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27th May 1943.

Here is a copy of my broadcast last April about the Fifth Freedom. I was pleased that you liked the idea. It would, I think, be a very good thing to popularise this phrase in the New World, and it seems to me it might give a very good basis for an address delivered to lawyers by an authority like yourself without being too narrow or technical. For example, it would be very much to the point, would it not, to expound how the freedom of a private citizen depends on there being an effective working machine to secure his rights - vague declarations won't do this and that is why our English system, which has spread to all English-speaking people in the world, concerns itself with procedure - *habeas corpus*, *certiorari*, and so forth. (But you must be careful not to wipe the eye of the Americans, who seem to attach more importance to declarations about the rights of man and government by the people, etc. than I do).

Equally, I think, it would be important to insist that procedure must not be the master, but the servant, of justice. New trials should only be granted when something substantial has gone wrong. You may remember that I made some caustic remarks on this subject at Harvard in reply to Dean Pound who patronised us by explaining the great superiority of the development of American law since Independence.

I suggest, also, that you might consider making a few remarks on subordinate legislation (see yesterday's debate in the Commons), on which subject I have been serving on a Committee with Anderson and Morrison for some time. In war time it is absolutely necessary that the Executive should be given considerable regulating power, including the power of subordinate legislation. But it can only do so to the extent that the majority in Parliament authorises it so to act, and it is the business of Parliament to be constantly watching to secure that this subordinate legislative power is not abused. I suggest, also, that it would be very welcome from a

will continue to be associated under the British Crown in the future.....

Why all this talk about the possibility that the use of the word "Empire" carries an evil hint of Imperialism? The question of Imperialism in the evil sense is one of fact not of name. There may be either an empire of aggressive power or an empire of justice, of honour, and good will. The true meaning of the words "British Empire" can only be found in the living proof of what that fellowship means. I am not urging the continued use of this name simply because we have used it in the past. We must not be slaves to tradition and we must not blindly do the things our fathers did before us. But on the other hand there is some middle ground between ancestor worship and a complete break with all the past from which we grew. Those who have no feeling of respect for their ancestors seldom command respect from their own posterity. The teaching of all history is that those who abandon their past usually lose their future. When there is such a wealth of tradition and warm fellowship within that name, why then should we substitute any other term in its place? Let us never forget the symbolic significance of the words we use. Many of the most stirring speeches in the English language lose much of their meaning unless we retain that ancient expression. If we abandon the name, we abandon a rich source of inspiration for all our people.

Why not continue to use the word which carries with it a long tradition of service, of justice, of honour, and of proven determination to work constantly for the betterment of the lot of the common man. The meaning of the word "Empire" is to be found in the hearts of our people and their own convictions, not in the interpretation placed upon it by our enemies.....

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FOREWORD.

I gladly comply with the request that I should contribute a brief introduction to this new issue of Stone's Justices' Manual, which is now appearing exactly one hundred years after the first edition came out in 1842. This is indeed a notable centenary. I have a rare copy of the first edition before me. The author was Mr. Samuel Stone, a solicitor, who was Clerk to the Justices for the Borough of Leicester. He gave to the original work the title of "Justices' Pocket Manual", and since it comprised only 212 small pages, was thus very suitably named. The contrast between this and the present bulky volume illustrates very clearly the enormously increased range of the duties and responsibilities discharged by courts of summary jurisdiction, and undertaken for the most part by the lay and unpaid magistracy of the country.

When I last looked into the figures, I found that over 95 per cent of the charges of criminal conduct which were dealt with in our courts came before, and were disposed of by, magistrates. In the vast majority of cases, these matters are satisfactorily dealt with and the country owes a debt of gratitude to the public-spirited men and women who compose our magisterial benches and who, with the assistance of their learned clerk, administer summary justice. Such a system, which in our own country can be traced back to the reign of Edward III and which has no parallel in any other country in Europe, is only possible because of the essential good sense and the respect for impartiality which we like to think are characteristic of British tradition and practice. If a magistrate were to allow his decision or his judgment to be influenced by "private affection, prejudice, or ill-will", then he would not only be unworthy to sit on the Bench, but he would be undermining one of the foundations upon which British institutions rest.

There are two further considerations which should never be overlooked in estimating the value and worth of the contribution which magistrates are able to make to the cause of justice. At bottom, British law is a sensible thing which appeals to the sense of justice and fairness which the ordinary citizen of character and experience fully understands. He expects the law as laid down by Parliament and by our superior courts

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to be respected, obeyed, and enforced, because he knows that it rests upon the free exercise of our Parliamentary liberties. He appreciates that the law of necessity lays down a general rule, and that the general rule must be applied, subject to discretion as to punishment, for the sake of certainty and uniformity rather than there should be the possibility of favouritism or uncertainty as to the standard we set up.

Finally, I would advance this reflection which is specially suitable for the stern and anxious times through we are living in the midst of a world-wide war. We are upholding our own conceptions of democratic liberty against totalitarian states which show no respect for the rights of individuals or for the regular course of law, and are opposing dictation and tyranny to our conceptions of freedom. Could there be a better proof of our sincere belief in democratic institutions than that we should in every locality entrust to the hands of ordinary citizens of repute and probity the business of administering summary justice, according to the law, to those in their own area who are brought before them? There is no function which calls for a higher sense of responsibility and fearless discharge of duty than the function of a judge, and it is in this spirit I feel sure that all of us in the judicial hierarchy would wish to act.

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liberal-minded authority like yourself to emphasise the importance of getting back to normality when the over-riding claims of war are over.

If you look at the Holmes-Pollock letters, of which I think I gave you a copy, you will see an observation of Pollock's during the last war upon Shaw's fatuous dissent in the "Zadig" case. Pollock says, if I remember rightly, that the simple answer to all this is that in war time there must be by Parliamentary consent some limitation on the liberties enjoyed in peace time, just as soldiers have to march in step and obey orders without question. Otherwise, our own freedom will contribute to our defeat. No democracy can ever plunge itself into war without general assent, and the temporary limitation of individual liberty is like the tightening of a belt when loins have to be girt and freedom to eat what you like has to be curtailed.

I really apologise for rambling on in this way - it is one of the evil consequences on one's style due to the habit of dictation.

The Right Hon.
Lord Wright.

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27th April, 1942.

THE FIFTH FREEDOM.

(Suggested Broadcast talk by the Lord Chancellor).

Nearly everyone who is listening to me will have heard on the wireless, or will have read in the newspaper, some account of the speech which Hitler made to the German Reichstag in Berlin on Sunday. I want to occupy a few minutes of your time in calling attention to one claim made by Hitler in that speech on which we ought to ponder. The Fuehrer was not as bombastic as usual; he does not seem to have shouted so loud; he repeated his railings against this country and his denunciations of the Jews and the glorification of himself - all after the usual pattern. What was novel was that he now openly proclaims that there is no law in Germany excepting his own will or his own whim. He openly threatens the judges in Germany - and they may well shiver with fear at the threat - that if they do not deal with those who come before them as the Fuehrer wishes, they will suffer for it. He blatantly asserts that no one in Germany has any rights; everybody is to get what Hitler chooses to give him, neither more nor less. Having already appointed himself Commander-in-Chief of the Army and Head of the State and Supreme War Lord, he announced on Sunday that henceforward he is Supreme Law Lord into the bargain, and that everybody should take warning not to offend against the one and only law of Germany, which is himself.

Needless to say Goering at once endorsed the claim. Hitler must have the position to compel everybody to do his bidding, whether judge, workman or employer, by every means that Hitler chooses. He is to have the power to punish everybody "without regard to so-called duly acquired right" - those are Goering's actual words, and the obsequious and servile members of the Reichstag, who exist for no other purpose but to register Hitler's will, without debate and without dissent, unanimously affirm this monstrous claim, like the slaves that they are.

Now, it seems to me that though this latest claim of Hitler's is all of a piece with what he has been doing all along, it brings out in a very striking way the true nature of a totalitarian state and emphasises one of the reasons why free men and women must fight against it, at whatever cost, to the very end. It is better to die

than to be a slave and this is the most horrible form of slavery which Hitler practises over his own people than can possibly be conceived.

You remember how President Roosevelt in one of those splendid addresses which he has made to his fellow countrymen spoke of "the four freedoms" which every true democracy must seek to secure and claim to enjoy - freedom of speech, freedom from want, freedom from insecurity, and freedom from fear. That was gloriously said. But there is also a fifth freedom without which no country can truly claim to enjoy liberty. It is the freedom of every citizen, however poor, however un-influential, however unpopular, however wrongheaded, to appeal to the law and the courts to protect him from injury or insult even though the wrong is committed by the misuse of official power. Some people are so ill-informed as to suppose that under the pressure of war conditions the writ of habeas corpus has been suspended. That is not so at all. If a man or woman is detained, a writ of habeas corpus will ascertain whether his detention is according to law, and, if it is not according to law, the detained person will be instantly released. Defence Regulations impose extra duties and liabilities and restrict in various ways the free choice which is part of our daily practice in times of peace. But Defence Regulations are all made under the authority of an Act of Parliament and are liable to challenge by Parliament after they are made. Judges and Magistrates in this country administer the law without fear or favour, and there is no power on earth which can direct them to act otherwise than in due course of law. Our High Court Judges have been irremovable (except under conditions which do not affect my argument) for over 250 years. Nobody in his senses would ever dare to suggest that a Judge could be dictated to by a Minister or by a Government, and if anybody ever tried it he would come off worse in any challenge to the independence and integrity of the judiciary. Not only so, but the right of every citizen, however humble and obscure, to get the same level justice from our courts that anyone else would be entitled to is known to everybody. It was not so many years ago that an extremely unpopular person, a Communist who had come in conflict with the law, nevertheless brought an action for damages because the police, who were entitled to seize his papers in his possession, retained some of these papers longer than was necessary. He recovered damages from the police just

as anybody else would do who showed that he had suffered, even at the hands of the officials, from a breach of the law.

Now, just see what the contrast is, under the system of government which the Nazis and the Fascists are trying to force upon the world. Whoever heard of anybody in a German concentration camp applying for a writ of habeas corpus? Apart altogether from the result, the result, the application would only get him, and probably his lawyer, into further trouble. Not long ago Pastor Niemuller was discharged by a German court from the accusations made against him, and in a civilised country if a man is discharged he goes free. Did Niemuller go free? Not at all. He is in a concentration camp at this moment, and what is happening to him only imagination can tell. Whoever heard of anyone in Germany today taking proceedings against the secret police or suing the Gestapo for damages? The simple truth is that these 80 or 90 millions of Germans are living as slaves because there is no German law to protect them, and because there is no German court that would dare to interfere with the edicts of the bullies in power.

This fifth liberty is just as essential for preserving the life of a free democracy as are the other four, and all we shall say to Hitler on this subject is that, come what may, we intend to preserve the lot.



Personal

BUCKINGHAM PALACE

9th December 1943.

My dear *Lord Chancellor,*

Sir Lyman Duff, the Chief Justice of Canada, is retiring on January 7th, after being a member of the Supreme Court for 37 years.

The King wishes me to send him a personal message on his retirement; could you very kindly suggest one or two appropriate sentences which would express His Majesty's appreciation of Sir Lyman's service to the Law, and of the reputation that he has established as an international jurist?

Yours very sincerely,

The Right Hon.
Viscount Simon, GCSI., GCVO., OBE.,
Lord Chancellor,
House of Lords.

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THE USE OF THE WORD EMPIRE. *date?*

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At a time when there is a tendency to drop the use of the word Empire altogether in favour of the word Commonwealth which, strictly speaking, only refers to the relationship inter se of the completely self-governing parts of the Empire, it may be of interest to read the following extracts from a speech by Lt. Colonel G.A. Drew, a member of the Canadian Parliament and leader of the Conservative Opposition in the Ontario Provincial Parliament.

L. S. A.

"As we Canadians look to the days beyond the war and contemplate the steps we must take to assure peace, security and prosperity for the people of Canada, it seems clear that one of the very first things we must decide beyond all question is the nature of the relationship which is to exist between Canada, Great Britain and the other parts of the British Empire. Until we have reached a decision upon that point it will be extremely difficult if not impossible to reach other decisions affecting our relationship with other nations.

A very wise Frenchman wrote these words: "This is the time for every nation to come to an agreement with its own most secret hopes." Now that the pattern of victory is beginning to take form I think these words apply with particular force to the people of Canada. We Canadians must come to an agreement with our most secret hopes regarding the future of our nation. That the hopes differ goes without saying. It will take much frank discussion if we are to know exactly where we stand.

It is no longer possible to ignore the speeches of some Canadians who make it clear that they hope we will sever all connection with Britain when the war is over. That is their right in a free country. But I believe it will avoid future misunderstanding if those who believe the very opposite leave no doubt whatever about their determination that Canada shall continue to be a vigorous member of the British partnership.

I think that many of us have been taking the British connection far too much for granted. We seem to ignore the fact that there is active anti-British propaganda in this country; no matter how much evidence we see that it actually exists. And above all we seem to forget that there is no magic in the air or soil of Canada which will make our youth grow up with faith in the British partnership simply because they are born here. That requires education. When we see what has been done in the minds of German youth by evil teaching, we should make doubly sure that the teaching in our schools lays a firm foundation for the loyalty of our youth to Canada and to the King as the living symbol of our free and decent way of life. In the British

partnership is worth maintaining, then we should insist that the history of that partnership and the extent to which we have benefited by its association in the past should be recognized as one of the most important subjects taught in our schools.....

There was more than British interest behind Mr. Churchill's statement that he was not prepared to preside over the liquidation of the British Empire. The continuance of that great fellowship of free people is of the utmost importance to the whole world as a practical demonstration of the fact that widely separated communities of different races, colour, creed and social development can work together for their common good. The Empire represents a cross section of the very sort of association which must be achieved throughout the whole world in the interests of mankind. In the Empire itself there will be sovereign self-governing nations, others with some form of Government nearing complete independence, and some communities removed by only a few years from savagery and cannibalism with a considerable period of education still ahead of them. The same is true elsewhere. If the Empire with its record of steady achievement were to be dissolved, there would be little encouragement for others to attempt to establish similar relationships between many diverse peoples with no background of common interest.....

All security depends upon collective action and for us collective action begins within the British Empire. Our partnership is no mere sentimental association or a relic of colonialism. On the contrary the very existence of the partnership is evidence of the maturity and full contractual powers of the partners. It has been of mutual benefit to the members in the past. It can be of far greater benefit in the future.

But in all partnerships there are obligations as well as benefits. In the future I believe the British people throughout the world should look upon their association as a family partnership maintained on a strictly business basis with some form of guiding committee, meeting regularly to settle all questions of common concern. Something of that kind is I believe the first step which must be taken if there is to be a sound foundation, for the personal security which our people rightly demand and to which they are entitled.....

In what I have been saying to you I have used the expression "British Empire". I recognize that there are some who insist that it should be replaced by the words "British Commonwealth of Nations." Others go so far as to condemn the use of the word "Empire" in the strongest language.....

In view of this violent conflict of opinion I think that it is not only important that we come to a clear understanding in regard to the British partnership but also that we should if possible come to some understanding and agreement about the terms we use. In that ancient storehouse of wisdom, the Book of Job, we read: "How forcible are right words." We have been told on many occasions that words are weapons. It would be useful if we could all use the same words to describe the same things. But it is a little difficult for many Canadians to agree that we are giving support and encouragement to our enemies by using the word "Empire" when as recently as Christmas Day the King spoke to the men serving overseas of "the importance and meaning of those outposts of Empire which the wisdom of our forefathers selected and which your faithfulness will defend."

We are told by some that with the passing of the Statute of Westminster the correct term to describe what had for so long been known as the British Empire then became the British Commonwealth of

Nations. That is a complete misconception of the wording of the effect of the Statute of Westminster. But since the confusion does exist and since it is clear that in all sincerity people disagree upon this point, then it is important that we try to understand the words we use and I hope you will pardon me if I attempt to make a brief analysis of the effect of the Statute upon this very question.

It is a short Act of twelve sections which was passed in 1931 to give effect to certain resolutions and declarations which had been approved by all delegates to the Imperial Conference of 1926 and 1930. It did not limit the effect of the earlier declarations or resolutions adopted unanimously by those two Imperial Conferences in any way, but dealt only with those which it was thought called for statutory enactments to give them full effect. In that Act the term "British Commonwealth of Nations" was used to describe the free association of Great Britain, Canada, Australia, New Zealand, South Africa, the Irish Free State, and Newfoundland. That was not the first time the term had been employed and its meaning was not open to doubt. The relationship of the self-governing nations to each other and their position within the Empire was clearly defined by the first declaration of the report adopted by the Imperial Conference of 1926. It is usually referred to as the "Balfour Declaration". It was usually the delegates from Britain and all the Dominions including Canada. Referring specifically to Great Britain and the Dominions, the declaration read as follows: "They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any respect of their domestic or internal affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations."

It perhaps should be recalled that this Declaration in itself was merely a definition of the already existing constitutional status. It is difficult to understand how any one can be in doubt about what the declaration means. Britain and the Dominions were described as a commonwealth of free nations within the British Empire. Instead of conveying any impression that the words "British Commonwealth of Nations" were substituted for "British Empire", the declaration made it clear that those nations which form the commonwealth are communities within the larger fellowship of the British Empire. Each expression has a clear meaning which should not be confused. If one is referring to Britain and the Dominions exclusively, then the correct expression is the "British Commonwealth of Nations." If, on the other hand the intention is to refer to that very much larger group of people in India, Africa, and elsewhere, who have not yet reached the status of complete self-government, then the correct term is "The British Empire". Nor is the only limitation upon the territory covered by the words "British Commonwealth of Nations" that of self-government. Beyond the territory of Britain, the Dominions and India, the words "British Empire" include such places as Malta, Cyprus, Ceylon, Gibraltar and Bermuda and we should thank God that it does because they have played a vitally important part in the defence of freedom, not only for ourselves but for all the rest of the world which is still free. The words of the King on Christmas Day were full of meaning when he spoke of the wisdom of our forefathers in selecting those outposts of the Empire.

I think there are ever increasing reasons why we should be proud to use the words "British Empire" in describing the achievements of the British people in this war and I think there are important reasons why we should employ that term as the one which correctly describes the larger fellowship which we believe