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LIBERTY IN AUSTRALIA

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Canberra, A.C.T., 29th to 31st January 1955, by*

W. G. K. DUNCAN

P. H. PARTRIDGE

R. J. F. BOYER

R. I. DOWNING

F. A. BLAND

*with a Preface by L. G. Melville, C.B.E.,
and a Conclusion by Edward Masey*

Edited by JOHN WILKES

*The Australian Institute of Political Science, a non-party organization,
was founded in 1932 to provide educational and research facilities for
people interested in the study of the political, economic and social
problems of Australia.*

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P R E F A C E

L. G. MELVILLE, C.B.E., B.Ec., F.I.A.

Vice-Chancellor of the Australian National University

ONE of the earliest of the Summer Schools of the Australian Institute of Political Science was on "National Economic Planning".* The subject was Planning, but moving uneasily in the minds of most of the speakers was the question of liberty. The issue was raised by the first speaker, Professor Portus, and it recurred throughout the session. No answers were given or at least no answers which received any wide acceptance. That was twenty-one years ago and in the meantime the question has become more insistent, the answer, if anything, more obscure.

It is well, therefore, that the Institute of Political Science should today focus its attention directly on this issue. It is not an easy one. It is perhaps as difficult to answer the question, "What is Liberty?", as it is to answer the question, "What is Truth?" Nevertheless, in the practical business of living we must each of us give some answer to these questions and shape our conduct in accordance with our answers.

Unhappily it also seems to be necessary for each generation to fight for its concept of liberty and democracy even on the battlefield. In the wars of 1914 and 1939 we were no doubt fighting for other things as well as liberty. But faith in our concept of liberty gave us the resolution to resist and brought allies to our aid. In our "cold war" with the Communists the most irreconcilable of our conflicts is over the meaning we each give to liberty and it is this that presents to liberals the greatest perplexity they have had to face in recent times.

The questions we must face and answer seem to point in different directions. Are we to give the privileges of our institutions to those who seek to destroy them? Can we deny

* See *National Economic Planning*, Australian Institute of Political Science, 1934.

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liberty to some and still preserve it for others? Are we to deny a living to communists? And yet, if we give them freedom of entry to the public services and to the governing bodies of trade unions, may they not seek to organize fifth columns and to disclose the secrets of our defences to a hostile power? And how do we protect ourselves against the efforts of the communist in office to surround himself by people of his own political persuasion? Liberals have in the past struggled to free the nation from corruption and nepotism. Are we to have these evils imposed on us again in the name of liberty?

These are difficult questions. I am glad I do not have to answer them. To try to give these answers or to provide some guide to the answers is, as I see it, the task of this School. Puzzled administrators will look to it hopefully.

One of the difficulties is that freedom is a habit of thought and a way of life rather than a set of principles. In looking for principles, dicta such as Edmund Burke's "Liberty must be limited in order to be possessed" give us little practical guidance. Limited—yes, but to what extent and by whom and for whom? In the English-speaking world we vacillate uncertainly between John Locke and Thomas Hobbes; elsewhere people turn to Hegel or to Marx. Where between anarchy and the Hegelian exaggeration of the State do we limit liberty? Since we have no set of principles, we are thrown into confusion whenever we are challenged from the left or from the right. I think there was evidence of confusion in the Referendum of 1951 and confusion is certainly my experience. I look forward in the hope that this conference will provide me with better sign-posts than I have at present. I am not optimistic enough to expect a set of principles to emerge. That has defied philosophers since the beginning and will no doubt defy them until the end.

We must not think that these are academic questions that can be left to philosophers and political scientists. Everywhere liberty is today being limited. By our standards and concepts the limitations are savage in communist countries. But the inroads on the old liberties in the English-speaking world have also been significant. Whatever the reasons, we have less liberty

PREFACE

today than we had in the 1920s and we cannot now, by shutting our eyes, escape a decision. We must decide what limitations we are prepared to accept and what part of liberty we want to preserve. We must also be watchful that in seeking to preserve our liberty we do not lose it. That is our dilemma. If, to be saved we give up our liberties we may have nothing left worth saving, and yet, if we do not, we may be so weakened by treachery from within that we shall still lose all that we have.

One final point before I leave this rostrum to those who know more about the problem than I do: I hope at this meeting we shall not confuse liberty with welfare, as many of us did in 1934, and suppose that freedom from want is a freedom of the same kind as freedom of speech and of thought or freedom from fear.

It is, then, in the belief that the study of liberty is one of the most urgent and most practical of problems that confront this generation that I thank you for the opportunity you have given me to open these proceedings.

Note: This Preface is the text of the speech delivered at the opening ceremony of the Summer School on 29th January 1955.

I

FREEDOM OF THE MIND

W. G. K. DUNCAN *

THE temperature of the cold war seems to have dropped a few points over the past twelve months, but surely no one imagines that the struggle for the hearts and minds of men between the rival faiths of communism and democracy will be resolved for many years to come. It is in this context of a basic and protracted struggle on a world-wide scale that I propose to discuss "Freedom of the Mind".

I start with an observation by an eminent American publicist, Mr G. F. Kennan, in the course of an address entitled "The Right to Differ", which he delivered to the Roman Catholic University of Notre Dame, Indiana, in May 1953:¹

For anyone who values the right to differ from others in any manner whatsoever, be it in his interests or his associations or his faith, there is no greater mistake we of this generation can make than to imagine that the tendencies which in other countries have led to the nightmare of totalitarianism will, as and when they appear in this country, politely stop, out of some delicate respect for the American tradition, at precisely the point where they would begin to affect our independence of mind and belief. These forces of intolerance and political demagoguery are greedy forces and unrestrained: there is no limit to their ambitions or to their impudence.

If this is so, no country, however firmly established it imagines its democratic traditions, is safe from infection or challenge by the forces of intolerance, and it behoves those who value these traditions to scan with anxious vigilance the form

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¹ Later broadcast in a recording by the B.B.C. and published in the *Listener*, 16th July 1953.

this challenge takes both abroad and in their own midst. I propose, therefore, to glance briefly at some recent developments in the U.S.A. and to ask whether there are any signs of similar developments here in Australia.

Before doing so, however, I remind you that the U.S.A. is an immense and immensely diversified country, about which it is therefore dangerous as well as difficult to generalize; that conditions in America, even at their worst, do not amount to anything like a "reign of terror" or an "authoritarian regime" of the type imposed on countries behind "the curtain"; and that the great majority of Americans can still, no doubt quite honestly, declare that they have personally suffered no serious infringement of their democratic rights. But this does not mean that minority groups open to scrutiny and attack, such as civil servants and journalists, teachers and actors and trade union officials, even the Army and the Church, have not been thoroughly "mauled" (to use an appropriately ugly word).

It is foolish for American visitors to this country to declare (as I have heard at least two Fulbright Scholars do, with great emphasis and heat) that what is usually called "McCarthyism" is a myth created by anti-American propaganda, and that, in any case, it is none of our business, out here in Australia. Evidence that McCarthyism is a serious menace to democratic rights can be drawn from such reputable sources as the *New York Times*, from publicists of the standing of Walter Lippmann and G. F. Kennan, from documented accounts like *The Loyalty of Free Men* by Alan Barth and *Freedom, Loyalty, Dissent* by one of America's best-known historians, H. S. Commager. These people cannot be ignored or dismissed by the epithet "anti-American".

If, then, McCarthyism is anything like what its American critics say it is, it is very much the business of the outside world, and especially that portion of it in which the U.S.A. is the dominant power. For satellite countries, such as Australia, it is a matter of life and death that America should pursue a wise foreign policy, and any policy is almost certain *not* to be wise if, during its formative stages, critical discussion of it is denounced as disloyalty. Even if we escape a world conflag-

ration we are unlikely, according to Mr Kennan, to escape the poisonous influence of the forces of intolerance at work in our own midst. How better can we prepare to resist such forces than by studying their advanced and virulent forms? What better resistance—indeed, what other resistance—can be built into the minds of our people than an awareness that the right to differ is the most basic of all democratic rights?

McCarthyism in America

“McCarthyism” is a convenient label for these forces of intolerance but, taken literally, it can be highly misleading. For the “cult of loyalty” with which his name is now associated had already made serious inroads into the liberties of Americans long before the junior Senator from Wisconsin achieved notoriety, and this cult, or obsession, shows no sign of declining even though McCarthy himself is now discredited. Indeed, McCarthy and his friends seem to have succeeded in persuading the American people that communism is so virulent a disease, and is so widespread in their midst, that, in the name of national security, drastic and ruthless measures must be taken against all unreliable elements. And the “unreliable” are, of course, those who hold unorthodox opinions. Dissent is increasingly identified with treachery—dissent of any kind, even sympathy that may have been expressed twenty years ago with what are now deemed the wrong causes.

Courageous voices can still be heard in America, protesting against this trend in public opinion. But there is nowadays little or no organized opposition—in the Democratic Party or even in the trade unions—against the assumptions underlying this whole approach to loyalty and national security. American liberals themselves have come to accept the need to purge from the ranks of the civil service, or the teaching profession, those whose opinions or associations, in the past as well as now, are not above reproach. The conviction of Alger Hiss has made thousands of people who shared his views (on the New Deal, for instance, as well as on international affairs) feel “guilty by association” and many of them show a pathetic eagerness to establish their conformity.

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One of the best known liberals, the Democratic Senator Paul Douglas, is reported,² for instance, to be anxious to out-do the Republicans. "They keep the Communist Party in existence," he said, "and use it to smear Democrats like myself. We liberals must destroy the Communists if this dirty game is to stop." It apparently did not occur to Senator Douglas that "Communism" can easily be widened to include "Fabian Socialism", which he himself once espoused, and that if liberals accept this whole approach, they will connive at their own destruction.

One of the most ominous things about the prevailing mood in America is the extent to which it has infected even its victims. Robert Oppenheimer, for instance, in his courageous self-defence before the Loyalty Board which dismissed him, described the support he gave, years ago, to the Spanish Loyalists as "idiotic", thus making the damaging admission that he was ashamed of his own past.

Purges and witch-hunts have, indeed, come to endanger the whole course of justice in America. The Department of Justice recently demanded that a judge disqualify himself from rehearing a case, on the ground that he had "a fixed personal bias" in favour of the defendant. The person charged was the celebrated Professor Owen Lattimore, who has been indicted for perjury arising out of the charge of "promoting communist interests", a charge which the Court almost unanimously rejected on the ground of vagueness. The intervention by the Attorney-General, a member of the executive arm of government, strikes at the whole idea of "the rule of law". Fortunately the judge concerned rejected as "scandalous" the notion that a judge who honours "the sacred constitutional presumption that a man is innocent until his guilt is established" is unable to conduct "a fair and impartial trial".*

² See "The Plight of U.S. Liberalism" by R. H. S. Crossman in the *New Statesman and Nation*, 16th October 1954.

* The Department of Justice eventually dropped the charges of perjury against Professor Lattimore. In reporting this on 30th June 1955, the *Washington Post* said in a leading article:

"The decision brings to a clear conclusion a case that should never have been brought into the courts—a case that will remain for a long time a black

The explanation of this disturbing move is, in the opinion of one English journal,³ that "Mr Brownell, the Attorney-General, and the influential Republicans who have pressed the case, in order to satisfy the China Lobby's clamour for vengeance, are no longer able to distinguish between a court of law and the kangaroo courts of Senators McCarthy and McCarran. These quasi-judicial 'hearings', in which the rules of evidence are disregarded and the defendant denied the right of cross-examination because he is technically a 'witness', have corrupted those who have used them. Unable to destroy Mr Lattimore in the ordeal of two different Senate inquiries, they have now carried their vendetta into the courts with the same cavalier disregard for due process and for facts that marked the previous stages of this persecution. That is why Judge Youngdahl's courageous refusal to be intimidated has an importance which transcends the personal fate of Mr Lattimore. This is the most important battle waged in this period in defence of fundamental American liberties".

That is the general point I am concerned to make: it is the whole cult of loyalty, and not merely the infamous methods of Senator McCarthy, that now threatens fundamental liberties in America—and could, if it got out of hand, do so here in Australia or anywhere else. It is not my province to describe in any detail how this cult developed in America but, for purposes of reference, I must indicate one or two of its main features.

There is, first of all, the Smith Act of 1940, which is based on the belief that the advocacy of Marxist ideas is a criminal act. It is true that the Act does not declare Marxist ideas, as such, to be criminal. It simply makes it unlawful "to conspire to advocate bringing about the forcible or violent overthrow of the government". There is a legal trap in the word "con-

mark on the record of the Department of Justice. The Courts, recognising its emptiness, were obliged repeatedly to rebuke the department and its prosecutors. The dropping of the charges represents, therefore, not only a final acknowledgment of error by the department, but a real victory for the principles of justice under law. The only amends that can be made to Mr Lattimore must lie in an end to the kind of persecution for opinion of which he was an unhappy victim."

³ *The New Statesman and Nation*, 30th October 1954.

spire", for this makes it unnecessary for the government to prove the defendants guilty of any overt act. People's ideas, and their agreement to spread these ideas, and the fact that these ideas may some day lead to crime, are sufficient to constitute a crime. "By this logic," it has been said, "two hungry men on a park bench might be sent to prison for mental intent to steal, or two others, who gaze admiringly at a woman, for conspiracy to rape."

Secondly, there is the McCarran Internal Security Act of 1950, which orders the registration of every communist and "communist-front" organization, and debars the members of all such organizations from government employment, certain social benefits and passport rights. Anybody who has, however innocently, associated at any time with any of these organizations is liable to find himself under investigation, defending himself against the vague charge of having promoted communist interests.

This notion of "guilt by association" was confirmed by President Truman's Loyalty Order of 22nd March 1947, setting up as a reason for non-employment or dismissal "membership in, association with, or sympathetic affiliation with any . . . organization, movement, group or combination of persons, designated by the Attorney-General as . . . subversive". Since then, as Commager notes,⁴ "this cloud, originally no bigger than a man's hand, has grown until it fills and darkens the whole horizon. For the notion that one might catch the contagion of subversion by 'sympathetic affiliation' with whatever organization some official might think subversive, was . . . quickly seized upon by professional patrioteers for partisan and private purposes. Soon not only the Attorney-General but almost everybody else was compiling lists. . . . That of the House Committee on Un-American Activities now includes some seven hundred names. And as the lists grow longer, the standard of 'affiliation' grows vaguer. To the witch-hunters of our time no more plausible test was ever devised than this one, for sooner or later almost every man or woman who is active

⁴ *Freedom, Loyalty, Dissent*, pp. 60-1.

in public affairs joins some organization that somebody considers subversive. And the shibboleths that 'birds of a feather flock together', that 'there is no smoke without fire'; that 'a man is known by the company he keeps' are so widely held that they affect the judgment of even the most level-headed. Whatever its legal status, in one sense the doctrine of guilt by association has already scored a signal triumph, for by now even the most courageous are reluctant to sign a petition or to join an organization for the most laudable purposes, while the timid simply refuse to sign or to join anything at all." Could anything be more damaging to the cause of active citizenship or the basic democratic right of free association?

It is this notion of "guilt by association" that the various Committees on Un-American Activities have used to blast the reputation of the unfortunate victims haled before them, victims almost helpless because of the extraordinary procedure that is followed. Faced with no definite charge, deprived of the benefit of legal counsel, unable to cross-examine hostile witnesses or to call witnesses in their own defence, asked to explain the curious coincidence of their views and those of avowed communists, submitted to all the ballyhoo of klieg lights and newspaper headlines, the victims find themselves smeared for life. It was in this sphere that McCarthy excelled, until he overreached himself in his attack on the Army.

It is the cumulative effect of all these practices which has led to an atmosphere of hysteria in the United States. In an address to the American Law Institute in May 1953, Mr Justice Douglas issued a warning that America was adopting the methods of the police-states she denounces. "We allow," he said, "important charges to be proved against a person in administrative proceedings on the testimony of witnesses whose identity, and therefore prejudices, are never known to the Government or the accused. As a result, the cloak of anonymity is thrown over a growing underground of informers, and as the secrecy mounts the reliability of the information obtained must necessarily decline. One facet of this underground is a vast network of wiretappers and eavesdroppers. In New York

City alone there were in 1952 at least 58,000 permits issued to tap wires. The effect is that we adopt more and more of the tactics of the world forces we oppose.”⁵

Similar developments in Australia

With this as background, let us now examine whether anything like these developments can be detected in Australia. The first thing that comes to mind is the Communist Party Dissolution Act of 1950. It is true that this measure proved abortive: the High Court declared it *ultra vires* of the Constitution and when the Government sought the necessary power, at a referendum, the people denied it to them. But almost equally significant was the closeness of the voting. The “No” majority was quite small, so that nearly half the people of Australia were at that time convinced that communism was so serious a menace to national security as to warrant drastic, even desperate, measures being taken against it.

Apart from the statute book, is there anything in the political atmosphere, or “climate of opinion”, in Australia corresponding to McCarthyism in America? On one occasion, at least, opposition members in the Federal House declared there was, and were concerned to brand it as such, and warn the public of its dangers.

The occasion was early in April 1954, when Mr W. C. Wentworth, M.P., directed the attention of the House to a letter published that morning in the *Canberra Times*, signed, among others, by the Bishop of Goulburn and a number of Professors of the Australian National University, and “which would appear”, said Mr Wentworth, “to be partly designed to paralyse Australian policy with regard to Indo-China”. In the debate which followed there were some very revealing remarks about freedom of speech in general, and academic freedom in particular, especially in a time of crisis, and I propose to quote several of them from the Hansard report.⁶

⁵ Summary taken from D. F. Fleming: “Are we moving towards Fascism?” in the *Journal of Politics*, February 1954, pp. 57-8.

⁶ *Commonwealth Parliamentary Debates*, House of Representatives No. 2, 6th-8th April 1954, pp. 239-46.

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Mr W. C. Wentworth (Mackellar): This is the movement which the signatories of this egregious letter in the *Canberra Times* described as non-communist. They differ from the Leader of the Opposition and members of the Government, who correctly describe this movement as communist. What is even more significant is that the *Sydney Tribune*, which is the organ of the Communist Party, published on the front page of yesterday's issue what is virtually a paraphrase of the letter which appeared in the *Canberra Times*. . . . I do not know whether there was any communication between the signatories of the letter and the writer in the *Tribune*. I simply point to the remarkable parallelism in the thinking. . . . It is too close to be ignored.

Who are the signatories of this letter? One of whom I wish to speak particularly is Professor Fitzgerald. I speak of him particularly because he is Professor of Far Eastern History in the Australian National University, and he sets himself up as an authority. How can such a man be ignorant of the plain facts that I have put before the House? Perhaps he did not read the letter which he signed? That is possible, I suppose. Perhaps he does not know anything about his subject? That, I suppose, is possible. Or perhaps there is some more sinister explanation, and that is possible. I cannot choose between those alternatives. I only say that here is something which requires explanation—which demands explanation. I know very little personally of Professor Fitzgerald. . . . I understand that he was recently refused, for reasons with which I am not familiar, a visa to enter the U.S.A. . . . I do not know much about the other signatories. Bishop Burgmann, I understand, was at one time connected with the Australian-Russian Society.

Hon. A. A. Calwell (Melbourne): As has been said many times, people have a right to say what they think in a democracy, so long as their words do not constitute a contravention of the law and an incitement to disorder. The persons who signed the letter . . . may have been hopelessly wrong, and should be criticized by those who think so. But it is wrong for an honourable member of this House, speaking under parliamentary privilege, to state that such persons are communists or near-communists, nor should he imply that because one man was refused a visa to enter the U.S.A., all those associated with him are communists. . . . It has been suggested that Bishop

Burgmann and the professors who signed the letter are trying to aid communism. I disagree entirely with that suggestion, just as I disagree with many of the views expressed by the bishop and the professors.

Mr H. B. S. Gullett (Henty): I remind honourable members that today there is only one struggle in the world. That is the struggle between the free democracies and the Communists. . . . There can be no doubt where our interests lie. We are against those with whom the persons who signed the letter in the Press have aligned themselves. . . . Some of these men are engaged at the Australian National University, and it cannot but be construed, particularly among our allies, that they are people who, unless they are contradicted, may reasonably be taken to be spokesmen for Australia when delivering sentiments of that kind. . . . This is not the first time that any one of them has lined himself up with the point of view and interests of our enemies. I use all those words most deliberately. No one can sit on the fence in this matter. Everyone must make up his mind where he belongs. He must decide whether his interests are with the democracies or not. . . . To me it is intolerable that persons engaged in a government instrumentality should be able to contradict publicly leaders on both sides of the National Parliament at the very moment when our Minister for External Affairs (Mr Casey) is to go abroad to put Australia's point of view in circumstances which can only be regarded as critical.

Mr E. G. Whitlam (Werriwa): It is sheer humbug for the honourable member for Henty to say that it is painful for him to mention names in this case. He and his colleagues rejoice in mentioning names. He said, with all the midget pomposity of which he is capable, that it was not the first time that these men had lined themselves up with our enemies; but he did not mention one instance in which any of the four signatories had lined himself up with our enemies. . . . It would be monstrous if this Parliament were to become the rostrum for the shibboleths and taboos of the Tories—those ideas which in the U.S.A. are crippling academic freedom of thought. Nothing but good can flow from a free discussion of these matters. In America, leading clerics and professors have been intimidated by just this sort of abuse of congressional processes. . . . We must allow freedom of discussion, and we must have respect for the

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opinions of persons in . . . the great academic institutions we have established.

Mr Osborne: Are their ideas right or wrong?

Mr Whitlam: That is not the question. It is not for any one of us to adjudicate upon their opinions. They have expressed an opinion which can and should be expressed. . . .

Rt Hon. R. G. Casey (La Trobe): Nobody in Australia would disagree with the free expression of opinions, particularly by educated and informed persons, but I think all honourable members would disagree violently with persons who suppressed facts that they knew to be relevant to the matter in hand, which was done by the four men, distinguished though they may be, who signed the letter. They were attempting to sway the minds of people less well informed than themselves by suppressing an essential part of the truth. I condemn them for what they have done, and I condemn the honourable member for Werriwa for the speech in which he supported them tonight.

Mr Whitlam: I did not support them.

Mr Casey: We shall soon have to stand before the people and show where we stand in the great struggle that is dividing the world between democracy and international communism. The honourable member for Werriwa, I hope, will be man enough to stand forward and be counted without depending upon equivocal forms of words to suit his party political purposes.

I quote this discussion for what it is worth. It is interesting to see that the tactic of "smear by innuendo" is not unknown in Australia; that the National University is regarded by at least one member as "a government instrumentality" and its professors as "spokesmen for Australia". I shall return to this later.

Turning to other matters which might show us which way the wind is blowing: to what extent are telephone lines being tapped in this country? This question has been raised repeatedly in Parliament, and I, for one, am left uneasy at the evasiveness of the replies. To what extent is our Security Service recruiting informers on the lines of the F.B.I. in America? The Sydney University Staff Association had occasion recently to protest

to the Prime Minister that one of its members had been asked by a Security agent to report on his colleagues' opinions and activities. Does that strike you as being outrageous, or as necessary and legitimate? Both schools of thought exist in Adelaide. One of our newspapers devoted a vigorous leading article to the matter, saying: "A most vital principle is at stake. . . . We have read a lot about the academic atmosphere of mistrust and suspicion which exists in the United States. . . . Is the same climate of fear beginning to permeate the academic life of this nation? If our universities are not going to allow the freest ferment of thoughts and ideas, their value to the community must diminish or die."⁷

The next day, however, three university students (all anonymous) wrote to this paper defending the Security Service. One wrote: "No loyal Australian need fear the Security Service. It is protecting our interests, not destroying our freedom." Another said flatly: "I wish to say that if approached by a Security officer, I would consider it an honour to be of loyal service to my country, irrespective of the people involved. A communist saboteur is still a communist saboteur, even if he is in the University; in fact, what better place to find a saboteur than at an institution where advanced scientific research is in progress?"

This leads me to say something further about academic freedom. It is always difficult to adduce evidence on this matter, as the pressures exerted on universities are generally discreet and "gentlemanly", and the information which comes one's way is usually confidential. One instance, however, I am in a position to discuss, for in Adelaide recently several professors were publicly and severely reprimanded by a prominent politician for what he described, in a series of elegant phrases, as "jostling their way into" a debate on censorship, sending "a plaintive wail" to the newspapers, and "sticking their necks" into something they did not understand. Apart altogether from the language used, his conception of the extent to which university officers are entitled to engage in public discussion is worthy of note.

⁷ *The News*, 1st November 1954.

The occasion was the consideration of a Police Offences Bill in the South Australian House towards the end of 1953. One of the purposes of the Bill was to restrict the circulation of the cruder kinds of comics, and the need for it was widely accepted. In its definition of "indecent matter" the Bill explicitly excluded "books and other matter published in good faith for the advancement or dissemination of medical science". In the opinion of a number of university professors, books of artistic or literary merit should likewise have been excluded from the definition of indecent matter, and several letters to this effect were sent by them to the Press. This suggestion was supported in the House and, despite strong resistance by the Premier and the member quoted above, the Hon. J. L. Travers, an amendment along these lines was successfully carried—by the narrow margin of two votes.

In the course of his speech in the House, Mr Travers spoke as follows, concerning the intervention by the professors:

It is somewhat unfortunate that a number of professors who are, after all, employees of the University, should take it upon themselves to write to the Press, giving the University as their address, holding out to the world that here is the University speaking. As a member of the Council of the University I take strong exception to it, as I think every other member of the Council would. . . . The matter was never referred to the Council and they had no authority to speak on behalf of the University. Their letter was designed to convey the impression to the public that it was the University speaking, but I want members to know some of the Chairs accepted by some of those gentlemen so that they may assess how persuasive their opinions would be on law and politics—because that is what this boils down to. I suggest that they would be the very last people in the world from whom any of us would seek an opinion if we wanted guidance on questions of law or politics. I refer to the chairs of music, botany, history, physics, mathematics, philosophy, medicine, geology and chemistry. Be it said to their credit that none of those gentlemen was a party to the masterpiece of logic published this morning. Only the professors of law, English and French put forward that masterpiece of

logic that if you are going to show an indecent picture to medical students why, in the name of logic, cannot you write poetry about it?

The professors concerned were doubtless a little surprised to learn that this is what their letter amounted to. Space prevents me from quoting much from the interesting debate which followed, but I shall give two further extracts to indicate, for the sake of a balanced presentation of the matter, that Mr Travers did not speak for the whole House, or even for all members on his side of it:

Mr C. D. Hutchins (Hindmarsh): We should welcome views expressed by every section of the community. The essence of democracy is that every citizen should be considered equal in the eyes of authority and his views on all legislation should be encouraged. Mr Travers may have some justification for complaining that the signatures appeared over the University address if the letter were for the purpose he suggests. I sign many letters with the address of Parliament House, but I do not think any person would imagine that I was writing on behalf of the Parliament of South Australia.

Mr Geoffrey Clarke (Burnside): It has been said that the letters to the Press have given the appearance of being the official view of the University. I have an exact copy of one of them in my hand, and in the whole of the letter the word "University" does not appear. I propose to read it, for I feel that the fears of these scholars and gentlemen have not been properly understood. The right of academic freedom, which is an essential freedom of all academic life, should be preserved at all costs. A professor reserves, under all circumstances, the right to say what he believes, and his justification is his belief in that view. If universities are to be told that they must toe the Party line, that their music or their clowning must follow the ideology of Communism as has been insisted on in Russia, it is a very bad thing. If people in universities are not free to express their views, as long as they sincerely believe them, it is bad.

Mr Travers: They should not hold themselves out as expressing the University's views.

Mr Travers was thus apparently unrepentant to the last, but to conclude this incident I point out that Mr Clarke is also a

member of the University Council, that Mr Travers had, at the time, just joined it and that nothing further was heard of any protest being made by Mr Travers to the Council about the matter.

The case for freedom

What conclusions are to be drawn from this rough comparison of recent developments in the U.S.A. and Australia? The comforting one that we have a firmer grip on the essentials of democracy, and are more vigilant in their defence than the Americans? I wish I could think so. Political problems are so much easier in small communities (such as Switzerland, or Australia—for we are still a small community, despite the fact that we are spread over a continent) and the dangers and anxieties and responsibilities we have to face are nothing like those of the U.S.A., as the dominant power of the free world. In any case, the arguments used in the Press and Parliament during the 1951 Referendum on communism, and more recently during the discussions over tightening up the censorship laws, I found far from reassuring. They show that the case for freedom of thought and expression is by no means widely or clearly understood. Everyone pays lip service to the principle, but when it comes to the point few of us are prepared to run the risks which freedom involves.

One of John Stuart Mill's arguments for freedom of thought, as we shall see in a moment, is that unless truth is constantly scrutinized and challenged it ceases to be a living principle and degenerates into a dead dogma. This argument can be applied to the principle of freedom of thought: if taken for granted, unthinkingly and uncritically, it is almost certain to be undermined in practice. Does freedom of thought really matter, and if so, why? What is its purpose, its value, indeed its very meaning? One of the American liberals who are now fighting back against McCarthyism has recently declared: "Freedoms vindicated anew are more precious than those achieved without effort, and only those who are required to justify freedom can fully understand it."⁸

⁸ H. S. Commager: *Freedom, Loyalty, Dissent*, p. 2.

This is my justification for reviewing briefly, as I now propose to do, the case for freedom of thought and expression. I have no new arguments to adduce. All I shall do is to remind you of what was said by Milton over 300 years ago in his *Areopagitica* (published in 1644) and by J. S. Mill nearly 100 years ago in his famous essay *On Liberty* (published in 1859). The language of the former may sound a little unfamiliar, but the substance of his argument is timeless, and his spirit is certainly needed at this hour.

Milton's first argument for freedom of discussion is that it is necessary in order to discover truth. "Assuredly," he says, "we bring not innocence into the world, we bring impurity much rather: that which purifies us is trial, and trial is by what is contrary."⁹ That sentence is preceded by one of his most frequently quoted passages: "I cannot praise a fugitive and cloistered virtue, unexercised and unbreathed, that never sallies out and sees her adversary, but slinks out of the race, where that immortal garland is to be run for, not without dust and heat."

"Not without dust and heat"—it is in the rough-and-tumble of affairs, outside the cloister, that truth should, in his opinion, compete for recognition. But Milton is supremely confident of the outcome. "Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously, by licensing and prohibiting, to misdoubt her strength. Let her and Falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter?"¹⁰

In any case, and this is his second argument, it is extremely difficult to know which ideas are true and good and should be allowed to circulate, and which are false and evil and should be suppressed. And how are evil ideas to be suppressed, for they can be made to circulate in so many different ways?

If we think to regulate printing, thereby to rectify manners, we must regulate all recreations and pastimes, all that is delightful to man. No music must be heard, no song be set or sung, but what is grave and Doric. There must be licensing dancers,

⁹ *Areopagitica*. Everyman edition, p. 13.

¹⁰ *ibid.*, p. 36.

that no gesture, motion, or deportment be taught our youth but what by their allowance shall be thought honest; for such Plato was provided of; it will ask more than the work of twenty licensers to examine all the lutes, the violins, and the guitars in every house; they must not be suffered to prattle as they do, but must be licensed what they may say. And who shall silence all the airs and madrigals that whisper softness in chambers?¹¹

Milton no doubt intended this as a rhetorical question, but is thought-control, in our totalitarian world, as impossible as he imagined? We have lived to see music, as well as science, made to "toe the line" in Russia, and by 1984, as George Orwell foresaw, television may have completed the process.

Even in the narrower realm of books, Milton thought that censorship would prove impracticable, not only because men lack the god-like wisdom necessary for such a task, but also because of the monotony and drudgery involved.

It cannot be denied but that he who is made judge to sit upon the birth and death of books . . . had need to be a man above the common measure, both studious, learned and judicious. . . . If he be of such worth there cannot be a more tedious and unpleasing journey-work . . . than to be made the perpetual reader of unchosen books and pamphlets, oft times huge volumes . . . to be enjoined the reading of that at all times, and in a hand scarce legible . . . is an imposition which I cannot believe how he that values time and his own studies, or is but of a sensible nostril, should be able to endure.¹²

This was clearly written before the days of typewriters, recording tapes, and huge printing presses—not to mention government control of publishing houses and paper supply. And propaganda beating incessantly on the minds of readers and listeners may render futile the furtive circulation of unauthorized publications. The greater, therefore, the importance of Milton's final argument—a psychological one. "I lastly proceed", he says, "from the no good it (licensing) can do, to the manifest hurt it causes, in being first the greatest discouragement and affront that can be offered to learning, and to learned men."

¹¹ *ibid.*, p. 17.

¹² *ibid.*, p. 20.

This, he argued, was no mere flourish, or turn of phrase, but his actual experience on the Continent during his youthful travels.

I could recount what I have seen and heard in other countries, where this kind of inquisition tyrannises, when I have sat among their learned men . . . and been counted happy to be born in such a place of philosophic freedom, as they supposed England was, while themselves did nothing but bemoan the servile condition into which learning amongst them was brought; that this was it which had damped the glory of Italian wits; that nothing had been there written now these many years but flattery and fustian. There it was that I found and visited the famous Galileo, grown old a prisoner of the Inquisition for thinking in astronomy otherwise than the Franciscan and Dominican licensers thought.¹³

The free play of ideas was therefore for Milton a condition of health and strength in society. "Our faith and knowledge thrives by exercise, as well as our limbs and complexion; if the waters (of Truth) flow not in a perpetual progression, they sicken into a muddy pool of conformity and tradition." It was because he felt the stimulus of this free play of ideas about him that he wrote of London as "the mansion house of liberty", wherein there were "countless pens and heads, sitting by their studious lamps, musing, searching, revolving new notions and ideas . . . others as fast reading, trying all things, assenting to the force of reason and conviction. What could a man require more from a Nation so pliant and so prone to seek after knowledge"? It was this which inspired his hopes for England's future greatness. "Methinks I see in my mind a noble and puissant Nation, rousing herself like a strong man after sleep, and shaking her invincible locks." "Invincible locks"—freedom to him meant strength, and what he called "prosperous virtue". Above all, he said, "Give me liberty to know, to utter, and to argue freely, according to conscience, above all liberties."¹⁴

I have dealt at some length with the views of Milton and I will now deal more briefly with John Stuart Mill. His argument runs along substantially similar lines. His defence of liberty

¹³ *ibid.*, p. 25.

¹⁴ *ibid.*, p. 35.

is based not on any abstract right of the individual, but upon what he calls "utility in its largest sense, grounded on the permanent interests of man as a progressive being". Variety, according to Mill, is not only valuable in itself—making civilized life interesting, vital and gay—but is the indispensable condition of progress. To innovate means to differ, and Mill was therefore concerned to establish the right of the individual to differ from the orthodoxies of his day, both in thought and conduct—subject always, of course, to respect for the rights of others. One of the notable features of Mill's argument is his insistence that the pressure towards uniformity, that should be resisted, is social as well as political in origin, or, in other words, that there is a danger, even in so-called free communities, especially perhaps in politically free communities, of a "tyranny of the majority".

In making his case for freedom of speech, Mill says that novel opinions will be true, false, or partly true and partly false. If they are true, but are suppressed, then clearly mankind has been robbed. Those in authority may argue that the opinions seemed to them, at the time, wrong and therefore harmful; that they are surely entitled to forbid the propagation of harmful opinions; that the fact that they occasionally make mistakes only proves that they are human and fallible, but does not relieve them of the responsibility of making the best judgment they can, and of acting on it. Mill's answer to this is that "all silencing of discussion is an assumption of infallibility"¹⁵ and that "There is the greatest difference between presuming an opinion to be true because, with every opportunity for contesting it, it has not been refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action, and on no other terms can a being with human faculties have any rational assurance of being right."¹⁶

Even if the novel opinions are, in fact, false, there is still, according to Mill, no ground in public utility for their sup-

¹⁵ *On Liberty*, ed. R. B. McCallum (Blackwell), p. 15.

¹⁶ *ibid.*, p. 17.

pression. Currently accepted opinions are scarcely ever entirely true, and nobody can be sure about them unless they have remained unshaken after every opportunity has been given to criticize them. The truth then will be known to be true, and that is a greater good. "He who knows only his own side of the case", says Mill, "knows little of that", and however true an opinion may be, unless it is "fully, frequently and fearlessly discussed, it will be held as a dead dogma, not a living truth".¹⁷

Finally, if the novel opinions are partly true and partly false, as is generally the case, they are likely to embody and emphasize those aspects of the truth which are neglected in orthodox beliefs. The issues can be sorted out, and a better balanced view attained, only by full and free discussion. The way to handle novel opinions, then, whether true, partly true and partly false, or wholly false, is to submit them to searching examination and discussion, not suppress them by force. "If all mankind minus one", says Mill in a famous passage, "were of one opinion and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind. . . . The peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error."¹⁸

This is Milton's "trial by contraries", and it cannot be said too frequently that the purpose of discussion is to discover the truth—not to indulge error. The whole point of an open-minded discussion is to find something out—to make a closer and closer approximation to the truth, which in its completeness is not yet, and probably never will be, fully or finally known. We understand this quite well in the realm of science, where hypotheses are tested and enlarged by unending criticism and discussion. The real scientist is just as anxious to hear what can be said

¹⁷ *ibid.*, pp. 30-2.

¹⁸ *ibid.*, pp. 14-15.

against his theories as what can be said in favour of them, and one of the marks of greatness in men like Charles Darwin is the scrupulous care with which they describe facts which cannot be accounted for, or fitted into their theories. But few people seem to remember this when discussing politics or morals.

Freedom under modern conditions

This is all very well in theory, you may say, but in the real world of clashing interests and wills and loyalties, in the atmosphere of the continuing crisis we call the "cold war", surely security and stability are as important and necessary as freedom and innovation. Of course, there is nothing absolute about the claims of freedom; it always involves serious risks, and in certain circumstances interference and restraint are unavoidable. But what circumstances, and what kind of interference and restraint? Mr Justice Holmes of the American Supreme Court made a notable contribution towards providing us with one criterion, in what became known as his "clear and present danger" test. In a celebrated judgment (*Schenck v. United States*, 1918) he declared:

The most stringent protection of free speech would not protect a man in falsely shouting "Fire!" in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. . . . The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree.¹⁹

This idea was taken up and the principles underlying it as a test were elaborated by Mr Justice Brandeis, in another celebrated case (*Whitney v. California*, 1927). "This Court," he said, "has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present; and what degree of evil

¹⁹ Quoted in *The Dissenting Opinions of Mr Justice Holmes*, arranged by A. Lief, p. 234.

shall be deemed sufficiently substantial to justify resort to abridgment of free speech and assembly as a means of protection." In fixing these standards Brandeis was guided by what he took to be the principles of the Founding Fathers. "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution."²⁰

If only Senator McCarthy could be induced to read and to try to understand the implications of such a passage before he speaks so glibly of "un-American activities"! But the climate of opinion in present-day America, which McCarthy has done so much to create, has now infected the courts themselves. In the case of *Dennis v. United States* in 1950 the Supreme Court upheld the conviction by a lower court of eleven Communist Party leaders, for breach of the Smith Act. The defence was that this Act violated the constitutional safeguards of freedom of speech, and the Court therefore reviewed at some length the "clear and present danger" test. The upshot was that it was "jettisoned", as one Justice put it.

Mr Justice Jackson argued that such a test was not applicable in the face of "the subtlety and efficacy of modernized revolutionary techniques used by totalitarian parties", and that it would provide no protection against "the secret stratagems of the type employed in communist revolutions in Eastern Europe". Chief Justice Vinson spoke of "impending threats",

²⁰ *The Social and Economic Views of Mr Justice Brandeis*, collected by A. Lief, pp. 260-2.

and of "an apparatus designed and dedicated to the overthrow of the Government, in the context of world crisis after crisis", and said that to apply the test in such circumstances would mean "encasing the Government in a semantic straitjacket". The Court, it is true, was not unanimous, and in a dissenting judgment Mr Justice Black hoped that "in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society".

The issues raised by this case are clearly of importance to every democratic country. I shall confine myself to one comment. No one imagines that the clear and present danger test is free from difficulties. Clear to whom—to the judges? What sort of danger—a political danger? If so, should judges be asked to assume the responsibility for assessing such dangers? Is that not the function of our political leaders? Mr Justice Frankfurter raised this point: "To make the validity of legislation depend on the judicial reading of events still in the womb of time—a forecast, that is, of the outcome of forces at best appreciated only with the knowledge of the topmost secrets of nations—is to charge the judiciary with duties beyond its equipment." A similar objection was voiced in the High Court of Australia, where Chief Justice Latham declared that "the question whether the defence of Australia requires the suppression of communist activities cannot possibly be determined by any decision upon facts. . . . Such a decision would depend entirely upon the political opinions of the judges. The Court should, in my opinion, have no political opinions".²¹

Perhaps someone trained in the law will tell us whether this is really what the court was asked to decide. Was it asked to make political predictions, or to determine whether there had, at particular places and times, been a clear and imminent danger of violent and unconstitutional action. That, at least, is what it should, in my opinion, be asked to determine, and such a decision is clearly best left to the judiciary.

The communists, of course, are themselves largely responsible for what has been meted out to them by repressive

²¹ *Commonwealth Law Reports*, vol. 83, p. 148.

measures of various kinds. Their tactics make it very difficult to preserve democratic practices and procedure, or to maintain a liberal or tolerant atmosphere in a community. They show no respect for majority opinions, no hesitation in "smearing" their opponents, no sense of loyalty to the particular aims and purposes of the various organizations they permeate and manipulate, no compunction at resorting to intrigue, conspiracy and, if necessary, strong-arm tactics. They are tireless, ruthless and fanatical—completely uninhibited by such bourgeois scruples as honesty, decency or, once they gain power, mercy. Why should they be given the protection and benefits of a constitution which they are determined to overthrow and destroy—if necessary by force?

This is the old question of whether toleration should be extended to the intolerant. All I would say, in passing, is to remind you that corruption is contagious. The thing to be borne in mind is not whether the communists merit decent treatment, but what the effects would be, on all of us, of treating them indecently—that is undemocratically. If we succeeded in "cleaning up" the Reds by force and proscription would the process stop there, or extend to the Pinks, and then to anyone deemed off-White? Are communists the only group who anger and exasperate us? And, in any case, would we succeed with the Reds? Is force the cure for either the grievances or the apathy and indifference which communists exploit?

Apart altogether from the danger of communism, objections can be made against the case for freedom of speech on more general grounds. The whole approach, it may be said, is based on a quite out-moded belief in the rationality of man, and takes no account of the development in modern times of what has been called "the mass mind". Instinct psychologists and the various schools of psycho-analysis are quoted as showing how minor and derivative a role reason plays in human conduct, and arguments like those of John Stuart Mill are therefore, it is said, vitiated by 18th century rationalism and 19th century optimism: what we need, of course, is 20th century realism. Here is one example: "For Mill, society

tended to be a little like the Oxford Union, an endless debate among articulate literates with Rationality in the Speaker's chair, keeping order. . . . The whole essay *On Liberty* exudes the confidence of the time in its ability to solve the problems of the day."²²

There is undoubtedly something in this, though Mill himself was well aware of the limited rationality of man. It was, indeed, precisely because he realized that men are so largely the creatures of irrational impulse that he argued that rationality should be fostered and deliberately cultivated, and the indispensable condition for such cultivation was, he believed, intellectual freedom.

But we are certainly far less confident nowadays than was Mill in the outcome of discussion, if only because of the development of almost irresistible organs and techniques of propaganda. Mill believed, with Milton, that Truth could be relied upon to prevail in any "free and open encounter" with her opponent Falsehood. So she might, but the encounter these days is far from being free, or open, or fair. This is the age of "mass media" of communication, of popular newspapers and pictorials, of radio and television networks, the purpose of which can hardly be described as to cultivate reason, to discover and abide by the truth, or to develop independent minds and critical judgments.

Television, indeed, opens up quite disturbing prospects and here is one assessment:²³

Democracy grew up on the freedom of people to put their case and win supporters by simple word of mouth. This they are no longer able to do. Modern methods of communication, the "mass media", have taken away the audience for the unamplified voice. They have undermined the influence of voluntary organizations which, in the past, were responsible for the formation and spread of opinion. The effect of television on democracy may prove to be no less important than

²² "The Theory of the Judicial Concept of Freedom of Speech", by E. Latham in *Journal of Politics*, November 1950, p. 644.

²³ "The Battle for Men's Minds", by J. Hotchkiss, in the *New Statesman and Nation*, 2nd October 1954.

the effects of gunpowder or the internal combustion engine have been on the organization of society. . . .

The issues at stake are the more serious because of the damaging effect, especially of television, on the political and religious and social organizations which traditionally give society its shape and cohesion. Six hundred years ago men had to come together in association for virtually every function of civilized life, whether it was hearing Holy Writ, listening to a story, or finding out about current happenings. The initiative and courage which men showed in forming their own groups and organizations have given shape and inner vitality to our democratic way of life. But in our age opinion forming is ceasing to be a matter of belonging to a group and taking part in its activities. We find out how our neighbours think by consulting the results of the Gallup Polls. Our ideas, like our food, come individually wrapped and sterilized. In the comfort of his own home a man is less likely to be stimulated by ideas, more likely to prove vulnerable to suggestion. . . . The solution for television may be found, perhaps, in competing corporations, linked in some way with representative public opinion. Whether voluntary organizations themselves should seek to run television programmes or produce films is more doubtful. They have shown little success in this field in the past. . . .

The issue is delicate and confused . . . but the new methods of communication demand central control by somebody, and the control of them, like the control of the army in times past, determines the seat of power within the State. In a totalitarian society they are an instrument of government. With us they are falling more and more under the influence of the owners of capital. The task, if democracy is to survive, is to put them into the hands of the people.

The social importance of academic freedom

The difficulty of ensuring in the modern world that free circulation and open encounter of ideas essential for the exposure of error and the discovery of truth, makes it the more important that complete freedom of speculation and expression be maintained within our universities. This is by no means easy, for it means "stepping on pet corns" and giving offence to people who resent having their values and opinions chal-

lenged. The social pressure that Mill spoke about is a very real, and deadening, influence, especially in smug and self-satisfied communities. We run the risk of becoming just that, the more we allow conventions to grow up in our midst that it is, for example, "bad taste" to speak critically of such sacrosanct institutions as the monarchy, and "mere sectarianism" to speak boldly on religious matters. Toleration does not mean the absence of convictions, or being too timorous or mealy-mouthed to voice and defend them. Broadcasting authorities, both commercial and national, tend to play safe and steer clear of issues likely to offend some section of their public. But the universities are in the happy position of being concerned neither to make profits nor to appease the political authorities.

As long as they enjoy such a position, universities have not merely the right but the duty to foster and participate in controversy on public issues. That is why I take so seriously the lack of understanding shown by Mr Gullett in Parliament, when he spoke of the National University as a "government instrumentality" and of finding it intolerable that some of its members should contradict in public the opinions of our political leaders, and the equal lack of understanding by Mr Travers in Adelaide, when he spoke of University professors "jostling into" a discussion on censorship, and implying that they spoke for the whole University by the use of the University address. (As though the University *could* ever speak as a whole, on any controversial issue.)

I think it a matter of some importance that the public in Australia be made proof against such misleading remarks, for our universities may very well have to fight in the near future to maintain their traditional independence and they will need the backing of an informed and sympathetic public opinion. Universities throughout the world are becoming increasingly dependent on public money, and there will be a natural tendency for governments providing this money to seek closer supervision and control of its expenditure. Professor Bland, who is Chairman of the Public Accounts Committee of the Federal Parliament, was reported to have stated that closer supervision was already needed over the rapidly increasing

grants being made to universities. If done sympathetically, this will no doubt be all to the good, but if done unsympathetically its effects might be disastrous. And it can be done sympathetically only if there is a clear understanding, both within and outside government circles, of the meaning and value to the community of academic freedom.

Academic freedom means "the freedom of professionally qualified persons to inquire, discuss, publish and teach the truth as they see it in the field of their competence, without any control or authority except that of the rational methods by which truth is established".²⁴ Why should such a freedom from outside control be allowed to people supported, in the main, by public funds? In the first place, because experience has shown that this is the best way to extend the boundaries of knowledge. "The discipline of reflective inquiry, of experiment and critical discussion, is a severe test on claims to truth. To add to these tests external, and therefore irrelevant, criteria is to establish needless obstacles to the growth of human knowledge."

Secondly, academic freedom contributes to human wisdom. In discussing the merits of alternative policies, the independence of the scholar within a university enables him to be more objective and disinterested than he could be if he held his post on condition that he accepted certain dogmas as beyond question. "His independence and training fit him especially for objective judgments on those controversial issues which arouse, and sometimes divide, the community."

Thirdly, in the field of applied disciplines, such as medicine, engineering or economics, the climate of an independent institution is more favourable to fresh vision and invention than is that of an organization with an axe to grind or masters to serve.

Fourthly, "academic freedom, permitting challenge and debate, subject to no authority but intelligence, develops a critical temper among students without which they cannot achieve intellectual maturity. In an era when propaganda and

²⁴ S. Hook: *Heresy, Yes—Conspiracy, No*, p. 154. Following paragraphs are based directly on this work.

advertising are highly developed techniques of eliciting non-rational consent to propositions of dubious character, the desirability of intellectual sophistication can hardly be overestimated."

Finally, restrictions upon academic freedom weaken the vitality of intellectual and cultural activities in the community. "Where safety and conformity are the rule in institutions of higher learning, apathy and indifference will often be found in the public market-place of ideas."

For these reasons academic freedom is important to the community. We all understand the need for, and are prepared to defend, the independence of judges. Governments appoint and pay them but in democratic countries, at least, they are not direct servants or instruments of the executive. Judges have a higher loyalty than obedience to the government of the day: they serve the law, as they understand it, and in doing so serve the community. Can people be brought to understand that there is need for a similar independence for scholars, who serve the truth, as they understand it, and in doing so serve the highest interests of the community.

The analogy must not, of course, be pressed too closely. The majority of people can, in a democracy, determine what the law shall be that the judges serve and declare, whereas the majority of people may, and on occasions should, be resisted and defied by scholars. "The University," says Hook, "serves a community always 'in the making', so to speak, and in which natural piety to the values and achievements of previous generations is joined to intelligent anticipation of the needs of generations to come—without in any way neglecting the legitimate concerns of the present. At a certain moment, the opinions and beliefs accepted in a university may be quite different from those entertained by a majority of the community. But this very majority must stand prepared to defend the right of the university to disagree with it, its right to be loyal to the community 'in the making', provided such disagreement flows from its vocation of inquiry."

This is the one thing that the community and its various authorities are entitled to insist upon—the integrity of the

scholar. He should not be expected to be neutral or "above the battle" in controversial matters. He must, however, patiently and honestly consider alternatives to his own views. Provided he does that, he should be free—not free from criticism, of course, but free from either pressure or contumely.

Conclusion

Academic freedom is clearly a special kind of freedom, but its justification is, at bottom, the same as for freedom in general, and I shall conclude by reminding you of its core, or essence. For both Mill and Milton, you will remember, freedom was no mere frill or luxury which a community could indulge in, or dispense with, at will, and promptly abandon whenever danger threatened. Rather it is a necessary condition for the health and strength of a community. Precisely the same argument is being used in the U.S.A. today by liberals who are fighting against the cult of loyalty and the general hysteria of McCarthyism. As Commager puts it, in the preface of the book I quoted, "The argument that runs through all these papers is that we must preserve and encourage the increase of freedom—of inquiry, investigation, dissent, association, education, science, literature, politics—freedom, in short, in all of its manifestations, not as an abstract right, but as an imperative necessity. Freedom is not a luxury that we can indulge in when at last we have security and prosperity and enlightenment; it is, rather, antecedent to all of these, for without it we can have neither security nor prosperity nor enlightenment."

Nothing the communists have managed to do in America has been anything like so harmful to the vital interests of the American people as what Americans have been induced to do to themselves and their own morale. For they have come to distrust and suspect each other, and nothing can endanger a nation's security so much as to have its sense of community undermined. "I believe," said an American Federal Court judge, Mr Justice Hand, "that that community is already in process of dissolution where each man begins to eye his neighbour as a possible enemy; where non-conformity with the

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accepted creed, political as well as religious, is a mark of disaffection; where denunciation, without specification or backing, takes the place of evidence; where orthodoxy chokes freedom of dissent; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists to win or lose. Such fears as these are a solvent which can eat out the cement that binds the stones together; they may in the end subject us to a despotism as evil as any that we dread; and they can be allayed only insofar as we refuse to proceed on suspicion, and trust one another until we have tangible ground for misgiving. The mutual confidence on which all else depends can be maintained only by an open mind and a brave reliance upon free discussion.”²⁵

That passage summarizes everything I have been trying to say. It derives directly from Mr Justice Holmes, who found the secret of happiness in liberty, and the secret of liberty in courage.

²⁵ In an address to the University of the State of New York, 24th October 1952, quoted by Fleming, *loc. cit.*, p. 64.

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Rev. E. J. Stormon, S.J., M.A., Dean of Newman College, University of Melbourne: I applaud Professor Duncan's vigorous and challenging plea for the retention of our typical democratic liberties up to the full measure compatible with our survival as an organized and independent society. If we prepare to meet the pressure of communist totalitarianism by sacrificing or seriously compromising principles essential to our present way of life we can only expect to continue as a different kind of society, and one not likely to be superior to that we now know. A democratic community which tries to ensure protection by closely aping the methods of totalitarian states may expect to hear pronounced by its own conscience the verdict: *Et propter vitam vivendi perdere causas*—"And, for the sake of life, to give up all that makes life worth living."

There are forces latent in any democratic society that could, under the influence of sudden alarms and panics, set in motion such a process, and we have certainly seen signs of them in America. Yet the very vigour of the reaction to Senator McCarthy's excesses is a sure indication that the American people are not likely to be stampeded into a spiritless ideological conformism. To a large extent the evident closing of the ranks and increased vigilance in America is a rational and unhysterical response to a world situation in which that country is mainly responsible for the preservation of the freedom of all the democracies, and ultimately, perhaps, for the maintenance of everything we associate with the "Western way of life". The fact remains, however, that under the burden of great responsibility, America and, to a lesser extent, Australia must inevitably be tempted to solve their problems the easy way by imitating methods in use beyond the Iron and Bamboo Curtains, and Professor Duncan has done well to point out symptoms and warn us of dangers.

We have been told that a democracy is characterized, at least in part, by the right to disagree, and we have been warned that, if, in the interests of a superficial uniformity, we forfeit that right, we shall have been false to our own traditions, and an element of great value will have disappeared from our midst. Whatever the arguments we adduce for the existence of our rights to disagree

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about politics and other matters, the great majority of us hold those rights unquestioned. Many of us would offer a rational justification of them by relating them to the nature of the human person, which is free and an end in itself in its own order, and to the compelling dictates of the individual conscience, and the piecemeal, provisional, and inadequate knowledge which is all that we possess on many matters of importance in human affairs. There is such a thing, even, as the right to be wrong, provided a person really thinks that he is right all the time.

It is, however, all very well insisting on the rights of the person to do his own political thinking and to give expression to it; but a person is, in one aspect, also a member of society, and responsible to that society for actions and words that bear upon its well-being and safety. Our political and civil liberties arise, not simply out of an absence of restrictions, but out of a healthy tension between our rights as persons and our obligations as members of a complex social organization. This much is also true of non-democratic societies, but one of the main differences in the democratic society is that the necessary tension between community and person is resolved as far as possible in the interests of the person. We try, on the whole, to be a *community of persons*, and take pride in the richness and variety which personal differences supply. We agree on a few major and fundamental issues—often for somewhat different reasons—and we try not to jostle each other too much where we disagree, but, in order to make the whole system work, we do insist on some obvious rules. If we are at war, for instance, we call up our manpower and we expect to do as we are told in all that pertains to the common safety; we counter attempts at spying, and put down attempts at subversion of public order. We should hardly have tolerated a public figure, such as a university professor, who used his power and influence to defend Nazi ideology and war-aims and weaken our will to resistance, in the years following 1939. We should have informed him that, while he could think what he liked as a private person, he had no right to jeopardize the safety of the people as a whole, and would have to be restrained from this kind of expression of political dissent. I am a Catholic priest, and I have taught in minor positions in two Australian universities. I find it difficult to think that had I been so irresponsible as to thrust down the throats of students, under guise of whatever subject I happened to be teaching, the various Catholic doctrines which I sincerely believe, I should have been

allowed to retain my position. My behaviour would have been grossly improper, and I should not have been excused by the fact that I happened to believe what I said. In practice, then, we do recognize certain limits to intellectual freedom, at least in its public expression, whether these limits are assured by law, by institutional and social pressures, or simply by powerful conventions of good taste. We do demand that a person, in his public activity, be responsible to the community which he serves.

The pattern of democratic society has changed a good deal since the days of nineteenth-century liberalism. There was something fine about the old liberal ideal, but the confidence it engendered that, if we all went our own ways, things would work out very well indeed proved in practice rather ill-founded. It has been found necessary for the community to make greater demands on persons, curbing cut-throat competition, restraining exploitation, making available to as many as possible the various resources, economic and cultural, of the nation. There has been a necessary evolution in the concept of the democratic way of life since the nineteenth century, and the general acceptance of that evolution is not peculiar to any particular political party.

Is there a similar process at work in the field of political thinking, transforming the *laissez-faire* politics of an earlier time into a more consistent and characteristic expression of a democratic society, of which the roots are in a Christian past and in which the typical values of Western civilization have been preserved, whether in a religious or secular form? I have in mind more particularly a certain crystallization in the international policy of the democracies, particularly in regard to the pressure exerted upon them, internally and externally, by the most rampant type of totalitarianism in the world today, Marxist Communism. I suggest that a certain hardening of the American attitude towards communism was inevitable, if the American people wanted to preserve the essentials of their own way of life. There have been excesses of suspiciousness and vindictiveness, but we must remember that America is bearing the brunt of a cold war, and cannot risk betrayal of its vital military secrets or allow international communism to undermine its security by the classical methods of infiltration. We must be patient with America, and not interpret every protective measure it takes against communism, or even every example of mistaken rigour, as a death-blow to democracy. We in Australia need to be on guard, looking

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at realities and not at legal fictions, and judging the workings of communism not by verbal protestations of communists themselves but by the general pattern of communist deeds all over the world.

Professor Duncan has rightly insisted on the need for the free play of mind on political and other questions in our universities. It is quite intolerable that the teaching staff of universities should be required to subscribe to anything like a "party line". That would transform a university, meant for the free and disinterested investigation of truth, into a mere political tool, and would hopelessly degrade the intellectual status of professors. That happened in Nazi Germany, and is happening today in a great stretch of the world, from Prague to Shanghai. It may well be the duty of academic men to say unpopular things and to call attention to truths which, in the pell-mell of political life, others do not see, or do not want to see. There is no reason why a university man should not make his voice heard when he thinks the public is being misled, or is in danger of lending its support to dangerous policies. We should hear more on all sorts of matters from responsible thinkers in our universities, provided that they show themselves really impartial, competent, and not too remote from common-sense reality.

Here I feel it necessary to add a rider. The university lecturer, while not an instrument of the government, has a responsibility to the community on quite a profound level. He is in almost a unique position for influencing other people's minds, addressing men and women capable, in some measure, of leading the intellectual life. He usually knows a great deal more about his subject than his audience and is not normally subject to searching criticism by his students, while his colleagues, if they disagree with him, often do not care to voice their disagreement for fear of upsetting personal relationships. The result is that a university lecturer who is not as disinterested, detached and well-informed as he ought to be, or who is simply lacking in a sense of responsibility to the community, can do much harm.

The right way to deal with such a person, however, is not to urge his dismissal or to demand his silence on controversial issues, but to subject him to healthy, friendly, but vigorous criticism. There is not enough real criticism exercised upon our academics, either by one another or by properly equipped people outside the universities. Instead of a current of ideas coming from different

sources, we have all too often, particularly in political matters, new conformisms—and usually conformisms of the Left. Last year, when the armed struggle in Indo-China was passionately engaging our attention, we had a right to hear from university men some disinterested accounts of the background of that fighting. Most of the standard literature on the subject is in French, and it needed to be regularly supplemented by articles in French periodicals of different political tendencies—particularly the dignified and reasonably detached *Revue de Paris*. What we got fell far short, in objectivity and in fullness of information, of what we had a right to expect. Though I missed some of the letters to the Press on this matter, the impression I and many others received was that the indispensable literature on the subject had not been assimilated and discussed. If this judgment is unfair to any university men who lectured or wrote on this subject, I am willing to make the appropriate reservations. If, however, it corresponds to the facts in general, as I believe it does, then it constitutes a damaging criticism against the state of detached learning and objective fact-finding in our university centres. This kind of deficiency can only be made good by the stimulus of healthy criticism, without partisan bias, of our university lecturers by their colleagues and by members of the public in a position to engage in dialogue with them. I believe that our university men ought to be only too willing to listen to such criticism, and, if they find it valid, to modify their position in the light of it.

Senator J. A. McCallum: I am in general agreement with Professor Duncan's thesis, but I am not at all persuaded that the danger to freedom in Australia is as great as he thinks. With regard to the quotations he gave from Mr Wentworth and Mr Gullett, it should be remembered that subsequent to their criticism one of the gentlemen criticized was given a much higher status in the University and at no time has any exception to the promotion been taken in Parliament. As for Mr Gullett's statement that the National University is a government instrumentality, his excuse is that of Dr Johnson when challenged on a wrong definition: "Ignorance, madam, sheer ignorance." The whole conduct of Parliament and the Cabinet towards the National University is to keep its status independent. As a member of the Council of the University, I am responsible to no one, I am appointed by the Senate, I make my own decisions, I get no instructions, I give no

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reports. That typifies the academic status of the National University, and I am quite sure that the present Parliament will maintain it.

Mr J. A. Meagher: The conditions which caused the case for freedom to be re-stated by Mill in the middle of the 19th century had been brought about by the thinkers of the 18th century in the French Revolution. Immediately following it, however, happened something of which nobody has emphasized the enormous significance, the Industrial Revolution, which changed and is still changing the whole world. It is changing the society in which we live. We do not live in what Father Stormon called an organized and democratic society. It is a disorganized and democratic society. That is the condition that was bequeathed to us, but we are rapidly moving of necessity towards an organized, and, I hope, a democratic society. The struggles in Asia, the break-up of the British Empire, the discovery of atomic fission, have so changed our society that there must be a re-examination of the whole of our social structure.

Mr G. Shipp, B.Ec.: Professor Duncan has emphasized the dangers to the community arising from the restriction by the State of the free expression of opinion. I wish to mention two other aspects: the freedom of formation of opinion apart from expression, and the question of the receptiveness of society to new ideas, to the unorthodox. The State undertakes certain activities and functions which lead to conformity and which have an effect similar to direct legislative or administrative censorship. I refer to the function of public education which the State undertakes and, in particular, the function of making up the syllabus, the courses of study. The New South Wales Department of Public Instruction Syllabus for Primary Schools says that the object of the Social Studies course is to ensure that the child will be equipped with an adequate body of facts and information necessary to the building up of lasting judgments, attitudes and understandings. So far so good, but it then instructs the teacher "to develop the specific habits of behaviour that will help the child to be a socially competent and acceptable person, to develop habits of behaviour which distinguish gentlewomen and gentlemen". This is clearly an instruction to the teacher by the State to inculcate into children those habits, attitudes, behaviours, which in fact mean conformity

to the predominant standards of present society. The effect of this is not only to reduce the quality and quantity of unorthodox opinions which will be formed in the minds of adults if they have undergone such indoctrination, but it also means that any new ideas or unorthodox views which are the result of academic freedom at the tertiary level would be less acceptable to society as a whole.

Mr A. G. Hebblewhite: The cold war is carried on by practices which have been carefully planned by communist thinkers over probably a century, for Lenin was merely the chief projector of the plan in active form. The plan is a complex thing, but Lenin stated his strategy very clearly. The best strategy in war is to refrain from the final blow until your enemy is thoroughly demoralized. The democracies are now becoming thoroughly demoralized, simply because we will not face the fact that every communist move is a contribution to the final objective, the erection of an administrative structure which puts strictures on every man and woman in the potential victim country. It is not a question of liberty, it is a question of war. As soon as we recognize that war exists, we immediately tighten controls, we govern by regulation and we lose all our freedoms temporarily until victory is won.

Mr N. Cowper: The plea that we are in a state of war and must therefore close our ranks and suppress dissident opinion is not sustained by the history of the British people. Throughout the Peninsular War when Britain was fighting for her very existence, there was a Whig minority which kept up, in Parliament and in the country, an incessant opposition to the Government's policy in foreign affairs and even to the policy of fighting that war. This did not weaken Britain in the long run and the fact that it was possible was due partly to the traditions of liberty in political matters which had prevailed for a century or two and partly to the fact that the leaders of this opposition consisted of Whig aristocrats who had considerable courage. Senator McCallum's account of what happened to Mr Fitzgerald of the National University, who had been subject to criticism but was later promoted, might be counterbalanced if Mr Boyer gave an account of the constant pressure applied to the Australian Broadcasting Commission to suppress dissident opinions from people like Pro-

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fessor McMahon Ball. One of McMahon Ball's theses was that one could not hope successfully to defend Indo-China whilst allowing conditions to exist in which the forces of nationalism were identified with the Communists. This was a matter which should have been most freely discussed here and, if it had been possible, in the United States. It went to the very roots of policy and was a matter which certainly should have been the subject of intense debate. Owing to the restrictions on freedom of the mind and freedom of expression imposed by our present panic in the face of the cold war, the issue was never properly discussed and as a result Professor McMahon Ball has been completely vindicated by events. One of the things that now disturb me is the almost total absence of any discussion here of United States' policy as regards Formosa. There is plenty of discussion in Britain, there is practically no discussion here. In the United States, whose action is vital, owing to the pressure on independent minds to keep quiet the issue has never received proper debate, yet it is an issue vital to policy whatever one thinks about communists.

Mr R. Swanson, U.S. Fulbright Scholar: Walter Lippmann and other American correspondents who are read in Australia present only one side of the picture, and I think Professor Duncan has done likewise. He has taken quotations from reports of Holmes and Brandeis, delivered over twenty years ago, and mainly minority reports. There are judges on the other side who agree with the decisions that were handed down. In the case of *U.S. v. Dennis*, for example, one of the concurring opinions was that there was simply an extension of the clear and present danger doctrine in that there was a clear and present danger to the security of the United States, to the security of the free world. I think the Professor failed to emphasize that fact.

Dr Matsdorf: Reference has been made to the term communist totalitarianism, but totalitarianism can be from either the left or the right. While we have to defend ourselves against totalitarianism, we have to ask ourselves whether we have a better way of life to offer. We want to live in a democracy where we have liberty and freedom but we have been told that we have to modify the old terms of liberalism, democracy, and freedom. We must first devise a philosophy of democracy and only then develop the machinery and present it to the people of the world. It is an

error to talk in terms of fighting, defending *against* something. It is more important in a free country to develop an idea, a philosophy of liberty and democracy.

Mr R. J. F. Boyer: Mr Cowper mentioned pressures to which the A.B.C. is subject. We do indeed meet such pressures and so, too, do newspapers and other publications. There are always pressures by any number of people in the community who cannot bear to hear or read opinions with which they disagree. Mr Cowper seemed to infer that, because of these pressures, some great issues have been improperly or inadequately covered. I think he mentioned particularly the question of Formosa and China. I can only say that the A.B.C. has covered this very adequately indeed—in fact, a great deal of the criticism we get is that we have given it such prominence on the heretical side that we have not given it enough on the orthodox side.

Professor W. G. K. Duncan, replying: Father Stormon has interpreted the extent of the rot of McCarthyism in the United States as being far less than I claimed, but I think it has gone much farther than I revealed. From published reports there is evidence that the Executive is now interfering in the Courts, demanding a withdrawal by a judge who had shown his inadequacy to handle a retrial because he was not violently opposed to the political opinions of the accused. That I think is getting serious, conflicting with American traditions and our traditions too. It is just as serious when people under challenge, under attack because of their opinions, cannot find lawyers to defend them. It is a duty for lawyers to undertake such things and the Americans are running away from that duty. In Commager's book, *Freedom, Loyalty and Dissent*, one reads that lawyers fear for the future, that their whole professional career is jeopardized if they undertake certain cases. The vigour of the reaction may be there among a few and I do not want to exaggerate. I do not wish to generalize about America; it is a very big place, a very complicated place, and there are terrible problems. But I do not underestimate the impudence, the arrogance, the deep-seated nature of the forces of intolerance in any community. I suggest they exist in our own community, fortunately not as far developed because we have not yet met the same sort of urgent issues.

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I do not think that Father Stormon's point about one's obligation to the community leads necessarily to his conclusions. Mill did not argue that taking freedom from the community added to individual rights. He argued that the best interest of the community was furthered by freedom of discussion. There is no necessary conflict whatever between the right of the individual to have his say and his sense of responsibility to the community. It may be that we had to give up some of our economic and political liberties, but the liberty to say things is basic, and we interfere and restrict that at our peril. I am not concerned with the individuals whose cases have been mentioned; I am concerned with the arguments used by people in public office against freedom of expression. We must learn again the lesson of Milton and Mill—that we are strong if we are free, stronger than we are if we give up our minds. The play of minds is an indispensable condition for all other social values like national strength and prosperity and enlightenment. Totalitarianism means enforced uniformity, democracy means a free play of minds with all their differences. Unless we realize and accept that democracy means differing, and that it is not treachery nor disloyalty to differ, then it seems to me that the communists have won.

II

THE RIGHTS OF THE CITIZEN

P. H. PARTRIDGE *

IN the growth of liberal thought and practice during the past three centuries, certain liberties have come to be recognized, both in social thought and in law, as being especially important. We might divide them into two groups. There are, first of all, freedom of thought and speech, freedom of association, and freedom of religion. These are important for more than one reason. They express the right of the individual to live his own life by being free from interference or coercion; by not having any uncongenial way of life or set of opinions forcibly imposed upon him by political and ecclesiastical authorities, or by any other group in society.

They are important in another way, too. They are essential to the freedom of the individual in a more "positive" sense. They are necessary if the individual is to have the chance to be a self-governing, responsible person. A man can be said to be free only if he can make his own decisions and can choose for himself; and this implies that he should be able to know what are the choices or alternatives that lie before him; what are the arguments in favour of the different alternatives; what are the consequences of choosing this alternative rather than that. Thus, one of the main arguments for the existence of freedom of speech and association within a community is that these freedoms are necessary if men are to be acquainted with the different views that they must consider, the different solutions to their problems that offer. Anything that restricts our opportunities, as members of a state and a community, to understand the character of the issues we have to decide, to consider and choose between alternative courses of action, automatically

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restricts our freedom. Freedom of speech, thought and association being essential to every man's power to consider and decide for himself are, therefore, essential ingredients of a self-governing community.

There is a second group of liberties which may be roughly distinguished from the first. They are too numerous to enumerate in full, and impossible to describe by simple names. Many of them are embodied as principles of English law, and some of them are not so much legal principles as protections established by forms of legal procedure through the practice of centuries. I am referring to such liberties as these: that no man can be imprisoned except for definite and assignable offences prescribed by law; that all men, if they are accused of an offence, are entitled to a speedy trial; that an accused man has the right to be apprised of the nature of the charges against him, and to have the opportunity of answering his accuser; that no man can be required to incriminate himself; that an accused man is presumed innocent until he is proved guilty. There are also the protections which are embodied in the rules and procedures relating to evidence that have been worked out in British jurisprudence. These are sufficient examples of the second group of civil liberties, which I refer to, for want of a better name, as "legal safeguards" or protections.

These legal safeguards and procedural protections are mainly rights that individuals possess against the state; their importance is that they circumscribe in definite ways the state's powers over its own members. They remind us that the liberal revolutions of the 17th, 18th and 19th centuries were in part revolutions against absolutist governments; and that the liberty which was fought for was often "liberty against government".

The two groups of liberties are closely bound up with each other. The second group not only protects those who might fall foul of the criminal law, but is important to all citizens, because the preservation of larger freedoms, like those of freedom of thought and speech, depends very much on the maintenance of these other safeguards. It is evident that a man's liberty to think and say what he likes, and to organize with others to propagate what they think, would be very much in

jeopardy without these safeguards against arbitrary and oppressive interference by agents of the state. I point out later, with reference to recent American experiences, how attempts to restrict freedom of speech and organization lead very quickly to a desire to tamper also with these legal and procedural safeguards.

Secrecy is the main prop of arbitrary and oppressive government; publicity is one of the things it chiefly has to fear. One of the consequences of these legal safeguards is that the state, in proceeding against its members in accordance with law, is compelled to proceed openly or publicly. Where accusation has to be made openly, and may be openly contested, it is possible for all the world to see what the state is doing. In an active community, if authority has to show its hand and proceed against its citizens publicly if it wants to proceed against them at all, it is possible for opinion to be mobilized, for the force of the public to be brought if necessary against the state. I attach a great deal of importance to this point, because I believe that publicity is the chief, or one of the chief, conditions for the existence of liberty and democracy. Now that democratic states are tending more and more to keep dangerous opinions under surveillance, and to penalize in various ways persons who are judged by officials to have undesirable opinions, the secrecy which often surrounds these measures constitutes one of the chief problems of civil liberty.

We can all recite very glibly the list of orthodox liberties embalmed in the liberal ideology, but of course there is nothing fixed or settled about these essential civil liberties. There is never complete agreement about them in any community, however democratic, and the need to rethink them and redefine them never ceases. The reasons for this are familiar. Firstly, these conceptions—freedom of speech and thought, freedom of association, freedom from arbitrary arrest or search, and the rest—are vague and indeterminate, like most social and legal conceptions. The real difficulties only arise when we have to interpret and apply them to concrete cases and circumstances. Secondly, these liberties are never, and can never be, regarded as absolute. They qualify one another: in practice, we limit

one liberty in order to leave scope for another. Thus, most people will now admit that the liberty of the employer in the use of the means of livelihood which he controls must be limited if *other* liberties to which *other* people aspire are not themselves to be abolished; as an American economist recently remarked, "one man's liberty may be another man's peonage". The leader of a political party fails to impress in argument by proclaiming "My party stands for the defence of liberty against socialism and bureaucracy", if he is content to use the word "liberty" in an uncritical and unanalysed way, without stopping to consider the impact of the liberty *he* defends upon other liberties, to which other people attach perhaps more importance than he does.

We have also to strike some balance between the several liberties and other social interests, such as the protection of public morals, or public order or national security. In fact, most of the problems that arise in connection with civil liberties are of this kind. What are the social interests which are important enough to justify a curtailment of liberty for their sake? What sort of restriction is necessary? Where exactly is the balance to be struck between liberty and these other interests?

There are no machine-made or agreed criteria to use in deciding where to strike the balance. I think, however, that we are entitled always to be cautious and sceptical when we are told that liberty must be curtailed for the sake of some other good. Firstly, conceptions like "public morals", "public order", "national security", are themselves vague and are often question-begging. It would be easy to show how much muddle and imposture there is in current popular and legal notions of "public morality". Secondly, those supposed social interests are habitually used as pretexts and shibboleths by people who believe that the mere appearance within a community of radically unorthodox or non-respectable opinions is evidence of the decay of public order and morals. A final reason why we should scrutinize with some care proposals for the curtailment of a liberty is that, in liberal society, civil liberties have always been accorded a rather special position. American judges,

dealing with the "Bill of Rights" cases that come before them, often say that, in American law, civil liberties enjoy a "preferred" position. They mean that freedom of speech, association, religion, freedom from arbitrary search and seizure, and from self-incrimination, and so on, are written into the constitution as principles which must be respected and observed. I suppose that civil liberties have no preferred position in the same sense in our law. But they have had such a position in a more general sense, in the social philosophy which has prevailed in liberal societies, including Britain and Australia.

Broadly speaking, they have enjoyed a preferred position in the sense that, when the question is raised of imposing some restriction on liberty for the sake of some other social interest, the onus of proof is on those who argue the restriction to be necessary; and, more importantly, in the sense that liberty has been regarded as so important that some risks to public order or national security have been accepted for its sake. If we want perfect order or absolute security, we cannot have very much liberty. The American historian, Arthur Schlesinger, in a recent article reviewing the Oppenheimer hearings, quoted a member of the Atomic Energy Commission as saying that security must be absolute; and Schlesinger made the comment that absolute security is an impossible idea. These limitations, of course, operate both ways. If considerations of security limit freedom, equally freedom limits security. In a democratic society it is a matter not of having only so much liberty as security allows, but of deciding what risks we are willing to take as regards security (or any other social interest or value) for the sake of having freedom. In the end, it is how strongly we want freedom that will determine at what point we will compromise with other interests.

Changes in technology and in social organization constantly make new problems concerning the way in which liberty is to be understood and made effective. Most of these problems fall within the scope of other papers in this book. So far as the freedoms of thought, speech and association are concerned, the chief problem with which the democracies have been pre-occupied in the past few years is the problem of communism:

whether the established rights of speech, organization and general political activity ought in existing circumstances to be extended to communists.

I shall examine the view—widely held in this country and in the United States—that, because communism is a force directly and indirectly hostile to democratic institutions, a democratic regime cannot as a matter of principle or expediency accord to communists the full civil liberties extended to other political groups and movements. It is not necessary to repeat in detail the characteristics of contemporary communist parties which many people believe to justify this conclusion. It is argued, first, that the *teachings* of contemporary communism are anti-democratic in content and tendency. Communists do not believe in political change by discussion and consent; the tendency of their agitation and propaganda is to discredit the supreme institutions of democracy; they are willing to use force and fraud whenever the opportunity offers to weaken or overthrow established institutions. Thus, in the United States, communist *doctrine*, as well as overt or political acts, is being penalized by current policy. And some provisions of the Australian Communist Party Dissolution Act of 1950 gave power to declare and disband organizations which were defined by the fact that they promulgated communist doctrine as expounded by Marx, Lenin and Stalin.

A second and perhaps more important characteristic of contemporary communism is its subservience to the Soviet: the conviction of almost all convinced Western communists that the success of the movement they serve is bound up with the expansion of Russian power. In the Western countries, there are unquestionably many communists who would use any means available to them, in peace and in war, to obstruct the policies of their own country and to help the Soviet. We must accept it as one element of the problem facing the democracies that, in the case of communism, potential treason has become associated with revolutionary political theory and policy.

Yet it is necessary to remember that it is not solely the recent expansion of Russian power and the subservience of Western communists to Russian interests that have wholly inspired pro-

posals or measures to restrict the civil liberties of communists. Long before the Soviet had acquired the means to threaten any other State, the democracies were trying by legal means to restrict communist propaganda and agitation. There were the "red scares", and the prosecutions associated with them, in the United States at the end of World War I. In Australia, the Crimes Act was amended in the twenties to give it teeth against communist organization and agitation, and the prosecution of Devanny, a communist propagandist, occurred in 1932. Ever since 1917 there has been a fear of communist doctrine and agitation, simply because it was revolutionary, and not because communists, in the earlier period, could have presented any serious threat to national security in war.

Thirdly, the same consideration is said to justify the exclusion of communists from the public services, from certain types of scientific research, and from the trade unions. Exclusions of this sort are now part of the established policy of the United States. In this country, the authorities attempt to prevent communists from finding their way into the public service, and one of the main provisions of the abortive Communist Party Dissolution Act was to debar communists from holding office in certain unions. In America, the non-communist declaration provisions of the Taft-Hartley Act are intended also to exclude communists from union office. In connection with the trade unions, the problem is the use by communist leaders of their power in the unions to engineer strikes or boycotts in order to further their purely political objectives, including their own special international policies. There will always be argument concerning whether a strike is about an industrial issue or whether the motive behind it is purely or mainly political. I think there is no question, however, that in this country communist trade union leaders have on a number of occasions called strikes or initiated boycotts, not primarily in order to prosecute a genuine industrial dispute, or even to enforce their own view on some internal political issue, but in order to embarrass and obstruct the execution of the defence or foreign policy of the government. One of the characteristics of our problem is that communists do accept the value for their own purposes of

the "political" strike, and the "political" strike, since it is in essence an attempt by a minority to use industrial power to coerce a government or to frustrate a policy which often has the approval of a majority of citizens, is obviously a problem for contemporary democracy. Whatever our answer to the problem may finally be, the use of industrial power to oppose popularly accepted policies inevitably raises the question of the limits of trade union autonomy in the choice of leaders, and of the limits of the right to strike.

These, briefly, are the chief features of present-day communism which pose new problems for democratic theory and practice, problems which are immensely complicated by the fact that the democratic communities are involved in overt or latent warfare in which the sympathies of the communists are entirely with the other side. Communists are an anti-democratic element within the democratic community, but the question is whether, granting all this, the best method of strengthening democracy is by depriving communists of the established freedoms of speech and organization.

It seems to me that there is only one way of trying to answer this question. Nothing is gained merely by expounding the obvious ideological incompatibilities: they might mean anything or nothing in practice. It is a matter of trying to estimate the damage being done by communists to democratic procedures and attitudes, the extent and the imminence of the danger they represent; and of measuring these against the consequences of our trying to exclude communists from the enjoyment of the civil liberties accorded to other members of the community.

I am sure that in a very great deal of the argument about the "menace" of communism that has gone on in this country and in the United States since 1945 the actual dangers and difficulties presented by communism to the internal life of these democracies have been usually grotesquely exaggerated. So far as the more general political doctrines, or "line", of the communists are concerned, the rationality of the bulk of Americans or Australians in political affairs, including rationality in international affairs, is more endangered in practice by other

teachers and dogmas than by communism. Neither in Britain, nor in America, nor in Australia, have the political theories or assumptions of communism penetrated intellectual life, or influenced the current political and economic ideologies, to any significant extent: the mass of people of all social and intellectual levels have been almost untouched by communism. There have been times—e.g. in the thirties in Britain and the United States—when a comparatively small number of intellectuals were influenced by parts of communist teaching: revulsion against fascism and the shadow of approaching war caused a few Western intellectuals to feel kinship with the communists. Russian policy since the end of the war has discouraged this flirtation. I do not believe, therefore, that the fear of communist propaganda—within political life, within the universities, within the entertainment industries—that is so prevalent in the United States, and is sometimes expressed by certain politicians and others in this country, is justified at all by our present intellectual and political situation.

Nor do I think that in these democracies the advocacy of force as a means of producing social change is of any danger, or constitutes any problem. The situation would be different if there existed a considerable minority convinced about the necessity of force, and actually preparing for a test of strength. Anyone who accepts the democratic position agrees that force has to be met by force, and that a majority which wishes to preserve democratic institutions will naturally use force to prevent itself from being destroyed by force. In the present state of opinion in America and Australia, however, this is an element of communist teaching that can easily and safely be ignored. (There are also positive reasons why I should argue that it is to the advantage of democracies that this particular view should be allowed to be freely argued and advocated. This, however, is not the point with which I am here concerned.) This particular doctrine is one that is accepted by a group of people in the three countries that is so insignificant in numbers that it cannot be said to be a force in political life that threatens or weakens in any way the democratic structure. Thus, I do not think that the imprisonment of communists in

the United States, on the ground that they advocate the overthrow of the government and constitution of the United States by force, is justified by any real danger to American democracy that this advocacy presents.

This seems to me to be true, also, of other elements of communist doctrine, including the view that the Soviet Union is really the workers' fatherland. Given the state of opinion in the democracies, it is difficult to argue that there is any present need to prevent the advocacy of such a doctrine on the ground that it really threatens to seduce citizens from their loyalty to the state.

It may be urged, however, that it is beside the point to argue about communist theory: that the activities of communists are the real difficulty for democrats. I do not think that this objection is in fact a valid one. I am sure that a great deal of the suppression and penalization of communists and of non-communists in the United States is aimed at suppressing communist opinion and propaganda simply; and I think, also, that the Australian Communist Party Dissolution Bill was directed in part against the expression of communist opinion. Nevertheless, it may be admitted that certain features of communist *practice* constitute the main problems. I shall leave the special questions of espionage and sabotage until later. At this point I wish to refer to communist influence and tactics in the trade unions: on the one hand, the use of direct trade union action to obstruct the carrying out of government policy; on the other hand, the use of fraud and intimidation in the internal politics of the union in order to gain and hold power.

The trade unions have gained such important functions and influence in political and economic life, their actions affect so deeply the life of the whole community, that the claims made by them to be independent in the management of their own affairs are becoming always more difficult to maintain; and the non-unionist public obviously has a legitimate interest in the way in which unions are organized and administered. The smooth working of any democratic system rests to some extent on a certain consensus broadly held throughout the community: a willingness by most people or organized groups

to submit themselves to the processes of open discussion and majority decision; to submit their claims to public discussion and attack; and to rest their fate on their ability to procure the support of the government and the acquiescence of public opinion. A powerful minority which consistently and ruthlessly uses its special power to get its own way, irrespective of the effects of its action on the opinion and the interests of the rest of the community, invites the majority to retaliate by imposing legal or other restraints. Trade unions, like other organized groups which have means of exerting direct power, do not find it easy to accept the sort of restraint that a democratic system presupposes. We know by experience that Australian unions under communist leadership have, on a number of occasions since 1945, ignored the understandings or restraints which a democratic system requires and have courted the sort of retaliation which was proposed by the Australian Government in 1949 and is supported by many public men in other democracies.

Admittedly, there is here a problem for democracies, but we ought to be cautious before we accept such a solution as that proposed in the Anti-Communist Bill, or in the Taft-Hartley Act in the United States. We should not accept the general proposition that the use of direct force by minorities to get what they want is always incompatible with conditions of democracy. There are differences of kind and degree which are crucial. In all democracies there are always minority pressure groups of one kind or another exploiting a position of power to extort concessions. It happens not seldom that direct minority pressure leads to an extension of democracy. Majorities are not always sanctified: they are in fact very often selfishly indifferent to the reasonable demands of some minority; and direct action, which inconveniences and shocks the public, is sometimes the only way of forcing the majority to yield some indefensible privilege. In this way, one might defend the direct action of the suffragettes early in this century. It is one of the justifications of the right to strike, even when strikes are really directed against the government or against the comfort of the general public. Strikes, and other forms of direct action, are

probably a necessary safety-valve: they are necessary to supplement the conventional democratic methods of decision by discussion and majority choice.

Hence, in dealing with the special problems created by communist control of unions, we admit that there are differences of degree. Minorities can be so arrogant and so violent that they throw a spanner in the democratic works and induce in the rest of the community the spirit of retaliation and repression. There have been a number of occasions in Australia in the past ten years when communist-controlled unions have brought very seriously into question whether the communists' enjoyment of civil rights does not weaken the whole democratic structure. Recognizing all this, the question to which we come back is the one I have put earlier: whether the impediments to the working of democratic processes, the dangers which the communists represent, make it expedient, in the circumstances now existing in this country and throughout the world, to adopt the sort of legal disqualifications and suppressions which were proposed as remedies in the Communist Party Dissolution Bill. Subsequent events have confirmed me in the view I held in 1950 that these particular defences against communism were neither necessary nor desirable.

The barring of communists from office in unions would probably have little effect on industrial militancy, but would rather convince most unionists that communist leaders were being excluded because of their *industrial* policies and because they were especially active and daring leaders. A more important point is that Australian experience in the last five years or so seems to show that the special problems created by communist activities in the unions can be better dealt with by a heightening of democratic activity, rather than by a restriction of civil liberties. By this I mean the resistance to communism by the democratic methods of criticism, counter-argument and counter-organization, not by governments or official bodies but by unofficial or spontaneous movements inside those organizations where communists are themselves active—the unions, the universities, the organs of cultural life, and other groups.

Nor is this merely a pious liberal hope. Events in this country since 1950 have shown very plainly that against this sort of opposition communism does not make headway. When the Government brought forward its proposal to ban the Communist Party and to disqualify communists from office in certain unions in 1950, it was strongly suggested that the struggle between communism and democracy had reached a very critical stage, and that nothing short of these measures would make democracy in this country secure. In fact, since that date communism has lost ground steadily; and its decline within the unions has been brought about mainly by the struggle carried on within the unions by anti-communist individuals and organizations. Thus, so far as experience in this country goes, I do not think that there is any solid evidence to suggest that communism either is now or was in 1950 a very immediate threat to our democracy. Not only has the influence of communism declined, but it is clear that governments have had other methods which have proved quite effective in dealing with communism, apart from the abrogation of orthodox civil liberties. So far as the political strike is concerned, I think that the Chifley Government showed by its handling of the Miners' Strike in 1949 that a communist leadership, where there are no serious industrial issues at stake, is highly vulnerable. On that occasion, it is interesting to notice, the Government was able to defeat the strike partly because the miners did not get the support of other strong unions. As for the trickery of communists in union politics, the secret ballot legislation of the Menzies Government has had a great deal to do with the loss of communist influence in some of the most important unions.

Moreover, the official inquiries into communism that have been held in this country—the 1950 Lowe Royal Commission in Victoria and the Petrov Commission—have not brought to light any evidence to suggest that communism in Australia, either as regards its teachings, its activities in the unions, or its success in espionage or sabotage, does constitute a “clear and present danger” in any reasonable sense of that controversial phrase. While we can easily conceive that communist minorities, either because of their inherent strength or because of the

world situation, could become dangerous enough to justify legal suppression, democracies do pay a price if they embark on that journey; and we have to measure the price against the magnitude of the threat.

I turn now to the peculiar difficulties of trying by legal means to silence or eradicate communism. To begin with, should we refuse to tolerate communist opinions because of their nature, and apart altogether from the acts which communists are led into because of them? It may be said that no one in the democracies has suggested that communism should be silenced simply because it is a political heresy; that no one has proposed that communists should be excluded from the public service, from universities, from other positions in social life, and that communist organizations should be disbanded, just because of the heretical character of the opinions they profess. It is suggested that communists should be subject to these special disabilities only because of what they do or are likely to do, not because of what they think. I cannot accept this. In the United States, the inquisition into the opinions of people who hold positions which are certainly not "sensitive" positions, from the point of view of national security, seems to me to be entirely a proscription or penalization of opinion. The campaign against communist opinion in the universities, in the entertainment industries, the attack on individual writers and publicists, suggests a campaign against opinion, not against the reality or danger of traitorous actions. Even in the Dennis case, where a number of leaders of the American Communist Party were imprisoned under the Smith Act, it appears that their real crime was rather the advocacy of the view that force would be necessary ultimately to overthrow the United States Government than any conspiracy or organizing to use force or prepare for its use. This is a point referred to by Justice Douglas in his dissenting judgment. Here in Australia, Section 5 of the Communist Party Dissolution Act defined the organizations which could be declared and disbanded by reference to propagated opinions: organizations which "support and advocate the objectives, policies, teachings, principles or practices of com-

munism as expounded by Marx and Lenin, or promote . . . the spread of communism, as so expounded”.

Hence there are very many people, here and in the United States, who think that the legal measures to be taken against communism should include measures against the advocacy of communist doctrine. To say that the members of a democracy should not have the opportunity of hearing anti-democratic views, and of considering whether they might prefer a non-democratic way of life, seems to me a conception of democracy very difficult to defend. After all, communism has been for almost a century one of the main political movements in capitalist societies. It is not something that is entirely alien to the democratic tradition. It is rooted in the conditions of capitalist society; it has affiliations with certain elements in modern democratic thought—historically, it is one of the strands in the web of modern democratic thought, a sort of totalitarian democracy, or, perhaps, a democratic heresy. It is obviously a doctrine that has had some appeal to sections of the industrial workers of modern capitalist societies. For these reasons, it would, I think, be a very serious interference with the free development of political thought or ideology under prevailing industrial conditions if we attempted by law and force simply to excise the communist, revolutionary strand that has run through political thought for the past century.

Of course, Russian communism is a very different thing from German Marxism. Yet post-1917 communist teaching is a criticism of capitalist-democracy which has some importance. I personally believe that the contention of the communists that socialism (as they understand it) will serve the interests of the masses better than capitalist-democracy is an illusion; but it is an important theory about the working of capitalism and democracy. I think, therefore, that communist *teaching* does present issues we all have to face; and it seems to be a curious view of democracy to say that the members of a democratic state ought not to be permitted to face and to decide them. I should say the same about communist teaching about the Soviet Union. The contention that the spread of Russian power throughout the world is really in the interests

of the "masses" of all countries is surely one which a free people can be allowed to examine and to decide for themselves. If we do not accept all this, to what conception of democracy are we committing ourselves? Surely we are saying that democracies must impose certain political orthodoxies by law; and that there are some opinions, some alternatives to prevailing democratic ideas and policies, which the members of a democracy cannot be allowed to face?

It will be said that the real difficulty which has been exercising the democracies of America and Australia during the last ten years is of another sort. The problem arises, not from what communists think or say, but from what they do. Holding the opinions they do, they naturally conspire or organize to capture positions of power or influence from which they can work to encompass the damage of democratic institutions, to assist international communism and to weaken their own country. Consequently, it will be said, the suppression of communist teaching is something that occurs incidentally. It is necessary to disband communist organizations to prevent communists organizing to commit treacherous or other illegal acts. It is necessary to prevent communists from finding their way into positions in the public service and elsewhere where they can or might work to weaken the state. But the only way of identifying communists and excluding them from "sensitive" places in the community is by maintaining a surveillance over and an inquisition into political opinion: there is no other way of identifying and quarantining them. Thus inquisitions, and other measures which penalize or discriminate against individuals because they hold particular opinions, are inescapable incidents in the struggle against communist espionage and subversion.

These are the considerations which have deeply influenced policy in the United States. Elaborate and widely ramifying inquiries into the political opinion and record of persons in the public service and in other walks of life—e.g. in scientific research institutes and departments—are now an established part of the machinery of governments; their purpose is quarantining or exclusion of communists from positions where they

could do harm. There is also the work of the various Congressional Committees of Inquiry. In this country, we have not gone so far. There is a surveillance of political opinion, maintained by the Security Service, and the exclusion of communists from positions in the public service. If the Communist Party Dissolution Act had come into operation, communists could have been excluded from the public service and from office in some trade unions by the use of the machinery of "declaration". It is clear that there is a considerable similarity in the way modern democracies approach the communist "problem" and in the legal measures they conceive to deal with it. How effective are these measures in preserving democracy against communism? What consequences do they themselves have? Can it be said that these consequences are a reasonable price to pay for the elimination of the danger of communism, whatever that danger might be?

The arguments and the measures just surveyed constitute a fairly radical departure from one principle of civil liberty that has been held to be quite fundamental in English law at least. It is the disqualification and penalization of persons who hold communist beliefs because they are *liable* to commit crimes which is the innovation; and the legal principle which they abrogate is that which is referred to by Dicey as a "pervading principle of English law, that men are to be interfered with or punished, not because they will break the law, but only when they have committed some definite, assignable legal offence". Dismissal from the civil service or exclusion from professional work is not itself a legal penalty, of course, but it is nevertheless a severe punishment, and it might be argued that a liberal society would extend the principle Dicey describes as widely as possible, unless there are very strong reasons for disregarding it.

Once this inquisition into political opinion is embarked upon for the sake of security, it is very unlikely in the nature of things that discriminations and disqualifications would be confined to communists and communism alone. In his judgment in the Dennis case, Frankfurter, though he found reason to uphold the legality of the conviction of the Communist Party

officials, pointed out that "suppressing advocates of overthrow will inevitably also silence critics who do not advocate overthrow but fear that their criticism may be so construed. No matter how clear we may be that the defendants now before us are preparing to overthrow the government at the propitious moment, it is self-delusion to think that we can punish them for their advocacy without adding to the risks run by loyal citizens who honestly believe in some of the reforms these defendants advance. It is a sobering fact that in sustaining the conviction before us, we can hardly escape restriction on the exchange of ideas". This is obviously a very plausible view. If it is opinion we are trying to identify for the sake of security, there is no clear or foolproof way of tagging communists. It is almost inevitable that men will come to be penalized because their views are held to be communist in tendency; because they happen to hold some opinion in common with the communists; or even because they are felt to be too "soft" in their opinions concerning the proper treatment of communists, i.e. because they may happen to hold a fairly orthodox liberal opinion.

These expectations have been fully borne out in the experience of the United States. Men have fallen under suspicion, have been pilloried or dismissed from public service or from scientific research or from university posts because they have had very remote connections with "listed" organizations, or have had suspicious views concerning American policy towards China or towards Russia. I think there is no doubt that Oppenheimer has been adjudged to be a security risk by the Atomic Energy Commission because he opposed the making of the hydrogen bomb in 1949. One of the most illuminating sections of Alan Barth's book *The Loyalty of Free Men*, which deals with all aspects of the anti-communist drive in the United States, is the chapters which discuss the interrogation of civil servants before the Loyalty Boards. In these cases, it is not only that the Boards are influenced in their decisions by the undisclosed reports submitted by undisclosed and unidentified informants of the F.B.I., who may or may not be competent to judge of the political tendencies of the people on whom they confidentially report, and who may be influenced by any

motive when they report damaging circumstances and conversations; even more significant is the extraordinary extension of the conception of "dangerous" opinion that constantly occurs. By quotation from interrogations, Barth shows that men whose opinions are in fact very far from communism have been held to be security risks. He deals, for example, with the case of one man who was cross-examined concerning his attitude towards anti-communist measures, and had a decision given against him because he tried to put forward a view very like the "clear and present danger" doctrine which has had considerable influence in the deliberations of the American Supreme Court.

Certainly, then, American experience suggests that if the democratic state adopts the policy of disqualifying communists, as identified by their beliefs, many people who are not communists will be hurt as well. Moreover it is not only a comparatively small number of individuals who are affected. The risks of holding suspect opinion become very great; there is a general discouragement of free and unpopular or politically unconventional thinking; and, in any event, there is a considerable discouragement of honest expression of opinion. The risks and the stress lead to the growth of self-censorship: individuals naturally hesitate about fighting for opinions which can bring great trouble to themselves and their families or, perhaps, to the institutions by which they are employed. It is inevitable, too, that institutions, including universities, research institutes, newspapers, broadcasting companies, film companies and publishers, should hesitate to employ men whose opinions and utterances might make them the target for official, political or public attack. Inquisition into political heresy tends to affect even those who try hardest to stand out against it. It is a very unusual person who can avoid being influenced by a powerful atmosphere of intimidation and illiberality. In reading the American literature dealing with this problem, I have been struck by the fact that even those who protest against the legal suppression of communist opinion, and who most oppose the American Government's security programme, still think that

communists should not be appointed to university posts—a generalization that seems to me untenable.

The policy, then, of officially inquiring into communist opinion and of disqualifying and penalizing communists, identified by the views they hold, will almost certainly expose all radical and unpopular views to attack. It is not a policy which can encourage intellectual daring or independence; men who have something to say that is highly critical of established opinions or dogmas, which politicians or the public consider to have a special sanctity, will be forced to measure the risks before they expose themselves. The tradition of critical and tough thinking in the United States would no doubt take a lot of destroying. But the treatment handed out to men like Lattimore and many others does not encourage disinterested social criticism and speculation. Consequently, if we are tempted to conclude that the dangers of the time justify us in attempting to eradicate communism as a doctrine, this is the possible result that we have to measure against the magnitude and the imminence of the danger.

To what extent, though, do the lessons of American experience apply in this country? Obviously, there are some very important differences. In America, the greatest harm to the temper and practice of liberty has been done by the various Congressional Committees of investigation. We have nothing like that. I am inclined to think, however, that if the device of "declaring" individuals and organizations which was included in the Communist Party Dissolution Act had come into operation, it might have encouraged a wave of denunciation and intimidation. If the Government had given a lead in detecting and "declaring" communists, it might have encouraged other fanatics, busybodies and professional detectors of heresy and dangerous thought to excessive zeal in order to spur the authorities on to greater vigilance. If communists are too dangerous to occupy positions in the trade unions and the government service, why not also in the universities, the schools, in the world of journalism, in cultural bodies? This appeared to me at the time to be one of the most risky provisions of that legislation. I have already said that it is a good thing—and in every

way consistent with the vigour of democracy and civil liberty—if individuals and groups attack communism publicly within the social bodies in which communists themselves operate. But when governments decide that *they* have a duty to oppose communist or radical thought (when the government identifies itself with a political orthodoxy and sets up machinery to detect, expose and suppress a particular political heresy), then we have a development which is incompatible with intellectual and political independence and liberty.

We all admit that there are circumstances in which the freedom of some sorts of speech has to be curtailed. How do we recognize the circumstances? I do not think there is anything better for us to use than the "clear and present danger" criterion that has been elaborated by Holmes, Brandeis and other American judges. Like all such criteria, it is very vague and indeterminate, and provokes incessant controversy in its application to particular cases. It is still important, however, because it indicates, if only vaguely, the kind of issue we have to tackle, the sort of question we have to answer, and it indicates the spirit in which we give the answer. Even in the much more difficult conditions of our own time, there is still a great deal to be said for the view expressed by Justice Brandeis in 1927, in his judgment in the case *Whitney v. California*: "To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the process of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is an opportunity for full discussion. If there be time to expose through discussion the falsehoods and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence. Only an emergency can justify repression." Each person has to judge for himself what time of day it is. For my part, I believe that, so far as the main elements of communist political doctrine or of the current openly avowed policies of the communists are concerned, there is no present emergency serious or imminent enough to justify us in refusing to allow them to be aired and discussed.

The exclusion of persons of unreliable views and attitudes from specified positions in the state and the community is another matter. Communist plotting, obstruction and possibly espionage are problems with which the democratic governments have to deal. It is not easy for me to discuss this aspect of Australian policy because I do not know much of what is happening. The Americans are being very illiberal very noisily; how illiberal we are being secretly it is impossible to say. However, from the straws of evidence I have seen, I do not think that the situation here is entirely satisfactory. The exclusions that I have spoken of are of course to be defended entirely by invoking security. Security is no doubt a social interest of the highest importance, but it is also a vague and treacherous conception, and one that needs to be watched very closely, since it easily lends itself as a cloak for repressions that are of an entirely different character. In this region, the main problem for liberals (including governments well-disposed towards the maintenance to the fullest possible extent of civil liberties) is to ensure that this does not spread and ramify unreasonably until it becomes a destroyer of all independence and liberty. Where exclusions are concerned, we have to be certain that the persons excluded really are a security risk and that the positions from which they are excluded have some security significance.

This is why I am puzzled by certain aspects of current Australian policy. For example, the Government has recently refused to issue passports to Australians who want to go abroad, not only to trade union officials, but to writers, and, in one case at least, to a university scholar wishing to take study leave and carry out research overseas. Presumably in these cases, or in some of them, it is an unfavourable security report that was the basis for the refusal. Now I think it ridiculous to argue that an odd novelist, or an odd university lecturer, becomes a threat to the security of the country if he goes abroad, even though he might talk to communists in other countries while he is out of sight of the security service. I do not believe that the dangers, national or international, which communism represents for us are sufficiently pressing, or of such a character, as

to justify the refusal of passports to writers or scholars, presumably because their opinions are unfavourably viewed by security agents. For a university teacher, this sort of disqualification is a very severe penalty. In many of these cases I cannot believe that security is genuinely involved to any perceptible extent. They appear to me much more like outright cases of penalization of political opinion. This is the sort of arbitrary and unjustified extension of the concept of security that a democratic public and a democratic government should guard against.

I suspect that the same is true as regards many of the disqualifications from positions in the public service. I do not think that we can be confident either that all the persons rejected for appointment are communists, or anything like communists, or that all the positions concerned have any connection at all with security. This brings me to my final point. It is the complete secrecy in this country surrounding most of the investigating of political opinion and associations, the reporting and the exclusions and disqualifications, which constitutes perhaps the main difficulty for democracy. It is secrecy above everything else that gives the opportunity for radical (not necessarily communist) opinions to be punished under the guise of security. It gives a very full scope for arbitrariness and incompetence in determining what views a man holds and whether he is a risk to security. I cannot help wondering whether all the secrecy is necessary. When, for example, the application of a young graduate for appointment in the public service is rejected because of a security check, is it impossible that he should be told why he has been rejected, and the nature of the evidence against him? Is it impossible that he should have the right of appeal to a committee of independent adjudicators? If from now on the policy of refusing passports for security reasons is to be applied to writers, scholars and others, is it impossible that they should be given the right to answer the information that has been collected about them by security and to appeal against the decision of the authorities?

These problems seem to me to be the most acute problems connected with civil liberties in Australia at the present

moment. Security is at one and the same time the most formidable argument that justifies limitations on the exercise of orthodox civil liberties and the conception which can most easily be employed arbitrarily and oppressively to curtail the exercise of liberties which have no very direct bearing on security. A security organization which is concerned with the crimes of espionage or sabotage or related offences is one thing and, no doubt, in that capacity it needs to act in complete secrecy and anonymity. A security organization which (as security organizations in all the democracies have increasingly come to do) assumes the functions of maintaining a surveillance over the expression of political opinion by individuals, watching their political associations and providing reports which can be the ground of severe penalties and disqualifications, is an entirely different thing. In respect of that function, secrecy can be a cloak for many evils; it can be a distinct danger to individual rights and liberties. I do not quite know what the answer to this problem may be. I do feel, however, that it is just on this point that some of the most acute problems concerning the balance of civil liberties and other social interests now centre, in this and other democratic countries.

DISCUSSION

The Rt Hon. H. V. Evatt, P.C., LL.D., D.Lit., Q.C.: I congratulate Professor Partridge on a most illuminating analysis, characterized by great frankness and great courage. He has raised for consideration and debate some of the vital problems we have to deal with. Quite rightly he devoted only a little time to the purely legal aspects. We all remember the Common Law principle that there must be no interference with freedom of opinion or freedom of the person except so far as it is positively authorized by law. The Common Law of England, which we have inherited, did not approve interference with basic freedoms, except where those defending interference could point to some statute. The right of the citizen to express his opinions freely, subject to the laws of the land covering sedition or defamation, or special statutory provisions, constitutes a freedom which is invaluable. But here we must remember that freedom of expression can become atrophied by disuse.

Professor Partridge referred to the proposed legislation of 1950. He outlined the powers given to deal with communists or alleged communists by that statute. The chief vice of that legislation was that it gave to the Cabinet of the day final and conclusive power to say that the person to be "declared" was disloyal or subversive or likely to be a danger to "security". That was in the Act of Parliament ruled invalid by the Court and subsequently rejected by the people by referendum. There was no appeal from this Cabinet decision, either to a court or to a jury, or even to a judge. The courts rejected the legislation as unconstitutional. Finally the people would not accept it through the process of constitutional amendment. Why? Not because the courts or the people were sympathetic with communism, but mainly because they knew that persons suspected of having radical opinions, left-wing opinions, non-conformist opinions, might be drawn into the net of the statute, thus unjustly and unnecessarily curtailing the sacred area of true liberty. In Germany, when Hitler swept the polls in 1933, he won not only because the burning of the Reichstag was pre-arranged on the eve of the elections, but also because he promised to confine his punitive actions to communists or to Jews. He did, indeed, start with communists and Jews, but he went on to the trade unions and to those with liberal views, and

finally he attacked the churches. In Australia it was reasonable to fear that the legislation would hit not only communists, but labour and radical thinkers, and even those called "liberal".

I discussed this proposed legislation with Mr Chifley and naturally I started with the lawyer's point of view. Any lawyer with a background of long study of writers like Dicey, Hallam and Macaulay, would naturally invoke the "rule of law". Why? Because under the Bill there was to be no review of the secret decision on a man's loyalty, although the decision was to be published and declared in the Commonwealth Gazette and the person declared would be branded with infamy. I told Mr Chifley the legislation was completely contrary to the rule of law. But Mr Chifley's view was more emphatic and devastating. He said, "This means, if the Bill is accepted, there will come into existence in this country a small army of pimps, informers, liars and perjurers, because they will all be wanting to denounce the people whom they fear or hate. Security files will be filled with lies or half-truths and the man attacked will never know." In other words, the proposed legislation of 1950 would have openly established a system completely alien to the spontaneous and even boisterous political freedom which Australians value so much. Mr Chifley was right.

I say nothing about a Security Service in general. We admit the need for one. In fact, it was Mr Chifley and I who established it. We must not only have punishment of such crimes as sedition, espionage, and other forms of subversion, but we must also have a non-partisan intelligence organization to help prevent those crimes from being committed. We must have information as to actual or threatened danger of these crimes being committed. But, under the system which would have been part and parcel of the 1950 Act, we would have had, on a smaller scale, something equivalent to the Gestapo system, that is, the secret-police system of central and eastern Europe.

Mr Chifley was aware of the tragic experiences of paid informers in Ireland during the hundred years' struggle for self-government. The history of government espionage in Ireland actually contains examples of lawyers who were paid money by Dublin Castle for disclosing to the prosecution the secrets of the proposed defences of men on trial for their lives. Most notorious was the case of Leonard McNally, a barrister who had defended Robert Emmett. McNally was a popular hero, and was buried

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with all the honours befitting a great patriot. After his death it was revealed that, during the course of many cases, he had disclosed to the Government vital points of the defence, being regularly paid for his infamy. Apparently McNally himself had been involved in activities that might be deemed seditious and the fear of prosecution operated on his mind. Perhaps there is an analogy to the cases of the professional ex-communist informers in the United States today.

Professor Partridge rightly says that one of the chief dangers to civil liberty arises from the secrecy of Security designed "to keep dangerous opinions under surveillance and penalize in various ways persons who are judged by officials to have undesirable opinions". Professor Partridge correctly maintains that it is by absurd exaggeration of dangers that some people advocate suppression of opinions. Take one instance. For generations the Labour Party has been attacked because, being a socialist party, its political opponents falsely argue there is no difference between social democracy and communism. Prominent anti-Labour politicians pretend not to be able to distinguish the two, although every educated person knows that communism and democratic socialism are fundamentally different and distinct. If politicians take this line, it is not surprising if secret governmental agents or informers will follow the same anti-Labour line. Therefore they are ready to write down and report any derogatory or slanderous matters which, even if true, are irrelevant to the crimes of sedition or subversion.

Who are the people who want this heresy hunt, this political witch-burning? I am almost persuaded to infer that they are chiefly persons who are sympathizers with fascist objectives and readily adopt totalitarian methods. In other words, very often they are totalitarians of the right who want to "deal it out" to totalitarians of the left. But in the course of doing so, they "deal it out", not so much to communists, or to left-wing radicals, but to Labour supporters and indeed to all who fail to conform to the tenets of neo-fascists or other black reactionaries.

We must observe closely the practice of using anti-communist slogans to conceal fascist methods. The development is comparatively new. Stefan Zweig triumphantly declaimed in 1936 that the notion of liberty, liberty of individuals and of thought, is now accepted as an "inalienable" maxim by the civilized world. Indeed, the historian, Bury, wrote similarly in 1913 that the fight

was won, that the battle for freedom was over. As long ago as 1829 Macaulay stated a fundamental principle as follows: "To punish a man because he has committed a crime, or because he is believed to have committed a crime, is not persecution; to punish a man because we infer from the nature of some doctrine which he holds, or from the conduct of persons who hold the same doctrines with him, that he will commit a crime is persecution; and is in every case foolish and wicked." But despite Macaulay the battle for freedom was not won in 1829. The wicked treatment of the six Tolpuddle Martyrs took place in 1834—and under a Whig-Liberal Government!

The truth is that the battle for freedom of expression is never won. It has to be fought in every generation. We must win the battle again and again, for we cannot assume that any victory is final.

I agree with Professor Partridge that in the United States the recent inquisitions into political opinions often merge into a general proscription of non-conformist opinion. He reaches the crux of the matter when he asserts that in Australia too there is in fact a surveillance of political opinion maintained by the Security Service.

And freedom of expression is attacked in many ways. A professor is "penalized" in the sense that his future career or promotion may be prejudiced whenever some expression of opinion by him is unfairly attacked under the privilege which shelters members of parliament. The object of such attacks is at times not only to injure the person attacked but to deter him and others in similar positions from speaking when they believe it to be their duty to speak. Therein lies a special danger to freedom. The result is often to silence critics of the government or of certain activities of government or of individuals. It is so much easier to say nothing. But this result is an evil that no democracy can tolerate. It means that the exercise of the freedom of expression will be stifled, not by any suggestion of breach of law, but by making it known that heterodox opinions will—truly or falsely—be reported and documented and secretly or savagely attacked under protection of privilege.

In the United States people have been pilloried, or dismissed from Public Service or prejudiced in the universities, simply because they have had some past or remote connection with organizations which the Government—not the courts—classify

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as "subversive" or "undesirable". We have in Canberra examples of two distinguished professors being refused visas to visit the United States. In such cases no reasons are given, questions must not be asked, yet there is an implied smear on loyal, honourable and courageous men. The tendency is to make the way of the able and honest critic more arduous and to silence the weaker brethren. "The cowards never started: the weak ones fell by the way."

Recently a member of the Commonwealth Security Police visited a Sydney University lecturer whom he asked to act as a secret agent or informer. The approach was very smooth. "The University is doing important work of interest to Security: the opinions of other lecturers and teachers on international and political affairs is a matter of keen interest to Security."

The lecturer not only refused to act but reported the approach to the Society of University Teachers, which by an overwhelming vote, subsequently endorsed by the University Senate, denounced the proposed seduction as completely contrary to academic freedom without which no university can survive. In this particular case the "approach" was stealthy and not without intimidation, for the lecturer "approached" had expressed communist views some twenty years earlier—a fact which was no doubt still contained in some dusty and stale Security report. This teacher was steadfast and acted with courage and wisdom. But cases there are, or will be, of persons who dare not refuse. Incidents of this kind remind us of Orwell's 1984 and of Karp's *One* and, of course, of the type of American "professional ex-communist" witness whose bona fides is now a matter of grave suspicion.

I would like to remind you of two or three sentences from Socrates in his final speech to the judges. After his conviction he had the privilege of choosing the penalty of banishment, rather than death, provided he was willing to give up his right to express his opinions and criticism on matters of public concern. But Socrates rejected all thought of being silenced and chose death rather than silence. "The greatest good of man," he said, "is daily to converse about virtue and all those things concerning which you hear me examining myself and others. The life that is unexamined is not worth living." His final decision was that if he could not be free to debate important public questions affecting the citizens or the state, life would be unendurable. And so he went to his death.

This, then, is the fundamental charter of conduct for all free men. It is not enough that the legal right of criticism theoretically exists. The right must be exercised or true freedom will become atrophied. Interference with freedom by bearing down on dissent, and by monopolizing the organs of mass communication, has increased, is increasing and ought to be diminished. The teacher at Sydney University, who refused to become an informer against his colleagues, and who publicized the attempt to seduce him, showed courage. University teachers everywhere should cease to speak of freedom as an abstract legal right. They should, like Professor Partridge, speak up and speak fearlessly. Courage is the thing. And only courage in exercising freedom of expression will save that fundamental right.

Mr H. E. Strakosch: Freedom is not only a negative concept, a freedom from restriction, but has its positive aspects—freedom to think and work for the greater good of the community. Professor Partridge, if I understood him correctly, meant that communism is no danger to us because our community is virile. If we value our positive freedom, we have nothing to fear from communism. If we do not value our positive freedom, secret police measures will not help us anyway. Professor Partridge correctly said that communism was no danger to us, but he could have been misunderstood as implying that communism as such was no danger. The whole question centres on whether the Professor's estimation of the inner force of our democracy is right or wrong, and whether it is right or wrong depends entirely on us. If we are complacent, we will misunderstand the nature of communism. If every one of us realizes the danger in communism as such, the nature of a threat which is so insidious that it cannot be fought by repressive police measures, I think we shall prove that Professor Partridge is right.

Mr M. McCollm, M.H.R.: I feel that people attending this School could go away with a very wrong impression of the attitude of the Minister for Immigration on the question of passports. He is a great defender of the rights of people to have passports but all unbiased persons will admit, at a time when the Petrov Royal Commission is sitting, that the Minister for Immigration would be failing in his duty if he were to issue passports to leave the country to people who might be brought before that Commission. Some people who were temporarily refused passports have been granted

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them recently, and there are cases where visas to enter the United States, previously refused, have been later obtained with the assistance of the Australian Government. On the question of the Security Service, much hypocrisy has been evident. Allegations have been made against the Government about tapping telephones and I do not know whether it is done or not. Mr E. J. Ward has consistently made this accusation in Parliament and yet in a recent book on Australian politics it is stated that he himself, when a Minister in a previous government, had means of listening in to telephone conversations. If Mr Ward disagreed with the statement he should have taken action, but to my knowledge he did not. So I have the feeling that democracy is not a lost cause in Australia; I do not believe that we have lost our freedoms.

Mr Eric Baume: My criticism of Professor Partridge is that he has not indicated any adequate mechanism for retaining liberty, without endangering the nation. Without such mechanism, it is to be assumed that at a time of national emergency all liberty must be thrown overboard. Moreover I feel that a most important point has been completely missed. The vilest part of the legislation proposed against the communists in 1950 was the proposal that a man was to be presumed guilty until he was proved innocent. It was a terrible thing that in 1950, after Australia had existed since 1788 with the belief that a man was presumed innocent until he was proved guilty, the whole concept was reversed by politicians. To put it in metaphor, politicians are the guardians of liberty and should be armed with rifles to shoot its enemies, but in this case they proposed to take a shot-gun and spread destruction widely and indiscriminately. I do agree with Dr Evatt and with Professor Partridge that all opinions must be permitted. A fascist has as much right in this democracy to express his opinions as a communist, so long as his actions do not contravene the law. All sections must be free within the body politic. There can be no Holy War against communist heresy or fascist heresy or any other kind of heresy. Opinion is free to all and no heretic, whether red or white or blue, should have to be dealt with in some antipodean *auto-da-fé*.

Mr D. H. Drummond, M.H.R.: Altogether too much has been said in this country about privileges and rights and precious little has been said about responsibilities and duties. When we talk of rights we imply at the same time the existence of responsibilities,

and we should all ask whether we exercise our rights with a sufficient sense of responsibility. I agree with Dr Evatt's view of the means by which Hitler achieved power, but the most important factor was the sweeping away of constitutional safeguards. I want to emphasize that in our Federal Constitution we have a safeguard which is sometimes forgotten. When Section 92 of the Constitution is condemned, it is in reference to Trade and Commerce, but we should not forget that there is a third qualification—that intercourse shall be absolutely free. Intercourse means the right to move, the right to express our ideas, from one quarter of Australia to another. While we have in this country a Constitution which cannot be altered except by law, by the will of the people, we retain a safeguard, so that no government temporarily in power can form a High Court of Parliament to destroy liberties as the Premier of South Africa is trying to do, as Hitler did in Germany, and as others from the left would do today.

Mr Ernest Platz: In July 1953 I wrote an article in the Melbourne University paper, *Farrago*, entitled "Is our liberty being strangled in Australia?". I had in mind the time of the governments of von Schleicher and von Papen, when in the newspaper office where I worked decrees were arriving in increasing numbers telling us what we were allowed to publish. I remember a colleague of mine saying, as we left an editorial conference, "Liberty is being slowly strangled; it will be easier for Hitler to seize power than we think." It is a sad reflection that there are a few similarities between the Germany of those times and Australia today. What are the danger points? Some, like passports, have already been mentioned, but there are many others. There are instances of young soldiers who have been threatened with punishment if they complain to the Press of, for instance, the quality of food. The Returned Soldiers' paper *Mufti* suggested, a few months before July 1953, that parents should insist that their children report any statements made by their teachers which might seem to the children to be unpatriotic. This seems to me more like Hitler's idea; this is not democratic. There are other instances like these but there is still a great and profound difference between Germany and Australia. There are danger signals, however, and people should be more courageous, and not merely accept what they are told by authority. We all need to participate fully in democratic activities, without fear of being "smeared" because we may have spoken

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with communists. The idea of guilt by association has no place in our conception of democracy.

Mr S. Cory: Professor Partridge posed the problem as a choice between liberty and security, and I wonder whether the people who place the emphasis on security are really attaining the kind of society which they want. If it became known in some sections of the Public Service that Security were making inquiries about a particular individual, many people of independent thought would be dissuaded from joining the Public Service, and some already in the Public Service might decide to resign. We could arrive at a stage where the Public Service is composed of automatons, only able to implement the legislature's laws in mechanical fashion and unable to bring to the administration of day-to-day affairs any independence of thought, initiative or critical sense. I do not think that is the kind of society that we want and I think that Security also is aware of this danger. When a particular individual is examined by Security, he is often requested not to inform his fellow members in the Public Service that he has been under investigation, because of the fear that morale in the Public Service will be undermined.

Mrs E. B. Gale: It has been said that there are dangers to Australia greater than communism and I think we need to be told specifically what these dangers are. Is it the danger from countries to our north? We hear so much from Press and radio commentators about Vietnam, about China and about Indonesia, that members of the public are hopelessly confused. This may explain some of the apathy we find, for we must not delude ourselves that members of institutes such as this constitute anything but a very small minority. It is heartening to hear the views of Professor Partridge and Professor Duncan, which tend to restore our confidence in our fellows, but we must not overlook the need to awaken the dormant conscience of most of our community.

Professor P. H. Partridge, replying: Mrs Gale asked me to be more specific about influences in Australia which I said were more a danger to political rationality than communist views. I meant to imply, not that there are views here which are more false than communism, but that there are views more dangerous because more attractive to Australian people and more widely spread. I had in mind some of the reactions on the occasion of Mr Attlee's

visit to this country when there was talk of boycotting meetings and dinners that Mr Attlee attended because he had visited Communist China. The attitude that there is something pernicious about a statesman wanting to find out more about Communist China and its policy seems to me an irrational attitude to international affairs, an irrationality which is more pervasive than communism in this country and certainly a much more dangerous attitude at present than communist attitudes could ever be. The assumption that what is happening in communist countries is so pathological and is so dangerous to us that we should avoid even any attempt to study or understand it, is an attitude that is fairly widespread in the United States and it has some root in this country too. One of the speakers in discussion on Professor Duncan's paper said that we are not confronted with the problem of liberty, we are confronted with war. If we are involved in war or become involved in war there is very little prospect for liberty, for it will no doubt be one of the earliest casualties. What does alarm me is the willingness with which some people embrace the notion that we are at war, the willingness with which they want to plunge into the organization which is appropriate to a society at war. My argument was based on the assumption that we have to recognize the incompatibility between war and a fully free society and that we have to be sure that we do not prematurely embrace the kind of mobilized society which war demands. Each of us has to decide for himself what time of day it is and, in making that decision, admittedly we run very considerable risks. I do not think that we are yet in a situation in this country where we have to embrace this kind of mobilized society and we should try to resist to the utmost being forced into a position where we have to sacrifice civil liberties on that ground. We may be forced into that position but I think that we should do what we can to avoid being forced into it.

Mr McColm spoke of criticism of the Security Service. I am not concerned to criticize the Australian Security Service as such, but I am concerned to point out that, like other Security Services, it is working under conditions of secrecy. It seems to be developing as a surveillance into the political opinions and activities of people, and this appears to me to be a danger. There is a great deal in the point Mr Baume made that the real problem facing us is that of the machinery which should be introduced in these circumstances. Dr Evatt said the Security Service is neces-

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sary, but it is important to recognize that if it is necessary it is all the same a necessary evil. It should not be difficult to develop machinery, which does not yet exist in this country, that would provide some check on the activities of the Security Service. Possibly we need some system of appeal or review of decisions made on the basis of security reports, when highly confidential information affecting the military defence of the country is not involved: when, for example, a young graduate is told there is no position for him in the Public Service, or when some individual is refused a passport. Much responsibility lies on the Minister who is responsible for the organization and conduct of the Security Service and a great deal will be lost unless we can be confident that the Minister is determined that the operations of the Security Service will not go farther than is absolutely necessary. In parliamentary debates it sometimes seems that curt and impatient answers are given to all questions asked about the operations of the Security Service. There is a tendency to assume, sometimes by some members themselves, that even members of parliament are doing something that is quite indefensible if they raise honest questions about some aspects of the Security Service. Mr Baume's point about machinery also bears some relation to the operation of the trade unions and the position and activity of communist and other leaders in them. It is clear that the legislation introduced by the Menzies Government for compulsory secret ballots and other measures of that kind are of fundamental importance and a great deal of further thinking could be done along those lines.

The Rt Hon. H. V. Evatt, replying: The correct title of the Security Service is the Australian Security Intelligence Organization. Its primary function is to advise Commonwealth Departments. It was established as a special corps of expert intelligence officers who could advise other departments what action was required to punish such crimes as treason, sedition or other forms of subversion set out in the Commonwealth Crimes Act, and who could also advise on measures aimed at the prevention of such criminal conduct. In that defined context, Security has a proper function and that alone should be its function. But wholesale collecting and recording of the opinions of persons in the community, obtained from direct servants of the government or from paid or voluntary informers, is really outside the scope of a true intelligence organization. In my opinion Mr Baume and Professor Partridge are right in emphasizing that there must be

some control of Intelligence Organizations, some machinery to prevent abuse of power and interference with freedom. Permit me to read from an essay of Orwell, written in 1939 and not so well-known as his later books: "The terrifying thing about modern dictatorships is that they are something entirely unprecedented. In the past every tyranny was sooner or later overthrown because of human nature which, as a matter of course, desired liberty; but we cannot be at all certain that human nature is constant—it may be just as possible to produce a breed of men who do not wish for liberty as to produce a breed of hornless cows. The Inquisition failed, but then the Inquisition had not the resources of the modern state. The radio, Press censorship, standardized education, and the secret police have altered everything; mass suggestion is a science of the last twenty years and we do not yet know how successful it will be."

I wish to stress again that there is no law of the land which prevents the free expression of opinion, and our discussion has illustrated this. There has been some difference of opinion expressed here, but this discussion has been especially valuable because of that difference. The principle is that truth and falsehood must grapple and, as Milton so optimistically maintained, truth should not be worsted in a "free and open" encounter. But the encounter must be both "free" and "open". I return to the point that the free life of a democratic nation is endangered when, for one reason or another, people become disinclined to speak up and speak out. The plain fact is that public abuses can only be remedied by courageous speaking out. Professor Partridge has spoken out. I hope his lead will be widely followed.

Let us never forget Castellio's heroic intervention against Calvin after the judicial murder of Servetus. Every humanist and every scholar knew that Castellio was right. They knew that Calvin had committed a crime against humanity, an intolerable injustice, and the humanists and scholars of the age foresaw that disaster must arise from the brutal suppression of ideas. Yet they dared not themselves openly fight for the truth. According to Zweig they exchanged touching and admirably written letters. But they did not come into the open to fight. "Erasmus ventured now and again to shoot a few arrows from his ambush; Rabelais used fierce laughter as a scourge; Montaigne wrote eloquently of the matter; but none struck open blows to prevent infamous persecutions and executions. Rendered cautious by experience, they said that a

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sage could find a better occupation than attempting to control a mad dog; it was the sensible man's part to keep in the background lest he himself should become a victim." Self-censorship of that kind has no place in our free society and it should be severely censured if it arises. Injustice must be uncovered by open and frank discussion, which is the very foundation of our hard-won freedom.

What is wanted in Australia today is not so much the sublime self-sacrifice of men like Servetus and Castellio, as the simple manliness to speak up and speak out whenever there is injustice or oppression. Once again I congratulate Professor Partridge.

III

THE FREEDOM OF THE PRESS

R. J. F. BOYER *

WHEN I was asked to address the Institute of Political Science on this topic, I was hesitant about attempting it because it covers ground well trampled in recent years by a host of distinguished observers throughout the world. Yet the very fact that the topic of Press freedom has so concerned contemporary democratic governments, liberal thinkers and even the Press itself, is surely the most significant indication of its importance, not as a vague principle of historic origin but as a vital issue of modern day-to-day life. Indeed, it has to be recognized quite frankly that not only governments, professors and newspapermen, but all newspaper readers are today critics of their journals and are quite vocal on the subject of Press freedoms. In my view, it is fair to assume that the attention given by the community at all levels to the manner of operation not merely of the Press but of all the mass media of information is bound to increase, rather than diminish, as time goes on.

The reason for this growing public interest in Press freedom must be found, I suggest, in the increasing influence of the Press itself—both in the number of readers involved, and in the intimacy of its entry into our lives. Modern journals are not simply purveyors of “hard” news, of the factual raw material for our individual judgment. In a very real sense they are doing our thinking for us, creating our opinions, setting our standards. Every headline is a suggestion to us that one piece of news is more important than another. Every editorial selection of news involves civic, political or ethical judgment which becomes, in a sense, the reader’s judgment. Indeed, news selection and priority of treatment are far more potent and

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intimate influences on public opinion than editorial comment on the leader page. In effect, the newspaper is becoming more and more the vehicle for the treasured freedom of expression of the individual. Mass communication in general, and the Press in particular, have set up a centripetal force which is centralizing at a few points a great deal of the freedoms formerly spread far more widely among the citizenry. As we shall see later, this development is not necessarily to be deplored—but it is the reason and the justification for the widespread and growing concern both for the protection of these “mass” freedoms and for their proper use.

As with all freedoms, we are inclined to lay stress on that aspect of the freedom of the Press which affects us most directly. To the publisher, it means primarily the absence of restrictions on his right to secure and publish such news and to make such comment and criticism as he thinks fit, subject only to the recognized limitations covering indecency, sedition and libel, for which he must answer in the ordinary courts of law. The reading public is not, of course, insensitive to this basic principle of Press freedom. Not only the right but the duty of the Press to act both as our mentor in the factual news of the day and as the public conscience in uncovering corruption, are so deep in our general scale of civic rights as to be largely taken for granted. Australian public reaction to infringements has always been prompt and emphatic. Nevertheless, Press freedom to the newspaper reader means much more than that. It means freedom for himself as a reader to be properly and adequately informed, and to be protected against undue invasion of his privacy and the corrosion of his civic, cultural and moral standards. My main thesis in this paper is that these two aspects of Press freedom cannot be separated, and that both will be lost unless both are preserved.

One finds, however, a growing misconception in some quarters that, because of the vast importance of the freedom of the Press, it is a freedom somehow more sacred in its nature than that enjoyed by individuals. It was this misconception which led Lord Chief Justice Russell to remark in 1900 that “The liberty of the Press is no greater and no less than the

liberty of every subject of the Queen", a judgment which has been echoed in our own courts of law on many occasions. In short, Press freedom is only our individual liberties "writ large", and is subject to precisely the same considerations of limitation, penalty and ethical sanction as that of the humblest citizen. But the essential fact is that it *is* "writ large"—so large, indeed, that its smallest departure from grace becomes of major community concern. The abuse of his liberty by a private citizen may be overlooked because of the narrow effects of his delinquency, but wrong exercise of freedom is bound to cause concern when its effect is felt by the hundreds of thousands of clients of a great daily newspaper. Indeed, public concern on the issue of Press freedom can be traced as growing in urgency precisely in proportion to the spread of Press circulation and influence. The 1946 American Commission on the Press quotes a description of American Press irresponsibility in the early days when individual circulation was small and editorially widely spread. "In its origin, freedom of the Press had little or nothing to do with truth-telling . . . most of the early newspapers were partisan sheets devoted to savage attacks on party opponents. . . . Freedom of the Press meant the right to be just or unjust, partisan or non-partisan, true or false, in news column or editorial column." "Today," comments the Commission, "this former legal privilege wears the aspect of social irresponsibility. The Press must know that its faults and errors have ceased to be private vagaries and have become public dangers. Its inadequacies menace the balance of public opinion. It has lost the common and ancient human liberty to be deficient in its function or to offer half-truth for the whole."

While this description of the care-free nature of early American journals may not have been, and I believe was not, true of the early Press generally, most of which was much more conservative than the Press of today, the point made by the Commission is valid and goes directly to the heart of the problem of Press freedom as we know it. While every publisher of a newspaper, every licensee of a radio station and every operator of a film theatre share with us all the freedoms common to a democratic and, still more, to a Christian society, the

restraints and responsibilities in the use of these are bound to grow in direct proportion to their influence on society. This is an aspect of the use of freedom which we all share in some degree. When we rode our first bicycles or drove our horse-drawn vehicles on our roads we were not subject to restraints of speed or the irksome regulations so familiar to us today. It was only when we had under our hand a ton or more of steel with an engine of lethal capacity harnessed to it that we began to treat the freedom of the Queen's highway with a new respect—or possibly we had that respect forced on us by governmental action.

Fundamentally, therefore, the concern of modern society, particularly of democratic society, for the maintenance and operation of Press freedom, derives from the enormous growth of the power and influence of the newspaper profession. This growth has been due to three main causes. Firstly, there have been major advances in the technique of news collection, publishing and distribution, making possible greatly increased output. Secondly, allied to these technical advances has been the tendency for the Press to grow into large proprietary or public companies so as to secure greater economy of operation, a tendency common to all modern industry. Thirdly, and perhaps most importantly, has been the change in the character of the Press itself. Mr Angus McLachlan, the General Manager of the *Sydney Morning Herald*, recently gave an excellent address, which is now in publication, entitled "Readability and Responsibility". In this address, Mr McLachlan outlines both the advantages and tension set up in the Press world by the activities of Lord Northcliffe. This remarkable man changed, almost overnight, the character of the British newspaper, which traditionally had been regarded as performing the serious task of informing the educated minority on current events, into a popular sheet canvassing every interest, noble or ignoble, of the whole mass of the people. In spite of the resistance of certain conservative journals, the bulk of the British, and subsequently the British Commonwealth, Press was forced to follow suit. There can be no doubt whatever that this development had critical influence on all British and Dominion Press policy. The

"Popular Press", with its "human interest" emphasis, challenged the older conception with a financial punch that could not be ignored. Whatever one's judgment on the net cultural and civic effect of this development, it is undeniable that at least it has made our daily papers the constant companion of practically every adult in our community. In effect, the result has been a process of larger circulations in a smaller, or at least no greater, number of hands. In other words, the proportion of the modern community which is exercising most effectively, on behalf of us all, our common freedom of expression, tends to become smaller, with its influence correspondingly larger. How these developments have affected the nature and usage of Press freedom is a matter of our common concern.

The wide contemporary interest in this topic is evidenced by the fact that serious and comprehensive studies of the problem have recently been conducted in the United States, in Britain and by the United Nations, which have all produced voluminous reports of evidence and lists of recommendations. The most exhaustive and at the same time the most inconclusive of these examinations has been that of the United Nations. After nine years of intensive study, this body has tried to achieve agreement on four cardinal principles of freedom of information—but without success. These were:

- (1) a definition of freedom of information and the responsibilities of the information media,
- (2) a code of ethics for information personnel,
- (3) a code on international transmission of information,
- (4) a Convention on the International Right of Correction of news reports which might be held to be erroneous.

On the major principles covering freedom of information and the responsibilities of Press and radio, no agreement has been reached or is likely to be reached in the near future owing to the widely differing views of the cold war contestants on the nature of freedom itself as a human right. The most interesting outcome of this prodigious effort, however, has been the near-agreement on the Convention on the Right of Correction. If adopted, this Convention would permit any member state,

which felt that information published about it by the Press or radio of another state had been false and liable to injure relations, to submit to the delinquent state a factual correction which that state would thereupon issue to its own media for publication. The General Assembly adopted this Convention in 1952 by a narrow majority and opened it for signature. As six nations have signed the Convention it is now technically in force but, as far as the United Nations records show, it has never been called into use. It is interesting to note that the chief opposition to this Convention came from Britain, the United States and Canada, who argued that a greater safeguard against incorrect news reporting would be to increase the supply and sources of news. In essence, however, the objections of the Press and governments of the English-speaking world, including Australia, were not aimed at correction of false news as a desirable principle, but at the impossibility of checking the accuracy of corrections which might come from sources not open to free journalistic investigation. It is worthy of note, however, that this idea of the Right of Correction has been the one which has most nearly achieved international adoption, for there is no doubt that not only sovereign states but public men, political parties, religious groups and individual citizens generally have evidenced growing concern that the Press should be scrupulous in granting correction of erroneous statements of fact. It is also significant, however, that those nations which are most devoted to liberty and most mature in its use are the most opposed to seeking redress through legislative compulsion. They look to the work of the United Nations in the whole field of freedom of information as achieving its main results through moral rather than statutory pressure.

The most useful analysis of this issue of Press freedom which has come from the United States is the report of the unofficial Commission on the Freedom of the Press which was initiated and largely financed by one of America's leading publishers, Henry R. Luce of Time, Inc. Under the chairmanship of Robert Hutchins, Chancellor of Chicago University, a group of America's leading authorities in law, economics, political science and ethics took evidence from both Press and public

on the role of mass communications in the education of the people in public affairs and on the manner in which this role was being carried out. Its report, in my opinion, is one of the most realistic and satisfying analyses of the difficult relationship of freedom to accountability in the field of mass information that has yet been achieved, and I have helped myself liberally from its comments in this study. In brief, its conclusions find no answer to the problem of Press freedom in governmental compulsions. It sees the modern Press as a social phenomenon of incalculable influence whose uses and abuses are the concern of publisher and public alike for mutual searching of conscience. Its most practical recommendation is to urge the constant provision of a supplementary flow of news and information, from both governmental and private sources, to ensure that spread of opinion and comment so essential to full freedom of expression.

Perhaps the most significant of modern developments in this general problem, however, was the appointment by the British Government of a Royal Commission on the Press in 1947. Its terms of reference were "to inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies to control, and to make recommendations thereon". As these terms indicate, the main concern of this Commission was less to analyse the principles of Press freedom, which were largely taken for granted, than to probe the effect on that freedom of the financial pressures resulting from severe industrial competition, on which score there was considerable public concern.

After extensive evidence from the Press and from the public, the Commission reported to Parliament that, while it recognized that the influences bearing on the modern Press from the highly competitive conditions of its operations had a direct bearing upon the maintenance of its freedom and its standards of public service, it recommended no legislative action to protect that freedom or to safeguard those standards. On the other hand, it urged that the Press itself should take active

steps to safeguard the public interest and its own professional standing by establishing a permanent body, to be known as the General Council of the Press, to act in both public and Press interests. While 80 per cent of the Council should represent proprietors, editors and other journalists, the Commission recommended that the remaining 20 per cent should be laymen, representing the general public, who should be nominated not by the Government but by the Lord Chief Justice and the Lord President of the Court of Session. The objects of this Council should be "to safeguard the freedom of the Press, to encourage the growth of the sense of public responsibility and public service among all engaged in the profession of journalism . . . and to further the efficiency of the profession and the well-being of those who practise it". Among the particular objectives of this Council, as recommended by the Commission, are four which are of special importance. They are:

(1) by censuring undesirable types of journalistic conduct, and by all other possible means, to build up a code in accordance with the highest professional standards. In this connection it should have the right to consider any complaints which it may receive about the conduct of the Press or of any persons towards the Press, to deal with these complaints in whatever manner may seem to it practicable and appropriate, and to include in its annual report any action under this heading;

(2) to keep under review any developments likely to restrict the supply of information of public interest and importance;

(3) to study developments in the Press which may tend towards greater concentration or monopoly;

(4) to publish periodical reports recording its own work and reviewing from time to time the various developments in the Press and the factors affecting them.

In effect, the proposal was that the Press itself, with some responsible public participation, should constitute its own Parliament and Court of Public Appeal and, further, that the public responsibility of this body should be made manifest by an annual reporting of its activities. I can think of nothing more wholesome, constructive and mutually advantageous than this

suggestion. It was essentially British in character, advocating as it did self-discipline as the most effective, if not the only, guardian of freedom, and joint professional and public participation in issues of high mutual concern. In 1949 the House of Commons, without a division, resolved, "That this House, having taken into consideration the Report of the Royal Commission on the Press, would welcome all possible action on the part of the Press to give effect to its conclusions and recommendations". It is greatly to the credit of the British Press that it accepted this proposal in the main and gave effect to it. In 1953 the Council was constituted by the voluntary action of the Press organizations with substantially the same objectives as recommended by the Commission. The main departure from the Commission's suggestions was the exclusion of any lay members from the Council, the whole of its personnel being restricted to full-time directors or employees of Press organizations or news agencies. While it is understandable that the Press should wish to conduct a body, having to do with its own professional standards, entirely from within the profession itself, it is my belief that the acceptance of lay members of the public on the Council would have paid high dividends in public confidence and goodwill. Their inclusion would have been a gesture of recognition that the great issues of Press freedom and standards can only be secured by the co-operative effort of both publisher and reader. Nevertheless, it was a magnificent step forward and public interest was met to a considerable degree by the willingness of the Council to hear and investigate public complaints and still more by the decision to publish a report of the Council's activities for public perusal. The first of these reports has just been issued and is a fine piece of honest journalism. It describes the complaints from the public which have reached the Council, the facts of the cases examined and the Council's judgment thereon. It does not hesitate publicly to censure both members of the public, who make frivolous or unjust complaints against editors, and editors or publishers, who have failed in professional standards. The report is, I believe, unique in the whole history of journalism. It is, in my opinion, one of the finest examples of the safeguard-

ing of freedom by self-discipline and of the recognition of public accountability that we have yet seen.

I have given this brief survey of the three most notable public inquiries into the issue surrounding Press freedom under modern conditions because I believe they provide the fairest and most factual background to any appraisal of our own Press—for fundamentally the issues are common to the whole of the free world. Their significance lies in the following conclusions which may fairly be drawn:

(1) that the time has gone when the liberty of the Press, both in its freedom from undue statutory restriction and in its use of that liberty, can be thought of as wholly, or even primarily, the private concern of the publisher;

(2) that the maintenance of Press freedom from restriction is regarded as essential to a free society and is not endangered or under serious challenge while it is used with a full sense of public responsibility;

(3) that where the Press falls short of public responsibility, the remedy should be sought not in censorship or statutory limitation but in self-discipline both by the profession and the reading public.

As to the nature of Press freedom itself, as seen by these Commissions, I cannot do better than quote from the American report:

The emerging conception of freedom of the Press may be summarized as follows—

(i) As with all freedom, Press freedom means freedom from and also freedom for.

(ii) A free Press is free from compulsions from whatever source, governmental or social, external or internal; from compulsions, not from pressures—for no Press can be free from pressures except in a moribund society empty of contending forces and beliefs.

(iii) A free Press is free for the expression of opinion in all its phases. For these ends, it must have full command of technical resources, financial strength, reasonable access to sources of information at home and abroad, and the necessary facilities for bringing information to the national market.

(iv) For the Press there is a third aspect of freedom. The free Press must be free to all who have something worth saying to the public, since the essential object for which a free Press is valued is that ideas deserving a public hearing shall have a public hearing.

How, then, do we stand in Australia against this background of the "emerging conception of Press freedom" which appears to be common to responsible opinion in Britain and America? I think it should first be said that, taking our Press as a whole, we are fully as well served as either of these two great democracies. If our more sedate journals may not be as punctilious and selective as theirs, neither are our "popular" newspapers so extravagant and careless of their effect on public standards. The general standard of accuracy and sense of public responsibility are both high—facts which we should recognize and for which we should be duly thankful. As far as Press freedom from statutory limitation is concerned, we have closely followed British tradition in that our Press is not subject to licence or censorship prior to publication (except in wartime), but shares the liability of all the citizenry for actions which the courts may judge as libellous, indecent or seditious. There is no significant weight of opinion in this country which does not support the principle of Press freedom within these limits, though opinion may vary as to the manner in which these limits are being observed. This is not to say, however, that public opinion in Australia is not critical of its Press. Indeed criticism, which is directed not at its freedom but at the manner of the use of that freedom, is more widespread than the Press itself seems willing to recognize. In my view, it is a great pity that we in Australia have not had our own Commission on Freedom, not only of the Press but of Radio and Film, where we could calmly and judiciously canvass the difficult issues of the relationship of these media to our community. Nothing could be more calculated to improve relations between Press and citizenry and to entrench our common freedoms than a frank and open discussion on points of difference. As I see it the situation in Australia may fairly be described in the following way. On the one hand we have the Press, which feels with a

great deal of justification that it has deserved well of the community, unduly sensitive to criticism and reluctant to make public account of its stewardship. On the other hand are ourselves, the readers, who, though avid clients of the Press, are grumbling in our beards about Press standards and policies. This is a thoroughly unhealthy situation which has in it all the seeds of mutual cynicism. As I have tried to show, the modern mass media of information, of which the Press is still immeasurably the most powerful, are so deeply entrenched in the daily life, thought and moral standards of every one of us that we simply cannot afford just to be cynical in our relations. It is of the utmost importance to our democratic health that we can have confidence and pride in our Press, and that the Press in its turn regards the community less as customers in a circulation schedule than as co-partners in the daily search for truth.

While it is impossible within the limits of this paper to cover the whole field of charges, counter-charges and misunderstandings which bedevil the relations of Press and public, I will try, at the risk of being misunderstood, to state the most basic of them. Let us take, for example, the charge that our Press (or a portion of it) is debasing public taste by over-exploitation of sex, sensation and crime. Allied to this is often the cynical comment that the Press, anyhow, is interested only in circulation and its consequent dividends. How true is this, and, if true, who is responsible? The first thing to note is that this complaint is not peculiar to this country. Indeed it constitutes the bulk of the charges dealt with by the American and British Commissions. The report just published by the General Council of the British Press, to which I have already referred, lists nineteen organizations, mainly religious and women's, who complained to it of "Press exploitation of sex". "Is this the meaning of Press freedom?" ask the cynics. The second point of note is that as a general charge it is grossly unfair. There are journals, here and abroad, which are meticulous in limiting the degree of prominence accorded these topics. But, assuming it has justification in some instances, let us see how far we, the reading public, are involved in the fall from

grace. The fact is that from the point of view of the Press this question of taste and standards poses to it an almost insoluble dilemma. We, the people, demand that the Press shall be free of governmental regulation and, therefore, of financial assistance from the Treasury. Further, we demand that our news sheets are promptly and frequently available at a low price but with a high coverage of domestic and oversea interests. We also deplore monopoly and demand a choice of journals. As a direct consequence our Press is compelled to develop into big business, with large financial commitments, and in most cases heavy obligations to investing shareholders. As financial casualties in the Press world are by no means rare, these conditions make the search for circulation, which is the prime condition of economic success, an anxious responsibility of management. And how does one achieve circulation but by selling those things that are most readily bought? And what are these things? It is a melancholy fact, known to all who are engaged in operating any of the mass media of information, that the most popular and therefore the most profitable production is by no means always the most worthy. If we are honest with ourselves we have to admit that we can be intrigued and our interest can be captured by matter which either is trivial or appeals to our lowest instincts. However noble our ambitions, it is astonishing how ready we are to wallow in sensation, in the character-assassination of our fellows and in the detail of the seamy side of life. The beast in us is the most easily captured market for all the means of mass communication. Is not the publisher of the popular Press therefore entitled to say that he is meeting the market in precisely the same way as other businesses, giving the public what it wants, and reflecting accurately its desires? Is not his circulation proof of community endorsement of his policy? These are questions that cannot be rejected out of hand. It is undeniable that we as a community have our own responsibility in the Press policies which we may criticize. Do we take the trouble to protest, do we refuse to purchase the journal we criticize, or to advertise in its columns? Or, more importantly, do we encourage and support those journals which maintain high standards at the

risk of economic loss? Indeed, I would say that there are few who have not had inside experience of this sort of "popular" competition in Press, radio and film (and perhaps one could also include the general field of literature) who can appreciate the strains undertaken by those who seek the higher standard which has to be paid for in hard cash. Gresham's law of bad currency driving out good has too much truth in it to make the lot of the responsible newspaper proprietor an easy one.

As one of the reading public, I am of opinion that we should examine our animus against what we term "Press monopoly". Theoretically it is true that freedom is best preserved where there are a number of alternative means of information. Nevertheless, it is equally true, as emphasized by the American Commission on the Press, that financial strength is essential to any journal which seeks to preserve civic and ethical standards. Competition, particularly in a restricted field, may be disastrous to the general tone of our Press. If a newspaper has an adequate field to itself, it has an opportunity of devoting more of its resources to the best interests of its readers than if forced to seek circulation by more questionable means. Alternatively if the holder of a monopoly proves unworthy, the disaster is proportionately greater. Precisely the same is true, of course, of all other mass media. Looking into the future, one wonders whether that portion of the community which is critical of Press standards, largely brought about by our own purchasing proclivities, will be willing to support the more responsible journals by direct voluntary subvention or by paying a higher price. That would indeed be the acid test of our concern for Press freedom.

Much the same type of dilemma faces the Press editor in the matter of adequate reportage. When a public personage has made a reasoned statement on a topic of community interest and finds that it has been compressed to a simplicity which is a poor compliment to his appreciation of its complexity, he must reconcile himself to being a victim of the popular penchant for having every issue in black or white. Indeed, we of the laity have much to answer for.

Yet when all is said on this side, I fear that we have to throw the ball back to the Press itself. Nothing that can be said in extenuation about financial pressures or about the complicity of the reading public can alter the ultimate responsibility of those in charge of mass media for their final accountability in the use of their freedom. It is the inevitable price of power and influence that responsibility attaches in a precise degree. How the alarming tendency to play down to the paltry and meretricious in us can be arrested is a problem which, ultimately, the Press itself must solve or it must face defeat. All that one can suggest, as a sympathetic onlooker, to those who serve us day by day with our Press is that the community generally would be grateful if its better instincts and higher aspirations, rather than its lower tastes, were made the chief target. One might suggest, too, that humanity, though not perhaps readily and easily, is capable of responding to a Press compliment of assuming that we are nobler than we actually are. However that may be, there is no doubt whatever that any of us who find ourselves responsible for the operation of mass means of communication in this modern context cannot contract out of our accountability to the community for the influence and the freedom with which we are entrusted. In the full width of the social and democratic issues at stake, the excuses I have mentioned, though valid enough *per se*, are specious and unconvincing. Particularly specious is the claim by operators of any of the mass media that, whatever the nature of their output, they are only reflecting the public taste, giving the people what they want. The truth is that we are very largely creating the taste we claim to be reflecting. The fact that Australians are among the world's greatest meat-eaters while the Norwegians have a passion for fish, indicates no biological difference in the two people. It is simply that we have grown to like the food that is most abundantly set before us. The positive, dynamic creation of a community's tastes and standards through its mass media is daily becoming more obvious and more unavoidable.

Responsibility and accountability cannot fail to be equated

precisely with power and influence. How this is to be achieved in relation to the Press lies, in the first instance, directly at the door of its operators. The privileges and freedoms which they now possess are derived only from public confidence and if this is lost they will inevitably disappear. If one has influence and power in a community it is not enough to trim one's sails to the majority winds that blow. One must accept a commensurate part in the unending struggle to hold the standards we have won and to press on to better still.

Let there be no thought that this question of the public responsibility of the Press is a matter of mere moralizing which may be ignored or laughed off as unrealistic in a tough and materialistic age, for the survival of Press freedom itself is at stake. Dr J. B. Lieberman, Associate Professor of Journalism in the University of California, and himself a former Press executive, has stated this danger very tersely: "By some process of emotional transfer, the onus of all real or misconceived failings of the Press is charged against 'freedom of the Press'. Insofar as the Press is in disrepute the concept of 'freedom of the Press' thus suffers disrepute by association. In critical times this is a real danger. An apathetic public, susceptible to inflamed prejudice, may be persuaded to acquiesce in a strong executive's attempt to muzzle the Press—and all our freedoms can thus be lost!" The itch of governments or of pressure groups in the community to prevent open discussion of events or issues unfavourable to them will always be present, as we have recently seen in this country. It is idle for our Press or radio executives to delude themselves into believing that this danger to their freedom can be avoided by their own violent leaders of protest. Still less can a journal which has lowered its general standards recapture public respect by running publicity stunts or raising funds for some charity. Our freedom in the last resort depends directly on the public's conviction that its means of communication generally and its Press in particular reflect the best that is in us and not the worst or even the second-rate. This is true of our community despite our readiness to be tickled or shocked by journalism of low morality or taste.

Our Australian relations between Press and public, though certainly no worse and possibly better than in Britain and America, are still greatly in need of improvement—and the initiative can only come from the Press itself. I would hope that our Press might follow the example of its British colleagues and set up its own General Council, with or without community representation, with objectives and procedures similar to the British model. Such a council could surely not be regarded as an intrusion into professional privacy nor into the susceptibilities of individual newspapers. The issue of our freedom and the standards of taste and morality by which we grow as a people are too urgent and serious to be regarded as anything but a joint responsibility of all the Press and all the people. There is little doubt that such a council would do more to lay the spectre of public cynicism and preserve Press freedom than all the efforts of “public relations” experts. It would not only constitute an official recognition by the Press of its accountability to the community but also provide the machinery whereby that accountability could be discharged. The Press is so deeply and intimately entrenched in the life of our community, at every level, that it is essential that we should develop not only respect but reverence for it, for above all other media it has the means and the opportunity to be our greatest guardian of freedom and our most constant gateway to truth.

If you will permit me I should like to say this final word on my topic. As I see them, the problems of freedom of the Press, indeed of all freedoms, are quite insoluble once we lose the conviction that it rests on a moral base and no other. Once we rule out the assumption that the human individual is by nature a moral and spiritual being, there is no ground left for freedom to stand upon, and no touchstone that we can apply for its usage. That, surely, is where we part company with communism and with all tyrannies. If we regard the human unit as merely an integer in a socio-economic mass there is absolutely no valid argument for freedom, whether of mind or of possessions, for reality lies in the mass and not in the individual. Was not the neglect of this belief the root of the

failure of nineteenth century liberalism to achieve its high hopes? Born of a moral and religious concept, it came to conceive of such things as the right to property and the making of contracts as freedoms in their own right and not what they really were, elements inherent in human personality. What grounds have we for our vaunted "human dignity", which alone is the justification for liberty, but the conviction, however vaguely conceived, that we do in very truth come from the unknown "trailing clouds of glory"? It is surely because of this bold venture of faith that we are entitled to take the stand that neither King, Parliament nor Potentate, of whatever kind, may abridge a personal dignity which is beyond the sovereignty of state, or economics or even of Time itself.

The degree of freedom, the extent of control, these are the real issues of our politics which can be solved only when we have determined on what grounds human dignity and worth rest. This is equally fundamental to the problem before us. There is no future for Press freedom, nor, indeed, for any other freedom, once the individuals who make up our Australian community are regarded merely as customers or economic units. Our Press has an enormous opportunity. We can only hope that it will measure up to our needs and the best traditions not only of its profession but of a Christian society.

This is not to suggest that there are no influential members of our Press who are fully conscious of these matters and concerned about them. It is to suggest that a more conscious and deliberate co-operation between Press and public has become necessary for the sake of all the freedoms involved, and, further, that the Press itself has reached a point of importance and influence, and therefore of responsibility, which it appears not fully to recognize. That such an assumption of leadership and accountability is the main, if not the only, guardian of Press freedom has been well expressed by Sir William Haley, the present editor of *The Times*, when delivering the Clayton Memorial Lecture in Manchester recently:

It is time for the Press as well as for broadcasting once again to assume their roles as leaders rather than followers. The

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extreme lip-service to democracy which asserts that the public should be given nothing but what it wants, and which suspects as being highly dangerous and anti-democratic any design to give it—or to lead it to want—something better, is nonsense and humbug. Even when it is attended by so-called success or by high profits such an abdication of leadership is an empty and stultifying occupation. That way lies an essentially uneducated nation. That way lies the abandonment of democracy, and the growth of regimentation and intolerance.

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Mr J. M. Douglas Pringle, Editor of the "Sydney Morning Herald": I believe in liberty and I believe that the freedom of the Press is an essential part of our liberty, taking as my slogan Lord Acton's ringing phrase, "Liberty is not a means to a higher political end, it is itself the highest political end." It seemed to me that Mr Boyer took Press freedom for granted and was more concerned about the responsibility of the Press. He even wanted to re-define the freedom of the Press as the freedom of the reader to be properly and adequately informed and to be protected against undue invasion of his privacy and the corrosion of his civic, cultural and moral standards. I might agree that the reader has a right to be properly and adequately informed, but I really do not think that an individual can have a freedom to be protected from anything. Men who want freedom to be protected generally end by being slaves. I can see Mr Boyer's point, however, that freedom and responsibility are connected. If papers have used their freedom too blatantly, if they use the confidence of their readers too wantonly, then sooner or later governments will try to curb their freedom and no one will protest. Every sensible journalist would agree with this, but though freedom and responsibility are connected they are far from being the same. Indeed, freedom implies the right to be irresponsible: one can say that if the Press behaves irresponsibly it will lose its freedom but one cannot say that if the Press behaves irresponsibly it *should* lose its freedom. Sir Winston Churchill, when answering questions recently in the House of Commons, said, "Free speech carries with it the evil of all foolish, unpleasant and venomous things that are said, but on the whole we would rather lump them than do away with them." I would, therefore, seriously suggest that at present we are inclined to overrate the virtue of responsibility and underrate the virtue of freedom. This seems to me strange in a period when we have seen freedom extinguished in so many lands and when so many political, technical and economic pressures exist which tend to extinguish freedom in our own. Nothing could have been more irresponsible than the letters of Junius, or John Wilkes's writings in the *North Briton*, yet they helped to

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establish liberty in England. On the whole, nothing could have been more responsible than the majority of the Press in Germany in 1930, yet it surrendered its freedom. It had to surrender, but it did not fight particularly hard. I would rather have a turbulent, vigorous, vigilant Press, sometimes forgetful of its responsibilities yet never forgetful of its rights, than a careful, sober, responsible Press, so fearful of offending authority that it can never defend liberty.

The Australian Press as a whole is vigilant of civil liberties. In three recent instances the Press in Sydney intervened actively in defence of civil liberties. They are not the only cases, but I mention these three because they are not politically all on one side. About eighteen months ago, the Security Police raided the office of *Tribune*, the communist paper, and seized some copies of the *Communist Review*, a publication with a minute circulation. This contained a somewhat critical article on "The Democratic Monarchy", and the Commonwealth launched a prosecution under the Crimes Act. In that case the *Sydney Morning Herald* published the whole of the article complained about. That in itself was rather important and not without risk, because, if it was an offence to publish, it was obviously an offence to republish. We followed it up with a leading article saying what a nonsensical prosecution it was. Partly as a result, I think, the Court took the view that it was an absurd prosecution and dismissed it. Again, the Press in Sydney took a very strong line against compulsory unionism. It may be said that this was political, but, whatever views one holds, it seems to me very difficult not to agree that compulsory unionism infringes civil liberties as defined by Professor Partridge and Dr Evatt. As a third instance, the Press in Sydney took up the cases of men who complained they had been bashed by the police. That I consider a very serious infringement of civil liberties, and I think the Press did right to take it up and, to be quite honest, I was horrified and disappointed by the lack of support from liberals in this campaign.

When one is asked to define a freedom, I think perhaps one should ask two questions: "A freedom to do what? A freedom from what?" For an answer to the first I would accept the first part of Mr Boyer's definition, covering the absence of restrictions on the publisher's right to secure and publish such news and to make such comment and criticism as he thinks fit, subject only to the recognized limitations covering indecency, sedition, and libel

for which he must answer in the courts of law. Here I would interpose that non-journalists do not always realize how severe these limitations are. A newspaper by no means enjoys unfettered liberty. It has no special privileges like members of parliament, but must be prepared to answer for what it prints—often an expensive process. In answer to my second question, "Freedom from what?" I would reply, quite simply, "Freedom from authority." Governments are not the only authorities, though they are the most powerful and the most dangerous. Newspapers are engaged in a never-ending battle with authorities of every kind, government departments, police, trade unions, businesses, town councils, churches, corporations, and even universities. All of them would very often like to prevent us from printing the news. People have a real passion for trying to stop the printing of things with which they disagree. They will agree that similar things should be printed about other people but not about their own institutions or their own concerns.

I sometimes think that against a dictatorship by either a Fascist party or a Communist party, the Press cannot do very much. It is very easy, if you are ruthless enough, to seize power unconstitutionally, and it is equally very easy to suppress the Press. I have myself seen, in Australia, a parliament in a fit of temper on a summer afternoon pass through in one session a Bill seriously restricting the freedom of the Press. There are other ways of doing it: it can be done by price control, by insisting that the *Herald* be published at a penny; again, licensing of distributors carries the danger that licences can be withdrawn. In practice I think the Press plays a most important part in defending liberty by resisting the pretensions of bureaucracy and bureaucratic bodies. As far as I can see there is no one but the Press which carries on this essential work. In Stendhal's *Le Rouge et le Noir*, when Julian was leaving for Paris, his friend, Father Pirard, told him, "There is more civilization in the north, and I must admit," he added, lowering his voice, "the proximity of the Paris newspapers puts some fear into petty tyrants." I am glad to think we still do.

I would like to quote two passages from the first report of the British Press Council, which Mr Boyer praised so highly. The first is on the subject of Press intrusions: "Some critics, when they refer to alleged Press intrusions, cherish the simple belief that they can suppress a piece of business or a document, of which

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the public ought to be apprised, merely by labelling it 'Private and Confidential', and that the Press ought to consider itself in honour bound to respect the injunction. Many a puffy little jack-in-office would like to set up his own Official Secrets Act in this way. Every experienced editor will refuse to be fenced off. If hushing up a matter is against the public interest the duty of the Press is clear: it must tell the public what is happening." The second passage is on the difficult subject of good taste and I think it is still warranted: "The local newspaper must serve its locality, the quality newspaper must serve its quality, the popular newspaper must serve its populace, and, with millions of the less cultivated in the land now buying newspapers, there is a proper place for what, without priggishness, must be termed a vulgar press. It should be remembered that what we here style 'vulgar' papers often destroy public abuses which would not come the way of the others."

I am glad Mr Boyer rejected out of hand all dangerous suggestions which are sometimes made to restrict the freedom of the Press in order to improve its quality. He mentioned the idea, once and perhaps still popular in left-wing circles, of taking the Press out of the hands of private individuals and companies, and putting it instead into the hands of political parties, trade unions and other public corporations and institutions, though all these bodies, of course, can even now have a paper if they want it. I urge you to reject this idea, for in my experience all such bodies have a natural antipathy to freedom when it concerns their own affairs and an inherent passion for secrecy. All, by their very nature, are far more prone to pressure from governments than the turbulent Press barons who are so often criticized. A Press published by such bodies might be more responsible, it certainly would not be free, and I am afraid it would be damnably dull.

Mr Boyer referred to the suggested International Right of Correction, and in my opinion Britain and the United States were extremely wise to oppose it. It would mean that if the *Herald* said in a special article that there were slave labour camps in Soviet Russia, the Soviet Government would demand that a correction be printed. The Soviet Government, however, would not give the *Herald* the right to send a correspondent to see if those allegations were true or not. There are obvious difficulties and I do not really think that the difficulties would be any less inside Australia. A recent book by an Australian writer advocated

as I understood it, that the right of correction should be widened and made a right of reply. According to this theory, every special article or leading article would have to be answered by someone else. This gave me exquisite pleasure. Would, I wondered, the leading articles in the *Anglican* be answered by Dr Rumble, or the writings of the Reverend Alan Walker by an atheist or a Hindu? Would the *News Weekly* be answered by the Communist Party or Dr Evatt? As for the *Herald*, we should have to print so many replies to so many different people that we would never appear at all. It is this kind of suggestion which makes journalists at times a little impatient with advice from laymen. I do rather resent the very wide assumption that there is no possibility of contradiction. There is no right, but, with all their admitted faults, Australian newspapers are rather scrupulous in printing statements of reply by politicians whom they have attacked. It simply is not true that they have no possibility of reply, though I admit that there are lapses sometimes.

Every serious journalist must be deeply worried by some of the trends in journalism today. He must be appalled by the low standard of public taste which gives such an advantage to what the British Press Council calls the "vulgar" newspapers over the "quality" newspapers. I readily accept Mr Boyer's statement that the Press itself has a responsibility for forming the public taste and that it is not a sufficient excuse to say we give the public what it wants, but this factor of public taste creates enormous difficulties. I worked in England for many years on the *Manchester Guardian* and for a few years on *The Times*, and I am often asked why we should not have similar papers in Australia. The answer is that Britain, a small island with very highly developed communications, has a population of some 50 millions, of whom about 40 millions can be reached within one day by newspapers published in London or Manchester. The *Manchester Guardian* has a circulation of only about 150,000 and *The Times* has a circulation of only about 250,000 including oversea sales, yet the London morning dailies alone have a total circulation of 16 million copies. If *The Times* can only get 250,000 readers out of 16 millions, how many would it get in Sydney? Australia is a very large country with very poorly developed communications and a paper published in Sydney or Melbourne cannot hope to reach more than 3 or 4 million people. Moreover I feel that the proportion of educated people is lower but costs are

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higher, so that the paper with a circulation of only 200,000 here can hardly exist, if it wishes to provide the services offered by its rivals. When I think of these things I am more inclined to wonder at the remarkably high standard of the Australian metropolitan Press than to wonder at the lack of a *Times* or *Manchester Guardian*.

If it is true, as I think, that the Australian people are extremely critical of their Press, it may be partly because few of them read a paper which wholly suits them. In England, quality papers are published for the educated because there are enough of them to make it possible, while popular papers are published for the populace, and so both are reasonably satisfied. Here newspapers are forced to cater for all tastes in the same edition, so that, whereas the *Manchester Guardian* publishes no racing news at all, except a rather nice description of the Derby after it is over, if the *Herald* dropped racing news it would go out of business. The more popular features make it possible to print a proportion of serious political and literary comment, and a knowledge of these simple facts might prevent a lot of foolish criticism. One important reason, possibly the fundamental reason, why Australians are so cynical about their Press is the lack of good readable papers with the Labour point of view. Nothing would do more good for Australian democracy, in my opinion, than a good popular Labour daily published in Sydney and Melbourne.

Mr Boyer concluded that in the long run it is for the Press to improve itself, for no one else can do it. I think three factors may help. The first is the steady increase in higher education, which is obviously of the greatest importance and the chief hope for Western democracy. The second, which applies especially to Australia, is the rapid increase in population; though this alone will not necessarily improve the Press as a whole, it will eventually make it possible to publish quality papers with a modest circulation among educated readers. The third, a mere possibility at present, is that science will find ways of publishing newspapers more cheaply; this would obviously transform the Press by enabling more papers of different opinions and qualities to be published profitably, and would be the most effective answer to monopolistic tendencies.

I agree with Mr Boyer that unless publishers and editors acknowledge that their freedom does carry with it a moral responsibility

towards their readers, nothing can be achieved. On this point I cannot do better than read a passage written by the great C. P. Scott of the *Manchester Guardian*, expressing everything which I believe:

A newspaper has two sides to it. It is a business like any other and has to pay, in the material sense, in order to live. But it is much more than a business: it is an institution; it reflects and it influences the life of the whole community; it may affect even wider destinies. It is, in its way, an instrument of government. It plays on the minds and consciences of men; it may educate, stimulate, assist, or it may do the opposite. It has, therefore, a moral as well as a material existence, and its character and influence are in the main determined by the balance of these two forces. It may make profit or power its first object, or it may conceive itself as fulfilling a higher and more exacting function. Character is a subtle affair, with many shades and sides to it. It is not a thing to be much talked about, but rather to be felt. It is the slow deposit of past actions and ideals. It is for each man his most precious possession, and so it is for that latest growth of time, the newspaper. Fundamentally it implies honesty, cleanness, courage, fairness, a sense of duty to the reader and the community. A newspaper is of necessity something of a monopoly, and its first duty is to shun the temptations of monopoly. Its primary office is the gathering of news; at the peril of its soul, it must see that the supply is not tainted. Neither in what it gives, nor in what it does not give, nor in the mode of presentation, must the unclouded face of truth suffer wrong. Comment is free, but facts are sacred. Propaganda, so called, by this means is hateful. The voice of opponents no less than that of friends has a right to be heard. Comment also is justly subject to a self-imposed restraint. It is well to be frank; it is even better to be fair. This is an ideal. Achievement in such matters is hardly given to man. Perhaps none of us can attain to it in the desirable measure. We can but try, ask pardon for shortcomings and there leave the matter.

Mr J. Metcalfe: The problem of more and more mass communication and more and more minority control is the inevitable result of technical progress. In dealing with freedom in relation to censorship, very few people have taken the trouble to consider the practical problems. the sheer technical problems which are going

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to reach their peak with television through the limited number of channels and the high cost of equipment. I thought Mr Boyer was a little too complacent about the situation in Australia at the present moment and I take the humble children's comic as an illustration of the sort of thing that can happen. The effect of the comics was said by well-meaning people to be that they were teaching children bad English, destroying their morals and so on. The comics were also American, which in some people's eyes is a very grave offence, and the first group to exploit this was the communists, who spoke of "filthy American comics". Well-meaning bodies supported the communists, quite unwittingly, and so resolutions were poured in on governments to do something about the comics. What was to be done was not stated, for there had been no study of the problem, but the cry was that something must be done. First of all the question was tackled by an Interstate Committee of the Public Service which recommended only some clarification and perhaps tightening of the definition of obscenity in the various State Acts. Its views were submitted to governments but, because of public pressure, not based on study, the governments did not accept those opinions, which were more or less expert. Their attitude was that, though privately many agreed with the Committee, they were forced to more stringent legislation because the public demanded it. It seems to me the great failure has been the failure of the protestant liberal tradition. There is a kind of attitude arising which is against the study of these problems, against the expression of opinion on them, a growth of quietism. Only the other day I was asked to make an affidavit about a particular crime comic because I honestly thought that it was an attempt to produce a good comic of that type. But the very interests that are producing and using that comic are those which have done much in the past to debase public taste and thus produce the present reaction. The Press itself, then, has some responsibility in the matter, but the real responsibility lies on us. There is far too much smugness amongst those who should uphold the liberal tradition, a too easy tendency to form a popular front with other interests against communism at any price. The price may be too great, even when these things start with something so minor as a comic. The results can be seen in at least four of our states at the present time. We have Boards of Censorship and we have registration of newspapers and publishers, largely because a great number of us uncritically accepted the case against comics.

Mr Raymond Watt: I am not at all sure that Mr Boyer was right in saying that it was fair to assume that attention given by the community to the Press and other media of news and information is bound to increase rather than diminish. It is terribly hard for a private individual or even for groups, lacking considerable finance, to spend time getting facts in order to contradict statements put out by organizations that are financially very strong. We ought to realize that, in these days, £ 1,000,000 in separate pockets has nothing like the power of £ 1,000,000 in a single pocket. It would be foolish to neglect the implications of this fact in considering the freedom of the Press.

I remember on one occasion seeing a placard of one of our main newspapers stating: "*War inevitable*" says Menzies. I studied the text of Mr Menzies's remarks and, while they could be construed as approximating to that notion, the placard certainly did not consist of a precise statement from them. The quotation marks were not justified. Had there been some organization which could have protested properly, the newspaper might have taken more care, and not have abused its liberty in the future. Another illustration concerns a student of one of my tutorial classes, who decided that he would see with his own eyes what was happening in Russia. He went by way of Pakistan and, as he spoke a number of languages, he was able to get off the beaten track. On his return, he summarized his experiences and his opinions, and sent a long letter to a Sydney newspaper. When the letter was printed, all the good things he had seen were omitted, all the bad things he had seen were included, and his name was printed as signature as though the letter appeared *in toto*. The individual concerned lives on dividends and might be assumed to be rather to the right in politics, but he has been driven more and more into the communist camp because of this one simple incident. How are such abuses of freedom to be corrected? I like the idea suggested by Mr Boyer that a Royal Commission on the Press would not be out of place in this country, but I think it should be known that the Australian Journalists' Association has its own Press Ethics Committee for the purpose of self-discipline. I have been Chairman of that Committee for some years and I can emphasize that working journalists have their own code of ethics and do try to apply it. They are bound by this code to report and interpret the news with scrupulous honesty; they are bound not to suppress essential facts and not to distort the

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truth by omission or wrongful emphasis; and, amongst other obligations, not to permit personal interest to influence their sense of justice. The committee deals with complaints received and the journalists concerned are reprimanded, or absolved, or are fined, and they are bound in law to pay the fines.

Dr John Burton: Mr Boyer reviewed various attempts which have been made in particular countries and at the United Nations to face up to the problem of control of the Press within the limits of essential freedom, and I think one must conclude from his remarks that he does not hold out much hope that anything can be done along these lines. I agree with him. If legislators were to consult roadhogs on what kind of legislation they would prefer, we might find that those roadhogs would prefer none, and in this case the roadhogs have said that if in fact we do legislate, they as roadhogs will run over us. When the Australian Government was preparing for the United Nations discussions, much work and thought were devoted to these matters, decisions were made, and drafts sent to the representatives of the Press. The response of the Press was what could only be described as political blackmail, and instructions to our delegates were promptly withdrawn. I feel that this, rather than technical reasons, is the explanation of the little success achieved by Royal Commissions and at the United Nations. There is one avenue of control or achieving a balance which is readily open to us, through the medium of Broadcasting Commissions. There is a wonderful opportunity here to ensure that minority views and differing viewpoints have some means of expression. Unfortunately, while Broadcasting Commissions are a relatively recent innovation, they have learnt very quickly the technique of blackouts on particular subjects. The blackout is a dangerous technique and I think perhaps the Broadcasting Commissions are more effective in handling it even than the Press. Moreover, the Broadcasting Commissions are able to control the expression of all kinds of views by their selection of commentators. When do we hear through Broadcasting Commissions the expression of a minority viewpoint? Politicians are given the opportunity to describe a strike as a communist move—do we hear the trade union point of view? We have fought three elections on communism and there were communist candidates, but have we heard a communist on the air? Are we frightened to hear him in case he persuades us? It may be that we should conclude that we

feel very strongly about freedoms in the sense that we expect other people to exercise their influence in preserving them, provided of course, that they are freedoms for ourselves.

Mr T. Inglis Moure: It seems to me that the power of the Press was slightly exaggerated at times by previous speakers, particularly in political matters. I think the best example of that was the fact that, when Roosevelt's New Deal aroused considerable opposition in the United States from almost the entire Press and all other American mass media, the people completely disregarded it and returned Roosevelt as President. It was an excellent example of the fact that the Press at times does not have the power it is sometimes assumed to have. I found as a leader writer, to my surprise and mortification, that in matters such as referenda the people did not follow the very wise, authoritative, expert and correct advice that I gave in the editorial columns. Even in such matters as the referenda on marketing and aviation the people gave a rather stupid vote despite the fact that all the Press had been quite intelligent. During the war, amongst the troops there was a general disbelief in the Press. I found, to my further mortification as an ex-leader writer, that in my troop of a hundred persons there was only one person other than myself who occasionally looked at the leader, and yet that troop was a fairly representative section of the A.I.F. and of the Australian people. I found that the troops were very cynical, and attached little or no weight to items appearing in the papers.

The Press in Australia has failed to live up to its responsibilities in using its freedoms. The freedoms themselves do not come into question for despite a few alarms and excursions in the turbulent State of New South Wales there is no real threat to the freedom of the Press in this country. But there is, I think, a very serious decline in the quality of the Press in Australia and we could give many examples of the failure of the Press to live up to its responsibility. I had one case during the war, when I was in charge of lectures for the Army Education Service in New South Wales. A report appeared in a Sydney newspaper which was the exact opposite of the facts provided by us to its reporter. There followed questions in the House, disturbance at Army Headquarters; Ministers and senior officers had to spend considerable time on this matter due to a completely unscrupulous and distorted report. The editor's defence was that the reporter was trying to get a story, and he apparently saw nothing reprehensible in the fact that

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he had given a completely dishonest report. I agree with Mr Pringle that there is a need for improving the standards of the Press in Australia.

Mr John Wilkes: I merely wish to contradict Mr Moore's contention that the Press has very little influence. The Press has an enormous influence and, of the endless instances to prove it, there are two outstanding examples which happened in the free world before the war. During the Italo-Abyssinian war there were secret negotiations between M. Laval and Sir Samuel Hoare, which leaked to the Press. Some newspapers ignored their duty to report those negotiations, but others, *The Times*, *News Chronicle*, *Manchester Guardian* and the *Daily Herald*, upheld their right to report them. Men of goodwill in Britain were thus able, on the evidence provided by the Press, to denounce this pact between Britain and France to sell out Abyssinia to the Italians. As a result, Hoare resigned and the Treaty never came into force. Had it come into force, the whole climate of the Western world up to 1939 would have deteriorated much more rapidly than in fact it did. Think, too, of the time of Munich, when the British Press, in fact the Press of the whole free world, stepped aside from its responsibilities to the people. They were all quite prepared, in 1938, to accept the Chamberlain dictum that the Czechs were just "far-off, unhappy people of whom we know nothing". There could be no good reason why we should go to war for them. Yet, within twelve months, we found a complete change of attitude by the British Press, which was then prepared to put over a different government line, and Britain was told she was going to war to defend democracy in Poland. If in 1938 there was one country in Europe which was democratic, it was Czecho-Slovakia. If there was one country in Europe other than Germany which was not democratic, it was Poland. Here is an illustration of the power of the Press to influence public opinion. If we think it does not, we delude ourselves.

It is not in foreign policy alone that the Press wields influence. In the Anglo-Saxon world we have never yet had any overt threat of a communist revolution, but we have in Britain had the possibility of a fascist revolution. That possibility was killed, not by the academic professors, though some of them did their best, but in the main by the British Press. Sir Oswald Mosley was not allowed to propagate his doctrines in the dark. His meetings pro-

vided sensational stories, of people being clubbed with chairs and broken bottles, which newspapers eagerly printed, but, of necessity and from principle, the Press also reported on his policy and methods. Through the Press Mosley was understood for what he was and in the end he would have been defeated in Britain even if he had not been locked up during the war. It is because of our debt to the Press that we too, and not the Press alone, have a tremendous duty to defend its freedom. Mr Pringle remarked on the complete lack of support from people like us on those recent occasions when the Press took up the cause of certain individuals in Sydney. It was the Press alone in New South Wales which tried to uphold the right of justice to every man, however great a rogue. This should not be. Freedoms are not to be counted separately but are interlinked. Freedom of the Press, of the citizen, of the mind are only facets of the same freedom, and Press and people should be united in its defence.

Professor A. Lodewyckz: I had occasion recently to refer to the Australian Constitution. In it I found a lot about Parliament, about the Budget, but I found absolutely nothing about these human freedoms which we have discussed, including the freedom of the Press. Mention was made of Article 92 of the Constitution, which deals with freedom of trade and intercourse, but none of the specific personal liberties is anywhere mentioned. This is not so in most countries which have a written Constitution. My own country, Belgium, adopted a Constitution 125 years ago, and, although it has been revised, here are some Articles which stand in in their original form:

Article 7: Individual liberty is guaranteed; no one may be prosecuted except in cases provided for by law and in the form therein prescribed.

Article 11: No one may be deprived of his private property except for a public purpose and according to the forms established by law and in consideration of a just compensation previously determined.

Article 12: Punishment by confiscation of property shall not be established.

Article 14: Religious liberty and the freedom of public worship as well as free expression of opinion in all matters are guaranteed with the reservation of power to suppress offences committed in the use of these liberties.

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Article 18: The Press is free; no censorship shall be established, no security shall be exacted of writers, publishers or printers.

Article 20: Citizens have the right of association. This right shall not be restricted by any preventive measures.

Article 22: The privacy of correspondence is inviolable, the law shall determine who are the agents responsible for the violation of the secrecy of letters entrusted to the post.

It may be said that these things are covered by British Common Laws that are still valid here, but we ought to consider, now that these liberties are so much discussed and when revision of the Australian Constitution has been advocated by Sir John Latham, whether these principles should be embodied in the Constitution. It would, at least, be of great assistance to New Australians, who do not know any of the background of British Law, if they could read therein what their liberties are in the free country where they are making their new home.

Mr R. J. F. Boyer, replying: Mr Pringle supplemented my paper by examples of actual attempts to limit Press freedoms, but it seems to me that the use of freedoms by the Press itself is by far the most important aspect. A quotation often used—though I may not have it verbatim—is that “democracy rests upon the freedom of the Press and that cannot be limited without being lost”. But if it is not limited at all it will be lost, and the only question is whence the limitation is to come. That is why I felt that the real threat to its freedom could only be met by self-limitation within the Press itself. Freedom is something that is extraordinarily delicate; it cannot be used with impunity; it requires reverence and restraint in its use if it is to be preserved.

Mr Pringle took issue with me on the protection of the reader. I had in mind that the Press and all the mass media are so completely and intimately part of our life today that we cannot think of the Press without the reader. The Press is ourselves, but in modern times there is little opportunity as readers of expressing ourselves, of exercising our freedom in an effective way upon the opinion of the community. For that reason I believe we are moving into an era when the readers, or the general public, and the Press and other mass media will have to come closer together if freedoms are to be preserved.

Mr Metcalfe said I did not consider certain aspects of censorship in recent legislation. I was not able to obtain full details of the

New South Wales Bill, but again I would say that, from my reading and sensing of our Australian community, we are ready to move rapidly and effectively to the defence of Press freedom, provided, and perhaps provided only, we have that respect for the Press itself which is the fundamental safeguard of its freedom.

Professor Lodewyckz spoke of his wish that these freedoms of ours should be more specifically stated in our Constitution. We are, perhaps, approaching that position. During the recent Citizenship Convention, there was much debate whether we should produce, primarily for our new immigrants but ultimately for all Australians, a charter of our rights and liberties. There was a noticeable feeling that these rights and liberties, which are part of our tradition, are perhaps better preserved if we do not write them down in legal forms. I do not agree with this viewpoint, and I believe that some attempt on these lines should be made.

Dr Burton went rather outside the issue of freedom of the Press, and spoke of the service which could be rendered by such institutions as the Australian Broadcasting Commission. I think we have undoubtedly had some effect in the field of news in this country, and we have legitimate pride in our A.B.C. news service. Dr Burton suggested that our commentators were hand-picked and therefore we were not adequately allowing for a reasonable degree of debate on major issues. Commentators obviously have to be hand-picked, but again I feel that our commentators and our discussions have covered a very wide area of debate in this country. I know of no individual subject that is of great importance or of high controversy in this country which we have not covered. I myself chaired a notable debate on Communism, in which the opponents were Mr Maloney, who is an extremely violent critic of communism, and Mr Ernest Thornton, one of the leading Australian communists. Dr Burton also referred to facilities given for election broadcasts. The apportionment of time in a public instrumentality is no easy matter and we went through years of difficulty in respect of the various religious denominations. It is not an easy matter with election broadcasts, but we have established principles covering them, which are not concerned with political opinions expressed. We give time to those parties which are dominant in the House, many of which have a great number of individual candidates, of whom only a very few have an opportunity of broadcasting at all. We have a

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problem with Independents and with small splinter parties which demand time on the air. At present for broadcasting time at elections we recognize any party or any group contesting at least 5 per cent of the seats at any election and which has secured the endorsement of significant popular support. We recognize such support as being evidenced either by the election of one member at the previous election or by the polling of 5 per cent of total votes cast at that election, without regard to the policy of such group. We take the view that it is not for us to make any proscription of civil rights, which is a matter for an authority higher than ourselves, but in these cases we have to use some formula, and any group complying with that formula has the right to speak on the air at election times.

Mr Watt mentioned that I had advocated a Commission on the Press, Radio and Films. I did so, not because I feel that there are scandals to be uncovered, but because it is my belief that open and calm discussion on these matters, with public reporting of them, is the only way of considering our difficulties and calining our fears about our media of mass communication. I advocate it, because in the case of the A.B.C., our relations with the community were never better than at the time when we had a Parliamentary Committee on Broadcasting, and all our cards were on the table and we could be questioned on any aspect of our operations. I believe that this whole question of human liberty, and particularly freedom of the mind, is so bound up with the Press, the radio, and the new medium of television, that we must somehow find means whereby we can make it a joint responsibility.

IV

ECONOMIC FREEDOM

R. I. DOWNING *

If freedom is the ability to do what you want—and I can think of no better definition—then, in one sense, there is and can be no economic freedom. For the occasion for economy arises simply because we have not enough resources to do all the things we want to do. The economic problem is to manage the limited resources at our disposal so as to get as much as we can out of them.

The issue of economic freedom really arises in connection with the method of managing the resources. Is each individual to be free to do his own management as best he can, or is some central authority to give directions as to what each individual is to do, covering maybe part or even all of his economic activities? That is, granted that we cannot in any case have everything we want in the economic sphere, are we to be free to do as best we can on our own initiative and judgment, or is a central authority to make some or all of our economic decisions for us?

It will be well at this stage to state precisely what we mean by economic freedom. Here we cannot do better, I think, than refer to Barbara Wootton's book, *Freedom Under Planning*.¹ I do not follow her classification of economic freedoms, I do not accept her basic thesis that it is necessary for the state to plan production, nor do I accept some of her reasoning as to which freedoms can be preserved and which must be sacrificed. Nevertheless, it is the only book I know which discusses economic freedom thoroughly, and it is extremely useful both as an analysis of the nature and content of economic freedom

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¹ Barbara Wootton *Freedom Under Planning* (London, George Allen & Unwin Ltd, 1945).

and as an exposition of how large a measure of economic freedom is consistent with the planning of production.

In this discussion of economic freedom I shall try to express each freedom as it appears to the individual. We shall consider later the broader question of what we believe the individual should enjoy as a result of his freedom.

(1) *Free choice of occupation*

Every individual wants to be able to earn an income provided he is willing to work. Further, he wants to be free to make his own choice of what sort of occupation he engages in—choosing according to his own natural abilities, the demands made by various occupations and the incomes that can be earned therein. He also wants to be free to choose whether to work for someone else or to go into business on his own account.

(2) *Freedom of marketing*

Every individual wants to be free to get for what he has to sell—that is, either his labour or the goods and services he has provided—the value placed on it by the market.

(3) *Freedom of expenditure*

Every individual wants to be free to spend his money as he thinks will best satisfy him and to save whatever part of his income he wishes to reserve for future use.

The first thing to remark is that, if everyone were left free to do whatever work they liked and to spend what money they had on whatever goods and services they chose, there would result, not chaos, but order. This must seem miraculous in view of the fact that there are over 2000 million people in the world and perhaps some 700 million workers, mostly wanting to do specialized jobs and to consume a wide variety of goods and services, many of them drawn from all over the world. It works because of the inherent nature of the economic process. Each individual has his own scale of economic values, and individuals can come together in markets to bargain with each other, using the common measuring rod of money. Their bargaining produces a price system which could yield an

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economic equilibrium in the sense that there would be no forces making for change in the size, composition and distribution of product.

What I want to discuss now is the economic system as we know it, in three important aspects. First, how fully does it preserve economic freedom? Secondly, to what extent is economic freedom compatible with the maximization of economic welfare? Thirdly, can governments intervene to increase particular economic freedoms without reducing either economic welfare or other equally important economic freedoms?

It must immediately be stated that the present economic system, at least in Australia, works fairly well and that to many people the freedom they enjoy today appears substantial—especially as some of the limitations on freedom are evident only to the more sophisticated observer. Moreover, to many people the limitations on freedom imposed by non-governmental forces such as imperfect competition, restrictions on entry, inequality of opportunity, depression and inflation, seem natural and inevitable. Certainly they arouse much less opposition than a government decision to ration an article of consumption, to control wages, to increase taxes or to license imports.

There are, however, some promising signs. People are beginning, properly, to blame governments, rather than the banking system or the capitalist, if unemployment appears. Or, at least, if they do not blame governments, they look to them to do something about it. They have long accepted some government action to increase equality of opportunity. There is also a feeling that big business should have to prove a fairly strong case to someone, and spend time doing so, before it puts up its prices. It seems, then, worth while to consider just what governments might do to improve the economic system and to enlarge the content of economic freedom.

Consider now the first of our economic freedoms:

(1) *Free choice of occupation*

(i) *Unemployment*: Men willing to work at current wage rates will not necessarily always be able to get jobs. No one

pretends that unemployment is caused by bad or selfish intentions. It arises simply because, in a free economic order, the price system—particularly the rate of interest and the rate of exchange—is not sufficiently flexible to ensure that aggregate demand is always adequate to absorb the output of the fully employed working population. We know this from our experience of the thirties and our current fears of the impact of depression abroad on our economy.

The possibility of unemployment threatens the most basic freedom of all—the freedom to get a job. Without a job and an income of one's own earning, freedom of the market and of expenditure are meaningless.

For me, there is no doubt whatever that by far the biggest contribution governments can make to the basic substance of economic freedom is to be sure that there are always jobs available for everyone wanting to work. Fortunately all political parties and, I think, most sections of the community now accept this wholeheartedly as a proper aim for government policy. It must be admitted that it is not yet proven by experience that governments can maintain full employment in a situation which would otherwise involve deep depression. But certainly, given the will and the support of a substantial part of the population, any government has powerful weapons at its disposal to prevent any serious unemployment. Broadly, it can increase its own expenditure, reduce its taxes, subsidize private consumption or private investment. I think it most important that, in choosing its policy, it should do its best to find out which course will best satisfy the community. Thus, for example, it should increase public works expenditure and subsidize private investment only if it is satisfied, and can convince the people, that more investment rather than more consumption is needed. If it is not, it should reduce taxes and give subsidies to consumers and leave them free to decide how they want to spend the money.

If it does this in the most responsible way it can—and of course we cannot expect perfection—then not only will the most vital of all freedoms—the freedom to work if you choose—be ensured, but no other freedoms need be reduced. It is

impossible to over-emphasize the importance of establishing firmly and for all time this freedom to get a job. The removal of unemployment and, even more, the removal of the fear of unemployment, has transformed this and every other community in which it has been achieved. It has made an immeasurably greater contribution to freedom and happiness than any other piece of economic policy has achieved or, I would venture to say, could conceivably achieve. Nevertheless it is well to remember that Nazi Germany was the first country which succeeded in removing unemployment through public policy. But it concentrated its expenditure on things the State wanted, not what people left to their own private choices would have bought. Communist countries are in a similar position today. Let us spare no effort to abolish unemployment, but let us try to do it in a way that preserves other freedoms.

(ii) *Inequality of opportunity and restrictions on freedom of entry into occupations*: The second problem affecting free choice of occupation is that people are not always in fact free to choose the jobs they want or to go into any line of business on their own account. I exclude altogether, of course, differences in native abilities—many of us could not make good doctors, good businessmen or good skilled tradesmen. But those of us who could do well in certain lines may be excluded therefrom by several types of restrictions.

First, there are costs of training, of which the most notable example is the six-year medical course. Until only a few years ago, the medical profession had to be recruited largely from those few with parents sufficiently wealthy and self-sacrificing to face this cost. There are many other examples, but happily the recent extensions of free and subsidized education have greatly increased the equality of opportunity on these grounds. I hope that the extension will continue and that, in particular, it will cover more and more technical education. This is an excellent example of a government intervention with wholly beneficial effects on freedom and no offsetting ill effects.

Secondly, the need for capital to enter many occupations has been a serious bar to a large proportion of the population. To continue our medical example, the cost of buying a practice

has excluded many from equality of opportunity in the medical profession. More obvious is the effect of lack of capital in excluding many people from building a factory, furnishing it with plant and equipment, and setting to work on what might have been useful production. Here what is needed is a great extension of present rather limited arrangements for special industrial finance facilities to support promising but penniless businessmen and professional people.

Finally, people may be excluded from particular occupations by the exclusive practices of those already established therein. For instance, in many countries, trade unions exert severe restrictions on entry by means of high entrance fees and restriction of numbers. So far as I know, in Australia (with the exception of the special case of the waterside workers, where governments, employers, workers and public opinion are doing their best to hammer out a suitable policy for this most difficult industry) the only restrictions on entry imposed by trade unions appear to be apprenticeship requirements which in some cases are believed to be unnecessarily stringent. They evidently become less serious as more and more skilled occupations are broken down into semi-skilled ones. But so far as they do achieve an unnecessary restriction on entry, they provide a serious limitation on the worker's freedom to choose his job. Since the employer also benefits, however, by paying relatively low wages to the more senior apprentices, there is no great pressure to ease this limitation on freedom.

(2) *Freedom of marketing*

The theoretically happy results of a free economic system depend largely on the existence of an open market in which there are many buyers and many sellers, with no individual able to exert alone any significant influence on the prices determined by the market. Each individual would then be able to sell his product for what it was worth on the market and each individual would be able to buy goods and services at their minimum cost of production. This would mean that consumers' wishes would be sovereign in determining the composition of output, efficiency of production would be

maximized and the distribution of income would be according to economic deserts.

Unfortunately, this kind of market never existed and never can exist. There are a number of reasons which make it impossible. Firstly, in many lines of production, large-scale production is most efficient—this means that small producers will be driven out by competition and leads to concentrations of economic power in the hands of a few large-scale producers. Secondly, people have an innate tendency to associate together in protective groups—in trade unions and in producers' and traders' associations—again leading to concentrations of economic power. Thirdly, consumers are not and cannot be well-informed about all the multitudinous goods and services available on the market. Moreover, they are highly susceptible to propaganda and advertising in their choices, rather than to careful comparisons of price and quality.

For these reasons, the economy can be divided, to use Scitovsky's convenient terminology, into the price-makers and the price-takers.² The price-makers are the large-scale producers and merchants. The price-takers are the consumers, the small farmers, traders and producers, and the workers. In these circumstances we cannot have a perfect market, the consumer is no longer sovereign and the composition of output no longer such as to give the greatest possible satisfaction to purchasers. Relatively too few of the imperfectly competitive products are produced and too many of the perfectly competitive ones. Efficiency is not maximized, and resources are wasted in advertising and product differentiation. Income distribution is distorted in favour of the price-makers and is more unequal even than could be justified by the need to encourage effort and efficiency. Inequality, moreover, is perpetuated by the institutions of private property and inheritance. The resultant inequalities of opportunity aggravate the inequality of distribution of income.

² Tibor Scitovsky: *Welfare and Competition—The Economics of a Fully Employed Economy* (London, George Allen & Unwin Ltd, 1952). Scitovsky remarks that the terms were suggested to him by Abba P. Lerner, and that the concepts were, he believes, introduced by Ragnar Frisch.

Quite a lot is already being done to lessen the imperfection of competition. For one thing, increased freedom of entry can do much to make production more competitive. Some natural monopolies—like water supplies and some parts of the power and transport system—are nationalized. Those in private hands are or may be subject to the pressure of public opinion, to nationalization and to oversea competition. In some cases, government regulation of private monopolies may be effective—as in the case of railways in the United Kingdom before they were nationalized. Private monopolies may also be made subject to competition from government enterprises. A notable case is the Australian airlines—where the public is now surely better served by two competing airlines than it would have been if either had had a sole monopoly. This power of the government to compete with private companies may come to be of growing importance in the future.

Galbraith, in his beautifully-written *American Capitalism*,³ has put forward the proposition that where an original market power exists, as in the case of monopoly, it will call into being a countervailing power—which might take the form of a monopoly on the other side of the market, a trade union, a consumers' co-operative, or of pressure from big retailers whose main interest is low prices and a big turnover. This is an attractive theory and it is undoubtedly operative in some cases. If it were universally true, the need for governmental intervention would be greatly reduced. The trouble is that it does not always work and, when it does, it may often be at the expense of the consumer, with the two powers in effect combining to squeeze the market.

Galbraith emphasizes that the state can do much to support the emergence and successful exertion of countervailing power—for instance, in supporting trade unionism and minimum wage legislation, in establishing orderly marketing schemes for agriculture where competition is too perfect for the industry's welfare, in encouraging consumers' and retailers' co-operatives, and so on.

³ J. K. Galbraith: *American Capitalism—The Concept of Countervailing Power* (London, Hamish Hamilton, 1952).

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The danger, of course, is that the encouragement of countervailing power may turn out to be a double-edged weapon if the new power either crushes the original power or joins with it and exploits consumers. Our agricultural marketing boards provide a good example. Agriculture as an industry suffers by being too perfectly competitive. There are inherent economic reasons why prices tend to be often low and subject to very great fluctuations. Marketing boards offset some of these disadvantages. The great difficulty is that thereby agricultural producers may get too great a market power, as seems to be true with U.S. farm parity policy and as may also be true with our own cost of production formulae. We should maintain continuously a careful study of agricultural price policy to ensure that a fair deal is obtained not only for farmers but also for consumers.

A similar problem arises in the case of trade unions. With the economy as it is, trade unions are essential for the protection of workers. As such, their growth has been fostered in many ways by the state. One question often discussed is whether the state should go farther and introduce legislation to make membership of trade unions compulsory.

Compulsory unionism seems on the whole to be an undesirable interference with the freedom of workers. It is, of course, easy to make an emotional case for the unfairness of non-unionized employees getting benefits from the activities of unions which are financed by the contributions of other employees. The New South Wales Act, incidentally, provides rather neatly for this by allowing a worker who objects to joining a union on conscientious grounds (whatever these may be—are we to have a Conscientious Objectors-to-Unions Tribunal?) to be exempted from the provisions of the Act, but requiring him to pay an amount equal to the union fee into consolidated revenue.⁴ This at least gives the state a vested interest in discouraging people from joining trade unions. But so far as I have been able to discover, many unions are not enthusiastic about compulsory unionism. A large proportion

⁴ N.S.W.: *Industrial Arbitration Act, 1940-1954*, Section 129B(11).

of workers are unionized. Those who are satisfied to remain out of unions can surely be left to do so. We shall return later to another aspect of possible abuse of powers by trade unions.

Another type of government intervention is that designed to increase the degree of competitiveness in business. The most notable example is the American experience of action to prevent the obvious forms of price agreements, cartels, boycotts and refusals to deal. These are important sources of market imperfections in Australia. They are admittedly difficult to control and the controls often turn out to produce their own undesirable effects. Nevertheless, considerable success has been claimed for this part of American anti-trust administration and we might well consider what part of their experience might be applicable here.

A slightly different form of government intervention is that designed to prevent so-called aggressive or ruinous competition. The obviously bad form of this is where a firm with sufficiently large resources engages in a price war with its competitors, crushes them and thereby establishes a monopoly. It may then use its new market power to raise prices and increase profits above what they would have been. Similarly, in some industries, freedom of entry may lead to a position where too many people get into an industry, none is able to get a decent living, but market forces may not be strong enough to drive some producers out.

Here the state will properly wish to prevent such occurrences. The difficulty is that it will be an extremely delicate matter to intervene in a way nicely designed to prevent ruinous competition but also to avoid the creation of new sources of monopoly power. Such measures as the licensing of taxis, the registration of hairdressers, zoning and restriction of trading hours are obvious examples. Here again it is a matter for continual pressure of public inquiry and discussion to ensure that state intervention to maintain effective competition is not converted into protection for pressure groups.

A most important step could be taken towards reducing market imperfections by deliberate measures to make consumers better informed—their ignorance and their suscepti-

bility to advertising and product differentiation are a most potent source of market imperfection. In the United States, much has been done through analyses of branded goods carried out by the Consumers' Union and other similar private bodies, and there is also a Government Bureau of Standards. Trade unions, housewives' unions and so on could usefully perform a similar task here. There seems no reason why governments could not provide the service, and it might also be possible to introduce official grade labelling for many goods.

Another possible form of government intervention to offset market imperfections is through price control. I am not very happy about this. It works well in wartime when it is fairly clear what we want and when there are many other direct controls to ensure that production follows desired channels. In peacetime it will rather weaken the price system as an indicator of the desired channels of production, without supplying any other indicator. It is a useful weapon to have in reserve to use against monopolistic concerns that cannot be controlled in any other way. But we should not expect too much of it.

An example of the undesirable effects of price control is to be found in the most important example extant today—rent control. This is a manifestation of government intervention which has surely had a very significant impact on the free price system and on the allocation of resources. I would like to see the abandonment of all rent control and the pricing of all houses at their economic rent. This would make a real contribution to mobility of labour; it would remove many of the anomalies in the current housing situation—notably that the greatest benefit goes to older-established families who probably need it least on grounds both of income and size of family; it would make it possible for owners to repair and maintain houses; and it would give people a freer choice between owning and renting houses. If it is believed that this would give an objectionably high capital gain to landlords—though it is not clear that they would gain more than other property owners have gained in recent years—this could be dealt with through a capital gains tax. The rise in rents may lead to a successful demand for an increase in money wages and consequently to

some inflation—although this seems to me a price we could well afford to pay for such a release from controls. Finally, for families whose welfare might be jeopardized by the rise in rents, even if partly offset by a rise in wages, I suggest that housing subsidies should be paid. Subsidies to particular items of consumption are generally not desirable since they interfere with the freedom of choice of consumers. But it is widely argued that housing is a special case—that, on grounds of health, safety, juvenile delinquency, crime and aesthetics, the state has a special interest in seeing that its citizens are well-housed. If subsidies are to be paid, we already have operating in Australia, in the Commonwealth-State Housing Agreement, what seems to me an ideal basis for assessing such subsidies. An appropriate ratio of rent to basic wage is set. If the basic wage-earner's house costs more than this, he receives the difference in subsidy; if the occupant receives less than the basic wage, his subsidy would be greater; if he receives more, his subsidy would be less. This principle, in contrast to systems in most overseas countries, has the great advantage of concentrating assistance where it is most needed.

The Agreement applies at present only to houses built by the states. It would be more difficult, but not impossible, to apply it to all rented houses. Some standard would have to be established as to what standard of housing would be eligible for subsidy for families of varying sizes. If a family wanted a better-than-standard house, it should pay the extra cost itself.

The trouble here, of course, is that, while the decontrol of rents appeals to an economist as an enlargement of freedom, particularly if associated with subsidies for those adversely affected by it, it will appeal to individuals as a gross injustice, a free gift to grasping landlords. But since rent control is already being gradually whittled away throughout Australia, we should at least suggest that the time has come for developing a rational basis for its complete abandonment.

Finally, the worst effects of market imperfections on income-distribution can be mitigated by tax policies. I think there is plenty of scope, especially if we compare our position with that, for instance, in the United Kingdom, for making

our tax system more progressive, so as to reduce inequalities of income.

This question of tax policies provides another example of how a well-intentioned government intervention may create its own difficulties. If we impose heavily progressive taxation for the purpose of reducing inequality, we are also penalizing risk-taking and reducing the incentive to effort. I think this so-called disincentive effect can be reduced—for instance, by concentrating on estate duties, by introducing a capital-gains tax and possibly by adopting some of the devices for making the incidence of income tax less closely felt by income earners.

In the end, however, we have to consider seriously how much extra output we should sacrifice to get greater equality. My own feeling is that we could impose heavy taxes on the highest incomes without serious loss—and that it is worth while giving considerable thought to minimizing any disincentive effects on lower and middle incomes where it is perhaps most important to encourage extra effort.

(3) *Freedom of expenditure*

From the individual's point of view, freedom of expenditure and of saving is more or less complete in Australia. We do have to pay a considerable part of our income in taxes, of course, but in a democracy we can only regard that as a collectively consented method of spending our income.

The only notable limitation at present is on our freedom to spend on imports. Here we seem to accept fairly happily the proposition that, if we are threatened with international insolvency, it is better for the government to control imports directly than to allow the situation to develop as it did in the thirties, when imports were finally cut, partly by tariff and exchange, mainly by the fall of employment, incomes and demand, affecting imports as well as domestic demand. If it comes to choosing between freedom to import and freedom to get a job, evidently the community very properly prefers the latter.

It is, however, pertinent to emphasize that, simply because import licensing is so easy to administer, we should be careful

to ensure that it is used as little as possible, because it is a very real limitation on our freedom to buy in the best market. I would like to see as much emphasis as possible on instruments such as tariffs and the rate of exchange, which do not interfere directly with our freedom to import, and to reserve import controls for dealing with short-term fluctuations with which we cannot cope by these other measures.

When we look at freedom to spend and to save from the viewpoint of the community as a whole, we come up against a rather different situation. There is first the possibility that the aggregate expenditure of free individuals may not be enough to maintain full employment. We have discussed this earlier and I have proposed that in such a situation the state should either increase its own spending or put more income into the hands of consumers so that they will spend more. But there is the other possibility which is only too familiar to us—that people may try to spend more than there are goods and services available for purchase at current prices. If this happens, we are faced with inflation.

Inflation is not a bad thing in itself. In the words of the textbooks, if every price in the whole price system doubled overnight, it would not matter at all. The trouble is that the entire price system does not move simultaneously. In a period when the general level of prices is moving up, this differential movement of particular prices is likely to bring undesirable distortions into the composition of output and into the distribution of income—and, if inflation goes far enough, it can lead to a partial or complete breakdown of production.

These are serious evils, but we should keep two points clear in our minds. First, the slower and the smaller the inflation, the less is the harm it does. Second, while the risk of running into inflation is admittedly increased by the desire to maintain full employment, unemployment and inflation are not twin evils. Unemployment involves a waste of resources, the total cost of which is concentrated on a small part of the population; inflation involves a waste of resources, the cost of which is distributed, albeit inequitably, over a much wider proportion of the population.

There is no doubt in my mind that the ravages of the depression of the early thirties did far more harm than the ravages of the recent inflation. If you ask me to choose between a moderate degree of unemployment and a moderate degree of inflation, I would have no hesitation in preferring inflation for, to my mind, it inhibits freedom far less seriously than does unemployment.

Nevertheless, the avoidance of inflation is in fact extremely important to the problem of freedom. The trouble is that, even if it is mild, and still more if it is serious, the existence of inflation offers a continuing temptation to impose direct controls as the only way of tempering unpopular price rises. Control of prices, of rents, of wages, of investment, of imports, of capital issues, of building permits, rationing of consumer goods, all these can be avoided in a fully-employed economy, if production is left to follow the market and if there is no inflation. Once inflation gets under way, more and more of these controls begin to appear necessary, and the imposition of each brings further limits to economic freedom. The government decides more and more, the people less and less.

The control of inflation has proved difficult politically. It presents no serious economic problem, however, and if we could get a wider understanding of it the political difficulties might diminish. In its simplest terms, the issue is this: if the government believes an inflationary situation is developing, either investment or consumption (including government investment and consumption) must be cut.

There are then two problems: to decide which should be cut; and to decide how the cut should be enforced.

The decision as to whether investment or consumption should be cut has to be made in the light of current circumstances. For Australia, it seems likely that for some years—apart from short-term fluctuations—we are likely to be wanting to undertake rather more investment than can be financed by voluntary savings.

The essential elements of policy designed to avoid inflation seem to me the following. Firstly, even after everything possible has been done to increase the resources available for invest-

ment, there will probably still be need, at least at times, to restrain investment. I believe that interest rates and bank advance policy can do this well enough, and neither involves direct interference with economic freedom. Controls which interfere directly with economic freedom—such as control of capital issues, of materials, of supplies and selective control of bank advances—should not be necessary and, in any case, seem to have been abandoned as much because they did not work well as because they were unpopular.

Secondly, the mobility of resources—that is, their flow from occupations where they are less urgently needed to where they are more urgently needed—should be deliberately stimulated. This is of great importance in a fully-employed economy where there are no reserves of unemployed to draw on to support expansion. Much can be done by improving employment services, providing training and retraining facilities, by ensuring that houses are available if workers have to move, by financing all or part of removal expenses and by guiding the location of new industries to relate them as far as possible to the location of available workers. The more immobile are resources of production, the greater is the risk that bottlenecks will arise and cause sectional unemployment and sectional inflation. To the extent that resources become more mobile, we can rely more on the overall management of aggregate demand, and less on direct controls of spending and output.

Thirdly, the government will from time to time need to take action to reduce spending so as to increase the supply of savings. The free economy's response to this situation would be, basically, to distort the income distribution pattern by raising prices, increasing undistributed profits and holding back wages. The resultant inflation and more unequal income distribution would yield increased savings, but at an obvious cost of greater inequality of income and property. I think the government can do better than this by producing a surplus in its own accounts, so providing public savings. Where extra revenue is required for this purpose, there is no particular reason for raising it on a progressive basis. We hope, in any case, that the tax structure would be maintained always on as

progressive a basis as is politically possible. Indeed, if it is true, as is often claimed, that the tax structure should not be varied too frequently, it might be desirable to keep anti-inflationary taxes separate from the ordinary tax structure, making it all the easier to abandon the taxes as soon as the occasion for them had passed. Since it is spending that must be reduced, a standard rate of tax imposed on all goods and services sold might be practicable. Alternatively, the device of "compulsory savings" might be exploited.

The great advantage of meeting a deficiency of savings in this way is that resources can be provided for investment without increasing the inequality of property ownership, which would be the result of the free economy's way of securing increased savings. If the suggestion of compulsory savings seems strange in a lecture on economic freedom, we have only to compare their impact on freedom with the alternatives of inflation, more unequal income distribution, or higher taxes, to see that they would enlarge rather than diminish freedom.

Finally, a possible source of inflation in an economy which is fully employed arises from the possibility that workers may exploit their increased bargaining strength to raise money wages. Here the trouble is that economists all agree that the effect of a general rise in money wages is almost wholly to raise prices and very little to increase the real income of workers. But it is very difficult to convince any worker or trade union leader of this. A pound in the pocket remains a pound in the pocket whatever happens to prices; it makes workers satisfied with their trade union leader who obtained it; it has real value at least for a time, even if it be eventually dissipated by price increases; and since there will certainly remain some real benefit to workers—even if it be as little as two shillings—it will still seem worth while.

The only hope of achieving anything in this sphere seems to me dependent first on convincing wage-earners that satisfactory progress is being made with reducing inequality of income, wealth and opportunity. Against this background, it would be equitable for governments to throw all their considerable weight into securing national acceptance for an anti-

inflationary wage policy, and for marshalling public opinion to exert its pressure on wage-earners to accept such a policy. The policy itself is fairly simple. Wages should not rise faster than productivity if inflation is to be avoided—and if they rise only a little faster, no serious inflation would result. This would allow a reasonable increase each year in money wages and therefore leave scope for wage-bargaining between trade unions and employers. The constitutional lawyers will tell us that the Arbitration Court is not allowed to administer a wage policy, but can only promote industrial peace in disputes actually before it. In fact it does administer wage policy and it is extremely desirable that it should be consciously aware of the effect of its decisions. Moreover, when the Commonwealth Government has chosen to intervene, in cases such as the standard-hours case, its evidence has obviously carried great weight with the Court. I have no doubt that much could be done towards developing an anti-inflationary wage policy if the Commonwealth Government wished. Let us exhaust these possibilities and, if they fail completely, it will be time enough then to consider the desirability and practicability of imposing more direct controls such as maximum wages.

Freedom and welfare

If these things were done and were done well, a great deal could be achieved at the cost of what appear to me to be negligible interferences with freedom. Some will say that more substantial interferences with freedom—to control production, to direct labour, to control prices and profits, to nationalize industries, and so on—would produce such great increases in living standards as amply to justify the restraint on freedom.

I am not convinced of this myself, and still less am I convinced that it would suit the wishes of the Australian people. In large measure, freedom is, for us, an end in itself. We are a wealthy people and even if freedom is a luxury it is one of which we can afford a great deal. The choice, of course, may be different for the greater part of the world's population which still lives in almost bestial poverty in Asia, Africa, Southern Europe and Latin America—but we are not now

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discussing these people. So far as Australia is concerned, it seems to me that no one could convince us that a substantial restraint of economic freedom could give us benefits great enough to justify that sacrifice. If it were argued that, thereby, we could raise living standards 50 per cent or 100 per cent, we would not believe it. If it were argued that we could raise living standards by 5 per cent or 10 per cent, the achievement would not seem worth while.

Over the last fifteen years we have enjoyed one enormous advance towards real freedom, thanks to the maintenance of full employment. The great remaining problems are two. Can we assure a greater degree of equality of opportunity by expanding educational opportunities, by making capital more accessible, by increasing freedom of entry into jobs, industries and professions and by making our economy more competitive? Secondly, can we avoid a state of inflation which would be fertile of a growing crop of government interventions to restrain economic freedom?

DISCUSSION

Professor H. W. Arndt, M.A., Professor of Economics, Canberra University College: Professor Downing has given us a stimulating paper, humane but not starry-eyed, liberal with a small but not with a capital "L", radical but emphatically not revolutionary. With his programme for economic reform, for the "enlargement of economic freedom", I am very largely in agreement. I am even prepared to go along with him on rent control. I therefore propose to concentrate on one or two of the issues of principle surrounding the awkward concept of "economic freedom".

Professor Downing begins by defining freedom as "ability to do what you want", and at once points out that "in one sense there can be no economic freedom" because "we have not enough resources to do all the things we want to do". He therefore proceeds to re-define economic freedom as freedom for the individual in the management of his limited resources and, following Barbara Wootton, lists three economic *freedoms*: freedom of choice of occupation, freedom of marketing, and freedom of expenditure. He explains that, while in an ideal free-market economy all these freedoms would be realized, in the real world an entirely free market economy would, for various reasons such as immobility, monopoly or government activities, work very imperfectly. He therefore goes on to outline a programme of measures to mitigate these defects, concentrating on six objectives, five explicit and one implicit: the explicit ones are full employment, greater equality of income and wealth, avoidance of inflation, international solvency and monopoly; the implicit one is to minimize direct government controls.

Now, while we may agree with every individual point made by Professor Downing, there does seem to be something wrong with the logic of this argument. The flaw is most apparent in his inclusion among his policy objectives of at least one which has nothing to do with any of his three categories of economic freedom, namely equality. If economic freedom is freedom of the individual in the management of his economic resources, whether they be large or small, then the issue of equality is completely irrelevant to economic freedom. (The same conclusion, incidentally, is reached by adopting Professor Downing's criterion

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of the ideal free-market economy. This, too, leaves the question of equality open. It achieves an ideal allocation of resources only for any *given* distribution of income and wealth, however equal or unequal that distribution may be.) Yet most of us will sympathize with Professor Downing in regarding greater equality as a worthy objective of economic policy; and some of us at least may be prepared to agree that there is a sense in which measures for greater equality would enlarge some people's "economic freedom", though this cannot be Professor Downing's sense.

I think Professor Downing has led himself into these troubles by failing to keep apart two distinct concepts of economic freedom. The first is the one most of us will have had in mind when first reading the title of this paper: freedom of the individual from control by others, and more particularly by government, in economic matters. This is Professor Downing's "freedom of the individual to manage his resources" and his three economic freedoms are no doubt the instances of it which most Australians today would regard as the most important. The second is freedom in Professor Downing's original definition: "ability to do what you want", or in Bertrand Russell's clumsier but more precise phrase: "absence of obstacles to the realization of desires". As Professor Downing points out, our ability to do what we want to do is limited by scarcity, by the fact that our resources are limited. But this, surely, is no reason for throwing this common-sense meaning of freedom out of the window. Why not admit that there are all sorts of obstacles to one's ability to do what one wants, shortage of money being one of them, government controls another, impersonal controls by the market a third; and that diminution or removal of any of these obstacles, to that extent and in that respect, enlarges one's freedom? If we accept this wider definition, Professor Downing's troubles disappear. For since poverty is very clearly an obstacle to the realization of desires, any measures which reduce poverty, by means of redistribution or, for that matter, by increase in *per capita* incomes, add to the freedom of at least the majority of people.

Each of these definitions has its merits, but whichever we choose we should retain. The narrower definition is perhaps less liable to lead to woolly thinking and does no harm provided it is recognized that, on this definition, freedom is but one of several ends of economic policy and that its claims need to be weighed against those of other desirable objectives, such as prosperity, equality, security, progress.

Personally, I prefer the wider definition. For one thing, it stops us chasing the will-o'-the-wisp of "perfect economic freedom" which, on the narrower definition, is at least theoretically conceivable in the ideal free-market economy: it makes us start out from the premise that the economic freedom of each of us is inevitably limited by scarcity and by the demands of others for the same freedom, and that enlargement of one's freedom in one respect must usually be purchased at the cost of limitation of freedom in other respects. Had Professor Downing used it, he would not, for example, have treated taxation as compatible with perfect freedom on the dangerous argument that it is "democratically consented", an argument which would, of course, do equally well for all manner of direct controls.

I also regard it as a positive merit of the wider definition that it emphasizes the close analogy between the frustrations of poverty or lack of leisure and those of government controls of business. We are liable to be misled into some rather odd value judgments by a definition which obliges us to regard an old-age pensioner, who cannot afford to smoke, or a worker, who is compelled to work all day in a factory, as enjoying complete economic freedom, but a businessman, who has to apply for a permit to make a new issue on the stock exchange, as lacking economic freedom.

There is, of course, as Professor Downing points out, a very important difference between government controls and the compulsion of market forces, and therefore also between direct controls which cut across, and indirect controls which operate through, the price mechanism. We resent direct controls far more because they seem personal and in some degree arbitrary, whereas the compulsions of the market, even when they leave us virtually no choice, are impersonal and, as it were, God-given. But here, too, the lines are liable to be drawn too sharply if we use the narrower definition. Is the worker, upon whom market forces operate through the personal and often seemingly arbitrary will of his employer, freer than the businessman subject to government controls? Is it really plausible to say, with Professor Downing, that bank advance policy (which, after all, impinges on the bank customer through the credit-rationing decisions of his bank manager) "involves no direct interference with economic freedom", while capital issues control does?

There is always a danger in this sort of discussion, where all terms are value-loaded, of unconsciously defining our terms to

suit our individual or group interests. Since everyone approves of freedom, a policy will sound less attractive if it is presented as curtailing freedom for the sake of equality than if it were presented as increasing the freedom of some in one respect at the price of limiting their freedom or that of others in another respect. In practice, economic policies do not enlarge or diminish "freedom"; they almost invariably increase the freedom (in the narrower or wider sense) of some at some cost to others. In all these cases, there is no basis for completely objective judgment; and talking about what "people would freely choose" or what would "suit the wishes of the Australian people" merely hides the difficulty.

Professor Downing's narrow definition of freedom as absence of government interference in the market mechanism tends to weight the argument in favour of businessmen and other owners of capital; for since they enjoy a favoured position in a free-market economy, government interference with the free market tends to hurt them most. Yet how many businessmen would be prepared to accept all of Professor Downing's proposals without complaint? Towards the end of his paper, he claims for his reform programme that it involves "negligible interferences with freedom", but that programme includes steeply progressive taxation, compulsory saving, a capital gains tax, intermittent import licensing, government interference with the location of industry, government regulation of monopoly, government competition with private enterprise, nationalization in certain cases, and also, if necessary, price and wage controls. The taxpayers, importers, monopolists and other affected groups are not likely to regard these interferences as negligible.

I am not saying this to score at Professor Downing's expense. His procedure of putting forward a programme which embodies the minimum interference with the economic freedom of various groups, which he regards as necessary for the achievement of other important objectives of economic policy, is a perfectly proper and indeed the only possible one. What I am concerned to point out is that someone else may adopt the same procedure and come out with a very different programme, involving far more or even less government intervention, and there is no objective way of proving him right or wrong.

That, of course, is why argument about economic freedom rarely proves fruitful. Each of us sets out with his own value

judgments, which may or may not reflect his own or his group's interests, and enlists the appeal to freedom to embellish his case. But there are some things we can do to help narrow the area and assuage the ferocity of the dispute. We can try to agree in advance on our definitions. We can take care in assessing the immediate and longer-range consequences of policies (that is where the economist or other expert comes in) and remind ourselves of the many imponderables in any such assessment. We can suggest that, although in a democracy majority opinion prevails, democracy will not work if minorities are bullied beyond endurance. Finally, we can endeavour, and appeal to our opponents, not to cast aside lightly the value of individual freedom, on the one hand, and the claims of the weak, the poor, the handicapped, on the other; in other words, to try to see the other fellow's point of view.

So much for generalities. On details in Professor Downing's paper, I prefer to leave comment to those who find more in it with which to quarrel. I merely make one point: few of us will disagree with Professor Downing's view that, by and large, the Australian people enjoy substantial economic freedom—both in the narrow and in the wider sense. There is now relatively little direct government control; extremes of wealth and poverty are less than in most other countries; and there are no obviously oppressed or grossly under-privileged sections. To the last generalization, however, I would make these exceptions: housewives, aborigines, and probably, in less prosperous conditions than at present, New Australians. All three groups deserve a better deal.

Mr D. J. Russell: My criticism of Professor Downing's paper is that his approach was academic and lacked reality. As an example, he supported equalization of incomes through taxation policy, and probably every university man, possibly every government servant would think similarly. It would not appeal, however, to farmers, manufacturers, or retailers. The farmers, indeed, had some experience and would not produce when their incomes were excessively limited. We must approach these matters as realists, not as academics. I suggest that one of the biggest restrictions of our liberty is through Government Boards which are to a large extent interfering and inefficient. I think that the Wheat Board is inefficient, for the primary producers who are members are only there by appointment of the Minister; in other words they become political. The Potato Board is a further example. Because

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of Section 92 of the Constitution, people can buy potatoes in one State, giving the producer more than he gets from the Potato Board, and can sell those potatoes in other States at prices below those charged by the Board. This seems to me proof of the Potato Board's inefficiency, and the story is repeated in other Government Boards and services. It would be much better if we adopted more of the freedom of enterprise and abandoned the restrictiveness of these official boards.

Mr P. J. Clarey: Economic pressures themselves can very seriously frustrate and damage the liberties which have been the subject of our discussions. It would be very interesting indeed to know to what extent economic pressure of advertisers can prevent the real expression of freedom of the Press. In *Land Nationalization*, Alfred Russell Wallace described the landlord who made tenancy conditional upon his tenant farmers always voting for the candidate whom the landlord favoured, with the result that the candidate always had a substantial majority in that area. A simpler illustration is the negative attitude of the average shopkeeper who always pretends to agree with his customers' views lest his trading be affected. My definition of economic freedom is freedom of economic security, a thing desired by the entrepreneur as well as by the employee. Wallace found, over forty years' experience in the trade union movement, that from the employee's standpoint the employer is an absolute monarch. I could relate many instances where the employee did not have economic security and his freedom of association and of expression were therefore destroyed or prevented or frustrated. The worker's idea of economic freedom is freedom from want, freedom from the fear that tomorrow is going to bring death to the breadwinner, sickness, unemployment, or destitution. While liberty of speech, liberty of thought and liberty of association are very precious and very desirable, the thing that dominates the employee's life is freedom of economic security, freedom from want. I have known, in times of unemployment, freedom of association destroyed for a large number of employees who have not joined unions to protect their economic interests. I have seen tyranny exercised by employers in workshops and factories and retail shops and other places, because those under them have had to submit through fear of unemployment. My considered opinion is that full employment backed by trade unionism will give to the employee the highest degree of economic freedom possible in our present system.

Mr G. B. Foletta: Professor Downing said that import licensing was a severe curtailment of economic freedom, but he thought we would have to accept it for a considerable period. I agree that we have neglected our overseas balances so much that this is inevitable, but I emphasize that it is one of the greatest curtailments of economic freedom. I am not even sure that these controls are an efficient medium for the control of overseas expenditure. Mr L. S. Amery put forward an alternative view in London in 1953, when he said that the nearest approach we can have to free trade in the present trading world is protection by tariffs, since tariffs ensure the citizen complete freedom of choice on payment of an appropriate fine. I address this question to Professor Downing: is not the freedom to enter many kinds of industry seriously curtailed by the lack of security and the lack of continuity of demand, brought about by alternate imposition and lifting of import controls?

Mrs Phyllis Burke: Professor Downing illustrated his remarks entirely in the masculine gender. I have to remind him that there are large numbers of women workers, and there are very positive restrictions upon their choice of occupation, upon their opportunities for promotion and upon their right to receive the same pay as men. The particular issue I wish to mention, however, is that of rental subsidies. Professor Downing offered better amenities for the householder and then said he would like to see an abandonment of rent control, which would probably necessitate an extension of rental subsidies. Although we know that the operation of the Fair Rents Court is to some extent a limitation upon the economic freedom of the landlord, at the same time it assures to the tenant continuity of tenancy at a reasonable rent. It is quite true, as he says, that there is a settled class, which, having brought up families, needs less protection, but this leaves a much larger class still to be protected. The only existing system of rental rebates, or rental subsidies, is through State Housing Authorities working under the Commonwealth-State Housing Agreement, and this is only possible because of the rigid control of family life. Two-bedroom houses are only allotted to those families that have a two-bedroom complement—a family of husband and wife only would not receive one. Similarly a four-bedroom house is only allotted to a family of appropriate size, and so on. If we accept rental subsidies we must also accept a great deal of interference in family life.

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Dr H. Burton, Principal, Canberra University College: Professor Downing referred to the absence in this country of anything like the Consumers' Union which exists in the United States. The bulletins published by the Consumers' Union are most interesting and informative publications which give the results of tests and appraisals of branded products offered on the market throughout the United States. They are of extreme value to all consumers in enabling them to spend their income to the best advantage because they indicate the best value for money. In this country we have a number of Housewives' Associations and it is not beyond the resources of these groups to try to do something of the kind that is being done by the Consumers' Union. Professor Downing has suggested that the State Governments and the Commonwealth Government might be able to help and I think that they could perhaps subsidize or assist these Housewives' Associations to do something really useful for their members. Another thing that might be done to enlarge the area of consumers' freedom in this country is the development of consumers' co-operatives. It is extraordinary that in this country we have seen nothing comparable to the development of consumers' co-operatives in Great Britain, on the Continent, in India and in many other countries.

Mr S. Baume: In previous papers we have had a well-balanced statement of those principles which most of us use as a guide in our ordinary living. In my own lifetime I have seen an ever-increasing tendency to limit personal liberties but at least we have sufficient background to understand that such limitation should be applied reluctantly and for a stated purpose. It should be done openly, with onus of proof on the government, and charges arising from it should be handled in the ordinary courts and not in special ones. These are the safeguards which most of us accept and emphasize. But in the realm of economics the ordinary citizen is somewhat lost. What I would like is a set of criteria by which to judge any legislation which, it may be suggested, will affect our economic freedom. I had hoped for a touchstone by which to decide whether to support or oppose politically measures limiting our economic freedom. I did not find one sufficiently adequate in Professor Downing's paper but I hope we may yet find in our proceedings a plain guide for the future.

Mr John Mant: Professor Downing has mentioned taxation, and there is one aspect of taxation to which I draw your attention. I

do not refer to the results of taxation, which are so obvious in Canberra where one can see the proceeds from taxes in some beautiful buildings, furniture, equipment and fittings that one cannot afford in one's own home, but to the taxation laws in all their scope and variety. In the administration of taxation law the economic freedom of the citizen can be very gravely affected, because each person who administers that law has discretion to make a decision. It may be a wrong decision which can be corrected in the courts, but that costs the citizen money, and a series of such decisions can have a very severe effect on the economic freedom of the citizen. That is also true, of course, of the ordinary penal code today with its hundreds of regulations. Some of you may have friends who have broken the law, and some of us may think that everyone commits a hundred technical traffic offences every few miles and we are all liable to prosecution for them. Even if we are acquitted in the courts we are penalized by the cost of defending those prosecutions, and therefore in the administration of our penal laws we have a considerable discretion amongst our authorities as to which of us will be prosecuted. It is in these two matters of administration of taxation laws and administration of all our penal laws that so much depends on the character of the officials administering them.

Mr H. W. Herbert: I want to question the workability of the system of economic management, as propounded by Professor Downing. This may not seem to be related to economic freedom, but we are dependent as a community for our standard of living on the production provided very largely by private enterprise, by our system of business. If we adopt a system which does not work efficiently, we reduce our standard of living and we have in effect reduced our economic freedom. Economic freedom is almost synonymous with money; very largely money means freedom. Professor Downing propounds a system which has its basis in such items as steeper taxation on high incomes, and he does not question that the system is workable but seems to assume that it would work quite well with such taxation, in spite of the patent results of heavier taxation a few years ago in destruction of incentive. Moreover he suggests that we could afford a steady inflation, that it is preferable to a small amount of unemployment. When I hear such suggestions, I think we have seriously to question the workability of the whole system he has put forward. Governments in Australia are already taking over 26 per cent of

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our earnings in taxes of one form or another and they thereby limit our freedom to that extent. I cannot see how the system that he proposed could possibly be effectual without even further government authority and further government infringements. Finally, when Professor Downing put forward the idea that the selection of men to enter business could well be entrusted to some government authority, like the Commonwealth Bank, for instance, I was reminded of the application of the two Coles brothers for assistance from the Repatriation Department after the first world war. The Coles brothers were duly interviewed by the authority and, after long questioning, their application was marked "Unlikely to succeed in any commercial business"!

Mr G. F. Chislett: I was surprised at Professor Downing's treatment of the subject. His thesis was based on value judgments which can be his alone, value judgments which I feel are quite incompatible with Mr Melville's opening address wherein he gave us an injunction not to confuse liberty with welfare. Professor Downing invites us to accept further controls so that we may attain greater freedom, and I do not believe that this is a realistic approach to the question of economic freedom. More specifically, his attitude was a negative one in that he was prepared to accept the necessity for import restrictions and had no policy to offer on how we might work in a positive way to put ourselves in a position where import restrictions would not be necessary, particularly by more positive export drives, both of primary and secondary produce. His proposals for greater welfare must necessarily cost money, which puts up our costs of production and we have less and less opportunity of competing on the world market. He thought import controls would be better replaced by allowing our tariffs and our exchange rates to adjust themselves so that we would reach an equilibrium where import restrictions would not be necessary. But he was not at all specific as to how the exchange rates and tariffs should adjust themselves. Presumably tariffs would go up and our exchange would depreciate, and this in turn would deny us the freedom of enjoying those things which are produced overseas. If technical advances are made in the United Kingdom and in Europe so that they can produce goods more cheaply than we can, why should we be denied the chance of obtaining those goods? Are we to impose tariffs on ourselves to build a wall around this country so that we can have more freedom within our own little container? In

essence Professor Downing's paper invited us to sacrifice "y" freedoms to gain "x" freedoms. For myself, I would rather keep the "y" freedoms because I am very suspicious of his unknown "x".

Professor R. I. Downing, replying: The point made by Professor Arndt that freedom is not the only end we should seek is a perfectly valid one. I tried specifically to meet that by joining the consideration of economic freedom to the consideration of economic welfare and, despite what Mr Chislett said, I still feel that we cannot discuss freedom in a vacuum: we have to consider whether it has given us the results we want. Freedom is to some extent an end in itself, but there obviously comes a point when we have seriously to consider whether we should make a sacrifice of freedom. In an economy such as ours, such as we are likely to have for our lifetime and longer, it is inevitable that the freedom of the worker should always be much less than the freedom of the employer. Short of advocating a revolution, when it is not at all clear what happens to freedom, whether of workers or of anybody else, the only suggestion one can offer is to ask for greater opportunity for those with ability to rise from positions where they have to take orders to positions where they can be more independent. It is obviously a much happier situation, but in our economy it does not seem to be open to more than a comparative minority of the people.

Several speakers have discussed the problem of taxation. In my paper I tried to avoid any plea for equalization of incomes as such. I was more concerned with the use of taxation where it was necessary to give greater equality of opportunity, and where it was necessary to mitigate the worst inequalities of income distribution in today's community. These seem reasonably objective criteria in asking for more progressive taxation. I have my own views on the seeking of a greater equalization of incomes as an end in itself, but this did not seem particularly relevant to the issue of economic freedom. But I think it is perfectly true, as Professor Arndt and others have said, that every discourse on economic freedom is largely concerned with values and it is very difficult to establish objective criteria. Mr Foletta asked a specific question about import licensing and Mr Chislett also referred to this subject. I agree that import licensing is, on the whole, an undesirable thing. I would rather see the responsibility for keeping imports in balance with exports borne by tariffs and exchange rates. Officials and ministers responsible for introducing import

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controls should not rely on them exclusively as a weapon but should try and develop a long term equilibrium in the balance of payments. In a country like Australia, which depends for a large part of its national income on its export income, and whose export income is by its very nature subject to wide fluctuations, we cannot expect our oversea reserves to carry the whole burden. We will need import control from time to time, therefore, even though it is quite a serious limitation on the freedom of enterprise.

Economists are indeed given to generalizations and in referring to workmen they usually intend the term to include women. Women do not enjoy equality with men, and there are limitations on their ability to obtain certain jobs, to get wider training and to enjoy equal payment. It is an issue which is being widely discussed, and any improvement will in the end depend on the ability of women's organizations to make their feelings effective, though their position has improved greatly during and after the war. The question of taxation incentives raised by Mr Herbert is a difficult one. We have to balance the disadvantages to incentives of higher taxation against the advantages which higher taxes may bring. I do not think that we have yet reached the limits of taxation in Australia; there are ways in which we can increase taxes without having very serious undesirable effects. Finally, I agree with Mr Clarey that freedom from insecurity is much the most vital freedom of all. It is the one affecting the greatest number of people in Australia. Workers who are subject to unemployment at short notice have in fact lost their security. Fortunately there are much more generous social services than in the past, but a state dole is not a substitute for a job. The greatest advance we have made in Australia is the elimination of unemployment and I see no reason why we should be faced with any serious unemployment again. We may not achieve the same degree of success in other directions as we have achieved with unemployment, because the problems are more difficult and involve perhaps more serious interferences with freedom.

V

PARLIAMENTARY GOVERNMENT AND LIBERTY

F. A. BLAND *

OUR system of Parliamentary Government consists of a complex of institutions, conventions and practices that have been developed through the centuries of English government to meet the changing needs of the people. The more important are the Parliament, the political Parties, the Cabinet, the Judiciary and the Public Service.

In considering how these institutions fulfil their purposes today, I have had to be selective. Further, I have been content to throw the spotlight only upon the more brazen and haughty invasions of the liberty of the individual. I must commence by re-stating for this paper the interpretation we place upon liberty in the field of government, for government implies control and restraint imposed from without.

Liberty is not freedom from restraint: it is freedom from arbitrary restraint. People readily accept limitations upon their activities if they are rational: they resent those that are arbitrarily imposed in an authoritarian manner. During periods of crisis, people may be persuaded to accept restraints, but even in this case they rightly demand that such restraints shall not be imposed recklessly or administered capriciously.

In our scheme of things, all the institutions of Parliamentary Government have, as their central purpose, the creation of conditions that will enable people to develop their personality and to foster their sense of moral values. And we should be able to choose freely the kind of life we wish to live. The Government cannot give us freedom, although it can deprive

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us of it. The Government is not able to tell us what interpretation we shall place upon our freedom, and it is quite incapable of deciding what values we shall attach to our freedom or how they should be pursued.

For us, then, it follows that the institutions of Parliamentary Government are restricted to maintaining a minimum standard of behaviour on the part of all as an indispensable condition of the enjoyment of freedom by anyone.

With this as a background to the objectives and limitations of the institutions of Parliamentary Government, we may turn to discuss whether Parliament in Australia measures up to the conditions just described. Because we use the same names to describe the parliamentary institutions and practices of the British Commonwealth, we may be led into thinking that they all operate similarly. To put us on our guard, we need merely mention the following features which are different in Canberra from what they are at Westminster: the composition of the Parliament, the character and operations of political parties, the selection and authority of the Cabinet, the electoral system, and, above all, the constitutional restrictions imposed upon an Australian Parliament by virtue of its operating in a Federal system.

Let us take the last point first. There are relatively few members at Canberra who fully appreciate the importance of a Federal system. They show constant irritation when proposals are rejected by the Government as being outside the powers of the Commonwealth. They evince little desire to abolish the system of Uniform Taxation which has gone far to destroying the substance of Federalism. Both within and without the Parliament it is doubtful whether there would be found much of that burning belief in Federalism that brought Federation in 1900; an indifference fraught with great dangers for the liberties of the Australian electors.

Consider the extent to which a Federal system prevents a government at Canberra from giving "untrammelled effect to its proposals". In 1942 Dr Evatt put forward a tentative proposal dealing with post-war reconstruction by which he sought to remove from the jurisdiction of the High Court any

matter that Parliament so decided. The proposal was not persisted with: it was realized that such a plan would be incompatible with Federalism.

In 1944, the first batch of post-war referendum proposals was put forward which, if carried, would have resulted in entirely upsetting the balance in the existing Federal system. But if there had been no Federal system Dr Evatt would have been able to give untrammelled effect to those proposals without having to consult the people. So, too, the legislation for Bank Nationalization, for Pharmaceutical Benefits and for controlling Transport was all passed by the Socialists at Canberra. All these measures have been criticized as infringing the rights of the individual. Had there been no Federal system, they could have been passed without fear of any review by the High Court, or of appeal to the Privy Council.

It is clear, therefore, that a Federal system is one that prevents a government, enjoying power conferred by a temporary majority vote, from riding rough-shod over the rights of minorities. A Federal system protects the minority by saying that a government cannot do what it wants but only what it is allowed to do under the Constitution.

The measures recently passed by the Socialists in New South Wales, for compulsory unionism, for controlling the Press, for depriving people of their property without adequate compensation, clearly show the manner in which a parliament, unrestrained by a written Constitution or by a charter of human rights, can deprive the people of their rights and liberties.

Parliament and its status

Now let us turn to the central institution—the parliament—in our system of Parliamentary Government. Our argument is that anything which assails the authority of the parliament creates a contingent threat to liberty. There is general agreement throughout the British Commonwealth that the power and prestige of parliaments have waned since the middle of the nineteenth century. Then the Press and public watched, with an interest now reserved for racing or football, the activities of

members of parliament and their leaders. Today the space and time given to parliament are insignificant as compared with that devoted to sport.

In one of his few pessimistic utterances, that brilliant statesman, General Smuts, declared that "It is no longer the elected representatives of the people who mainly guide and interpret the popular mind in matters political . . . the parliament itself is becoming of less and less importance. This is notoriously the case even in constitutionally governed countries, while in others the parliament, except as a form, has disappeared. From an attitude of respect for the parliament, the public has passed to one of indifference and boredom".

In Australasia we have sought to counter this boredom by broadcasting parliamentary proceedings, but it is doubtful whether the popular education achieved has outweighed the disadvantageous effects upon the members themselves.

A more important move to overcome the indifference of electors has been the resort to compulsory voting. Introduced after World War I as a private members' contribution to political science, the Bill was not opposed by the Government and became law after the most perfunctory examination. Compulsory voting disregards our basic principle of liberty that man can only be his best self if he is free to reject the pressure of authority to compel him to act in a manner deemed best for him by authority.

In my judgment, Parliamentary Government would operate more effectively if we abandoned compulsory voting, and relied upon a sense of duty rather than the fear of a fine to take the citizens to the polls. In any case, it is time that compulsory voting and the broadcasting of parliamentary proceedings were submitted to an independent investigation, with a view to discovering what effect these two features of Australian politics have upon voters and the character of debates.

Another factor that influences the prestige and standing of the Parliament is the practice of making important policy pronouncements in the Press and upon public occasions instead of to the Parliament. If the Parliament is not sitting, the pronouncements must be made upon the most suitable occasions,

and to the most significant public body. But even with that excuse, there has been in the past too ready a habit to ignore the Parliament—compare the statements made by the late Mr Lyons on the Trade Diversion policy of the Government prior to World War II.¹

The abuse of "Privilege" is another matter that has tended to bring the Parliament in Australia into disrepute. This abuse may occur when the Parliament thinks itself to have been slighted, or when citizens think that they have been traduced by members during sittings of the House. Almost every session provides material for vigorous protests by members against Press comments upon their conduct. The sittings of 22nd June 1945 are typical. Mr Barnard complained that the *Daily Telegraph* had cartooned him by depicting a House in which there were on the Government benches himself and two others (including a Minister at the table, seemingly asleep) during a debate on Supply. Mr Barnard thought that this was calculated to ridicule him and to bring the Parliament into contempt; he asked the Speaker to discipline the paper. The facts are not denied, and there is no doubt that the cartoon had the effect intended by the paper. But the cartoon was important because it reflected the attitude of members that there was little they could do about the Supply Bill, once it had been approved by the Caucus and the Government. The immediate reaction was, "Let us suppress the paper lest it disclose our habits and bring us into disrepute in our electorates." Fortunately, the House is aware of the hypersensitiveness of members!

The type of privilege raised when a member uses the shelter of the House to defame a private citizen is more serious. It is highly important that a member of parliament may be free to throw the glare of publicity upon matters that he thinks affect the community. But there are limits, beyond which members should not go, in traducing a citizen and vilifying his character

¹ The infrequent sittings of the Parliament in Australia partly explain the development of the practice. What is disturbing, however, is the general indifference to the affront to the Parliament implicit in these practices. Indeed some ministerial statements seem deliberately calculated to disregard the rights of the Parliament to priority in the disclosure of information.

merely for a political advantage. Those parliamentary limits are but vaguely defined. The kind of abuse referred to is the insinuation made by Mr Mountjoy during question time on 16th March 1945, a question that was answered without rebuke by the then Attorney-General and allowed by the then Speaker. To prevent such abuses it has been suggested that there should be a small committee of Privilege that would examine, on the complaint of a member, any allegation of scandalous conduct traducing a private citizen. If abuse is proved, the member should be called to account.

The increase in the size of the Commonwealth Parliament has had a marked influence on procedure. Debate is restricted because there are so many members for whom time must be made available. And, since time has to be saved, it has been taken out of the committee stages of measures. There was a time when the second reading dealt with the general principles embodied in the legislation and the manner in which the Government intended to apply those principles. The committee stage was directed to examining the language in which those principles were expressed and the administrative organization proposed for carrying out the purposes of the Bill.

In these days every Bill tends to be an opportunity for discussing the things that the Government has left undone and the things that it ought not to have done, with only incidental references to the measure. It is much easier for members to sing in a chorus than to compose their own music. When the second reading debate has ended the Bill goes to the House in Committee, and it is now general practice for the Bill to be taken as a whole instead of clause by clause, which robs members of the opportunity to examine details of the measure. If there is debate at this stage, it tends to be a repetition of the second reading speeches, instead of a minute examination of the several sections.

It is true that, in these days, legislative measures are, generally speaking, technical and difficult to appreciate, and therefore debate tends to be general rather than specific. Again, this reflects the changed attitude towards the functions of the Parliament. The Bill is drafted by officials, sometimes with

help from outside experts. It is considered by the Cabinet, explained to the Party in secret session, and then brought to the House by the relevant Minister.

In their turn, Ministers tend to dismiss suggested amendments quite summarily, because any amendment may throw the Bill out of balance. But such action also suggests that debate is useless, and that Ministers and departments possess a monopoly of knowledge on the particular measure. The frequency with which Acts are amended reflects the inadequate thought and attention given to legislation, and this is unsettling both to the public and to the departments.

In the hey-day of socialist thinking and planning in the years immediately before World War II, Stafford Cripps and Herbert Morrison devoted their manifest abilities to planning ways in which Parliament might be restricted to debating broad principles or fundamental features of legislation: all the details of the legislation were to be left to the Executive to work out with the use of delegated legislative powers.

Commenting upon the Cripps-Morrison proposals, the *Economist* (11th March 1944) remarked, "the real domestic problem of Parliament is to find means of making much better use of its time so that it can, without holding up the process of government, simultaneously approve and criticize legislation, pass government policy under continuous review, watch over the public interest, and protect the rights of individuals and of minorities. Delegated legislation may increase and, with it, the power of the Executive. But Parliament will abandon its central duty if it allows any of the essential controls over Executive action to pass out of its hands simply for lack of working efficiency, or ingenuity in its organization." The proposals accurately reflected the features of the Socialist State, but they would have been the end of Representative Government in a democratic state.

There is little doubt that the machinery of Parliament needs overhauling and adapting to new conditions but I will not repeat here suggestions for reform that I have made at other times before this Institute.

The Cabinet

"By the Cabinet system," to quote G. M. Trevelyan, "we mean, in England, a group of Ministers dependent on the favour of the House of Commons and all having seats in Parliament, who must agree on a common policy, and who are responsible for one another's actions, and for the government of the country as a whole. . . . The Cabinet is the link between the executive and legislative and it is a very close link indeed."² Other essential features are the supremacy of the Prime Minister and the obligation of secrecy.

The Labour Party in Australia has rejected some of the conditions regarded by Trevelyan as fundamental, and this vitally affects our system of Parliamentary Government. Since Socialist Ministers are elected by the Parliamentary Caucus, often after dictation by the Australian Labour Party Executive,³ there is no overriding loyalty to the Prime Minister, nor can the Prime Minister get rid of a Minister who is disloyal. There is no common policy, no feeling of obligation for secrecy, and no feeling of responsibility for each other's actions. Nor can there be, while policy and office are determined by an external authority. Ministerial responsibility and Cabinet solidarity are primary conditions of Cabinet Government, and if they are disregarded or rejected the whole character of our government has changed.

In Australia, there is no distinction between the Cabinet and the Ministry as in England. But our Cabinet tends to approach the size of the English Cabinet. A Cabinet of twenty members is much too large for effective discussion, and all the governments of the British Commonwealth have been realizing it. Every Minister brings to the Cabinet table the measures, proposals and Bills that need Cabinet discussion, and meetings are strung out to the pitch of exhaustion.⁴ There still remains

² G. M. Trevelyan: *History of England* (London, Longmans, Green & Co.).

³ *vide* happenings in N.S.W. during periodic struggles between sections of the Labour Party striving for power, 1929-44.

⁴ The Cabinet meetings held in Melbourne in January 1955, prior to the departure of Mr Menzies for London, were continued long into the night after all-day sittings, and this was not unusual: this situation flows naturally from the expansion of governmental activities, and effective Cabinet discussion tends in consequence to become almost impossible.

all the material that he never brings to Cabinet and which may affect the fate of the Government.

The work of the Cabinet might be made more manageable if more use were made of private members. Here the technique of the committee system might be adopted. These committees might be entrusted with the task of reviewing certain functions of government and the manner in which these functions were administered. They would report to the Cabinet. Mr Menzies resorted to this practice when he was in office at the beginning of World War II, and he induced the Opposition to co-operate in creating Joint Committees. In the long run, all the activities of the Cabinet and the committees come back to the Prime Minister, and the extent to which he can be relieved of other work to enable him to cope with the Cabinet business is engaging constant thought.

One of the more involved problems affecting Cabinet discussion is the policy of socialization that all governments pursue. If these nationalized undertakings are to be efficiently managed, the managers must be free to manage, and this means that they must not be subject to parliamentary control through a Minister. If the Minister is to manage, the undertaking should be run as an ordinary government department. In that case, the public and the Parliament will know where they stand. The public can expect Parliament to keep the Minister on his toes, and there will be no doubt where responsibility lies.

The fundamental objection to this suggestion is that business and politics do not mix. Business decisions cannot wait while party interests are being served. With ministerial control they must wait, and the result is fatal to economic administration. Delays are the natural concomitant of politics; they strangle a business. Does it follow that managers must be free to manage? And, if so, are we then prepared to rob Parliament of its traditional right to exercise a control over the Government on behalf of the people? So far political inventiveness has not resolved the problem of reconciling effective management with parliamentary control, i.e. with party politics. The device that gets nearest to a solution is the Parliamentary Standing Committee now being canvassed in England. Whatever is done,

there must be some measure of ministerial responsibility, even if it is confined to providing necessary funds or authorizing means to raise them.

But the Minister may not feel bound to act as liaison with the public. That will then fall to the lot of the managers, and that again raises the question of political responsibility.

It is the essence of our political system that the public service is anonymous and that, by reason of the doctrine of ministerial responsibility, the electors can dismiss a Minister if they do not like what he does. But we are seeking to relieve the Minister from responsibility without providing means for fastening it upon officials—the managers.⁵

The same problem arises with the appointment of Planning Commissions, Price Fixing authorities, authorities for granting licences, permits and passports. All these officials who exercise a semi-autonomous and quasi-judicial function tend to make public statements about their activities, and these can often be embarrassing to their Ministers. One Minister, towards the end of World War II, said, "I am seriously perturbed regarding conflicting statements made in the Press by several officers acting under my jurisdiction on the same matter." Appealing to the principles of ministerial responsibility, he added, "it is not only undesirable but dangerous for Press statements to be made by officials," and he directed that in future all Press releases were to be made through him.

As long as governments extend their functions without having invented machinery for effective supervision and control, so long will the liberties of the individual be in the hands of officials and not of their parliamentary representatives.

The issue of passports is one of the developments of the two world wars, and in Australia it has been made the sport of party politics. We have not yet emancipated ourselves from wartime thinking. The present Minister has been severely criticized by his own supporters, and by the Opposition, for his

⁵ There is a regrettable tendency for sections of the Press to attack officials by name, and to credit them with responsibility for influencing the policy of the Minister. In that way lies the destruction of the integrity of the Public Service.

passport policy. I content myself by saying that all obstructions on freedom to travel are obnoxious, and only under the most compelling circumstances should a passport be refused to a citizen wishing to leave the country.⁶

Political Parties

As with other institutions in the scheme of Parliamentary Government, we are concerned only with the effect that the activities of political parties have upon individual freedom. In general, we can say that our institutions are geared to the two-party system. But the system exacts a heavy toll, making it necessary for the elector to accept one or other of the candidates or make his vote informal. If we abolished compulsory voting, the elector would have greater freedom.

The party system encourages and demands blind devotion to platforms, and crowds out persons with independent minds. It tends to create opportunists.

The working of our scheme of Parliamentary Government has entirely changed with the advent of socialist parties offering electors an alternative philosophy and government. Until that occurred, parties could afford to bicker over policies because they were all agreed as to the nature and purpose of the State. A change of Government was merely a change in emphasis. Now, in theory at least, as Lord Balfour has pointed out, it is not a matter of bickering over unsubstantial matters, but of confronting each other from entirely irreconcilable platforms. There is no common ground between socialism and a government believing in the sanctity of private property. And so a change of Government is a change in direction, which must make for political instability.

The developments in party government are a natural result of identifying politics with economics, the extension of the franchise, the size of the electorates, and the cost of conducting an electoral campaign. The identification of politics with economics has been especially disastrous. It has allowed the

⁶ For illustrations of the more reprehensible interferences with freedom to travel *vide* the cases of Egon Kisch and Mrs Freer, before World War II, and of the Manila girls after that war.

socialist parties in Australia to exact from their members an allegiance to the Socialist Movement which overrides all other loyalties, whether to the electorate, to the Government, to the Parliament, or even to the sanctity of the ballot box.

A printed New South Wales Parliamentary paper of 21st August 1935 contains a copy of a letter from the General Secretary of the A.L.P., dealing with the election of candidates to the Metropolitan Water, Sewerage and Drainage Board. The letter calls a meeting of Labour aldermen eligible to vote, and directs such aldermen to bring their ballot papers to a meeting in Party Headquarters for the purpose of recording their votes in the presence of named officials of the Party. If unable to attend the meeting, aldermen are instructed to call at a later time to vote under surveillance.

This letter is typical of the approach of the Socialists to the problem of government and power, as is further shown by recent activities in New South Wales in Local Government and in State Upper House elections. Indeed, the activities of the Bailey group of the Australian Workers' Union in the early nineteen-twenties included the use of ballot boxes with sliding panels to capture votes. In Australia, no Labour Government is free to act according to its own understanding of a situation. Power is in the hands of the Labour Conferences. If the Parliamentary Labour Party does things of which the Socialist Executive disapproves, it will have to retract and obey instead a body which is irresponsible, and unrepresentative of the electorate, or face automatic expulsion from the party.

Let us mention a few occasions on which the Parliamentary Labour Party was humiliated by being compelled to change its policy. In June 1942 the McKell Labour Government in New South Wales decided to resist the proposal of the Federal Labour Government, led by Mr Curtin, for Uniform Taxation. Mr McKell was directed by the A.L.P. Executive to withdraw his appeal to the High Court and he did so, despite the fact that he believed the proposal would wreck the Federal system; as indeed it has.

In November 1942, Mr Curtin sought permission from the Federal A.L.P. to merge the Militia with the Australian

Imperial Force on the ground that it was necessary for the defence of Australia. The appeal of the Prime Minister was rejected with disastrous results upon our war potential.

In 1950 the Federal Labour Party Opposition, led by Mr Chifley, decided that the Menzies anti-communist legislation was inimical to the well-being of the Commonwealth and was calculated to destroy the freedom of citizens and deprive them of their rights. The A.L.P. Executive directed Mr Chifley and his colleagues to cease opposing and to advocate its acceptance by the electorate. He obeyed with reluctance.

These actions by an external authority render ministerial responsibility meaningless, distort parliamentary debate, and reduce the effectiveness of parliamentary authority over the Government.

Bureaucracy and the New Despotism

The emergence of the Welfare State at the end of the nineteenth century focused attention on bureaucracy and "the New Despotism". With each extension of the activities of "the Government" there has been a contingent threat to the liberties of the individual. The political, judicial and administrative developments that sprang from this expansion are too well known to need more than a passing reference.

People fear bureaucracy because it challenges their enjoyment of those liberties which they fondly hope are safeguarded by the parliamentary system. There is now a tendency amongst writers on public administration to invest bureaucracy with a cloak of respectability by describing our system as "Representative Bureaucracy". But surely those two words are mutually contradictory. If a Civil Service is at once representative and responsible, it cannot be bureaucratic. Both by derivation and usage bureaucracy implies irresponsibility, the power of the desk imposed upon those outside the bureau, an attitude of mind, and a determination to use official power arbitrarily for its own sake. Official convenience, rather than the public welfare and interest, is the characteristic of bureaucratic government.

Because of its size, capacity, permanence and organization, the Civil Service exercises a decisive role in government. Ministers find that they must leave to their officers a great bulk of matters that are handled by their departments. For example, Sidney Webb relates that when he was President of the Board of Trade he received on an average a daily mail of 8152 letters, but he never saw any of them. They were all dealt with by his officials in accordance with accepted principles.

Principles are, of course, impersonal, and officials tend to be unbending in their application of these principles to specific cases. Yet it is the specific case that contains the human factor. Hence there are appeals to members of Parliament to persuade the Minister to bend the rule in hard cases and to act with sympathy as well as equity. The member of Parliament has then to be the irresistible force seeking to displace the immovable mass of officialdom: this is amongst the more important of the many roles the member of Parliament plays.

We have already mentioned that the immense expansion of departments, bureaux and corporations, since the end of World War II, greatly enhanced the power of officials and aggravated the difficulty of Ministers seeking to control and direct departmental activities. It is not easy to resume representative government after years of totalitarian methods. It is not strange, therefore, that there is still abroad some of the attitude of arbitrariness so characteristic of totalitarianism. We have not yet disentangled our thinking from the political philosophy that in Australia, during three years of World War II, from 1942 to 1945, produced 2123 price-fixing orders, couched in terms that were both humourless and arrogant.

The Commonwealth Gazette became a best seller, as people scanned its pages to read the latest efforts of the real bureaucrats to find words appropriate to describe all the motions sellers had to go through to ensure that buyers were not robbed of a farthing here and there, and to see that producers were effectively handicapped and harrassed in all they did to get supplies to the market. It is hardly credible that, ten years after the end of the war, there are thousands of officials still engaged in the same frustrating and inquisitorial activities.

In order 2116 (1945), dealing with the price of mandarins, we are told that:

... in this Order, unless the contrary intention appears,

(a) a dealer means a wholesaler who is neither a grower, a packer, a primary wholesaler, or a secondary wholesaler;

(b) a primary wholesaler means a person who receives, stores, displays, and sells mandarins on behalf of a grower or packer, or who receives, stores, displays and sells mandarins which he has not purchased from a grower or packer;

(c) a secondary wholesaler means a wholesaler who purchases mandarins from a grower or a packer through the agency of a primary wholesaler, the management or financing of whose business is not directly or indirectly connected with that of the secondary wholesaler. . . .

This Order takes a whole page to define mandarins and to clarify the meaning of Orders about the price and the selling of mandarins. There is little wonder that this sort of thinking and dictating produced, and still produces, both the racketeer and the agent provocateur.

In another field of totalitarianism we may recall the National Security Act, which conferred power to make regulations that disregarded all the safeguards of the people against arbitrary law-making and abrogated the rights of the citizen conferred by Statutes such as Magna Charta, the Bill of Rights, and the Habeas Corpus Act.

The Land Transport Regulations have been described as the apotheosis of the bureaucratic method. They provided that "any order or direction of the Board imposing any duty, obligation, or liability upon the public at large or any class of persons described generally, whether in respect of a particular locality or generally, shall be published in the Gazette, but the order shall take effect as from the time when it is made, and no order shall be invalid on the ground only that it has not been so published".

That a person can be punished for a breach of a regulation which has never been published, and which, in addition, might be applied retrospectively, shows the length to which the price-fixers and the planners of the war days would go! I submit that

the "I could send you to Bourke" attitude⁷ of the totalitarian days still persists, while the spacious thinking and lavish spending of the Post-War Reconstruction officials still condition the budgeting of many of the mushroom departments at Canberra.

The manner in which this attitude affects the rights and liberties of the individual may be illustrated by three cases from England, in the year of grace 1954, which have outraged public opinion.

The first case is that of Crichel Downs where, in 1937, the Government resumed 725 acres of land for a bombing site. There was an undertaking that the former owners would have the right of re-purchase if ever the land was not required by the Government. In 1949 the land ceased to be used as a bombing range but, instead of letting former owners have the land, one of the several authorities dealing with agriculture and land usage decided that it would make a good model farm. One of the former owners, Lieutenant-Commander Marten, wanted to exercise his right of re-purchase but the agricultural authorities decided to use their powers to prevent the land being lost as a government model farm.

Marten was able to maintain such a campaign against the decision that the Minister set up a Commission of Inquiry which reported that the Department had developed an attitude of great hostility to Lieutenant-Commander Marten "engendered solely by a feeling of irritation that any member of the public should have the temerity to oppose, or even question, the acts or decisions of a Government or State Department".⁸ The result was that the Minister reversed the decisions of the Department and created another tribunal to inquire into the actions of the senior officials of the Department of Agriculture, in consequence of which some were removed from office. And finally the Minister, in accordance with his understanding of the principles of ministerial responsibility, resigned.

⁷ This statement was alleged to have been made by a temporary "man-power" official to the wife of a prominent K.C. who challenged the authority of the officer to give what she regarded as an arbitrary direction, Bourke is a town in the remote west of New South Wales.

⁸ H.M. Stationery Office, *Cmd. 9176*, June 1954.

Two things emerged from the various inquiries and public discussion. One was the statement by the Committee of Inquiry that "in these days when the activities of government impinge more and more upon the rights of the citizen, the official should bear constantly in mind that the citizen has the right to expect not only that his affairs will be dealt with effectively and expeditiously but also that his personal feelings no less than his rights as an individual will be sympathetically and fairly considered".

The second was the realization of the helplessness of the average citizen in England today (and it applies equally to us in Australia) when confronted with the legal exercise of powers vested in a Minister "but which in fact are exercised by the delegate of a delegate, or by a collective anonymity which has as little soul as it has human face". As the case unfolded, there came the startling revelation that the citizen has no defences against a Ministry acting within the ambit of its enormous powers. There was no bribery, or corruption, or personal dishonesty: there was simply the zealous, if ruthless, determination to carry out a departmental policy which officials conceived to be in the national interest.

Another case with something of the same background but with much more tragic result was that of Edward Pilgrim, who hanged himself after waging an unequal battle with officialdom. Pilgrim had land resumed at less than one-tenth of the price he had paid for it. After two years of being pushed about, Pilgrim's nerve gave way, and he hanged himself in a shed on his former property. It was contended that this case was difficult, but that if Pilgrim had only studied the regulations he would not have hanged himself. It was unfortunate but the officials had no regrets, for they had acted quite in accordance with the law in taking away his land at their own valuation.

In still another case a farmer named Twigg was turned off his land in Derbyshire for not having improved his land and buildings. It was shown that the land had been in the hands of and farmed by the local Agricultural Committee for eleven years prior to Twigg's obtaining it, and there was some doubt

about the validity of the eviction. But the facts did suggest that it ought not to have been necessary for Twigg to carry out the required improvements if the condition of the farm had not prevented the local Agricultural Committee from previously using the land advantageously.

These are three recent cases in which the outstanding features are the arrogance, arbitrariness and utter indifference of officialdom anxious to carry out what it conceived to be public policy. They are three instances out of many which have occurred in the process of carrying out the wartime and post-war agricultural policy in England. They are in line with the eviction, reported late in 1954, of a soldier's widow in New South Wales, because her late husband was alleged to have failed to comply with conditions of residence on his block of land. They clearly show us that there can be law without liberty, and that we must reform our law-making processes if we are to enjoy our liberties.

Delegated legislation and administrative justice

The practice of delegating power to Ministers or public servants to make regulations giving effect to the provisions of an Act of Parliament has had a long history and is essential for administrative efficiency. The reasons for giving legislative powers to Departments are sufficiently well known to make it unnecessary to discuss them here. They include urgency, Parliamentary time, technical nature of the matters dealt with, political feeling, and so on. The safeguards against abuse were normally regarded as sufficient, and included publication, laying before Parliament, and the right of disallowance. Since the report of the Donoughmore Commission in 1932 on the use of Ministers' Powers in England, there has been an increasing disquiet with the adequacy of safeguards and a growing practice to have all regulations with a legislative content reviewed by Regulations and Ordinances Committees (compare the Senate Committee of the Federal Parliament), so that Parliament may have independent advice upon the nature and significance of the regulations.

One of the developments that caused great concern in all parliamentary democracies was the omission of the phrase "not inconsistent with the provisions of this Act", when delegating power to make regulations. Having advanced so far, it was easy to take the next step in usurping the power of Parliament. The power was now couched in the following terms: "Where there is no provision in the Act, or no sufficient power, in respect of any matter or thing adequate, necessary or expedient to give effect to the Act, then the Governor-in-Council may make regulations providing for, or remedying, such deficiency." In other words, the Minister could alter the original Act by making regulations.

Later, power was taken to amend other Acts by the following provisions: "In addition to, and in no wise limiting, the powers of the Governor-in-Council under the Act, the Governor-in-Council is hereby empowered from time to time by Order in Council to issue such orders and to give such directions and prescribe such matters and things, whether in addition to or in amendment of this or any other Act, as will be calculated to give full effect to the objects and purposes of this Act."

Although the obloquy for this type of law-making falls on the official, the power is actually conferred upon him by the Parliament or, if Parliament claims it has no option, by the Government. It illustrates how ready modern governments are to assume dictatorial powers to remove obstructions from their political path.

When officials make the laws, adjudicate upon any conflicts that arise under the regulations so made, and then execute their own decisions, as in the Crichton Downs case, we have what has been called in recent years the New Despotism. And when, in addition to all these things, the ordinary courts of the land are excluded from reviewing the exercise of official discretionary powers, the rights of the individual citizen are seriously invaded.

If our idea of government is that its methods should be machine-like, applied with a soulless uniformity by an unbending authority, as in the Crichton Downs case, then we will not be very concerned with this invasion of individual liberty.

If, on the other hand, we believe that the best government is that which gives precedence to the individual's rights at every stage, and which promotes conditions under which he may live the life he wishes, then we shall view very seriously the attitude of mind and the official practices just discussed.

The creation of the administrative tribunals has been justified, as were the delegated legislative powers, on the ground of official necessity, and there is much to commend the system, provided there are ample safeguards and extensive rights of appeal. But it is well to recall a remark by William Pitt that "necessity is the plea for every infringement of human freedom; it is the argument of tyrants; it is the creed of slaves".

An extension of the ideas we have been discussing is found in the provisions of the Industrial Arbitration Act and the Factories and Shop Acts of New South Wales which empower trade union secretaries to prosecute employers and employees for breaches of these Acts. On 8th November 1943 the Chief Industrial Magistrate, Mr Prior, told Mr Owen Schreiber, the General Secretary of the Furnishing Trades Society of New South Wales, that he had made history by being the first union secretary to take advantage of the provisions of the Acts. Hitherto, said Mr Prior, only Inspectors authorized by the Minister of Labour and Industry could initiate proceedings.

The amendments of the Acts affirmed the rights of the unions to be paid the penalties that the courts awarded for breaches by employers and employees, thus giving the unions a pecuniary interest in prosecutions and in the penalties imposed. This development—which still operates and which is used extensively by Alderman E. C. O'Dea in his official capacity as Secretary of the Shop Assistants' Trade Union—is a serious inroad upon the rights of the citizen. Formerly the employer was protected because the Industrial Inspector was required to get the authority of the Minister to prosecute: now there is no such protection. It is clear that the principles of official accountability and ministerial responsibility have gone into the discard and, with them, some of the liberties of the individual.

In this field, there are to be found many illustrations of injustices within the law. One is the effect of the present policy

of governments in the resumption of property. After all the preliminaries of resumption have been completed and the value determined, the dispossessed individual may have to wait more than two years before receiving his money. It should be possible to allow the dispossessed individual to be paid his money once the value of the land resumed has been determined. And there should be a more equitable assessment of interest upon the money withheld.

Conclusion

The conclusion that emerges is that the institutions of Parliamentary Government are being subjected to an immense strain because they are being asked to do things for which they were never organized. The question is whether Government can invent the machinery for running at one and the same time a Police and a Welfare State. Suppose it can: will it be possible to allow the ministerial and departmental and bureaucratic discretion and initiative without sacrificing democratic government?

The problem is one of time and capacity. Every decision has to be made in the light of circumstances. Time is the essence of action. There are only twenty-four hours in a day, and some at least of these must be ruled out. Will there be time to investigate and weigh? If not, things will bank up and be neglected or be handled inefficiently. Responsibility is hard to sheet home, as we gathered when reading recently the ministerial and departmental excuses for the break-up of the Richmond air-strip, a repair job that was estimated to cost the taxpayers a quarter of a million pounds. The longer the lines stretch out, the less is the certainty of getting responsibility and the more is the likelihood of arbitrary action. It is fatal to grant power without exacting responsibility.

Finally, through all the changed relationships between the State and the Community, one thing persists. It is that the authority of the State is exercised by individuals. These do not lose their individuality on assuming office. They keep their prejudices and their attitudes.

The limit to democratic government is the capacity of

Ministers to know and control what their officials are doing, and the ability of the individual member to scrutinize and appraise what Ministers do. Anything over and above this escapes supervision and responsibility is lost.

The objective should be to reduce as much as possible the strain on the centre by devolving upon subordinate Governments—State, Regional and Municipal—all things that are within their competence to undertake. And in these fields, also, the policy should be decentralization and still more decentralization and reliance wherever possible upon the voluntary agency, which will give to the individual opportunities to participate in the work of government. This will help him to protect his liberties and to develop his personality.

As one reviews the features of Parliamentary Government that we have been criticizing, it is disturbing to remember that they all exist with the express authority of the Parliament. The Parliament could abolish administrative tribunals, it could withdraw the power of Trade Union secretaries to prosecute, it could abandon the system of delegated legislation, and it could destroy the New Despotism. But it does not, and it does not even give an indication of seeking to correct the abuses described.

When, therefore, Ministers are urged to concentrate more and more power at Canberra, when people are scolded for not trusting Parliament, we should preserve a healthy cynicism. In this connection, I remind you of a bitter comment by Thomas Jefferson:

It would be a dangerous delusion were a confidence in the men of our choice to silence our fears for the safety of our rights: confidence is everywhere the parent of despotism: free government is founded in jealousy and not in confidence: . . . it is jealousy and not confidence which prescribes limited constitutions to bind down those whom we are obliged to trust with power.

DISCUSSION

Mr E. G. Whitlam, B.A., LL.B., M.P. for Werriwa: Parliamentary government has the dual function of giving effect to the will of the majority and safeguarding the rights of minorities. In Australia parliamentary government is not adapted to give expression to the will of the majority in any of our seven Parliaments or to safeguard the views of more than a very few minorities, and those entrenched ones, in those seven Parliaments.

By parliamentary government we do not mean government by Parliament, but that the government is responsible to Parliament and that Parliament is representative of the people. Parliamentary government requires three things: firstly, that the people be equally represented; secondly, that the people have the power to choose their Parliament at regular intervals; thirdly, that the Government face Parliament at regular intervals.

In none of those requirements is Australia well served by its Parliaments. The House of Representatives is fairly representative in that, with the exception of Tasmania, the electorates are divided on the basis of equal population. The Senate, on the other hand, is deliberately arranged on a basis to safeguard certain minorities, the smaller States. New South Wales has eleven times the population of Tasmania but has the same number of Senators. If it were not for a highly effective party system, the Senate would indeed safeguard minorities, but only by making it impossible for the will of the majority to be expressed by Federal Parliament.

The position is worse in the States. Tasmania has a Parliament where members of the Lower House represent equal numbers of constituents, but the Upper House has the vice of being representative of provinces where the disparity between the electorates is very great. It ranges from 4500 in some provinces to 1100 in others; in addition there is the property qualification which exists for Upper House elections in each of the three small States. Victoria after the next election will be represented in its Lower House on the basis of electorates of equal population but its Upper House, though based on adult franchise, has a monstrous disparity of electorate populations varying between 129,000 and 46,000.

In New South Wales the Legislative Assembly is moderately representative, the country seats having a population of 75 per

cent or 80 per cent of that of city seats and the distribution being mathematically the most precise in Australia. The Legislative Council has, however, a refinement of oligarchy. It is elected for 12 years, a quarter of its members retiring each three years and being replaced with other members by the vote of members of both Houses. The consequence is that in New South Wales we have an oligarchy of age dominating politics, because the Legislative Council represents the average views that were held in Parliament six years earlier.

In Queensland, where there is only one House of Parliament, the electorates vary in size between 16,000 and 5000. In South Australia, which is worst served in this respect, the House of Assembly was last distributed in 1936, and population movements have resulted in one electorate having 30,000 people on the roll and another having only 3600. There are five electorates with a population of less than 5000, twenty-four with a population of less than 10,000 and eight with a population of more than 20,000. And in the Legislative Council, based on a property qualification, the five provinces vary in population between 53,000 and 18,000.

In Western Australia city electorates should by statute have twice the population of the country electorates. Actually the city seats vary in population between 13,000 and 7000 and the country ones between 5300 and 3000. In addition, there are three country electorates in the north-west which have a population varying between 1600 and 1000. The Legislative Council, again based on a property qualification, has electorates varying between 9200 and 1300.

These statistics are arid but eloquent. There is no country which calls itself a democracy, which upholds the ideal of liberty for majorities as well as for minorities, where parliamentary government is so ineffective as in the Australian States to express the wishes of the majority or to preserve the rights of minorities.

I suggest that, as long as we have seven Parliaments instead of one, we should at least have the safeguard in our Constitutions that electorates shall be of equal population. The population of electorates is based on statutes which the seven Parliaments themselves can repeal, and we cannot dispense with any of these oligarchies of region, of property or of age without the consent of the bodies which the oligarchies control. The State Lower Houses cannot hold a referendum on the subject because none is able, as is the House of Representatives, to have a referendum without the

DISCUSSION

consent of its Upper House. Even in the Federal Parliament it is thought that the Senate cannot be amended unless all six States show a majority for that purpose at a referendum.

My second proposition is that the people should have power to choose Parliaments at regular intervals. It is true that the Federal Parliament, and, since 1950, the New South Wales Parliament, cannot exist for more than three years, except by altering the Constitution at a referendum. There is no such safeguard in the Constitution Acts of any of the other five states. In New South Wales in 1917 the Legislative Assembly and the Legislative Council increased the life of the Assembly from three years to four years, while the Parliament was still current, without any reference to the people. In South Australia the same thing happened in 1933, when the life of Parliament was lengthened from three to five years, although it has since reverted to three years; and in Tasmania in 1936 Parliament increased its life from three to five years.

My third proposition is that Governments should face Parliament at regular intervals. Only thus can Parliament call the Government to account. It is true that in the Commonwealth Parliament, but in that Parliament alone, there has to be an annual meeting of Parliament under the Constitution, unalterable except by the will of the people. All the States have a similar provision in their Constitution Acts, which they can repeal or amend at their own will.

Admittedly it is difficult, indeed impossible, to represent minorities in Parliament unless we divide States into large electorates with proportional representation. Although the Senate and the Tasmanian House of Assembly are based on electorates where five and six persons respectively are elected on proportional representation, no minorities are represented. Representation is still on party lines alone.

The aspect of parliamentary government to which Professor Bland directed most attention was the Australian Federal system, which he regards as a bulwark of liberty. I take issue with him at once. The United Kingdom and New Zealand, both unitary states, know no less freedom and no fewer liberties than Australia. Federalism does not make for freedom so much as for friction, or for liberty so much as for litigation. The "buck-passing" which Professor Bland rightly condemned in bureaucrats and politicians is intensified under a Federal system, where the several Govern-

ments can all find plausible excuses for evading or transferring responsibility.

Professor Bland believes that the High Court provides some safeguards for our liberties. I doubt it. The court is less representative of the Australian people than are their elected parliamentary representatives. Judges are irresponsible in that they hold office for life, which sometimes is a very long life. Some have used that asset for a political purpose. I recall two flagrant examples where resignations were withheld until there was a change of government. Early in 1950 one judge retired in the last month of his eightieth year and another retired on his eighty-seventh birthday; and neither was as active or as liberal-minded as Oliver Wendell Holmes, Junior.

We are constrained by our present Federal Constitution to leave the final disposition of many matters in the hands of lawyers. We are forbidden to do not so much what the Constitution forbids us to do but what the judges forbid us to do. If counsel has to advise whether a certain action is constitutional, he is less concerned with the Constitution than with the composition of the court. We thus run the risk that we shall be granted only such liberties as commend themselves to lawyers.

Australians have developed a habit of asking the High Court to invalidate Acts of Parliament whenever they conceive their liberties to be infringed by those Acts. Advocacy has been so successful in recent years that the Court itself has developed an attitude of almost supercilious suspicion towards Acts of Parliament and actions of the administration. People who have successfully approached the Court in these matters are loud in their praise for the safeguard the Court affords. There are, however, hundreds and thousands of persons who have not a sufficient interest to be heard by the Court but who would have received benefits and enhanced liberties from the legislation in question. The Court, in other words, gives liberty to those who can establish a sufficient interest or a right of action and to them alone. In the result the Federal system gives a great initial advantage to any vested interest and to any persons who wish to resist change.

I am not reassured by Professor Bland's references to the pharmaceutical benefits and banking legislation. The first Pharmaceutical Benefits Acts were passed in 1944 and 1945; the Banking Act of 1945 required that local governments and State governments should bank with the Commonwealth Bank. This legislation

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was enacted before the 1946 elections, the Government which enacted it was returned with a substantial majority, and the High Court, after the elections, disallowed the legislation. It is a moot point whether these were infringements of liberty or at least infringements which the people resented. The health schemes of Great Britain or New Zealand are infinitely preferable to any we have in this country, but we cannot have them here. In England the scheme has existed for nearly ten years, and in New Zealand for about fifteen years, and no Government in that time has sought to alter a system which is desired by the people. In Australia the people had no opportunity to decide whether they preferred the scheme. The choice was taken from them. Federation does not provide safeguards: it merely precludes us from making advances which, in fact, we may desire.

I shall quote an instance where the working of our Federal system prevented the wishes of the majority being given effect. In 1946 the people voted by a majority in the whole of Australia and in three of the states for organized marketing of primary products, unrestricted by Section 92, and for putting terms and conditions of employment in industry into the hands of the Commonwealth Parliament. The people of Australia, as a whole, wanted this reform but, because only three instead of four of the six states gave majority approval, it was not achieved. So the people were denied the greater liberty which they thought would flow from those matters being in the Federal Parliament's hands.

There is not the time for me to traverse the wealth of separate instances which Professor Bland has quoted. I shall classify some of the faults I see in his approach.

Firstly, there is his Canute complex concerning uniform taxation and compulsory voting. There is no minority in this country of any significance, no minority which can get the support of any political party, which agitates to do away with either of these procedures. They are here to stay. Compulsory unionism is a much more contentious topic. Nevertheless it has existed in New Zealand and in Queensland for many years and, although there have been changes of Government, the system is preserved and its former opponents have accepted the principle.

Secondly, he has the Nelson touch. He is grossly partisan in his selection of bureaucratic infringements and tyrannies. The only ones which he quoted as perpetrated by or under Tory Governments occurred before the war. He gives more recent

instances under the Socialist Federal Government of Mr Chifley and some contemporary instances under the socialist New South Wales Government; he quotes none under the capitalist Federal Government of Mr Menzies during the last five years. Either the Federal bureaucracy has been above reproach for the last five years or Professor Bland has suppressed its misdeeds. I believe the latter.

Thirdly, he has committed inaccuracies which should be deplored in an Emeritus Professor of Public Administration. He says, for instance, that Labour Ministers are elected after dictation by an outside executive. This is not true, as he would have found on looking at the rules of the party, which are readily available and which provide that the Parliamentary Party alone decides who will be the Speaker and the Ministers. I feel, indeed, that there is a majority of members on the Tory side in Canberra, always excepting the majority of the Ministers themselves, who would prefer the Labour system of election to the Cabinet by their fellows, instead of patronage by the Prime Minister.

Fourthly, Professor Bland does not substantiate some of his assertions. He says that some of the wartime attitudes of arbitrariness are still abroad but he quotes no examples. When he uses terms like "totalitarian" and "police state" he speaks as a politician and not as a political scientist. (I should point out that for the excesses of bureaucracy he must take more personal responsibility than I. He is the father of a bureaucrat and I am only the son of one.) Bureaucrats, however, are not a race apart. In fact, top men in government and top men in business during and immediately after the war exchanged positions on many occasions to the satisfaction of the great enterprises which they respectively controlled. The system is blamed if the bureaucrat fails; human frailty is blamed if a company director fails. Bureaucrats are open to captious and carping criticism, and many interests with access to the organs of propaganda are keen to disparage them. Critics know that bureaucrats will not hit back because they are not allowed to do so; they do not have the viciousness of those animals who defend themselves when they are attacked. I gather that Professor Bland suggests that the way to deal with public boards and corporations is to make them more independent of political control, but it appears to me that this solution will make them even more bureaucratic.

There appear to me two fundamental misconceptions in Pro-

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fessor Bland's paper. Firstly, that division into parties with opposing ideas of economic organization has some effect on parliamentary government. Secondly, that for the abridgements of liberty in our society governments alone are responsible. Now the essential of parliamentary government is that governments are responsible to Parliament and Parliament is responsible to the people. Parliament itself does not govern and select committees do not govern: the Ministers govern; and the function of Parliament is to train Ministers. The Opposition is the alternative government, and back-benchers on the government side are there as reserves or replacements for Ministers who become diplomats or otherwise fall by the wayside. We have to face the fact that parties are in Parliament and that people vote for parties, not for individuals. We accept the party system because it is the only way we can assure responsibility and achieve stability.

There are endless examples of crimes committed in the name of liberty by private enterprise—the price-fixing, the rationing, the regimentation imposed by private companies, which are international or interstate bodies and therefore beyond the purview of any Australian Parliament. In Australia no Parliament, because of our Federal Constitution, is able to deal with those restrictions which are imposed by private people behind closed doors.

British history shows that Parliament has been our great liberating force. Parliament has conferred political freedom on those represented in it, first of all the barons and squires and then the merchants and now all adults. There is no freedom without equality. To redistribute and equalize liberty has been one of the principal functions of Parliament. Parliament alone can give equality of opportunity and thereby increase liberty for all. If we are to have economic equality of opportunity, which is the next stage in the advance of liberty, we must have effective parliamentary government and, accordingly, dispense with fetters on parliament rather than contrive them. For every person whose liberty has been prejudiced by governmental action, there are many whose liberty has been enhanced. The virtue of Parliament is that it provides publicity and works in the open. When Parliament is sitting, there are a great number of opportunities for calling a Government to account. The forum which Parliament provides is the best guardian of our liberties. As long as we have members on both sides of our Parliament who are able and willing to express many and varied points of view, we have some

liberty and can aspire to greater liberty. The price of liberty is eternal vigilance. Parliament has hitherto proved the best instrument for exercising that vigilance.

Mr P. F. Irvine: We have no need to fear the people, but we do need to fear the machinery of government which we have created. Professor Bland clearly indicated that government is too complex, checks are insufficient and the rights of the people are heavily infringed. Ten importers, who were interested in the importation of certain textiles into this country, were threatened with seizure of the imported goods, on which they had paid duty and tax, merely because departmental officers decided that the definition of the country of origin showed that there had been fraud on the part of the importers. All of the importers were in small businesses, with staffs, with plant, and with commitments. After very long argument it was proved conclusively that the departmental officers were wrong. One importer was subjected to forced search of his office and forced seizure of his documents, and all suffered considerable disruption of trade. Mr Whitlam will be interested to know that this did not happen under a Socialist Government but under the present Government within the last six months. Such things happen whether there is a Liberal Government or a Socialist Government. I do not blame the bureaucrats as human beings, for the officers of the Federal Public Service are intelligent, human and sympathetic. But they lack business experience, they do not realize what happens to companies, to staffs or to the business commitments of the employers. The thing that is vital for us is to preserve our freedoms, not because there is bad will but because there is inexperience on the part of some who interpret and administer the law. I for one believe that it is high time that this country incorporated into its written Constitution certain essential freedoms.

Senator J. A. McCallum: Mr Whitlam was in error when he said that Parliament never governs. During the Civil War under "King Pym", as he was called, Parliament governed so successfully that it defeated Charles Stuart who had absolute power. It governed with a system of committees, and I think we can return to a more effective use of Parliament and of its members through the development of committees. I believe that they represent a way in which members of Parliament can meet members of the Public Service, and learn to know them and the workings of their minds,

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The New Despotism of bureaucracy stems not from the evil character of the public servant but from his good character. A government which was perfect, which ran everything smoothly and efficiently, which governed solely by the Public Service, would surely end in damnation. I am prepared to tolerate a little inefficiency in return for parliamentary government. I do not believe that Ministers today can control their departments and, since the Cabinet itself is responsible to Parliament, Parliament must have other agencies to control departments, and the committee is the method we should try.

I agree with Mr Whitlam that there must be parties and I prefer two parties and no more. The real problem we face is how to secure parties of good parliamentarians. That brings me to this question of party organization, and I do not believe in an all-powerful machine. It should be the aim of members of the Labour Party and of the Liberal Party to diminish the power of the caucus or of the machine. We can do it only by getting honourable and capable men whom the electors will trust.

Professor L. Laing, Professor of Political Science, University of Michigan: As an American, naturally I want to avoid the partisan aspects which have already entered the debate and speak as a political scientist. Professor Bland has suggested that the work of the Cabinet might be made more manageable if more use were made of parliamentary members. He implied and Senator McCallum has emphasized that more use should be made of a committee system. I assume by this that they have in mind something approaching the "subject matters" committees which are found in the American legislatures. I would caution slowness in adopting such a system under parliamentary government where there is not the separation of powers which we have in America. In a parliamentary system there is executive leadership, and that is the central core. If Australia adopts the American system, there would be the danger of parliamentary committees making the work of the executive branch at times almost impossible. Members of Parliament in each parliamentary committee would set themselves up as experts in very delicate fields, particularly in the field of foreign affairs. In the United States we have had some bad examples of this. There are very real dangers in having a subject matter committee if one is trying to preserve the parliamentary system of Executive direction and leadership.

There is one way in which I think private members could be

better utilized and it is to be found in the Canadian House of Commons. In Canada there are a number of parliamentary assistants to the Ministers, and they help to take some of the load off Ministers in their work in Parliament. During question time the Minister will not always have to be in Parliament for his assistant is there when it is necessary to answer on behalf of the department. I think this could be utilized to some good effect here, particularly in the situation where several Senators hold ministerial posts and are therefore unable to answer on behalf of their departments in the Lower House. Many of the present members of the Canadian Cabinet served a period of apprenticeship as parliamentary assistants to other departments, and when the Prime Minister was looking for fresh additions to his Cabinet he dipped into this reservoir. Assistants could also be useful in another way. Today we have more need of government representatives to attend International Conferences, and some of these could be parliamentary assistants who in that way would gain experience in the international sphere. The system serves one other purpose in Canada, which might only be of minor importance here. It helps to strengthen the Canadian Cabinet from the point of view of geographic representation. Some areas of Canada have one full Cabinet Member but if they also have parliamentary assistants they feel that their region is given a little added importance.

Dr F. W. E. H. Stanner: I am one of several people who have been trying for some years to arouse a little interest in a field of government which is to us of some concern, the future of local government in Canberra. This could be a testing ground for much that has been said in our discussions. But we have completely failed to arouse the least interest either in parliamentary circles or in private circles. One young man, knowledgeable and educated, whom I tried to interest, said, "What on earth are you grumbling about? This is a clean city, well run, beautiful. What more do you want?" I said, "It is being run by the wrong people. Its control should be a civic function." His reply was, "These things are done really well by people who know much more about it than we do, who are much better equipped to know what we need; they are experts." This viewpoint was put quite seriously and quite firmly and it was extraordinarily widespread amongst the younger people in Canberra. It typifies exactly what I feel about Mr Whitlam's paper. He has no sense of the problem; he

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does not see these things as in themselves being a problem, about which we should be concerned. My answer to my Canberra critic was that the right to form a local government, the right to assume some degree of responsibility for local affairs, is a very ancient right and one which I am not called upon to defend. It is not our function to make a case for local government; it is for those who wish us to be controlled by a Parliament or by a department to make the case against us. Professor Bland's paper did show an awareness that the whole attitude towards the proper fields of government and of departments is changing, but Mr Whitlam's reply did not show that sense of what is now taking place.

Mr Hugh Robson: I regret that it was not possible to include another paper on the importance of the courts in relation to personal liberty. Indeed, if it were not for the rule of Common Law, the power of the courts and the care of the judiciary, all our discussions would mean nothing, because the whole of our liberties ultimately must be defended by the courts. For that reason I wish to refer to one aspect of Mr Whitlam's speech, namely the function of the High Court in our Federal system, and an implied suggestion that the High Court is not as pure as it might be—pure in its legal sense. I start with two basic propositions. Firstly, I believe that the vast majority of people in Australia wish to preserve the Federal system. I believe this partly because of the frequency with which they have rejected proposed amendments which to thinking people seemed desirable. Secondly, so long as we have a Federal system of government it is beyond argument that we must also have legalism: as Dicey said, "Federalism is legalism." On those two assumptions, the character of the High Court as an institution, having regard to its powers, to the judges who constitute the Bench and to the method of selection of those judges, becomes of primary importance in this discussion. There are areas of problems which cannot be subject to adequate government control. Firstly, there are problems that cannot be dealt with by the Federal Government, but can be dealt with by the States, but because of the nature of those problems the States are unlikely to deal with them. Secondly, there are areas of problems which cannot be dealt with by either the Federal Government or by the State Governments, since the Privy Council has decided that Section 92 is binding on all matters, Federal and State. Mr Whitlam said that, because of this, the will of the people has been frequently frustrated, and, because of that

frustration, the Federal Parliament has endeavoured to do things which otherwise it would not have done. The frustration originated, said Mr Whitlam, in the decision of the High Court which prevented the will of the people being carried out. One of the examples he gave was in reference to banking. Since we assume that the people desire Federalism, we must retain legalism; and I do not think that there is any validity in Mr Whitlam's suggestion that Parliament representing the people is a body better qualified to interpret the Constitution than the members of the High Court. Whilst one must concede that the personal views of judges come into their approach to constitutional problems, I think it is beyond question that the judges of the High Court, irrespective of their original political views, have acted by and large with complete honesty in the approach to legal problems. It has been established that the interpretation of the Constitution is to be approached like any other piece of legislation. Therefore it is essential, so far as constitutional problems are concerned, that the judges of the High Court should be judges of the finest quality as lawyers, because they approach the problem as lawyers and not as social scientists. When they consider a matter with social implications, they do not consider the result it may produce but consider it from the standpoint of their duty as judges. I think the achievements of our High Court are to the credit of Australia and to the credit of Federalism.

Mr J. A. Meagher: I shall endeavour to suggest how liberty may be given to parliamentary government, liberty which is necessary to parliamentary government, namely the liberation of the members of Parliament. It can be done by the simple method which was designed for liberating the members of the trade unions: instead of shepherding them into lobbies, let them have a secret ballot. It may be destructive of some of the worst features of the party system, but the secret ballot would have very startling results and I think it would ensure the freedom of members of Parliament and consequently the freedom of parliamentary government.

I would like to comment on the relation of the citizen to his government. As is obvious from my brogue, I come from a country where the relation of the citizen to his government has undergone a change in the last thirty years. I lived in Ireland when Ireland was in slavery and Irishmen were free. I am afraid that things are reversed in my native country now. It seems that if

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we really want freedom from government the best thing we can do is to import a foreign one. Native governments are always more tyrannical: we cannot abuse them, we cannot fight against them, we cannot rebel against them with the same freedom and the same enthusiasm.

Professor F. A. Bland, replying: With regard to Mr Meagher's suggestion, I wonder what the parties would say if members were allowed to vote secretly. I remember that every time a secret ballot is taken for the election of the New South Wales Legislative Council it has been possible, ever since the present group managed to gain control, to know who voted secretly. I would be rather afraid of applying the secret ballot to members of Parliament, at least in their present attitude of mind.

One has to remember that, as Mr Robson pointed out, the courts are the safeguard of our liberty. When once a judiciary is made the pliant instrument of the Executive, as was done in Continental countries, as could be done and has been attempted here, the whole of our liberties disappear. With regard to Mr Stanner's remarks I merely say that they emphasize the old tag that "good government is no substitute for self-government", and so long as people exist who want to do things for themselves, so long will liberty flourish.

I would like to thank Professor Laing for his suggestion. I think that there is a somewhat reluctant attempt here to introduce the idea of parliamentary under-secretaries. It is one of the most important moves that could be made. The difficulty with a Parliament like ours, and a Cabinet as big as ours, is that every additional appointment to a political post makes it more difficult for us to control those holding positions of power. To strengthen the Cabinet by the introduction of a number of other Ministers or assistants produces a vested interest on the part of those people and we have tried to fight against that ever since the Bill of Rights drew attention to the matter.

I have to deal, as a member, with a number of cases such as Mr Irvine has spoken about, where members of the public cannot get satisfaction from government departments. These folk, inarticulate themselves, ask me to be their mouthpiece, and I represent them in the expression of their discontent. They feel that they are simply being pushed about all the time by officials, even though the latter are exercising their powers rightly. Our

job now, as members of Parliament, is not to protect the bureaucracy, as I would have advocated thirty or forty years ago, but to protect the public and make them articulate in the expression of their disabilities. I think, in our present scheme of parliamentary government, this is one of the ways in which the liberties of the people can be protected.

Sometimes I do not know what to believe, or how far we are going in the development of these great expanses of government. I do most seriously advocate an inquiry into the nature of the Public Service to find out where we are going. We have not had an inquiry into the Public Service since 1918, and the whole character and composition of the Commonwealth Public Service has changed since then, as has that of all the States. In England and in America, during the last twenty years, there have been regular inquiries to find out just what government is doing and where it is going, with a view to seeing whether it could work better and yet preserve some of the liberties that a welfare state necessarily takes away. As Mr Meagher said, we cannot have a welfare state and have our liberties. It is for this reason that I want an inquiry, and Professor Duncan misunderstood me in this regard when he referred to the universities. I do not want a political inquiry to see what the universities are doing. Universities have completely altered their character in the last ten or fifteen years and we need to know how the universities are being managed. We need management of men and resources in the interests of the institution, management by men of the calibre of Hutchins. I simply say that government should be discriminating in its assistance to universities until there has been an inquiry to show what purpose we expect universities to achieve, from which we can gauge the assistance they require.

Would Mr Whitlam seriously advocate that there should be complete equality of representation as far as electorates are concerned? There are minorities in Western Australia and, indeed, in all States there are conditions in which people are hardly represented at all. We must try and achieve some balance between metropolitan areas and rural areas. I think it is far more important to maintain rural representation than it is to increase urban representation, and we should accordingly use some system of weighting. I do not believe that there is any particular virtue in equality. Mr Whitlam avers that we will not have liberty without equality, but where is his sense of history? I am sure that he is

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well aware that the whole of the liberties we have were achieved by people who simply did not know the meaning of equality.

Mr Whitlam favours a unitary parliamentary system rather than a Federal one and tries to establish that Federalism in Australia has merely led to "buck-passing" at the present time. But this is not due to the Federal system, for that is not, in fact, being correctly operated. It is not being operated because its working is prevented by people holding the views of Mr Whitlam. We have a Constitution which fixes the powers of the Commonwealth and the powers of the States; and if it were correctly implemented there would be no chance of "buck-passing".

The reason why I fought against Bank Nationalization was that the very approach to it indicated the incapacity of a Federal Labour Prime Minister to comprehend the relative positions of various governments. A local government, supposedly independent in its own sphere, was to be told by an outside person, by a Federal Minister who had no connection with the local government system, where the local authority's money should be banked. This is the whole process of which I complain: that people outside want to tell us exactly what we shall do when we know ourselves exactly what we want to do. Mr Chifley's decision that local governments would bank with the Commonwealth Bank was that kind of authoritarian direction which is the very essence of arbitrariness, the breeding-ground of bureaucracy. There are still people who do not wish to accept control of their own lives and who do not belong to a party which believes in dictation.

It has been suggested that I took most of my examples from New South Wales, and this is quite true. Anyone who has been living in New South Wales for the last few months can have no illusions at all about the amount of direction, dictation and regimentation which is being imposed upon us politically. It does not follow that this is now equally true for other States, but these encroachments on liberty have a habit of spreading, and spreading rapidly.

VI

PROSPECT FOR FREEDOM

EDWARD MASEY *

I

INJUSTICE never sleeps, and the battle for freedom is never finally won. Time after time in our history issues we had imagined to be settled forever have risen from what we thought were their graves, and have had to be laid low once again. Truth is proverbially many-sided, and some of her facets shine brighter at one time than another; while man, being still imperfect, recognizes her more clearly in one light than in another. It is therefore not strange, nor irrelevant, that in the Australia of 1955 some among us, at least, should turn to the writings of Milton in 1644 for guidance, or that a considerable proportion of the time of the Summer School on "Liberty Today" should be devoted to a re-examination of the basic principles of intellectual and political freedom.

Let me have men about me that are fat;
Sleek-headed men and such as sleep o' nights;
Yond' Cassius has a lean and hungry look;
He thinks too much: such men are dangerous.

So have murmured all the tyrants from Julius Caesar to Adolf Hitler, and such has been the secret thought of lesser men who feel they know so much better than others what is good for their fellow men. And those who hate or fear liberty, and seek to impose their way of feeling and thinking upon others, are not always the strident, aggressive, self-important and self-seeking; they are just as often the demure, prim, timid and well-meaning.

Whichever they are, how are they working among us today?

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II

In March of this year the Parliament of New South Wales, following the precedents already set by the Parliaments of Queensland, South Australia and Victoria,* passed the "Obscene and Indecent Publications (Amendment) Act 1955". This measure is ostensibly aimed at curbing and regulating those dull, involved and humourless picture stories ironically known as "comics", which the sponsors and supporters of the Bill claim to be so harmful to the morals of children, but covers all publications which come within the Act's definition of an obscene publication. The Act declares, among other things, that:

Without prejudice to the generality of the meaning of the word "obscene", any publication or advertisement shall be deemed to be obscene if it unduly emphasizes matters of sex, crimes of violence, gross cruelty or horror.

In determining for the purposes of this Act whether any publication or advertisement is obscene the court shall have regard to—

- (a) the nature of the publication or advertisement; and
- (b) the persons, classes of persons and age groups to or amongst whom the publication or advertisement was or was intended or likely to be published, distributed, sold, exhibited, given or delivered; and
- (c) the tendency of the publication or advertisement to deprave, corrupt or injure the morals of any such persons, class of persons or age group,

to the intent that a publication or advertisement shall be held to be obscene when it tends or is likely in any manner to deprave, corrupt or injure the morals of any such persons or the persons in any such class or age group, notwithstanding that persons in other classes or age groups may not be similarly affected.

Leaving aside for the moment the major issue whether morals can be protected by sheltering people from books and pub-

* It was reported in July 1955 that the Advisory Council of the Australian Capital Territory has also recommended anti-obscenity legislation based on the New South Wales Act.

lications which might be judged by some to be immoral, the above definition is open to grave objections on at least two counts. In the first place, all serious works of art, science, sociology or politics, whether in fiction form or otherwise, must be judged on the obscenity issue, not by their reception among the sober-minded and intelligent and worldly-wise readers for whom they were written and intended, but by their alleged effect on the unformed and uninformed mind of some child, imbecile or criminal into whose hands they might possibly come. All publications are liable to get into the hands of persons for whom they were not originally intended, and it follows in consequence that all works which treat of the more serious problems of living are likely to be regarded as tending on one count or another to injure the morals of juveniles or persons unable to understand or handle the matters that they raise. They are therefore liable for the penalties provided by the Act; and they are not saved by the amendment to clause 4 of the Act, since that amendment exempts works of literary and artistic merit, or of serious intent, from the definition of an obscene publication only if they do not get into the hands of persons who are considered likely to be corrupted by them.

The second grave objection to the definitions quoted lies in the loose tests which are to be applied. A publication shall be deemed to be obscene if it *unduly* emphasizes sex, violence, cruelty or horror, and when it *tends or is likely in any manner to deprave, corrupt or injure the morals* of certain persons. These tests are not matters capable of proof; despite the strong views that are held on this matter there is, as far as I am aware, no evidence that the reading of books has ever led anyone into a life of crime (although persons embarking on crime may at the same time have revelled in books of violence and depravity). The tests of obscenity prescribed by the Act are matters of opinion, feeling, attitude and prejudice. Whether a publication will be condemned by a court would depend, not on definite and objective standards, but on the personality, temper, age and outlook of the magistrate who happened to be taking the case. When it is remembered that the penalty on conviction is not

only a substantial fine, but the possible loss, at the discretion of the court, of the registration without which a person may not carry on business as a publisher, it is easy to believe that from now on in the State of New South Wales, the adventurous, original and controversial distributor of books is likely to become a memory of the past. And without publishers willing to take a risk, there will be no market for creative writers who deal with serious aspects of living in a frank and provocative manner.

I remember witnessing a couple of years ago John Alden's fine production of "King Lear", which included a cold-blooded and realistic presentation of the eye-gouging scene in Act III. For the sake of the more tender-hearted among the audience the management included in the programme a note that this scene would appear immediately after the interval, thus making it clear that they were presenting to the public a work that "unduly emphasizes crimes of violence, gross cruelty or horror". Apart from this particular scene the whole play is based on crimes of violence, gross cruelty and horror of both the body and the mind. The same is true of "Macbeth", "Hamlet" and "Othello"; and the last two "unduly emphasize matters of sex" as well. Yet these four works are regularly set by the Department of Education for study in schools throughout the state by children of the susceptible ages of fifteen to eighteen. They are undoubtedly obscene publications within the meaning of the new Act, and, to me at least, it seems clear that their literary or artistic merit (if the court is satisfied that they have any) would be no protection to anyone "printing, publishing, making, possessing, selling, delivering or distributing" them, since in determining whether those acts are justified or not the court is required to have "regard, in particular, to the persons, class of persons or age groups into whose hands it was intended or likely to come". Legal proceedings under this Act against school teachers, officials of the Education Department, Government Printing Office, Oxford and other University Presses and private publishers of Shakespeare for schools, would indeed provide interesting reading.

But it is not necessary to go to the classic masterpieces of literature to find obscenity, as defined by this Act. Do the sponsors of the measure remember the tales to which they listened enthralled in their early childhood, and which no doubt many of them have recounted on numberless occasions to their own children, and grandchildren? "Jack and the Beanstalk", for instance: the story of a child delinquent who acted with filial irresponsibility during a family crisis, and then embarked on a career of plunder and burglary culminating in murder, after which he lived happily ever after on the proceeds of his crimes. Or "Hansel and Gretel" (so charmingly set to music by Humperdinck), "Snow-White", and other nursery favourites, including many of Hans Andersen's and most of Grimm's fairy tales, in all of which undue emphasis on crimes of violence, gross cruelty or horror is the main ingredient. And, of course, as critics of this kind of legislation never fail to point out, the Bible (which most supporters of the measure seem anxious to place in the hands of young children and adolescents, for the benefit of their souls) abounds in material that comes within the Act's definition of obscenity.

The truth is that a child's moral development runs parallel with his physical and mental growth. A parent teaching a child to swim runs the risk of drowning him in the process. A boy going to school for the first time is in danger of being run down by the traffic, of catching all kinds of infections, of learning bad habits from less disciplined playmates, of developing a taste for swearing on the occasions when Mother is most anxious to create a good impression, of suffering physical injury from the horseplay of the schoolyard and psychic upset from failing to adjust himself to the hurlyburly of the new world into which he is thrown. But the risks of segregation are even greater; it is only by contact with infection that the body develops immunity, by familiarity that foul language and bad conduct lose their attractiveness, and by being in the world that a child becomes of the world, at ease and able to choose his own way without being fearful of falling out of step. To shelter him is to stultify him, and to deny him the only means

of learning taste, discrimination, and mental and moral independence. If I may share the privilege of quoting Milton:

What wisdom can there be to choose, what continence to forbear without the knowledge of evil? He that can apprehend and consider vice with all her baits and seeming pleasures, and yet abstain, and yet distinguish, and yet prefer that which is truly better, he is the true wayfaring Christian.

The truth is, as every parent knows, that children thrive on crime, horror, cruelty and violence, and reject with scorn versions of the old nursery stories that omit the throat-cutting, poisoning, boiling in oil and baking in the oven episodes that spice so many of them. And in doing so, they are acting on sound instinct, for the child who is protected from the robust and turbulent behaviour of common humanity grows into the man who needs protection.

The absurd limits to which this mania for protecting somebody else from evil influences (from which the self-appointed guardian almost certainly considers himself immune) was illustrated about ten years ago, when the film censor placed a ban on the "Dracula" type of thriller, on the grounds that it had a bad effect on women in a delicate state of health. What evidence he had of this I do not know; probably the same as had the elderly gentleman who once protested to me against the Archibald Fountain in Hyde Park, which he said was an open invitation to unmarried mothers to drown their unwanted infants in it. The film censor was not, of course, referring to sick women at all, despite his phraseology, but to pregnant women; though why he should have seen fit to constitute himself a Guardian of Expectant Mothers is a mystery, except that such is the way of censors. Poor man! He had never had the opportunity of learning that such women do not need the protection he offered, and it never occurred to him that it was for them to see that they came to no harm.

III

While it is incontestable that intellectual liberty is the most precious of all liberties, since without it no other freedom can

PROSPECT FOR FREEDOM

be secure, it is nevertheless not the one of which the average member of society is most conscious. The majority of people, in Australia or elsewhere, have little material surplus over the necessities of life, and they are constantly worried that unemployment, sickness or other crises may disturb the pattern of living they have managed to achieve. Freedom from want (that is, security of employment and a certain minimum income) therefore looms larger in their vision than a seemingly theoretical and abstract mental freedom. So important is this in their eyes that they have before this sacrificed certain freedoms for the sake of obtaining economic benefits that they regard as more desirable.

The whole of our industrial legislation bristles with directions and restraints and requirements in certain respects for the intended good of the community as a whole or for groups within the general community. Professor Downing's paper at the Summer School emphasized this very clearly. He accepted the need for freedom from want and insecurity, as in varying degrees most people do, and then expounded economic policies which he believed would, in Australia's present position, bring that about. In the process he trod on the corns of many people who did not see why their particular freedoms should be curtailed for the purpose of extending those of the community generally, or some sections of it. We have to recognize that in the economic field there is a perpetual conflict between different freedoms, and the fact that there is so much divergence of opinion and feeling over them only emphasizes the need for a scrupulous regard for justice towards individuals affected. Whether the legalistic nature of our arbitration and industrial machinery make this possible I do not know.

One aspect of economic freedom mentioned by Professor Downing in his reply to the discussion on his paper probably deserves more attention than it usually receives. That is the freedom the worker enjoys in the process of his employment.

In many respects, the employer obviously has more freedom than his employees. There are many men who could not be happy unless they were employers; and there are perhaps even more men who do not desire to be employers. Many persons

of considerable talents—skilled tradesmen, doctors, scientists, engineers, architects, research workers, teachers, clergymen, musicians—lack the kind of ability that makes a successful businessman, and would be most unhappy as well as most unsuccessful in the role of manager or administrator. For them, as for all men, economic freedom means the full opportunity to develop and exercise their peculiar talents, whatever they may be. Apart from policies aimed at economic stability, a major contribution towards industrial freedom is the extension of education for technical and scientific activities; and for those who must perform the more unskilled and mundane tasks, the development of manual and other skills for their leisure hours.

This, of course, is no new theme, and for many years facilities for technical education have been made increasingly available. The reason usually (and quite validly) advanced for the extension of these training services has been the economic advantages to the individual and the community, but it may well be that in the long run the gain in the worker's sense of personal freedom may rank as even more important. In a much quoted phrase at the 1944 Summer School of the Institute of Political Science, Dr Evatt pointed out that in these days of technological advancement, with large scale operations and impersonal relations between management and labour, the full freedom of choice of an occupation no longer exists. But that is so only as far as the unskilled man is concerned, and the same technical improvements have opened avenues for initiative and achievement, provided men and women have the knowledge and competence to seize, or make, the opportunities. Moreover, no worthwhile man can be happy indefinitely doing work that he does not consider worth doing, even though he has security and a high level of comfort from it; and an era of economic stability not combined with opportunities to exploit individual peculiarities and talents could be just as fruitful of discontent and frustration as any other. And that would remain true irrespective of whether the framework of society were capitalist or socialist.

But it so happens that the industrial legislative pattern and the temper of those especially concerned with industrial matters

in New South Wales tend to curb the natural initiative of the individual and set up a rigid caste system. Our laws are riddled with provisions that a shopkeeper may sell sweets after a certain hour but not groceries, wet milk but not powdered, vegetables but not jam. Apart from the absurdities of the discriminations (the prohibited articles being often much more necessary to the convenience and well-being of the customer than the permitted), most people would imagine that a man who is prepared to render a service to the community at times when that service is most needed should be free to do so, and in fact should be encouraged to give that service. He is the freer for so doing, and so is the community whom he serves.

Recent cases that have come before the courts in this State include a factory owner who did some work in his own factory over the week-end; a milk-carter who commenced his run at five minutes to three in the morning instead of waiting for the hour to strike; and a transport worker who took another job during his annual holidays to earn extra money to provide medical treatment for a dangerously ill child. Each of these lawbreakers, as in fact they were, was fined, and the mean-spirited unions who initiated the prosecutions collected half the penalties. That also is the law.

These petty tyrannies are defended on the grounds that they are necessary to preserve the hardwon rights of those employed in the industries concerned, and to prevent the undermining of their standards of living. Behind them lies the assumption that those engaged in an industry have a right to the benefits arising from employment in that industry, either as owner or worker, irrespective of the standard of service they provide and the reward they exact. A perfect example of that attitude occurred recently among poultry farmers in the Tamworth district, in northern New South Wales, some of whom urged that as a means of ensuring their market the keeping of hens in backyards should be prohibited. Market gardeners might with equal logic demand that the growing of vegetables by home gardeners be prohibited; or graziers might clamour for compulsory wearing of woollen stockings to hold back the growing threat of synthetic fibres. Neither owner nor employee has any

justifiable interest in the continuance of his industry unless it is willing to meet the challenge of new techniques and altered conditions, and so pass on the benefits of advances in methods and equipment to the community. Yet many of our industrial laws are inspired by the belief that the community, which means not some abstract and collective entity but simply the everyday men and women and children in the homes and streets around us, must protect special privileges among producers and industries simply because they are already in existence, even though everyone else suffers. At the same time those who accept that attitude are usually the people who proclaim that higher material standards are the first requisite for economic freedom.

The most serious attack on economic freedom, and on several other kinds of freedom as well, in New South Wales of recent years was the introduction late in 1953 of compulsory unionism. This measure was in fact an amendment to the existing arbitration law, and provides that no man or woman may accept employment unless a member of the union covering that employment, and no employer may engage a person who is not a member of the appropriate union. The penalty in each case is a heavy fine or imprisonment. It is still open for a person to select an occupation not covered by a union, and for an employer to do without staff. Except for half a dozen unions who are affiliated with the Communist Party, and a few who are unattached to any political organization, all unions are affiliated with the Labour Party, to which they pay fees and send representatives, and whose policies and actions they very largely control. The practical effect of compulsory unionism is, therefore, to make it illegal for anyone not belonging to an organization affiliated with one of the political parties to earn a living as an employee. A person may be a supporter of that party without being a member or a subscriber, but to lay down by law the extent of his support, either in effort or money, is an act of tyranny. It is an even greater act of tyranny to compel the opponents of that party to become in practical effect supporters of it to the extent of swelling the membership of

certain of its constituents and through them contributing to its funds.

Compulsory unionism has been defended on two main grounds: it has been a "success" in Queensland where it has been in existence for some years; and it is right and proper that those who benefit from the efforts of unions should contribute towards their cost. As far as I can gather, its "success" in Queensland amounts to no more than the fact that it has never been repealed because the ingenious electoral arrangements in that State render it impossible for its opponents ever to become the Government, and for that reason it has been accepted as an inevitable injustice. The second defence is more complicated. As a broad generalization it is right that those who receive benefits should pay their fair share of the cost of obtaining them; but should they be compelled to pay that share? There are many workers who do not recognize that unions have benefited them. I believe it is incontestable that without a strong trade union movement, acting both inside and outside Parliament and the Industrial Courts, the workers in Australia would not enjoy the living and working conditions that now exist, and that many individual injustices would have had to be accepted that are now remedied through the efforts of union officials; and I am convinced that without the continued existence of the trade unions, even in these days of a "seller's market" in the labour exchanges, injury could still be done to employees.

Nevertheless, a very strong case can be made out that, since the war, the unions have acted against, and not for, employees' interests. They have materially contributed to the post-war inflation by pressing for wage increases at a time when stabilization should have been their aim; they forced the forty-hour week on the New South Wales Government at a time when industry was desperately attempting to overcome shortages caused by the war, and presented the Federal Arbitration Court with a *fait accompli* when that tribunal was half-way through an inquiry into the merits of a forty-hour week; in the main they have for many years adopted a negative, Luddite attitude towards technological advances, preferring the immediate in-

terests of the few workers directly involved to the well-being of the trade union movement generally; they have been singularly inactive in the formation of workers' co-operatives, promoting insurance against technological unemployment and other industrial hazards, the acquiring of financial interests in the companies for whom their members work, the technical training of members, and their general social betterment; and their officials have often been more concerned with the maintenance of their own positions than the welfare of members. Most non-unionists would not think their objections out in such detail, and some of those who do would be simply rationalizing a position already taken up. That, however, is beside the point, which is that many workers do not feel under any obligation to join a union; since it is a matter of opinion whether any such obligation exists, they should not be compelled to join a union.

It could be argued that capitalists should be compelled to join the Employers' Federation, manufacturers the Chamber of Manufactures, and sheepgrowers the Graziers' Association, but the Act makes no provision for this—an oversight which no doubt has merely to be pointed out to be remedied! There exist throughout the community numerous voluntary bodies in addition to trade unions whose strenuous efforts without thought of reward have contributed immeasurably to the betterment of society—the Churches, the Red Cross, Country Women's Association, hospital auxiliaries, the Workers' Educational Association, Parents' and Citizens' Associations, and a host of others. Each one of us is deeply indebted to those organizations, but we accept the results of their efforts without giving many of them a thought, and repay them in varying degrees by participating in the particular activities which do arouse our special interest. So let it be with unions.

Many supporters of compulsory unionism have failed to notice that this measure is an attack on unions as well as on the liberty of the conscripted members. A position of privilege is always one of dependence and humiliation, in a trade union as well as an established church, and imposes restraints which are incompatible with virility. Mr J. T. Lang and some of the

more independent minded trade union leaders have pointed this out, and undoubtedly many others have thought it.

Apart from the moral and mental debility involved, a union that consents to compulsory unionism cannot logically refuse to accept the nomination of any person employed in its own industry, and in fact the Act provides for this. But freedom to accept or reject applicants for membership is one of the essentials of a free association, whether it be a tennis club or a union. The Australian Workers' Union almost immediately on the passage of the measure declared that it would still refuse to admit communists to membership, thereby asserting the right not to associate, which the Act denies to present non-unionists.

Freedom to associate and freedom not to associate are in fact inseparable. The historical struggles for the right to associate were for the most part concerned with religion, and the persecution of Christians by pagans, heretics by the Roman Church, Roman Catholics and Protestant dissenters by the state on behalf of the Church of England, all arose only because those who desired to combine for worship in their own fashion desired equally not to remain in communion with the established faith. From their successful struggles later emerged the rights of workingmen to join together for their common ends, including the right to fight for better terms and conditions for themselves. Those who are at the time of writing engaged in the internecine conflicts rending the Australian Labour Party, expelling and counter-expelling each other, include many union leaders asserting in their own fashion the right of free association and free non-association. It is to be hoped, when the smoke and fire have died down, that they will remember that others are entitled to that right as well as themselves, and that a denial of that right to non-unionists will, sooner rather than later, lead to a denial of that right to unionists. Like a tiger that has tasted blood, the tyrant who has made one kill lusts for another.

IV

The average citizen feels that, if by some strange chance he is charged with a violation of the laws of the land, no coercion will be placed upon him by the police, who will advise him of

his legal rights and scrupulously see that he is not denied them, that when he appears before the court the obligation rests upon the Crown to prove him guilty and not upon him to establish his innocence, that certain procedures will be observed to prevent his incriminating himself, and if he should be convicted in error he has the right to appeal in order that the mistake may be rectified. In the overwhelming majority of cases he would be completely justified in his faith.

In all human affairs, however, there is imperfection, and within the last few years there have been disturbing chinks in our legal protections. The recent Liquor Commission in New South Wales shook public confidence in the police administration rather badly; reports in the past twelve months have heightened a suspicion that in isolated cases police officers have failed to observe the niceties that form so important a part of the citizens' legal safeguards (in one case the Commissioner of Police himself has been involved, but the Government has declined to permit the inquiry which would dispel doubts necessarily aroused in the public mind). It is a grave mistake to allow public confidence in the police force, an integral part of our system of justice, existing primarily for the protection of citizens, to be drained away and replaced by a feeling of cynicism or worse. The same Government has on more than one occasion introduced changes in our criminal law and court procedure which have on the whole been well received by those most concerned. Some lawyers have objected to a change recently made in respect of the right of trial by a jury, and I have heard criticism of the system of appointing magistrates in the lower courts, and of the latent threats to personal liberty in the lunacy laws. I am not competent to pass judgment on these matters, but mention them as a possible subject for inquiry by those equipped for the task.

About three years ago the Government of New South Wales, to its credit, set up an Inquiry into the case of a man who had served four years of a sentence of life imprisonment for a murder committed in the central west of the State. He had been found guilty by a jury on circumstantial evidence, and his sentence had been confirmed on appeal, so that he had exhausted

all the legal provisions for establishing his innocence. However, his protestations finally convinced the governor of the jail where he was lodged that an error may have been made, and on the latter's representations the government decided that further investigation should be made. The commissioner's report declared, in effect, that he should not have been convicted, and he was immediately released. However, as a convicted person he had no legal claim to compensation for the great injury done to him and, as far as I can find out, no recompense has been given him.

At the end of 1954 it was recorded in the Sydney Press that a road carrier had served a twelve months' jail sentence for breaches of New South Wales enactments purporting to control interstate road traffic, and during his imprisonment his fleet of trucks was sold at a loss to him, so he claimed, of £20,000. A High Court judgment last year declared that the "laws" he was alleged to have broken were invalid—that is, they were not laws at all—but it appears that he, too, has no legal redress; and again, the moral obligation to compensate him has not been met.

In human affairs it is inevitable that, despite all precautions and the observance of all safeguards, errors of fact or of law will occur. When they arise, the admission of error should be frank and ungrudging, and restitution sure and swift. In peacetime, the occasions may be few, but in time of war or crisis, when feelings are high and the normal processes of law are set aside in the interests of security, they may be frequent and serious. In March 1942 sixteen men in this State were detained under the provisions of the National Security Act, and following a protest in the House of Representatives by the late Maurice Blackburn (without a mention of whose name no book on liberty in Australia would be complete) they were accused by the deputy Prime Minister of engaging in a treasonable, pro-Japanese conspiracy against Australia at a time when the fortunes of war were at their lowest point. No legal charges were ever laid against them, and after periods ranging from six months to three years they were released. A Commission of Inquiry was set up in 1944, and Mr Justice Clyne's report was

tabled in the House of Representatives in September 1945, and debated for three days in March 1946.

Without canvassing all the issues of the Australia First detentions, the following facts were clearly established by the Commission: None of the sixteen was involved in the treasonable activities alleged against them (and which in fact were initiated by a Military Intelligence official in Western Australia) or any other subversive activity; Intelligence in Sydney had documentary evidence that they were not involved three days after they were detained, and twelve days before the Minister made his statement; a few days after the Minister's statement a Press censorship order prohibited any mention of the detentions in the newspapers (although this order was subsequently relaxed to permit publication of ministerial statements on the matter); a report on one man, typical of many, stated that he was engaged in an occupation he had left twelve years earlier, and gave the name, age, birthplace and other details of his wife, although he was in fact single; the officer who recommended the internments said that he had never read any of the man's writings, which were mainly economic, but objected to them because they appeared in a journal of which he disapproved; the same officer thought certain of Sir Winston Churchill's pre-war (1937) writings "hardly Churchillian" because of what he regarded as their pro-Hitler bias, and he regarded utterances of Australia's wartime Prime Minister, John Curtin, as disruptive.

The present Prime Minister and the present Leader of the Opposition in the Federal Parliament between them summarized the Clyne report when Mr Menzies stated in the March 1946 debate that eight men had been detained against whom there was never at any time any suspicion, and Dr Evatt declared that he did not believe any one of the sixteen would have done anything against Australia's interests. It is a mistake (rather commonly held, I think) to imagine that the Australia First case was an isolated one. It did have many features peculiar to itself, but every wartime Federal parliamentarian knows that there were some dozen reputable and loyal Australians deprived of their personal liberty (not to mention their livelihoods and

their good names) because of suspicions, enemy associations (in some cases marriages) and even mistakes of identity. Although according to the Act and its regulations the detentions were ordered by the Minister for the Army (or the Attorney-General later), that Minister of necessity acted on recommendations made by officers, who in their turn acted largely on reports compiled by subordinates. It is clear from some of the facts I have mentioned that some of the recommending officers were not well equipped to judge a suspect's eligibility for detention, and some of the field men were not very competent in investigating everyday facts, much less in probing the minds and intentions of men under observation.

We are today in a state of high international tension and suspicion, and it is no secret that many men and women, mainly with communist sympathies, are under observation by the Security Service. The list of suspects quoted by the Prime Minister when seeking to ban the Communist Party in 1950 showed that glaring mistakes are still possible. Let us acknowledge frankly that we are in a dilemma. In these days of atomic weapons, some of which it is claimed could be smuggled in piece-meal by enemy sympathizers and assembled later, and of trusted research workers who can carry away in their heads vital information about our methods and discoveries, the need for vigilance against possible saboteurs and spies must be unrelenting.

On the other hand, the Javert-minded officer who sees a communist behind every lamp-post and treason in every independent opinion will not only endanger the personal liberty of every innocent citizen in the land, but threaten the security of the nation itself by his failure to distinguish real treason from imagined. It may be that in some restricted fields of scientific activity and confidential governmental services some possibly blameless individuals on whom a suggestion of suspicion rests may have to be diverted into other activities; but, if so, great care should be taken that they do not suffer in reputation or in fortune or in personal feelings. Sir Winston Churchill's memoirs reveal that in the midst of his heavy war-time duties, Britain's Prime Minister still felt it his duty to

intervene on behalf of a humble Petty Officer, whom the Admiralty intended to dismiss from the service because of a suspicion of an indiscretion that could not be proved. "Such processes cannot be allowed," he bluntly declared, and they should not be allowed in Australia today.

I feel that, although the attitude did not find expression at the 1955 Summer School, there is a pretty strong sentiment abroad that the threat of communist aggression is too serious and the risks of any latitude to possible saboteurs too high to permit giving any benefit of the doubt. Counsel of perfection though it may be, the real answer to that argument is to have our counter-espionage at a level of efficiency that will reduce doubt to the minimum.

One of the ways of doing this is to have a very tender regard for the difference between political extremism (even rabid communism) and active or potential sabotage. A man may earnestly see salvation only in the scrapping of the existing order and consider our present policies towards Russia and Red China completely wrong-headed and disastrous, and at the same time be utterly incapable of any action that would endanger our defence preparations or our national security. Moreover, there is a distinction between subversion and the most trenchant criticism of the national effort before and during war. Mr Cowper pointed out during the discussions at the Summer School that the younger Fox bitterly opposed the war against Napoleon up to the time of his death, and was permitted to do so by Pitt, while Campbell-Bannerman's opposition to the Boer War and its beneficial consequences are still within living memory. Lloyd George replaced Asquith as head of the British War Ministry because of rebellion against his leader; and it was dissatisfaction with Chamberlain's leadership that made Churchill Prime Minister of Britain in 1940. Throughout the war, the British Government resisted the constant pressure to place one of the most exalted peers of the realm behind iron bars for his unceasing opposition to the war, and half-way through the conflict liberated Sir Oswald Mosley once it was satisfied that his pro-fascist leanings did not involve pro-Axis activity.

V

The regard in which personal rights are held by Australian Governments cannot be looked upon as comforting. For many years now much of our legislation, especially our taxing laws, provides that an averment by the department concerned shall be evidence of the alleged fact, and the individual contesting a point against the department has thrust upon him the onus of disproving the averment. During the past five years the present Commonwealth Government has varied its policy regarding passports on several occasions. It has just relaxed a ban on visits to the periodical "peace conferences" sponsored by the communist nations, and the justification for that ban must have sounded very hollow even to the Minister who made it.

Since the end of the war, the New South Wales Government has acquired land for soldier settlement at the values ruling in 1942, which are about one-third of the present market value. It has in some cases given prices 15 per cent above the 1942 level, but only to those landowners who accept the government's offer without demur. Any landholder with the temerity to contest the price and stand firm for what he regards as his rights gets 1942 values and not a penny more. And he is lucky to get that, for the High Court has pointed out that the States have the constitutional power to take the land, or any other property, without giving any compensation whatever.

When a request was made in the Legislative Assembly of New South Wales for an inquiry into alleged police maltreatment of a man charged with offences but never brought to court, the Minister concerned refused to investigate, and took the opportunity, behind parliamentary privilege, of impugning the conduct of the solicitor acting for the complaining citizen. Both the present Commonwealth Government and the Chifley Government have pleaded the Statute of Limitations in cases brought against them for alleged illegal arrest and detention, and the New South Wales Parliament has just passed an Act limiting damages the Government Railway can be compelled to pay landowners for burning out property. In a broadcast the Premier stigmatized the parliamentarians, university authorities,

writers and distinguished churchmen who criticized the Obscene Publications measure as "profiteers in filth who, over the past decade, have been imposing the sale of this literature on the community and reaping much ill-gained wealth".

Such capricious, arbitrary and overbearing actions raise the issue whether we should consider, after a century of self-government and half a century of Federalism, the need for embodying in our Constitutions safeguards on personal rights which Parliaments, and the Governments that manipulate them, are powerless to override. These devices are common in many of the written constitutions of the world, notably in that of the United States of America, but are relatively rare in the British world, where the prevailing sentiment up to now has been that a vigilant, independent-spirited community is a more effective guardian against tyranny than a legal document, which the ingenuity of lawyers will always find some way of circumventing. While not denying the merits of that standpoint, it is important that the vigilant community should be armed with weapons to protect its political virtue. Only too often have we seen in recent years rights trampled on because, while the aggrieved had plenty of power to make a noise, neither they nor their champions had power to do anything else.

Safeguards that I believe should be embodied in the Commonwealth Constitution in such a way that they bind the States as well include:

(a) A fixed term for the Parliament. Section 28 of the Commonwealth Constitution does provide that the House of Representatives shall have a life of three years, and Section 13 provides that half the Senate shall retire every three years. But some, at least, of the States have no similar provisions, and in more than one the Parliament has varied the length of its life. A Government that feels that it can postpone the hour when it must account to the electorate is much less sensitive to public opinion than one with no choice in the matter.

(b) An unalienable right to vote. The Commonwealth Constitution provides in Section 41 that any person with a right to vote cannot be deprived of it by the Federal Parliament, but that right derives in the first place from enactments of the State

Parliaments, which may be repealed or varied at the whim of those controlling those Parliaments. All States provide for adult franchise for their lower houses, but some of them retain archaic provisions (usually of property) in regard to voting rights for the upper houses. Adult franchise, with the usual reservations in connection with convicts, insane and other legally disabled persons, should be constitutionally secured for both the Commonwealth and the States.

(c) Impartial electoral arrangements. Mr Whitlam in his comments on Professor Bland's paper drew attention to the well-known electoral disparities in some of the States. The two most blatant cases are Queensland (which usually returns a majority of Liberal-Country Party members to the Federal Parliament but where it is impossible for a non-Labour Government to be elected to the State Parliament), and South Australia (which often sends a Labour majority to Canberra, but where it is impossible for a Labour majority to be achieved in the House of Assembly). The position is also bad in New South Wales, where a non-Labour Government would be possible only with a catastrophic landslide against the Labour Party. Subject to the limitation imposed by the Commonwealth Constitution in connection with the representation of the States in the Federal Parliament, the federal electoral arrangements, providing for a periodical re-distribution of seats by an electoral commission, seem as satisfactory as can be obtained. But those arrangements again derive from an Act of Parliament, which can be repealed or varied; and they, or something like them, should be embodied in the Constitution, and be binding on both Commonwealth and States.

(d) Freedom of speech, expression, religion and association. These are all so closely interwoven as to be almost indistinguishable. Perhaps the most famous guarantee is the First Amendment of the United States Constitution, which reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the Press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 116 of the Commonwealth Constitution has a similar clause in respect of religion only, which binds the Commonwealth but not the States. In the powers referendum of 1944 Dr

Evatt, then Federal Attorney-General, sought the inclusion of an amendment binding the States as well, and also sought the adoption of a new clause reading:

Neither the Commonwealth nor a State may make any law for abridging the freedom of speech and of expression. He explained at the time with all his considerable legal ability and authority that this amendment fully protected all forms of public expression, irrespective of the mechanical methods employed, at the same time pointing out that the First Amendment in America, on which his clause was based, still permitted restraints deemed essential to public order or safety in times of crisis or war.

Our recent history, a few incidents in which I have quoted, suggests that we require an all-embracing clause in our Constitution covering all forms of intellectual, political and religious freedom, and perhaps something like the following may serve the purpose:

Neither the Commonwealth nor a State shall make any law for abridging the freedom of speech and of expression, or the right of the people peaceably to assemble, and to petition or sue the Government for a redress of grievance; or for compelling or preventing membership of any association, or for imposing any disability for joining or not joining any association.

The drafting of legal and constitutional documents is a matter for experts. What is important is that the words used guarantee that everywhere in Australia a citizen is free to express himself as the spirit moves him, and may associate for lawful purposes with whomever he chooses, and only with whomever he chooses.

(e) Freedom of person and property. The memorable articles of the Great Charter signed by King John at the point of the sword at Runnymede declare that:

No freeman shall be seized or imprisoned, or dispossessed, or outlawed, or in any way brought to ruin: we will not go against any man or send against him, save by legal judgment of his peers or by the law of the land. . . . To no man will we sell, or deny, or delay, right and justice.

In British countries these lofty principles are embodied in a series of historical statutes, common law, legal conventions,

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procedures and traditions, while in the United States they are enunciated also in the Fourth to Eighth Amendments to the Constitution. Infringements of personal freedom I have quoted suggest that we, too, need something above parliamentary modification and executive pleasure. Personal rights might be more surely protected than at present by a concise prohibition against arbitrary arrest, unreasonable search and seizure of property, and the denial of a speedy trial by jury; and providing for the acquisition of property by the States as well as the Commonwealth only on just terms.

Such constitutional guarantees as I have advocated add nothing to what already exists in our laws. What they do is to place our traditional rights in a preferred position, from which they can be removed, not by Governments or Parliaments, but only by the people. Magna Charta itself affirmed nothing that was then new in English life. Its great merit, as the historian Green pointed out, was that it replaced the bonds of unwritten custom that had proved too weak to hold the wilful Angevin kings, and the barons threw them aside for the restraints of written law. By the same methods, we can hold in check the Angevins of today, and retain precious heritages of freedom that current trends indicate are in danger of being lost.

These growing feathers pluck'd from Caesar's wing
Will make him fly an ordinary pitch,
Who else would soar above the view of men
And keep us all in servile fearfulness.

VI

Important though they are, written guarantees in our Constitution are not in themselves sufficient to preserve and expand our liberties. They are, after all, merely the tools for those with the will to freedom, and with the discernment to detect threats to their rights, as well as the determination to use the weapons available when the occasion arises. In a liberty-conscious community, Governments and other authorities will be much more cautious than in one as politically docile as we seem in danger of becoming.

The problem is one of education. In the first place, there can be no freedom without an open-minded approach to the moral, political and religious problems that man feels called upon to consider—the willingness and ability to try all things, and to hold fast that which is good. This must be something more than an attitude of mind; to it must be added a trained critical faculty. During the debate in Parliament and in the Press on the Obscene Publications measure, for instance, there were many people who seemed unable to understand that those who criticized the Bill were not advocating the dissemination of indecent literature, but objected to the methods proposed for its discouragement; while there were others who stated that the Bill should be supported because it purported to rectify a grave social evil. It did not occur to the latter people that the measure might be like a sledgehammer used for cracking a peanut, and even so missing the peanut. Apart from this particular topical piece of legislation, we have to recognize that many of the restrictions on freedom under which we labour, especially those dealing with industrial matters, are the result of attempts to right wrongs and injustices and limitations arising not from acts of Governments at all, but from practices and pressures created by private individuals or combinations or from the impersonal operations of the economic system. Whether regulation or modification by Governments is worth while depends on an appraisal of the evil sought to be remedied and the effects of the proposed control. On this there is perhaps no final opinion, and our judgment will vary with the circumstances in which we make it. The development of the inquiring and discerning mind is a task both for parents and for schools, and since many parents are beyond redemption in that respect, the immediate responsibility is probably on teachers.

To make freedom safe, we must not only resent and resist infringements of what we believe to be our own rights, but be equally eager to defend the liberties of our opponents. Their liberties are in fact our own. To accept without protest the suppression of a view we abhor is to concede to the authority concerned the right to suppress our opinions, since the test to be applied is simply whether that view is acceptable to

someone or not. If it is right to ban the Communist Party, it is equally right to ban the Liberal or the Labour Party if the Government of the day regards these as obnoxious. When the Legislative Assembly in New South Wales called for the removal of an atheist professor at Sydney University (as it did without a single dissenting vote about a dozen years ago) on the score of his unorthodox views on religion and education, it affirmed its belief that a university is a place for indoctrination, and that the youth who attends it must not be corrupted by views running contrary to the prevailing thought in the community.

The truth is, of course, that our youth have the right to be corrupted; and we, who are of an older vintage and presumably beyond corruption, have the right to be outraged and shocked. Let us believe that it is possible we may be mistaken in our opinions and prejudices, and that views we have regarded as misguided and immoral may after all be right. How are we to escape from the error of our ways and have our minds directed towards possible truth if we are denied the opportunity of having our treasured illusions dissected and torn apart before our eyes? It is also possible we may be right. If so, a frontal assault on our cherished principles will compel us to re-examine them and proclaim them with renewed faith.

There can be, finally, no freedom without a sense of personal responsibility. There will never be general agreement on what constitutes liberty in a particular set of circumstances, since in our complex society, wherein we are all dependent on each other, one man's freedom may limit another's or encroach on the community's. What is essential is that each of us accepts responsibility for our own conception of freedom, whatever it may be. In this field, as perhaps in no other, the efforts of one man—possibly obscure and in himself quite unimportant—who refuses to remain silent when he ought to speak may rouse a nation to the consciousness that Patrick Henry's famous cry

Give me liberty, or give me death

is no empty rhetoric. There is in fact no other choice.

