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FOR POLITICAL AND ECONOMIC REALISM

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From Week to Week

In a competent review of a book by the Swiss, Charles-Ferdinand Ramuz, "*What is Man*" the American newsletter, *Human Events* has some important things to say.

Ramuz considered that the great and pandemic sickness of modernity is that he terms intellectualism, but which we have frequently called abstractionism, and he defines this as the attempt to live by abstract ideas, rather than by nature and by the values of direct experience. "Ideas," wrote Ramuz, "are the occupational disease of the great cities, which an over-civilisation [*sic*] has set apart from the wholeness of life."

The American Edition of the book is a translation, and it is possible that a certain confusion in the use of words, such as the identification of "ideas" with "reasoning," may be due to this, and may not occur in the original. But it is clear enough that what the author had in mind was the abuse of the deductive method—the application of logic to some premise and the totally invalid assumption that because the logic is sound, the premise is justified. Where values of "reason and science" [*sic*] are substituted for those of faith and emotion, man finds himself plunged into that "terrifying abyss where numbers progress in both directions towards that total absence of finality which we call the infinite and in relation to which the greatest as well as the smallest numbers lose all significance."

"It is for this reason that Communism is the natural and logical end of bourgeois rationalism . . . this accounts for the hatred of nature which is characteristic of Communist thought for where Communism insists on uniformity, nature is variform. Hence Communism in action strives to separate man from all direct contact with nature."

It is wisdom, not logic, which we lack.

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In the closing hours of the current session of Parliament, Mr. Douglas Jay, M.P., (Soc.), said that keeping down the cost of living had been one of the Government's major policies in internal economic affairs.

It is only necessary to enquire of any housewives' Association, or still more simply, of any housewife, to learn the enthusiasm which the Government's success in this matter has aroused.

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Hard upon the complaints of Mr. Gardiner, the Canadian Minister of Agriculture, that the United Kingdom, by its purchasing methods, was discouraging Canadian farmers and arousing widespread resentment amongst them, Sir Hartley Shawcross, who, being a lawyer and a yachtsman, would naturally know all about food, warned the world that if we did not grow more we should all starve. But no doubt he was speaking to the book—it is the Socialist pose to take The Big View on every question. It's so much easier.

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"... while Wallace was paying out hundreds of millions to kill millions of hogs, burn oats, plow-under cotton, the Department of Agriculture issued a pamphlet telling the nation that the great problem of our time was our failure to produce enough food to provide the [U.S.] people with a mere subsistence diet . . . we had men burning oats when we were importing oats from abroad on a huge scale, killing pigs while increasing our imports of lard, cutting corn production and importing 30 millions of bushels of corn from abroad.—*The Roosevelt Myth;* John T. Flynn, p. 49.

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"From the London School of Economics came an organisation to advance Political and Economic Planning—P.E.P. This was a scheme for fascist planning through a 'national Council of Agriculture, a National Council for Industry, a National Council for Transport, all to be statutory bodies with powers to govern their special provinces of business.' The chairman of this group was Israel Moses Sieff. He turned up as a special consultant to OPA in 1941. The place was full of these boys." *ibid,* p. 315-6.

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"The rules and directives issued were frequently beyond the power of the human mind to understand. Here is an example:—

"The maximum price which a manufacturer may charge to any class of purchasers for any packaged cosmetic priced under the general maximum price regulation shall be the maximum price established under the general price regulation for sales of such packaged cosmetics by him to a purchaser of the same class." *ibid,* p. 317.

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Having failed completely in the U.S.A., "Britain" has been reduced to a slave state in order that another try may be made here.

It has to be admitted that Mr. Sieff and the London School of Economics don't let go until their knuckles are well hammered.

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Bribery is a word which may have many meanings, and it is quite possible that we are all bribed. It may be argued that any man who spends his days in obtaining money with which to buy a living, rather than in doing those things which he has an inner urge to do, is "corrupt."

On the other hand, it is possible to regard bribery simply as a rather crude and, on the whole, troublesome, price system which is exactly how the Oriental regards it. The English objection to it, where it exists, is looked upon as just one more manifestation of madness.

Nevertheless, that objection is sound, and it is both sound and critically important where the monopoly of bribery on a mass scale becomes vested in a ruling clique—the position to which we have attained by the capture of the Bank of "England" by P.E.P. and Co.

It is much heard, at the moment, that "this Labour Government is finished." That was what they said of Roosevelt's New Deal—a parallel Government of one simple principle—bribery.

PARLIAMENT

House of Commons: December 15, 1948.

Palestine (Arrested British Subject)

Professor Savory asked the Secretary of State for Foreign Affairs whether he is aware that Mr. Sylvester, a British subject, was arrested in Jerusalem, imprisoned in a cellar for 133 days, in complete darkness and without exercise, and was daily, for 10 days, tortured by the Jews, being kicked as he lay on the ground, and hit over the head with a rubber truncheon; and whether His Majesty's Government have demanded compensation on his behalf.

Mr. Bevin: The Foreign Office have received from Mr. Sylvester himself a detailed statement as to the treatment meted out to him in the various places of his imprisonment. This states that he was kicked and beaten by the Irgun and otherwise illtreated during the first ten days of his confinement. Thereafter the regular Jewish authorities obtained custody of him and his four companions, and he states that he was well-treated. The whole question of compensation for Mr. Sylvester and the four other British subjects arrested with him is now receiving careful consideration by His Majesty's Government.

Professor Savory: Is the right hon. Gentleman aware that this man was seized in a building belonging to the United Nations and that he himself has stated that the only reason for his arrest was that the Jewish authorities wanted to get rid of the Jerusalem Electrical Corporation?

Mr. Paget: Does not the Foreign Secretary feel that it is a fortunate change when we find a political trial fairly conducted and ending in an acquittal?

Mr. Bevin: I think that after the Jewish authorities got hold of the case there was better treatment and a fair trial, but that is not in the Question. What I am asked about is what happened beforehand.

Professor Savory: Exactly.

Mr. Warbey: Do the reports available to my right hon. Friend bear out the allegations contained in the Question that this man was

"imprisoned in a cellar for 133 days, in complete darkness and without exercise"?

Mr. Bevin: I cannot go into everything Mr. Sylvester has told us. I am studying the matter very carefully.

Legal Aid and Advice Bill

The Attorney-General (Sir Hartley Shawcross): I beg to move, "That the Bill be now read a Second time."

If I might translate a respected expression from the promissory and ephemeral field in which it has been misemployed of late into the sphere of intended enactment, I should be inclined to call this Bill a charter. It is the charter of the little man to the British courts of justice. It is a Bill which will open the doors of the courts freely to all persons who may wish to avail themselves of British justice without regard to the question of their wealth or ability to pay. . . . Since the right hon. and learned Gentleman the Member for West Derby (Sir D. Maxwell Fyfe), who is to speak for the Opposition on this Bill, and I have been at the Bar—indeed, going back further to the time when Magna Carta decreed that:

"To no one will we sell, deny, or delay right or justice."

—it is an interesting historical reflection that our legal system, admirable though it is, has always been in many respects open to, and it has received, grave criticisms on account of the fact that its benefits were only fully available to those who had purses sufficiently long to pay for them.

There is the old taunt, the familiar taunt, about His Majesty's courts being open to all just as the grill room at the Ritz Hotel is open to all. . . .

. . . there is at present no official machinery whatever for providing legal advice [as distinct from legal "aid"]. Those who have stood in need of it and have been unable to pay for it, have had to rely on the facilities of trade unions and on the admirable work of voluntary poor man's lawyer organisations such as the various Personal Service societies, the Society of Our Lady of Good Counsel, and other similar bodies. In the field of legal aid, that is to say, in the field of litigation, legal aid is only available at present in the civil courts to persons whose incomes are not more than £2 weekly, with capital not exceeding £50, or, in exceptional cases, whose incomes are not more than £4 weekly and whose capital does not exceed £100.

Under the existing machinery, there are no facilities for remunerating the solicitors and counsel who deal with these cases and who often have conducted them—and it is right that this tribute should be paid to those who have undertaken that work—at considerable personal sacrifice to themselves. Moreover, even that degree of legal aid, on that limited scale, is only available in the High Court, and none at all is provided in the county court, increasingly important as that court is and as I believe it ought to continue to be. Again, in civil proceedings, often involving considerable financial implications and of great importance, such as bastardy and maintenance proceedings in the summary courts before the justices, there is no provision of legal aid at all.

In the criminal courts the position is slightly different, and, I venture to think, more satisfactory. . . . —apart from the traditional dock brief under which any prisoner at assizes or quarter sessions who possesses the sum of £1 3s. 6d. is entitled to select one of the counsel, if any, who appear in the row in front of the dock at the time—under the provisions of the Poor Persons Defence Act, 1930, defence certificates may be issued to those whose means are insufficient to enable them to obtain legal aid. In the criminal courts there is no precise income or capital limit in regard to the matter, and these certificates are issued as of right—to poor persons, of course—but as of right in the case of murder, and in other indictable cases they are issued where it appears to be in the interests of justice so to do.

In the summary courts, in criminal cases but not in civil or quasi-civil matters with which the justices sometimes deal, certificates may also be granted where it seems desirable to the court in the interests of justice by reason of the gravity of the case or for other special circumstances so to do. That

THE "PALESTINE" PLOT

The clue to the world conspiracy against Great Britain is to be found in the Palestine affair. Here is a full documentation, 150 pages, covering the momentous events of 1948. 3/-, post inclusive, from W. L. Richardson, Lawers, by Aberfeldy, Scotland.

is the existing position. . . .

. . . It was in consequence of that [the wartime] situation, and of the position which it was realised would arise at the conclusion of the war, that, in 1944, the Rushcliffe Committee was established to consider and report upon the matter. In 1945 they did report, and they recommended the establishment of an entirely new structure of aid in the civil courts, and, in regard to civil matters, a new structure which was to be operated by both branches of the legal profession. . . . This Bill is the result of the work done between the two branches of the profession and the Government in order to implement the proposals of the Rushcliffe Committee. It is based upon those proposals, it follows them in most of its important details, and, indeed, I think it is right to say, although there may be a number of quite minor differences, that in only two significant respects does it depart at all from the general principles of the Rushcliffe proposals. In one case it extends the proposed facilities to a rather wider circle, and in the other it slightly restricts the classes of litigation in respect of which the facilities will be available.

It is, of course, a skeleton Bill; it does not pretend to be more. It seeks simply to lay down the general principles and outline of the scheme, leaving the rest of it to be filled in, in part by regulations to be made hereafter, and in part by the actual scheme itself to be drawn up by the Law Society and the Bar Council, and to be approved by the Lord Chancellor. . . . I venture to think that this is perhaps a Committee Bill rather than a Second Reading Bill. We shall, I hope, on all sides of the House, agree about the general principles on Second Reading. There may be many aspects which we can discuss together on Committee, and if proposals can be made, from whichever side they come, to improve the Bill, we shall be very ready and glad to consider them.

I should now like to indicate, quite broadly, the main features of the Bill in this sense: the tribunals before which legal aid will be given; the classes of proceedings in which legal aid will be available; the classes of people who will qualify for legal aid; the conditions upon which the legal aid may be given; and the general machinery for its administration. Then I shall say a word—indeed, I shall deal with this first—about legal advice, and a word or two about the separate problem of legal aid in the criminal courts.

First, a word about legal advice. I explained to the House the connotation of that item. In Clause 6 of the Bill, solicitors who will be employed by the local committees to be established under the scheme, either whole time or part time, for this specific purpose, will be available in the different localities to give oral advice to those who seek it and who appear to be unable to pay for it in the ordinary way. . . .

. . . I return to the first Clause of the Bill and that, read with the first Schedule, deals with the tribunals before which, and the cases in which, legal aid will be available. I think it is in this Clause that hon. Members will find the only significant departure from the proposals in the Rushcliffe Report. Hon. Members will recall that the report recommended that legal aid should be available before all tribunals in front of which solicitors or counsel had a right of audience and in all cases which could be litigated before such tribunals. We have given the most careful study to this problem and we have felt that it is impossible, for practical reasons rather than on any grounds of principle or logic, fully to implement that recommendation.

There are a large number of tribunals—I think it is something approaching 100—of a judicial or quasi-judicial nature outside the ordinary legal hierarchy, but before which lawyers have a right of audience, although in practice they very rarely exercise it and very rarely appear. There are a number of more or less obsolete courts—such as borough courts of record—before which, in practice, legal proceedings are not taken at all. If the doors of all those tribunals, quasi-judicial and quasi-obsolete, were opened to free legal aid it is felt that the proceedings before them would become perhaps more numerous and certainly unduly prolonged; and that one of the benefits of these tribunals, the informal atmosphere before them, would disappear and that an excessively litigious and technical atmosphere might be developed in its place.

Moreover, and this is one of the main practical considerations which have led us to the conclusion we have reached, it is certain that the profession itself, which contains only about 2,000 practising barristers and 11,000 practising solicitors, would be hopelessly overburdened. . . . we have felt that it is essential to limit legal aid to the ordinary courts of justice but including now, of course, the county court in which so many actions are brought. Legal aid will thus be available in the ordinary courts before which the ordinary action, action between party and party, is normally brought. That will leave outside the scope of the Bill some tribunals, important tribunals—tribunals like the pensions appeal tribunals, the rents tribunals and some of the discipline tribunals which have been established under various codes. They are tribunals which do most useful work but they seem to do it quite effectively and they seem to get along quite well—I regret to say—without having members of the legal profession appearing before them.

For a similarity of reasons, not of principle or logic but of practicability and expediency, it has been felt necessary to exclude, at all events for the present, certain classes of litigation, and those classes are set out in the second part of the first Schedule. They include various classes of action in which experience has shown—and I think there will be general agreement on this broad statement of the position—that there is most room for bringing vexatious, frivolous, unmeritorious or unnecessary claims. The most important of these, I suppose, are libel and slander. . . .

In connection with this part of the Bill, I only add that the list in the second part of the first Schedule is not intended to be final. Experience might show that there were other causes of action which were being made the subject of excessive litigation and in which the scheme was being abused. On the other hand, experience might show, once the scheme had got going and the system was in its stride, that it would be possible to bring in some of the cases which at the initial stage we have had to exclude. If either of those possibilities arises it will be possible to deal with it by way of regulation approved by the House.

Mr. Joynson-Hicks (Chichester): May I ask the Attorney-General whether it will be possible by regulation to bring into the Act proceedings before the tribunals?

The Attorney-General: Presumably the hon. Member

(*Continued on page* 6.)

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As 1948 departs, we detect a certain air of despondency even among our supporters. Concerning the others, we are not disposed to throw away useless pity for disappointment which arises from a mistaken sense of values. Among ourselves the phenomenon, which is not new, is also not general; nor does it arise, in our opinion, from any deep study of the position. When the year began, we thought it would see some major development. Perhaps that major factor has shown itself unrecognised. If so, it is idle to speculate concerning its nature or its probable course and effect. The threat of war has, in significant regions, turned into actual war: war and the threat of war go together, but whether entirely according to plan or not is another matter, to create the situation desired by P.E.P. But in all countries of the world, and not only Indonesia, the U.S.A., Great Britain and her colonies and dependencies, France, and even Russia, some 'spot' of difficulty, some unexpected, craggy, resultant develops, each with its vital lesson for everyone concerned, and in no place does this feature inevitably build up despondency, but, on the contrary, sight of a clearer, if not a clear objective.

In Russia more millions go to prison; in Hungary another Archbishop goes to prison for vastly different reasons; in England and in Scotland (let us not be flippant) more aid is to be forthcoming to get the right men into prison and to keep the wrong men out; in the——States "a blistering dissenting opinion" of a Judge, Mr. Justice Burton, charges the Supreme Court with abandonment of its judicial function "to proclaim the intolerable doctrine that executive agencies are entitled to make their own law." (The immediate issue is a decision, which will have far-reaching social consequences in the further concentration of population, making illegal a system of pricing cement with reference to a 'basing-point' from which freights are costed—"phantom freights"). Each of these happenings in its own way puts evidence before the eyes of a selected audience, not every member of which is in a state of political dither.

We have said so often that the situation is developing rapidly that, perhaps, some have thought we meant the political equivalent of ninety miles an hour, when we meant seventy, and the observed speed is sixty. So much the better; the victory of our enemy depends chiefly on speed, headlong speed which leaves no time for deliberation, no opportunity for taking thought, no room for the elaboration of defensive measures. Let it be agreed that there are few signs of deliberation, where deliberation should be solidly based, few signs of thought where thought would at least exclude frenzy, and that adequate lines of defence are as yet invisible (though they may be real). All in good time: "A Good New Year."

Parliament and the Law

No Member of Parliament opposed the principle of the Legal Aid and Advice Bill on its second reading. None questioned that it would produce the rosy results predicted —or produce them without far more corrupting long-term effects. There was no mention of the continual pressure from needy litigants which will drive the lawyers to submit themselves to the patronage of the State. Yet points such as the conditional determination of a *prima facie* case by the local committee of lawyers; before grant of assistance, and the limitation on payment of the other fellow's costs by the loser of an action, are obviously critical.

It seems as though once again the impulse to grasp at a tempting short-term result—in this case the convenience of assisted litigation—is being set to whittle away the long-term security—here the independence of the members of the legal profession—on which depends what freedom, civilisation and culture we still have.

In the Health Scheme, the National Insurance Act and the Education Act, the Government's case has been based on exactly the same argument, springing directly from the rejection of Social Credit in the nineteen thirties. That is to say, it is based upon acceptance of the proposition that 'the individual can't afford it,' without enquiring what he can't afford or how what the sum of the individuals can't afford, the State can. In each case a bribe is offered *on the condition* that each man restricts his field of responsibility and diminishes his self-reliance.

The survival of our culture depends exactly on the reversal of this 'trend'.

E.S.D.

"Pen-Name Problem:"

"Editor 'S. C. Freeman' Still Figure of Mystery"

"When delegates to the annual Social Credit League convention which ended Thursday packed their bags and left for their home, they had one mystery which gripped them.

"This was the question—Who is S. C. Freeman?

"This came about when verbal bouquets to different officials and presiding officers were being handed out at the closing session.

"One delegate said he would like to have S. C. Freeman, editor of the Canadian Social Credit-er, official organ of the party, introduced to the convention.

" 'Many of us don't know the editor and probably he knows only a few of us,' said the delegate. 'Why not have him introduced here?'

"The motion was moved and seconded.

"Then Orvis A. Kennedy, business manager of the paper, who was acting as chairman of the meeting, said he wished to make an explanation.

"In reality, there was no S. C. Freeman. It was a nom de plume or pen name.

"Mr. Kennedy explained that the editor's real name could not be divulged, because of business relationships which might be affected.

"Accepting Mr. Kennedy's viewpoint, the convention voted down the motion and left 'Mr. Freeman' draped in obscurity.' "

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Power's Subordination of Judiciary

Soviet Justice, which has been mentioned in connection with the Administration's measures to introduce 'the State' as a third party between litigant and advocate, thus (as the doctors are now aware) controlling both, was first published in September, 1943, by W. H. Allen and Company, Ltd., on behalf of the Haldane Society, an association of socialist lawyers. It bears the name of Ralph Millner, M.A. (Cantab.), a barrister of the Inner Temple, as author, and a foreword is contributed by Mr. D. N. Pritt, K.C., M.P., once expelled from the Labour Party in company with Sir Stafford Cripps. The pamphlet, recently available on railway bookstalls, is now virtually unobtainable, and photostatic copies were made for the information of various legal societies and authorities in England and Scotland. A warning note opposite the contents page states that the views expressed therein do not necessarily represent the views of the Haldane Society. There are four chapters. The first three give a naive account of the legal machinery of the U.S.S.R. The fourth briefly but sufficiently epitomises "The Marxist View of Law." According to this view, which is identical with that enunciated in the *Protocols of the Learned Elders of Zion*, there is, strictly speaking, no Law, only laws. Laws form a part of legal systems, and legal systems are 'organs of power' of the State. The function of laws is to maintain the power of a ruling class. This is the same, whether the ruling class is 'the dispossessed capitalists' or a dominant class of workers and peasants. The difference (which is only one of appearance, or emphasis) between the *Protocols* and *Soviet Justice* is that the illusion of 'classlessness' is openly repudiated in the former but not in the latter. In the pamphlet, and in Marxist propaganda there is no absurdity in the idea of overlordship by a 'disciplined and educated' proletariat—the discipliners and educators are merely reflecting the will of those whom they discipline. The function of law 'during the period immediately following the Revolution', Soviet Law, is double: "to stamp out opposition to the new political system" and "to assist the forward march . . . by maintaining discipline among the working people and by educating them." "The success with which this task was performed is now one of the known facts of history, and an achievement for which the Allied Nations must be extremely thankful." This allusion in Mr. Millner's pamphlet is explainable by his choice of the particular instance of espionage in war time to illustrate the function of the legal system. His next sentence, however, extends the pretexts for legalised defensiveness to fascists, absentees and bureaucratic delinquents, *e.g.*, doctors and lawyers who fail to do what is expected of them by 'the people', (or, as the *Protocols* would say, the Chosen). Most people are now aware of what is meant objectively by "the success with which this task was performed" in Russia. Compare the attitude of the *Protocols*: "In these days the judges of the goyim create indulgencies to every kind of crimes, not having a just understanding of their office, because the rulers of the present age in appointing judges to office take no care to inculcate in them a sense of duty and consciousness of the matter which is demanded of them. As a brute beast lets out its young in search of prey, so do the *goyim* give their subjects places of profit without thinking to make clear to them for what purpose such place was created." Also: "Our legal staff . . . he who wishes to keep his place will have to give blind obedience to deserve it. In general, our judges will be elected by us only from among those who thoroughly understand that the part they have to play is to punish and apply laws . . . "

As Mr. Millner says, "The Soviet lawyer . . . has the advantage over the lawyers of pre-Marxian days that his environment includes a scientific understanding of what the function of law is, and he is therefore able to make a *conscious* effort to assist the legal system to perform its function effectively."

To this particularly ("I am very glad that the author has devoted . . . ") Mr. Pritt gives his approval. "Many British readers," he says, "brought up in the Liberal individualistic tradition, are at first unready to accept—or even to recognise and understand—the doctrine, universally held in the U.S.S.R., and to-day accepted by most students of politics, that the laws and the Courts of every country form part of the machinery whereby the ruling class in the country, however it may be constituted, maintains its rule. They cling indeed to the view — comforting enough until it is shattered by reality—that the Courts and judges are impartial arbiters deciding in terms of abstract justice the disputes between one citizen and another, or between the citizen and the State . . . I think that the author has successfully overcome the obstacles. For myself, I have read the book with the greatest pleasure and profit; I find it remarkably clear and illuminating; and I am confident that it will fully supply the public need."

We have said that the description of the legal machinery of the U.S.S.R. is naive. What better word could be chosen for this (which does not come from a talk in the "B."B.C. Children's Hour, but from Mr. Millner's pamphlet)?: —

"In the legal profession, as in most other branches of work in the Soviet Union, active efforts are made to stimulate efficiency and improvement. One of the most interesting is that form of friendly rivalry called Socialist emulation. As practised among lawyers, it consists of a challenge made by one lawyer to another, in which he undertakes, as a matter of honour, over a period of six months or a year, to perform certain obligations, and challenges his colleague to do as well or better. For example, he may undertake always to prepare his cases thoroughly; never to be late in court; to give fifteen free consultations in factories; to write three legal articles for the Press; to attend a course of lectures on the law; himself to give a series of lectures on legal topics; to assist the junior members of his chambers to improve their advocacy; and to study some political subject. When the period is up, the competitors compare notes to decide who has had the satisfaction of winning."

And all that under the eyes of the Procurator, "a combination of the Attorney-General, the Public Prosecutor and the guardian of the rights of the individual citizen," whose Department "has developed into the watchdog of the public" [Laski], and who watches trials, "intervening in trials where the public interest is involved, and even re-opening cases where [Soviet] justice demands it."

Revolution works for Power, not for Liberty. It begins by proclaiming that men have inalienable sacred rights, and ends by abolishing them, sucking into itself the latent power in them in the process. "The subordination of the magistracy to the government," says de Tocqueville, "is one of the triumphs of the Revolution. At the moment of proclaiming the rights of man, it destroyed their castle and paralysed their defenders." On August 24, 1790, the Assembly made

provision that "The judges are forbidden, on pain of forfeiture, to interfere in any way whatsoever with the operations of the administrative bodies or to cite administrators before them for anything done in the course of their duties."

PARLIAMENT (*continued from page* 3.)

means before the tribunals which are not within the Bill at present—other classes of proceeding or other classes of tribunal. That will be possible. . . .

. . . Now I come to the classes of person who will qualify for legal aid within the limits which I have just indicated. Here the Bill is wider and more generous in its scope than the Rushcliffe Committee proposed. Legal aid will be available to those whose disposable—and that is a word which is used in the Bill—income and disposable capital do not exceed £3 and £75 respectively: it will be available to those persons free of all charge, and will be available on a contributory basis to those whose disposable income and disposable capital do not exceed £420 and £500 respectively.

Let me now say a word about "disposable," because that word qualifies very much the figures which I have given, and leads in the result to the fact that legal aid will be available to persons with a considerably higher income than £420 and an appreciably higher capital than £500. . . .

. . . I think that the net result of all the allowances, exclusions and disregards will bring the gross income within which an applicant may still qualify for legal aid to something between £550 and £750.

Similarly, in regard to disposable capital, a man's interest in his dwelling house, his furniture, his tools of trade and so on, will normally be disregarded. . . . This, however, must be added. Above the limits of £3 and £4 in the case of a married man, of income, and £75 and £150 in the case of a married man, of capital, the scheme will be on a contributory basis, and the litigant will be called upon to assist towards the cost of the litigation. The amount of the contribution will be fixed by the local committee which will have before it any representations that the Assistance Board may think right to make in regard to the litigant's capacity to pay in a particular case, but the contribution will not exceed half the difference between the amount of the minimum income limit of £156 a year and £420 a year, and the whole of the difference between the capital limit of £75 or £150 and £500. . . .

. . . On the other hand . . . those in the higher income ranges may have to bear a substantial proportion of the costs. In the cheaper form of litigation . . . may indeed have to pay the whole of them. I will give one example. A man with a net income of £400 a year after allowing for all the disregards, who has saved up £500 in addition perhaps to his house, fights an action the cost of which is say £500, as it might well be. He may be called upon to pay out of his income £98—that is to say, half the difference between £400 and £208—and £350 out of his capital. He might have to contribute nearly £450 towards the cost of that action. That would be his maximum contribution. If the costs were less than that, he might be called upon to bear the whole of them.

Mr. Eric Fletcher (Islington, East): Is that on the assumption that he lost the action?

The Attorney-General: These would be his own costs. Of course, it might well be that the costs would be payable by the other side, but this would be his liability for costs if the costs could not be recovered elsewhere. I am coming to the question of the further costs. If he lost the action he might have to pay the defendant's costs. I am going to say a word about that in a moment, but that is the case of a man who has capital in addition to his dwelling house. If he had any capital other than his dwelling house, his maximum contribution in that case where his income is that which I have mentioned would be £98, which the local committee might require him to pay by suitable instalments. . . . it is estimated that the scheme within those limits will bring within the scope of the Bill about 12 million people—a quarter of the population of the country. It is estimated further — and the estimate must be a little more than a reasoned guess—that about 100,000 cases will be assisted in the course of each year.

One further matter remains to be said, and that is the liability to pay the costs of the other side if one is unsuccessful. That liability, of course, has in the past always been a most powerful deterrent to the poor man engaging in litigation at all. . . .

Consequently, if we were going to open the doors of the courts freely to all the persons regardless of their means, it would plainly not have been enough, simply to provide them with legal aid in bringing their claims. The risk of paying the costs of the other side if unsuccessful would still have remained a most powerful deterrent to the poor man. On the other hand, of course—and this is equally to be considered, and has been considered—that very risk of having to pay the costs if unsuccessful has been a powerful and proper deterrent against bringing unjustfied claims. . . . It was obviously a deterrent against the bringing of blackmailing actions or actions which it was hoped would be settled, and actions which were not thought likely to succeed. Whipping and the pillory have gone, but in these modern times it is certainly true that the risk of being dragged up to the House of Lords, even if one has been successful in the court of first instance, by wealthier opponents has been a most powerful deterrent to people who might have been able to pay their own costs but just could not afford the risk of having to pay the costs of the other side.

In these circumstances the Rushcliffe Committee recommended what may have seemed to be a very reasonable compromise—that the assisted litigant, if he turned out to be unsuccessful, should be required to pay only such sums in costs as the tribunal thought reasonable in all the circumstances, and that, in addition, his dwelling house should be protected against execution. That proposal we have adopted in this Bill. The assisted plaintiff will be saved from ruin if the case turns out to be unsuccessful; and, on the other hand, from the point of view of the successful defendant, the protection which the liability to pay costs affords him will not be entirely withdrawn. It will be remembered that in this class of case, where the protection is diminished, he will also be protected against frivolous claims by the fact that the action will have to pass through the filter of the local committee.

That brings me to the question of machinery. The Law Society, which, in this connection, is to discharge its functions through a committee consisting of members of both branches of the profession, will, in due time, with the approval of

the Lord Chancellor, make a scheme establishing 12 area committees and 110 local committees, themselves composed, as far as local possibilities enable that to be done, of members of both branches of the profession. The area committees will be responsible for the general organisation and administration of the scheme in their areas, for the preparation of panels of barristers and solicitors from which intending litigants can choose their own solicitors and their own counsel as they wish, and for the appointment of the local committees, and the hearing of appeals from the decisions of the local committees.

The local committees, on the other hand, will consider and determine the applications that are made to them for legal aid, will decide whether a prima facie case has been disclosed, whether it is a case which it is reasonable and good business to bring, and what, if any, contributions ought to be made towards the cost of it; there being a right of appeal to the area committee if the intended litigant dislikes the decision. In addition, the Lord Chancellor will have an advisory committee, composed of such people as he thinks right, to assist him in the general supervision of the scheme which the Bill proposes.

That brings me to the question of finance. The Bill, obviously, is going to cost money. One of the criticisms of the existing scheme was that, apart from its limited scope, it depended entirely on the charity of the profession. It is perfectly true that help was generously and readily given, but it was not right that, in a matter of this kind, litigants should have to depend on the generosity and public spirit of those who had the time to devote to this kind of work. Nor would it have been right under these proposals to withdraw from the legal profession 25 *per cent.* of their potential clients without providing that they should get some fees in respect of the work they were called upon to do.

The Bill provides for the payment of proper fees—55 *per cent.* of the taxed costs in the High Court—which means that solicitors will forgo half of their net private costs, and barristers will forgo 15 *per cent.* of the fees, assessed on a different basis, which they would otherwise be entitled to charge. In the county court and in the police court the margins of costs are much narrower, and it has not been possible to make that cut, so that the full taxed costs—but they will be taxed costs—will be payable to the profession. The total cost of the scheme is estimated—and again I say, quite frankly, that it is difficult to estimate—at something of the order of £4,370,000. It is thought that a substantial part of that will be met by contributions by the litigants and by costs which are recovered, leaving about £2,000,00 to be borne by the Exchequer in the form of a block grant to be provided to and administered by the Law Society. I should perhaps add just this in regard to that aspect of the matter, that the Law Society will furnish estimates and accounts to the Lord Chancellor, and that the Comptroller and Auditor-General will report each year upon them to Parliament. Both matters are dealt with in Clauses 8 and 9 of the Bill.

Now I come—I am afraid I have been rather long about all this, but it is a little technical—to the position in the criminal courts; and about that I can, indeed, be very brief. There, as I said, the proposals in the Bill do not involve any substantial interference with the existing structure. Clauses 15 to 17 provide that legal aid should be available in all cases tried in the criminal courts where it is desirable, in the interests of justice, that that should be done. In cases of doubt, the doubt is to be resolved in favour of the applicant, and machinery is to be provided to ensure that legal aid certificates are granted in sufficient time to enable cases to be properly worked out and prepared. There will be no rigid income or capital limits, nor will any contribution be required from those to whom legal aid is granted; and in the criminal courts, consequently, both the courts where cases are tried on indictment and the summary courts, the provisions for legal aid will have a very wide scope, depending upon the discretion of the judge or the justices to whom the application for aid is made. . . .

Mrs. Braddock (Liverpool, Exchange): . . . The Attorney-General mentioned that there was no other way of dealing with cases that required free legal aid except through the poor man's solicitor departments. That is not quite right, because in Liverpool about 18 months ago we appreciated the fact that there was need for some other type of legal advice for people who were unable to pay. The local authority itself, after discussing the matter with the magistrates, who had met cases of this sort in the courts, decided to allocate the sum £500 to the Personal Service Society for the purpose of paying a solicitor on an agreement through the Law Society in Liverpool.

That agreement was made, and continues to operate at the moment. The matter came to light because, in respect of many cases in the courts, it was found that one side was able to obtain a solicitor, and pay him, and the other perosn was unable, from the financial point of view, to obtain a solicitor. Magistrates, feeling the position rather keenly, were adjourning cases so that the second party might obtain legal advice. The present position has obtained in Liverpool for about 18 months and we are now awaiting a progress report. So far as I know it is working very well indeed, and I think the result, when the report appears, will be rather gratifying and of particular interest. . .

Mr. Turner-Samuels (Gloucester): . . . That brings me to the first point of principle, which is whether there should be in this Bill what is termed a fixed financial limit. . . .

. . . I cannot see, therefore, why this particular aspect of the Bill cannot be met by simply having a system of contribution. That is not an original idea of my own by any means, it is actually being applied in many Continental systems. In my submission that is what the Government ought to consider and apply here. They should say that the financial position of each litigant is the only fair test and that, having studied the financial position of that person, it should then be decided what contribution he is in a position to make. . . .

. . . I ask the Attorney-General to examine also the position of the certifying committees. A certifying committee has to perform a special duty and has to consider whether the proposed assisted person has a reasonable case. Involved in that factor is the consideration of facts, and not only points of law. It is not right that minds which are exclusively technical should be brought to consider those facts. It seems to me that that is a point for a "jury" view, because very often the matter will be decided on the facts rather than upon the law. It is not primarily for such a committee to decide questions of law. It is really for the court to decide those questions. It is for the committee to decide whether, on the facts of the case, it looks reasonable and ought to be allowed to be brought. Therefore, I ask the Attorney-General to consider injecting into these committees some consumer or lay representation.

I would ask the Attorney-General to consider another aspect of the matter. On these committees there will be

members of the Bar and solicitors exclusively. Might it not be said that here we have lawyers who are judges in their own cause? They are judging a matter which really concerns them very closely in a professional capacity, and are not only taking into account the personal and lay position of the assisted person. From the point of view of the profession as well, it would be much better if there were some independent voice or lay representation outside the legal profession, which would be entitled to have a say in this matter. I do not say that the independent voices need be in the majority. I cannot understand why, although there is to be no lay representation on the certifying committees, there will be such representation on the advisory committee whose duty will be to advise the Lord Chancellor. I cannot understand why this distinction should be made between the certifying committee and the advisory committee.

There are various other matters, such as provisions which exclude certain tribunals and certain types of proceedings. I find it very difficult to understand why these tribunals have been excluded. In these days tribunals are very important from a Parliamentary point of view. Much of our legislation involves orders and regulations under such legislation as the National Insurance Act, the Industrial Injuries Act, the National Health Act, National Service, rating appeals and pension appeals. All these are matters of first-class importance, and they all involve tribunals before whom people of very slender means have to go, on issues which are very important to them. I cannot see why there should not be representation in such cases.

In the matter of arbitration, I cannot understand that at all. Arbitration is increasing greatly. As the right hon. and learned Gentleman the Member for the West Derby Division said, contracts of insurance constantly include arbitration clauses. Very often the party concerned is a person of very poor means, and there ought to be facilities for legal aid in those cases. . .

. . . Therefore, with those criticisms of its details, I desire to say I agree with the basic principle of the Bill.

Mr. Emrys Roberts (Merioneth): . . . Another difficulty which may occur with regard to legal advice centres is that the two parties may go to the same legal advice centre. That may easily happen. More often than not the two parties to a law action reside in the same locality. If there is but one centre, presumably the one who gets there first will get the advice, and then what will happen to the other one? That brings me to the position of the local committee which gives civil aid certificates so that an action may be carried on in the High Court or county court. The same thing may happen there. The person who wants to bring the action may refer it to the local committee; and, after he has obtained his civil aid certificate there, the person against whom the action is brought, who may very likely be in the category of an assisted person, may apply to the same committee for a civil aid certificate. These complexities must be very carefully worked out.

Many hon. Members have talked today about restricting the eagerness of potential litigants, of damping down their enthusiasm for going to law over a grievance. People must not be encouraged lightly to go to courts of law. As against that, it is equally important that persons should not feel aggrieved that they have been deprived of access to the courts. I am not sure that the provisions of this Bill respecting civil aid certificates are really adequate in that respect. Suppose a man goes to a local committee and asks for a civil aid certificate, and is refused it; he has the right, apparently, to appeal to an area committee; but if that committee turn him down he has no further appeal. In criminal cases he can go to the judge. Surely in civil cases also it is only right that there should be an ultimate right of appeal to a judge, say a county court judge, against the refusal of a committee to grant a civil aid certificate. After all, the power to grant or refuse a civil aid certificate is a very important power. . .

Mr. Manningham-Buller (Daventry): . . . I hope that hon. Members will not seek to make the introduction and passage of this Measure an occasion for party propaganda. Credit is, it is true, due to the Government for introducing this Bill; we could not. But this Bill emanates from the action of Lord Simon in appointing the Rushcliffe Committee, and from the unanimous report of that widely representative Committee on which I had the honour to serve. I can say with confidence that had we on this side been the Government since 1945, we would certainly have introduced a Measure of this sort at the earliest opportunity. . .

The Under-Secretary of State for the Home Department (*Mr. Younger*): I know that my right hon. and learned Friend the Attorney-General, who introduced this Bill, would wish me to begin by thanking hon. Members for the extremely co-operative spirit in which they have received the Bill, no matter in what quarter of the House they sit. There has been a certain amount of criticism, but it has all been helpful. I need not fear contradiction in saying that the Bill as a whole is welcomed by hon. Members. . .

*Not all Mr. Turner-Samuels's criticisms have been quoted here.—Ed. *T.S.C.*

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