability to cope with the practical aspirations of the average man and woman. I am fortified in this view by what seems to me the total failure of humanists to agree among themselves about any coherent or constructive view of ethics or social policy to put in the place of the traditional values which they have been so eager to dispute. The sparrow falling to the ground, the rabbit in pain and terror in the field, the child in agony and fear, the old man in loneliness and despair, the maimed body, the tired spirit, need something more than humanism to explain their significance. They need an insight into the divine, and the love of a Divine Creator. Humanism by itself has never redeemed mankind from sin or despair, offers no explanation why, in acting morally, men are also acting rationally, and provides neither explanation nor excuse for the exercise of political authority. In so far as humanism exalts the nature and destiny of man I am with it all the way. But in so far as it debases man to a mere bundle of wants and satisfactions, I find it unworthy of the name of humanism, because it fails to understand the true nature of the humanity it professes to serve.

**THE DEVELOPMENT OF CIVIL TRIAL BY JURY
IN ENGLAND AND THE UNITED STATES IN LIGHT
OF LORD HAILSHAM'S *HAMLYN REVISITED***

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Return to Hamlyn: An Introduction

As Lord Hailsham of St. Marylebone delivered the Hamlyn Trust lectures in May 1983 at Lincoln's Inn,* he stated as his purpose "to face squarely" the problem presented by the foundress' bequest. Miss Hamlyn, in her will had sought to effect

The furtherance of lectures or otherwise among the Common People of [this country] *the United Kingdom of Great Britain and Northern Ireland* of the knowledge of the Comparative Jurisprudence and the Ethnology of the chief European Countries including [our own] *the United Kingdom* and the circumstances of the growth of such Jurisprudence to the intent that the Common People of [our country] *the United Kingdom* may realize the privileges which in law and custom they enjoy in comparison with other European Peoples and realizing and appreciating such privileges may recognize the responsibilities and obligations attaching to them.¹

Miss Hamlyn's bequest dated from 1939, her death occurring in 1941 while her country was fighting for its very survival. Yet

Miss Hamlyn wrote her bequest in a triumphalist mood. Let my lecturers, she says, tell the Common people of the United Kingdom what privileges they enjoy and responsibilities and burdens they undertake by the simple fact of being British. Let

* Dean Montgomery attended these lectures while reading for the English Bar and met Lord Hailsham personally. The lecture room at Lincoln's Inn was the historic Old Hall, containing Hogarth's impressive painting of "Paul Before Felix" (1748), based on Acts 26.

1. Lord Hailsham, *Hamlyn Revisited: The British Legal System Today* xxii (1983).

them study the ethnology and institutions of Europe... and compare their institutions and jurisprudence with our own, and they must see how lucky they are to be British and what a serious responsibility is therefore imposed on us who enjoy the privilege.²

Although the first Hamlyn lecturer, Mr. Justice Denning, (as he then was) "echoed" the triumphal mood of the bequest, subsequent speakers have regarded its tone with "growing scepticism". Some of the lecturers took "refuge in byways, sometimes of considerable sophistication."³

It was then for Lord Hailsham, as the thirty-fifth Hamlyn lecturer, to retrieve for the foundress what lay all but abdicated. He sought to reassure her "shade", waiting by the river Styx, that Great Britain is

still a happier country to live in than any other, or than almost any other, in the world and that those who might challenge successful comparison with ourselves are precisely those who resemble us most closely.⁴

But then he proceeded to prepare her shade for a series of shocks.

So much has changed since she spoke from death in 1941 that I am sure she would wish the case to be restated along the whole front for the "Common People" in 1983, and she will find, of course, that the context in which these lectures now have to be delivered is so different that many of the assumptions implicit in the original bequest must be enlarged, examined, revised, and turned before we can ask the Common People to accept the lesson which Miss Hamlyn wished them to learn.⁵

2. *Id.* at 1-2.

3. *Id.*

4. *Id.* at 4.

5. *Id.* at 5.

The shocks of which Hailsham spoke comprised everything from the ethnology of the United Kingdom — the heterogeneous composition of the Common People themselves — to developments within the concept of law and order. And yet perhaps the issue that presents the greatest contrast between the England of the past and that of the present relates to due process of law. "... whatever the causes, English law is a totally different thing from what it was when I was called to the Bar in 1932 and what, no doubt, in 1941 Miss Hamlyn still considered it to be."⁶

It is noteworthy that the single issue of due process presenting the greatest distinction between English and American procedural law is doubtless that of the civil jury. In Great Britain, use of the jury in civil trials has all but disappeared. In the United States, juries are called in the overwhelming majority of civil actions. Lord Hailsham acknowledged this disparity as he concluded a synopsis of the history of trial by jury:

Most of this elaborate system was still intact when the Great War broke out in 1914. Most of it still remains intact in the United States, that great museum of discarded English legal forms. ... But in England, apart from a few cases of fraud or defamation, the civil jury is almost a thing of the past, and the great race of civil jury advocates which sustained the reputation of the English Bar from Erskine to Walter Monckton is extinct as the dodo.⁷

G. D. Nokes has remarked that "perhaps the most astonishing contrast between the two countries is that the jury remains a flourishing institution in America, while its use has been continuously lessening in the country of its early development."⁸ And Jerome Frank observed that

6. *Id.* at 37.

7. *Id.* at 38.

8. G. Nokes, "The English Jury and the Law of Evidence", 31 *Tulane L. R.* 153, 155 (1956).

... even before World War II, [the jury] was seldom employed in civil suits, was abandoned in criminal prosecutions except for major crimes, and even there was, and is, used decreasingly. Surely that attitude in England, the birthplace of the modern jury, should give us pause.⁹

In the present essay we shall indeed pause to consider this fascinating topic of comparative Anglo-American jurisprudence. But before attempting a value judgment on the civil jury, let us set the stage by a brief historical overview.

History of Trial by Jury

As to the origins of trial by jury, we are unfortunately denied universality of agreement. John Pettingal believed that the jury concept of the Ancient Greeks — consisting of the Areopagus, the Ephetae, and a general assembly of Athenian citizens — was brought in part to Rome around 451-450 B. C. According to Pettingal, the Roman system "provided for judices (the jurors) who were chosen once a year to try criminal cases."¹⁰ After challenges by each side, fifty-one remained to decide the case. "The Roman judices determined the guilt or innocence of the accused, resolving both questions of fact and of law and could acquit or condemn regardless of the evidence."¹¹

Pettingal contended that when the Romans "under the rule of Claudius . . . reduced England to a province, they brought their form of the jury with them."¹² Although such an early account of the introduction of the jury to England is discredited by most serious historians, "the possibility of a residual Roman influence is

not entirely discounted."¹³ Frank, while maintaining that accord had eluded historians on this topic, could write that "many of them say that the germ of the modern English jury is to be found in 9th century France, . . . perhaps borrowed from 5th century Roman procedure."¹⁴

The germ found in Carolingian France was the "inquisitio," an institution established by Charlemagne for the resolution of disputes in which the sovereign had an interest. Heinrich Brunner described the inquisitio in this manner:

Its distinctive feature consists in the fact that the judge may summon, at his discretion, a number of men from the neighborhood in whom he can assume a knowledge of the matter in question, and demand from them the promise to declare the truth upon the question to be submitted by him. After the promise comes the judicial putting of the question, "Inquisitio."¹⁵

In this form of trial, "the jurors themselves were the witnesses and they were the mode of proof, as they were in the ordeal, deed, or compurgation."¹⁶ According to Holdsworth, it is the inquisitio "which is the root from which the English jury springs."¹⁷ Both he and, later, Moore ask us to remember Maitland's definition of the early English jury: "a body of neighbours summoned by some public officer to give, upon oath, a true answer to some question."¹⁸

Most theorists maintain that the Carolingian inquisitio was

13. *Id.* at 4.

14. Frank, *supra* note 9, at 108.

15. Moore, *supra* note 10, at 13-14.

16. *Id.* at 14.

17. W. Holdsworth, 1 *A History of English Law* 312 (rev. ed. 1971).

18. *Id.*

9. J. Frank, *Courts on Trial* 109 (1949).

10. L. Moore, *The Jury* 3 (1973).

11. *Id.*

12. *Id.*

adopted by the Norsemen who raided the northwest coast of France in the latter half of the ninth century. As the province was essentially "assigned" by the Frankish throne to the government of the Normans, "we can further assume that they substantially adopted the customs of the Franks, including law, faith and language."¹⁹ Moore accepts Brunner's conclusion that "the tradition of the Frankish jury had considerable influence on the courts of William the Conqueror in the following centuries."²⁰ The development of the inquest required strong central government. This authority could be found on the continent only in Flanders and Normandy, while it had not appeared in England under the Anglo-Saxons.²¹

Other legal historians contend that the English jury developed initially in Scandinavia, and that its presence on the British Isles was due largely to the legislation of the two Aethelreds. While Professor G.W. Keeton holds this view,²² Holdsworth discounts it. He writes:

Some of the Scandinavian nations seem to have evolved an institution which was something like a jury. But, if we except the passage about the accusing thegns in Ethelred's law there seems to be nothing in the Anglo-Saxon laws, secular or ecclesiastical, which suggests a jury.²³

Holdsworth concluded that

... though there may be more than one possible origin for the jury, though England may have been prepared for its introduction, it was definitely introduced by the Norman kings.²⁴

19. Moore, *supra* note 10, at 17.

20. *Id.* at 17-18.

21. *Id.*

22. G. Keeton, *English Law* 100-101 (1974).

23. Holdsworth, *supra* note 17, at 313.

24. *Id.*

This argument has endured at least since the time of Sir William Blackstone.²⁵

It is plain in any case that within a century of the Norman invasion, something similar to the modern jury was suggested by the Grand Assize, an enactment of Henry II.

It was intended to give a person whose possession of land was challenged (the tenant) the alternative to put himself on the Grand Assize (an inquest of four knights and 12 neighbors) or to decide the issue with a duel.²⁶

In the situation where the relationship to the land was disputed, the matter was set before the neighborhood, or vicinage, whose decision was final.²⁷ The knights elected the recognitors, after which the twelve were summoned "... to appear in court, prepared under oath to declare, which of them, namely, whether the tenant, or the demandant, possesses the greater right to the property in question."²⁸ This system provided a means and a remedy of which men could and did "avail themselves . . . , avoiding the illogical and dangerous trial by battle or compurgation of the local courts for the new method of trial which Henry made available."²⁹

In addition to the Grand Assize, the possessory assizes applied jury procedure to issues of "the ownership and possession of land."³⁰ The royal prerogative was in no way being

25. W. Blackstone, 3 *Commentaries on the Laws of England* 349-350 (1768).

26. Moore, *supra* note 10, at 38.

27. *Id.*

28. *Id.* at 39.

29. W. Walsh, *History of English and American Law* 83 (1926).

30. Holdsworth, *supra* note 17, at 314.

divested of the crown; rather, as Glanville remarked of the Grand Assize, it was a "certain royal benefit bestowed upon the people, and emanating from the clemency of the Prince."³¹ Keeton observes that the reign of Henry II is notable in that "the ordeals and trials by battle were superseded by the gradual extension of the jury or inquest to legal procedure of all kinds."³²

The Magna Carta, in part, offered impressive testimony to the success of the possessory assizes. The assizes evidently "took business from the feudal courts; but so far were the barons from wishing to see them abolished that they demanded their frequent session."³³ The Great Charter is generally claimed to be the document by which trial by jury was effected, but it had greater significance for the use of jury trial in criminal prosecutions.

Out of the original assizes grew the entire system of trial by jury as we now know it. As has been mentioned, the jurors, or recognitors, were initially witnesses of fact. The transition from this system to our present system, wherein the jurors were to possess no knowledge of the facts other than that gained in the trial itself, began in the reign of Edward III.³⁴ Yet, according to Walsh, even in the seventeenth century, "juries were still supposed to decide on facts within their own knowledge, though not testified to on trial."³⁵ In *Bernet v. Hundred of Hartford*, Styles, 233 (1650), "the court said that a juror with special knowledge of the facts should be examined openly in court, not privately by the other jurors."³⁶ This case set the proper perimeters for the future,

creating the ideal (not always followed) that jurors are to be judges of the facts rather than witnesses to the facts.³⁷

The right to trial by jury in the American colonies was provided in both the First Charter of Virginia and the Massachusetts Body of Liberties. Trial by jury in the colonies ran essentially parallel to that in England. However, "during the colonial period the jury became a symbol of rebellion against the Crown and a bulwark in favor of democracy."³⁸

The Declaration of Independence objected to the Crown's use of the judicial forum for its own ends and declared that the colonists were justified in separating from the mother country *inter alia* because of England's "depriving us, in many cases, of the benefits of Trial by Jury."³⁹ The original draft of the Federal Constitution provided for trial by jury only in criminal trials in federal court cases.⁴⁰ The right to jury trial for criminal prosecutions was set out in detail in two Amendments of the Bill of Rights, while the attendant right to civil trial by jury was extended in the Seventh Amendment.⁴¹

It is important to realize that these particular Amendments apply to federal court trials only. Later, when it was realized that the Federal government must maintain some control over the corresponding legal actions of the individual states, the Fourteenth Amendment was added.⁴² The Supreme Court has interpreted

37. *Id.*

38. R. Simon, *The Jury: Its Role in American Society* 5 (1980).

39. *Fed. Code Ann.* (U.S. Const. vol) 7.

40. *U.S. Const.* art. III, 2.

41. *U.S. Const.* amend. VI, VII.

42. Bloomstein, *supra* note 34, at 27.

31. Moore, *supra* note 10, at 39.

32. Keeton, *supra* note 22 at 67.

33. Holdsworth, *supra* note 17, at 56.

34. M. Bloomstein, *Verdict, The Jury System* 17 (rev. ed. 1972).

35. Walsh, *supra* note 29, at 493.

36. *Id.*

the due process clause of this Amendment to apply to all state prosecutions.⁴³

Although the jury trial safeguards of the Bill of Rights apply directly only to the federal court system, every state constitution has provided for jury trial in one manner or another.⁴⁴ The character of trial by jury in this country, then, is defined by both the Sixth and Seventh Amendments and the constitutions and statutes of the fifty states.⁴⁵

In England, during the century following the American Revolution, confidence in jury trial was on the rise.⁴⁶ A libel bill, enacted in 1792, presented juries with "an absolute right to de-

43. Simon, *supra* note 38, at 6.

44. *Ala. Const.* art 1, 6, 11; *Alas. Const.* art I, 11, 16; *Ariz. Const.* art 2, 23; *Ark. Const.* art 2, 7; *Cal. Const.* art 1, 7; *Colo. Const.* art 11, 23; *Conn. Const.* art First, 8, 19; *Del. Const.* art 1, 4, 7; *Fla. Const.* art 1, 16, 22; *Ga. Const.* art 1, 2-105; *Hawaii Const.* art 1, 10, 11; *Idaho Const.* art 1, 7; *Ill. Const.* art 1, 13; *Ind. Const.* art 1, 13, 20; *Iowa Const.* art 1, 9, 10; *Kan. Const.* Bill of Rights 5, 10; *Ky. Const.* 7, 11; *La. Const.* art 1, 9, art 7, 41; *Me. Const.* art 1, 6, 20; *Md. Const.* Declaration of Rights art 5, 21; *Mass. Const.* pt 1, art XV; *Mich. Const.* art 1, 14, 20, art 4, 44; *Minn. Const.* art 1, 4, 6; *Miss. Const.* art 3, 26, 31; *Mo. Const.* art 1, 18 (a); *Mont. Const.* art III, 16, 23; *Neb. Const.* art 1, 6, 11; *Nev. Const.* art 1, 3; *N.H. Const.* pt 1, arts. 16, 20; *N.J. Const.* art 1, 9, 10; *N.M. Const.* art II, 12, 14; *N.Y. Const.* art 1, 2; *N.C. Const.* art 1, 24, 25; *N.D. Const.* art I, 7; *Ohio Const.* art I, 5, 10; *Okla. Const.* art 2, 19, 20; *Ore. Const.* art I, 11, 17; *Pa. Const.* art 1, 6, 9; *R.I. Const.* art 1, 10, 15; *S.C. Const.* art 1, 18, 25; *S.D. Const.* art VI, 6, 7; *Tenn. Const.* art 1, 6, 9; *Tex. Const.* art 1, 10, 15; *Utah Const.* art 1, 10, 12; *Vt. Const.* art I, 8, 11; *Wash. Const.* art 1, 21, 22; *W. Va. Const.* art 3, 13, 14; *Wis. Const.* art 1, 5, 7; *Wyo. Const.* art 1, 9, 10.

45. A. Ashman and J. McConnell, "Trial by Jury: The New Irrelevant Right?", 27 *South Western L. J.* 436, 438 (1973).

46. Moore, *supra* note 10, at 126.

liver a general verdict in libel prosecutions."⁴⁷ In 1837, juries were impanelled to set values in actions of eminent domain.⁴⁸ Divorce and probate matters were tried by jury upon request of the parties as early as 1857.⁴⁹ Moreover, "the jury's jurisdiction was expanded in 1888 when minor civil suits in county courts could be tried to juries upon demand."⁵⁰

The late nineteenth century saw the jury beginning to weaken. Statutes limiting the right to jury trial began to appear, but at first the limitations consisted in no more than giving litigants the right to waive juries in civil courts, such as in the Court of Common Pleas.

The first real turning point occurred in 1883. Through parliamentary legislation, trial by jury would hereafter be ordinarily used only in actions for libel, slander, malicious prosecution, seduction, false imprisonment, and breach of promise. "In other cases, a party desiring jury trial had to request it, the aim being to reduce the number of jury trials necessary."⁵¹ This effect was realized, for in those areas in which a request had to be made, "jury trials fell from 80 percent to 50 percent of the total."⁵²

But still the elaborate system of civil trial by jury, was — to use Lord Hailsham's own expression — "intact when the Great War broke out in 1914."⁵³ As a war measure, jury trial in civil cases was

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 128.

52. *Id.*

53. Hailsham, *supra* note 1, at 38.

restricted to the six causes of action of the 1883 act.⁵⁴ After the war, trial by jury was restored — but its restoration was only temporary. In 1933, the statutory picture was changed by Act of Parliament:

Sec. 1 ... grand juries are hereby abolished. ...

Sec. 6. (1) Subject as hereinafter provided, if on the application of any party to be tried in the King's Bench Division of the High Court made not later than such time before the trial as may be limited by rules of court, the court or a judge is satisfied that —

(a) A charge of fraud against that party; or

(b) A claim in respect libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage is in issue, the action shall be ordered to be with a jury unless the court of judge is of the opinion that the trial thereof requires prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury; but save as aforesaid, any action to be tried in that division may, in the discretion of the court or a judge, be ordered to be tried either with or without a jury:

Provided that the provisions of this section shall be without prejudice to the power of the court or a judge to order in accordance with rules of court, that different questions of fact arising in any actions be tried by different modes of trial, and where any such order is made the provisions of this section requiring trial with a jury in certain cases shall have effect only as respects questions relating to any such charge or claim as aforesaid.⁵⁵

Moore maintains that, whereas nothing within this Act "seems to require the virtual elimination of jury trials, ... that was to be its effect."⁵⁶

54. Moore, *supra* note 10, at 128.

55. *Id.*

56. *Id.* at 129.

From about the year 1939, the overwhelming majority of personal injury cases were tried from the bench sitting without a jury.⁵⁷ In the 1964 decision of *Watts v. Manning*,

reasons considered as rendering juries unfit to try personal injury cases were: (1) the cases were overly complicated; (2) the time and expense were greater with a jury; (3) it was impossible to achieve uniformity with juries; (4) it was difficult to control jury verdict on appeal; and (5) it is improper for the jury to consider the fact that the defendant is insured as this fact often prejudices the jurors.⁵⁸

Judge Salmon, concurring in the *Watts* decision, wrote:

I must confess that, if I were approaching the matter *res integra*, I should have thought the section of the 1933 statute, and the rules passed in pursuance of it, confer an unfettered discretion on the judge to order or refuse a jury as he thought fit. In 1937, this court, ... decided ... that that was exactly what the section did mean.⁵⁹

The *Sims* case, on the other hand, held that juries were not the proper determining bodies for personal injury cases.⁶⁰ "The *Sims* and *Watts* decisions put an end to trials of personal injury cases by juries in England."⁶¹ Moreover, this atrophy of jury trial affected even the Queen's Bench Division where, as early as 1963, less than two percent of the cases heard therein were tried before a jury.⁶²

57. *Id.*

58. *Watts v. Manning*, 2 All Eng. Rep. 267, 271 (1964).

59. *Id.*

60. *Sims v. William Howard and Son Ltd.*, 1 All Eng. Rep. 918 (1964).

61. Moore, *supra* note 10, at 130.

62. *Id.*

In England today, defamation "is one of the remaining strongholds of the civil jury, but the Law Society has recommended that the jury no longer be permitted to fix damages in libel cases."⁶³ In 1971, it appeared as though even libel cases would be compelled to be tried without the benefit of a jury. *The Times*, on March 19, 1971, published a column under the headline, "Profit and Dishonour in Fleet Street." "The article charged certain interests with heartlessly closing down a great newspaper for profit and needlessly bringing unemployment to hundreds."⁶⁴ *The Times* subsequently was sued for libel by the Associated Newspapers Group, the case being reported as *Rothermere et al. v. Times Newspapers Ltd. et al.*⁶⁵

The Times' request for jury trial was initially granted but, on interlocutory appeal by the plaintiffs, the order was reversed. The case was ordered to proceed as a bench trial — the judge sitting alone — on the basis that numerous documents and accounts would have to be examined, this being inconvenient with a jury. *The Times* filed for relief from this order to the Court of Appeal.⁶⁶

The Court of Appeal, by a majority of two to one, ruled that *The Times* was entitled to trial by jury.⁶⁷ Lords Denning and Lawton wrote the opinions of the court. Lord Lawton reasoned:

If the defendants lost their action and heavy damages were awarded against them, the newspaper scene in this country might never be the same again. The reputation which *The Times* had enjoyed for so long around the world for responsible journalism would be badly dented, if not destroyed. The destruc-

tion of its reputation would be the destruction of a national institution. A trial that could have that result should not be the responsibility of one man.⁶⁸

The Court of Appeal denied leave to appeal to the House of Lords.⁶⁹ Moore concludes that "This decision was of immense importance to the limited retention of the civil jury in England."⁷⁰

This, then, was the state to which the civil jury had arrived when Lord Hailsham commented on the system in *Hamlyn Revisited*.

We shall now use Lord Hailsham's critique of the system of civil trial by jury as a *point de départ* for our own.

Answering Specific Objections

Lord Hailsham does not regret the passing of civil trial by jury in England:

Its weaknesses as an instrument of civil justice are known to everyone who has operated it. There is the danger of disagreement, involving a fresh trial, sometimes more than one, with, for the litigants, renewed anxiety and costs thrown away. There is the compromise verdict which necessarily involves injustice to both sides. All civil trials by jury tend, if fought to the end, to last a third longer (at least) than trials before judge alone. We have all known examples of the perverse verdict against the weight of the evidence. There is the tendency of juries to find for a plaintiff and for excessive sums. There is the hazard of good, and bad, professional advocacy unduly influencing the result. In addition there are, or rather there were, the absurdly artificial rules of

63. *Id.* at 136.

64. *Id.* at 138.

65. *The Times* (London), Jan. 24, 1973, at 11.

66. *Id.*

67. *The Times* (London), Feb. 14, 1973, at 14.

68. *Id.*

69. *Id.*

70. Moore, *supra* note 10, at 138.

evidence by which the profession sought to hedge about these weaknesses.⁷¹

Hailsham's fundamental point is thus the jury's "weakness as an instrument of civil justice."

Roscoe Pound, from the American side, observed the same danger. In his epic speech before the legislators and members of the Bar assembled in the capitol building at St. Paul, Minnesota, he observed: "A . . . perennial source of popular dissatisfaction with the administration of justice may be found in the popular assumption that the administration of justice is an easy task to which anyone is competent."⁷² He proceeded to compare laws to the formulas of engineers. He continued:

A layman is no more competent to construct or to apply the one formula than the other. Each requires special knowledge and special preparation. None the less, the notion that anyone is competent to adjudicate the intricate controversies of a modern community contributes to the unsatisfactory administration of justice in many parts of the United States. . . . It is felt in extravagant powers of juries. . . .⁷³

The particular malady of which Pound spoke was the right of juries in certain States to decide law as well as facts. Moore maintains that, even today, there "still exists . . . some narrow areas in which the jury has the right as well as the power to judge law."⁷⁴

71. Hailsham *supra* note 1, at 38-39. See also his recent remarks on the subject in his interview in *Pegasus* 1984 (Inner Temple, London), at 16.

72. R. Pound, "The Causes of Dissatisfaction", 180.

73. *Id.*

74. *Id.* at 181.

Yet the fundamental inadequacy of the jury fairly and rationally to determine the facts has been expressed more directly:

Today, instead of gathering together a group of men who know something of the subject with which they are to deal, we demand as a condition precedent to their ability to serve as jurors, that they shall be totally ignorant of all things which may aid them in arriving at a just conclusion.⁷⁵

Ironically perhaps, as these quotations illustrate, much criticism of the jury trial arises in our own country, while eloquent praise of the jury characterizes much of English legal literature. According to Blackstone,

. . . trial by jury ever has been, and I trust ever will be, looked upon as the glory of the English law. . . . The liberties of England cannot but subsist so long as the palladium remains sacred and inviolate.⁷⁶

In 1903, Lord Halsbury said, "as a rule, juries are, in my opinion, more generally right than judges."⁷⁷ Lord du Parcq, addressing the Holdsworth Club, was more emphatic: "When questions of fact have to be decided, there is no tribunal to equal a jury, directed by the cold, impartial judge."⁷⁸

Hailsham's assertion that civil trials by jury last considerably longer than comparable bench trials perhaps touches the pragmatic heart of the matter. One need only look at a multiplicity of

75. Moore *supra* note 10, at 151.

76. Blackstone, *supra* note 25, at 379, and 4 *Commentaries on the Laws of England* 350 (1768).

77. Quoted in J. Baldwin and M. McConville, *Jury Trials* 3 (1979).

78. *Id.* at 2, n. 5 (Address of Lord du Parcq to the Holdsworth Club, Univ. of Birmingham, 1948).

surveys to see that it is true.⁷⁹ To be sure, court congestion is a complex problem, involving diverse social and political considerations. Moore cites increasing population, and the failure of the public authorities to create new judgeships and court facilities as among the larger causes of court congestion.⁸⁰

The argument relating to perverse jury verdicts suffers from a tendency to place greater emphasis on a judge's opinion of the facts than on the jury's determination. Lord Devlin reminds us of Chief Justice Vaughan's warning in *Bushell's Case*: "A man cannot see by another's eye, nor hear by another's ear, no more can a man conclude or infer the thing to be resolved by another's understanding or reasoning."⁸¹ Devlin comments: "To my mind it is the so-called perversity of juries that justifies their existence. . . . What makes them worthwhile is that they see things differently from the judges. . . ."⁸²

Possible Reasons for the Disparity between the English and American Systems

Every student of the common law recognizes that the English and American legal systems emanate from the same source. Yet, on the one hand, the legal system which originated trial by jury has now largely discarded it, while the system which borrowed trial by jury employs it as its conventional means of resolving disputes.

79. See E. Sunderland, "Trial by Jury", 11 *Cincinnati L.R.* 126-127. Also H. Kalven and H. Zeisel, "The Dignity of the Civil Law; 50 *Virginia L. R.* 1055-1072 (1964).

80. Moore, *supra* note 10, at 169.

81. *Bushell's Case*, Vaughan 135 (1670).

82. Lord Devlin, *The Judge* 131 (1981).

Part of the story, to be sure, may be attributed to historical accident. The English Crown historically has retained unto itself the privileges and prerogatives incident to the sovereign. Dicey, in the nineteenth century, defined the "royal prerogative" as "that gradually diminishing common law residuum of customary authority, privilege, and immunity belonging to the Crown alone." Within feudal England, the sovereign could maintain a right unto itself or, in using the prerogative, the Crown could bestow a privilege previously retained unto itself upon its subjects. Henry II made such a bequest under the prerogative when he established the Grand Assize, the possessory assize, and the assize utrum.

Monarchs found that privileges under the royal prerogative, once devolved by a predecessor, were difficult to retrieve. The *Magna Carta*, "by no means confined to voicing the aspirations of a reactionary feudalism," was intended to regulate "the new machinery of justice."⁸³ All concerned believed that the Great Charter would entrench the rights granted therein, including those of trial by jury in criminal cases and of the assizes.

However, the *Magna Carta* did not entrench the rights expressed. Holdsworth says:

[*Magna Carta*] closes the period during which the law is developed by the power of the crown alone, and it begins the period which will end in the establishment of a Parliament, with power to take some share in the making and development of the law.⁸⁴

Finally, Parliament achieved total law-making supremacy, and to this day no entrenched equivalent of the American Bill of Rights guarantees jury trial in England.

83. Holdsworth, *supra* note 17, at 54-55.

84. *Id.*

Two points in contrast with the American system are worth emphasizing at this point. First, with regard to the royal prerogative, the English may have come to view the bequest of civil jury trial as a mere privilege emanating from the Crown and, later, Parliament. The American colonists, on the other hand, temporarily lost the privilege of jury trial; once rewon, it became a "right" corresponding to "certain inalienable rights." It was natural, therefore, for Americans to entrench the right to trial by jury within their Constitution. Secondly, one should not forget that any enactment by Parliament may be rescinded by a later Parliament. Jury trial in England, believed "sacred and inviolate" by Blackstone, is now but a remnant of its former self. This change was the effect of the 1933 statute and similar ones regarding trials for lesser criminal offenses.

Bloomstein, in his *Verdict: the Jury System*, examines a number of civil law nations that have abolished the jury system. He then asks the question: "Why this ebbing of the jury system?"

Perhaps the answer to this decline of the jury system lies in the fact that in many lands, the government is afraid of the power of the people and takes every opportunity to curb such power.⁸⁵

Yet, this charge cannot appropriately be leveled against England. If one looks closely at the English legal system, one finds that civil liberties (*pace* critics such as Professor Harry Street) are generally held very high.

Certainly, the English judges themselves constitute a good part of the explanation. They deserve the esteem in which they are almost universally held. The unitary court system in England provides a means for the systematic review of the judiciary, and such review assures that English judges maintain the highest standards on and off the bench.

In our country, "while violations of the Code of Judicial Conduct are grounds for discipline in most states, they historically have little impact on the federal level."⁸⁶ Accountability for federal judges is a tenuous thread in the United States, but this is only part of the problem. Sociologically, Americans tend to treat anyone associated with the legal system at any level as suspect, and judges are no exception. Cheap electioneering and political influence have not helped the image of the American bench either.

Finally, Lord Hailsham's comment that the United States is "that great museum of discarded English forms" may give us insight into the nature of the disparity between our systems. There was a time when the common law was a fluid system, when it was more capable of being changed and expanded. Writes Cardozo:

Some judge, a century or more ago, struck upon a path. The course seemed to be directed by logic and analogy. No milestone of public policy or justice gave warning at the moment that the course was wrong, or that danger lay ahead. Logic and analogy beckoned another judge still farther. Even yet there was no hint of opposing or deflecting forces. Perhaps the forces were not in being. At all events, they were not felt. The path went deeper and deeper into the forest. Gradually there were rumblings and stirrings of hesitation and distrust, anxious glances were directed to the right and to the left, but the starting point was far behind, and there was no other path in sight.⁸⁷

He continues:

There are fields, known to us all, where the workers in the law are hampered by rules that are outworn and unjust. How many

86. D. Popeo, "Federal Judges and Accountability: There's No Such Thing", *Los Angeles Daily Journal*, Jan. 23, 1984, at 4.

87. B. Cardozo, "A Ministry of Justice", *Readings in Jurisprudence* 1134 (1938).

85. Bloomstein, *supra* note 34, at 125.

judges, if they felt free to change the ancient rule, would be ready to hold today that a contract under seal may not be modified or discharged by another and later agreement resting in parol? How many would hold that a deed, if it is to be the subject of escrow, must be delivered to a third person and not to the grantee? How many would hold that a surety is released, irrespective of resulting damage, if by agreement between principal and creditor the time of payment of the debt is extended for a single day? How many would hold that a release of one joint tortfeasor is a release also of the others?⁸⁸

Perhaps the American retention of the civil jury is not just antiquarian: Perhaps it reflects the passion of a non-traditional, open, future-directed society to counter the arteriosclerosis built into any developed system of statute law and judicial precedent. In the final analysis, are not juries often the last bastion against juridical injustice? Roscoe Pound made the point eloquently:

Jury lawlessness is the great corrective of law in its actual administration. The will of the state at large imposed on a reluctant community, the will of a majority imposed on a vigorous and determined minority, find the same obstacle in the local jury that formerly confronted kings and ministers.⁸⁹

88. *Id.* at 1136.

89. Quoted in Simon, *supra* note 38, at 6.