

NUREMBERG—A REVIEW

By VISCOUNT SIMON

AFTER ten months of continuous and exacting toil—some of it in almost daily public sittings under the glare of world-wide observation, and some of it (not less exacting, we may be sure) in constant confidential consultation, the judges at Nuremberg have finished their task. It is an immense achievement—a milestone, and perhaps even a turning-point, in history. While the impression is fresh in our minds of the magnitude of the effort involved and of the unbroken dignity of the proceedings, it may be well to look back—to remind ourselves of the origins, to retrace the steps that have led to this impressive conclusion, and to estimate the true significance of what has happened.

Long before the war had ended the leaders and advisers of the Allies gave consideration to the perplexing question of the treatment which should be meted out to Hitler and his leading criminal associates when their conspiracy to enslave the world had been finally overthrown, and their frightful and pitiless atrocities had been investigated and exposed. In the meantime, the Inter-Allied War Crimes Commission, over which Sir Cecil Hurst, the late Viscount Finlay and Lord Wright successively presided, was set up for examining material bearing upon individual war-crimes.

On one matter there was complete agreement from the start. It was impossible to put on trial and punish the *small* men for individual war crimes—crimes which they were in some cases ordered to commit (though superior orders provide no defence)—unless adequate steps were taken against the *big* men who had inspired and contrived these enormities in the mass. But on the kind of steps to be taken against the latter, there were at first more views than one.

Some were inclined to dwell on the precedent of St. Helena—though any parallel between Napoleon and Hitler drew from Mr. Churchill a characteristically pointed protest. Some argued that the only sensible course was to shoot the Nazi leaders out of hand: why try a criminal if his crime was notorious? Besides, would not a trial end in farce, like the farce at Leipzig after the previous war? Would not the accused take advantage of legal proceedings to persist in Nazi salutes, and end by becoming national heroes? And so forth.

A RIGHT DECISION

HOWEVER, the alternative of a public trial before a bench of judges nominated by the chief Allied Governments grew steadily in favour. There must be few serious commentators who now regret the decision to adopt this course. The Moscow Declaration of November 1, 1943, signed by Mr. Churchill, President Roosevelt and Marshal Stalin, spoke of "the case of the major criminals whose offences have no particular geographical localisation" and announced, without more detail, that they would be "punished by the joint decision of the Governments of the Allies." But it was not till the last year of the war that agreement as to method had advanced so far as to justify negotiations in London, in which the Americans took a particularly active part, for drawing up a Four-Power pact under which the Nuremberg Court would be set up.

The present Government were heirs to these negotiations and carried them to an agreed conclusion with vigour and despatch. It was a masterly piece of work. Hence emerged the Charter of the Court, a document entirely without precedent which authorised the Tribunal, sitting as a court of criminal jurisdiction, to try those brought before it for breaches of international law and cognate war crimes, and to sentence those proved to be guilty.

The objection has been raised in some quarters that the course taken involved the condemnation, after the event, of men for acts which had not been declared to be crimes against international law at the time when they were perpetrated. The objection is misconceived: the Tribunal in the first part of its long and closely reasoned judgment has disposed of it most effectively. The substantive law that the Tribunal has applied already existed—the Kellogg-Briand Pact, for example, which condemned recourse to war as an instrument of national policy, is a Treaty of 1928, and Germany is one of its 63 signatories.

> "In the opinion of the Tribunal," the Nuremberg judgment runs, "the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact."

LORD JUSTICE LAWRENCE

THE defect in the past in these prohibitive provisions of international law has been that there was no Court with power to try and to punish the transgressor. It is the creation of the Court, not the enunciation of the law, that is the novelty; and few people will feel their sense of justice outraged because when Germany collapsed the Allies decided to create such a Court rather than to let those who were guilty of such deeds violate the law with impunity.

What is so remarkable is the smoothness with which the machinery devised by the Allies has worked. For this the chief credit must go to the presiding judge, Lord Justice Lawrence, with his faithful and self-effacing colleague, Mr. Justice Birkett, at his elbow. A Court engaged in trying Germans and composed of American, British, French and Soviet judges had great difficulties to surmount. Apart from differences in language, which required everything that was said to be translated into three other tongues, there was the contrast in traditional methods of procedure. For instance, neither in Soviet law nor in French law is an accused person sworn like an ordinary witness; I believe the same is true in German law. These and a dozen other contrasts in national practice were got over partly by the prescriptions of the Charter, and in large part by the patience and tact and wisdom of the presiding judge, and by the co-operative spirit of the Bench as a whole.

The present Lord Chancellor is indeed much to be commended for his choice of the two British judges. Sir Geoffrey Lawrence is, as his father the Lord Chief Justice was, the embodiment of good sense and good temper, always alive to the point and always considerate to the argument on both sides. His authority and reputation grew with every week of the hearing, and it is a proud thought for British lawyers—and for British laymen too—that by common consent the chief British representative became the most eminent and most respected figure of all the distinguished men engaged in the Nuremberg trial. He never missed a day.

Sir Norman Birkett, too, was an admirable choice. He threw himself into all the difficult work behind the scenes and promoted harmonious co-operation and good understanding, utterly regardless of the fact that, as things worked out, he had himself small opportunity of speaking before the footlights. Mr. Justice Birkett's broad humanity and fervent devotion to peace are known to all who have heard him on the wireless. Justice, with him, is not divorced from mercy, but when he tries the bully he does not forget the victim. The country owes much to him, as well as to Lord Justice Lawrence, for vindicating our conceptions of an impartial trial under the rule of law.

There are other British names which should be specially mentioned. Our team of prosecutors was a strong one, and from top to bottom of the list its members admirably illustrated the effectiveness, as well as the fairness, of British methods. The Attorney-General, though of necessity heavily engaged elsewhere, delivered an opening and a closing speech of outstanding power and eloquence. But it was upon Sir David Maxwell Fyfe's shoulders that the bulk of the heavy work fell, and the manner in which he discharged it has proved to the world what a wonderful instrument for establishing truth and exposing falsehood is the British way of cross-examination. He has sacrificed a whole year of Parliamentary opportunity to carry through his allotted task; he returns home with a world-wide reputation. Such public spirit makes his re-entry into the political arena doubly noteworthy.

I would add a word on the subject of the acquittal of three of the accused, and of the comment which this has aroused in certain quarters. In the first place, a long experience has convinced me that no one is really qualified to quarrel with a verdict unless he has first informed himself fully on the issues to be decided, and given to the whole of the evidence the full and concentrated attention which it has received from those who have had to pronounce a conclusion. And, secondly, we have to remember that highly qualified judges, endeavouring to do their duty without fear or favour, reach the view which they themselves believe to be right (even if it be not unanimous) in pursuit of justice without paying the least regard to any other consideration whatever. We cannot ask them to do more: they would never consent to do less.

A PRECEDENT

WHAT, then, is the true estimate of the importance of the Nuremberg trial? It has established the possibility of elevating the rules of international law for regulating or preventing aggressive war into effective provisions, for breach of which offenders may be brought before a criminal court with adequate powers to convict and to punish. For this is the first time that a joint Court of Nations with such powers has sat. That is a precedent (and a warning) of enormous consequence for the future peace of the world. And the story of Nuremberg teaches another lesson. It shows what can be done by steady and genuine co-operation between the representatives of nations, set to discharge a common task. The Charter which created the Court would never have been agreed without much give-and-take. The work of the Court could never have been carried to its dignified conclusion save in an atmosphere of friendly co-operation between all the eight members of the Bench throughout. The lesson of Nuremberg may well prove of value to some other international conferences, where such complete harmony is proving difficult to reach.

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The Office of Lord Chancellor

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A NUMBER of correspondents writing to THE SUNDAY TIMES have been discussing the question whether a Roman Catholic can hold the office of Lord Chancellor. The question is not altogether an easy one, and the suggested answers are by no means unanimous

I am put in mind of a story about Lord Coke who, being asked by James I to answer a question of law, desired to know whether it was one of Common Law or of Statute Law. "For," Coke explained, "if it were one of Common Law I could answer it in bed, but if it were one of Statute Law I must get up and examine the statutes." In this case, the question is one of Statute Law, and there are a great many statutes, some of which are very perplexing to construe.

What is clear is that no Roman Catholic has occupied the Woolsack for several centuries. The Test Act of 1672, passed in the time of Charles II, required not only that every Minister of the Crown, but that every military and naval officer and everybody who served the Crown in any capacity should, besides taking the oaths of allegiance and supremacy, make at the same time a declaration of his disbelief in the doctrine of transubstantiation. This was designed to have the effect of excluding Roman Catholics from any form of Royal service, and, in the case of every conscientious and honourable believer of that faith, it would do so.

Five years later, Parliament in 1677 went so far as to provide that no member of either House of Parliament should sit or vote without making such a declaration, and, to make matters absolutely plain, the declaration was enlarged to include a repudiation of the invocation or adoration of the Virgin or the Saints and of the sacrifice of the Mass

Catholic Emancipation

Early in the next century intolerance went even further, by including in the ban people who wished to follow various professions. Under the terms of a statute of George I every barrister and every attorney was forbidden to practise without taking oaths or making declarations designed to exclude Roman Catholics. Oddly enough, this veto did not extend to conveyancers, with the result that conveyancing was the branch of the legal tree upon which many Roman Catholics found a perch. Heads of colleges, schoolmasters, and many others, were put by Parliament under the same test.

Most of these restrictions—outrageous as they must seem to every man of liberal outlook today—were done away with by the ultimate success of the movement for Catholic Emancipation. That change might well have come about a generation before it did had it not been for the violent objection of George III in the days when he was exercising almost a personal government. Pitt had been in favour of emancipation, but the occupant of the Woolsack, Lord Thurlow, operating very closely with the King against his own Prime Minister, fomented the opposition. At length, the Act of 1829 became law.

The Act provided that Roman Catholic laymen could sit and vote in either House of Parliament on taking in prescribed form an oath of allegiance which did not violate their conscience; similarly, they could hold civil or military office under the Crown and be members of Corporations. But the Act contained a special clause (Section 12) that "nothing herein contained shall extend or be construed to extend to enable any person or persons professing the Roman Catholic religion" to hold certain named offices. One of these was the office of Lord High Chancellor, and another was the office of Lord Lieutenant of Ireland. The latter of these exclusions was got rid of by the Government of Ireland Act, 1920, and, indeed, Lord FitzAlan, who is a prominent Roman Catholic, has since held the office of Lord Lieutenant. But under the Act of 1829 the prohibition against a Roman Catholic becoming Lord Chancellor by reason of the declarations he was required to make, continued unaltered.

A Jew is Eligible

The difficulty is to determine whether the result of a series of Victorian statutes passed in 1863, in 1867, and in 1871, which repealed many previous Acts about oaths, have, on their true construction, removed the disqualification altogether. The requirement in the Test Act of 1672, that every holder of an office under the Crown should receive the Sacrament according to the usage of the Church of England, was finally removed in 1828, and the idea that a Lord Chancellor nowadays must be an Anglican is quite mistaken. The better view, I think, is that a Jew might occupy the Woolsack, for what formerly excluded members of that faith was the requirement that the oath to be taken w taken "on the faith of a Christian." Th requirement vanished in 1867.

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Two things are quite certain. The first is that in these days, and indeed for some seventy or eighty years back, a Lord Chancellor, on taking office, does not take any oath or make any declaration which a Roman Catholic would hesitate to accept. The oaths taken by a Lord Chancellor today are the oaths ordinarily taken when one assumes any Ministerial office—the oath of allegiance and the oath to serve in the office faithfully—together with the judicial oath.

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The Lord Chancellor

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SIR,—The article from my pen on the above subject contains a historical 'howler" which, though it does not affect the substance of the matter, I ought in candour to admit and correct. I spoke of Mr. Gladstone's Bill for enabling a Roman Catholic to occupy the Woolsack as being brought forward in the time of his last Government. Mr. Gladstone's last Government took office, as everybody knows, in 1892, but the Bill was introduced in November, 1890, and was rejected on second reading in February, 1891, when Mr. Gladstone was in Opposition. It was, in fact, what was common in those days—but what at present is prohibited in the House of Commons—a "private member's Bill."

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constitutional tradition—an enabling or
declaratory Act would be required first.

Let us conclude this dissertation by a
story, a true story, though it is not
precisely relevant to what I have been
saying. When the first Lord Russell of
Killowen (formerly Mr. Gladstone's
famous Attorney-General, Sir Charles
Russell, Q.C.) was appointed Lord Chief
Justice of England, Lord Rosebery, who
was then Prime Minister, rode over from
Epsom to Tadworth Court in order to
congratulate his wife. Lady Russell
thanked Rosebery, but added with spirit
that she had hoped that her husband
would be the first Roman Catholic
Lord Chancellor since the Reformation.
Rosebery replied that she was quite
mistaken in not preferring the Lord Chief
Justiceship, for that is a position which
can be held for life, and its occupant does
not change with changing Governments.
"A Lord Chancellor," said the Prime
Minister, "may hold a splendid office as
long as it lasts, which is not usually very
long. But an ex-Lord Chancellor is
nothing but a shabby old gentleman with
£5,000 a year!"

Sunday Times
Nov 3. 1946

The Lord Chancellor

From VISCOUNT SIMON

SIR,—The article from my pen on the
above subject contains a "howler" which, though it does not
affect the substance of the matter, I am
in candour to admit and correct. I spoke
of Mr. Gladstone's Bill for enabling a
Roman Catholic to occupy the Woolsack
as being brought forward in the
his last Government. Mr. Gladstone's last
Government took office, as everybody
knows, in 1892, but the Bill was intro-
duced in November, 1890, and was rejected
on second reading in February, 1891,
when Mr. Gladstone was in Opposition.
It was, in fact, what was common in those
days—but what at present is prohibited
in the House of Commons—a "private
member's Bill."

House of Lords. SIMON.

Dec 20. Lord Russell of Killowen died suddenly from heart collapse: - a dear friend and old colleague who gave up his Law Lordship a year ago. He was 79- We took silk together 38 years ago.

Lord Simon writes:—

By the death of Frank Russell there passes from this troubled world a serene spirit of rare quality, always to be remembered with affection and admiration by his friends. He was, of course, a fine lawyer and a splendid judge, with a passion that was worthy of his father's son for reaching the true conclusion, and a power of concentrated and precise statement which was the envy of—or at any rate a model for—more prolix colleagues. But the characteristic which endeared him to so many was his invariable kindliness—a kindliness which sprang from the depths of his nature, which mingled charity with any criticism, and which made it a special pleasure to work with him, even on rare occasions of disagreement.

In the calmer waters of the Chancery side, and before the Judicial Committee, where his practice as a barrister had lain, he had had little occasion for the oratorical vehemence which caused someone to describe the advocacy of his famous father, Sir Charles Russell, as an "elemental force." But on the Bench there was much resemblance between the two life-peers who chose in succession the title of "Russell of Killowen"—above all, in their firmness of judgment when once the facts were grasped and the authorities studied. It was interesting to compare the excellent portrait of Frank Russell painted by R. G. Eves, which hangs in his study, with Sargent's fine picture, on the opposite wall, of the "Old Chief," as the son always called him.

So generous and friendly a temperament made Lord Russell happy and popular in many fields. At the Garrick Club his whimsical speeches when presiding at some dinner of congratulation had an exquisite felicity and humour. He liked on suitable occasions to wear the "Authentics" tie which reminded us that he had been a cricketer at Oriel. He played golf regularly at Walton Heath at weekends till a year ago, and in spite of shortness of length was too straight to be easy to beat—moreover, like a true golfer, he much preferred to win. Yet when the doctors told him that the strain was becoming too much for his heart, he gave the game up without a whimper, and ended his days, quietly but gaily, in his ideally happy home. *Requiescat in pace.*

Times Dec 23. 47

Butts Gate
Knibworth Green
Herts.

27 Dec 46

Dear Lord Senior

I feel that I must write to say what a pleasure and comfort it was to hear him and talk with him and myself to read what you had written in the Times about my father.

As you know he regarded you with affection and admiration, and was especially pleased at your kindness to me in his Bill of Reference.

It is a great wrench to lose so good a man. Yours sincerely
Charles Russell

BIBLIOTHEQUE ROYALE BRUXELLES

Jan 9. 1947. K and I returned last night from a fortnight in Morocco, where we stayed at the Hotel Mamounia at Marrakech — "a rose-red city half as old as Time" as Dean Burgon described Petra in his Newdigate. We dined one night with the local Pacha in his Arabian Palace — fingers instead of forks, endless courses served

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from a central bowl while we sat round on cushions, and at the end warm rose-water over our hands with a cake of Pears' Soap and a towel.

Armond Massey, the French golfer and ex-champion, was at Marrakech and told me of his being seized at Biarritz by the all-conquering Germans; an examining officer put him through a severe interrogation. "Naturally, you love France best; but after France, what is the country you most admire?"

"L'Ecosse", Massey replied.

I was asked for an elegiac Couplet to turn into Latin "Lift up your little white hands for me, which prayeth for you to God." † For thee". I have suggested:

Tende manus ~~pro me Caelo~~ tuteras pro me, precibusque meum:

Pro te sacpe deum, parvule, voce precor.

Feb 7. 1947. One of the new year honours was a peerage for Sir Ernest Simon, formerly a Liberal M.P. and once Lord Mayor of Manchester. In spite of my protests, he has decided to be called Baron Simon of Wythenshawe, wherever that may be. In practice there will be two Lord Simon's in the Lords + the confusion about messages and letters will be endless. He rendered to the various excesses - his business connections, his municipal record,

† This is from Colet's preface to his Latin grammar. I did not know the epithet 'white' came in.

BIBLIOTHEQUE BUTLER

from heart collapse: gave up his last hobbyhorse
Butler Gallery
Scarborough Open Exhibition

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Jan 14. 1946. I was one of fourteen elderly chess-players at the N.L.C. against whom Ponar, the Spanish boy of 13 who has just scored 6½ wins in the International championship, played simultaneously. This youngster won 12 games and drew 2. I was one of his victims. I was in fact a knight up and should have won by steady play, but I attempted a "brilliancy" with fatal consequences. At the end, being asked to thank and congratulate our conqueror, I said "We bow our heads to the Master". The boy replied— "My legs are tired"!

A Minister's Wife

THE kindred points of heaven and home are not those to which the agitated spirits of to-day most gratefully revert. Motherhood, apart from its clinical aspects, has had a bad press for years; and this is a pity, for the refounding of our lost and lapsed homes depends mainly on mothers. That Viscount SIMON'S *Portrait of My Mother* (HODDER AND STOUGHTON, 3/6) has run through four editions since 1936 is, however, not only a tribute to a noble and high-spirited woman but to the enduring English delight in such characters. A young Welsh minister's wife, who left a happy country-house home for a dour Manchester suburb in the 'seventies, Fanny Allsebrook Simon carried the enchantment of her holiness and beauty into every relationship her ninety years of life encountered. Her consideration for her friends, poor and rich, never involved the slightest decline from her own standards; nor would her circle have prized her so dearly if it had. Under the Breton cap that covered her white hair, there lurked to the last a gay resourcefulness that never sought its own yet turned every dispensation to account. "If I don't like what he is saying," she would declare, apropos of a dull preacher, "I can always plant out my thoughts." H. P. E.

Punch Apr 17. 1946

to 'dear Ernest'

his prominence in Manchester University - I replied, that, as to 'the Importance of Being Simon', he had surely admitted the most powerful argument — his laundress objected to a change of name on his collars! (I imagine the real reason to be that his wife wishes continues to be known as Lady Simon.) He stood unsuccessfully as an Independent at the recent by-election for the English Universities, and announced his further drift into the Labour Camp only a fortnight before he was ennobled — quick work. [and now the fruit has appropriately him at a princely salary to be the head of the B. B.C. — July 47.]

Feb 4. 1947. Today I introduced in to the Lords a private Bill — the first time a non-Government measure has been presented there for many years. (This could be done in the Commons, and the Government has taken all the time of that House.) My bill enables the Crown to be sued as occupiers in cases where an action for damages would lie if the occupier was a private person. I took this course because Ever since Last September it has been plain (Adams v Naylor - see 5 pages back) that in such cases the injured person had no remedy at all. Legislation on the general question of Remedies against the Crown is overdue, but was not proposed in the King's Speech, and when challenged for it was not encouraging for this session. Later, he said he was having a bill prepared and hoped to introduce it - but he told me privately of some departmental objections. My intervention is intended to help the passage of a Government measure into law this Session.

REMEDY AGAINST THE CROWN AS OCCUPIER BILL. [H.L.]

VISCOUNT SIMON: My Lords, I beg leave to introduce a Bill to provide a remedy against the Crown as occupier of premises, analogous to that now existing against a private occupier. I beg to move that the Bill be now read a first time.

Moved, that the Bill be now read 1ª.—(*Viscount Simon.*)

On Question, Bill read 1ª, and to be printed. 4 Feb. 47

Right to Claim Against The Crown

By A Sunday Times Correspondent

Viscount Simon has performed a notable public service by introducing a private Bill into the House of Lords for dealing, in part, with the problems of claims against the Crown—i.e., against Government Departments. For he has impelled the Government to hasten the introduction of a more comprehensive measure of their own.

No other interpretation can be placed on the Lord Chancellor's announcement that he hopes to be able to introduce the Government Bill before the end of the month, presumably with the intention that it shall be passed into law this session; for when the subject has been raised on previous occasions, while admitting the urgency of the problem, he has been most discouraging in his estimate of when legislation would be possible.

A PIQUANT POSSIBILITY

As no two Bills dealing with the same subject can be considered simultaneously, Lord Simon will have to withdraw his measure if the Government proposals are introduced. A piquant Parliamentary situation would thus be avoided.

In the Commons the Government—to the dissatisfaction of members on both sides of the House—have continued the wartime practice of taking up private members' time. No private member, therefore, can introduce a private Bill. But no such inhibition applies to the Lords.

If the Government Bill had not been announced and Lord Simon's Bill had passed the Lords—which it was probably certain to do—the Government would have been put in a very embarrassing position. Despite their ban on private members' Bills in the Commons they could not decently have refused facilities in the Commons for a measure passed by the Lords and backed by an overwhelming mass of opinion in all parties both in and out of Parliament.

Sunday Times 9 Feb. 47

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Punch Apr 17. 1946

Vingt Ans Après

By VISCOUNT SIMON

READING the report of the discussion ten days ago in the House of Commons on the Second Reading of the Trade Disputes and Trade Unions Bill, one is struck by the extent to which the membership of the House alters in twenty years.

The deplorable events usually called the "General Strike" went on for nine days in 1926 amid keen debate in Parliament; the legislation that followed, seeking to define illegal strikes, to redefine intimidation, to substitute "contracting in" for "contracting out," and to deal with the case of the established Civil Service, was discussed at length in 1927. But I do not think that a single member who took part in the discussions of 1926 and 1927 spoke in the recent debate: was any one of them still a member of the Commons?

Even more remarkable is the fact that the protagonists at the time of Sir William Jowitt's abortive Amending Bill of 1931 have all left the House—except Sir Stafford Cripps, who was called on the other day to explain an apparent difference of view from that which he espoused as Solicitor-General fifteen years ago. At any rate, he was then advocating a Labour Bill to amend the statutory definition of an illegal strike. Now he supports a Bill for sweeping away all statutory definition whatever.

I may observe, in passing, that neither Sir Stafford Cripps nor Mr. Eden, who interrupted to correct him, was accurate in his recollection of how Mr. Churchill applied the amusing phrase they quoted about the Labour Government's Bill of 1931. "Take it upstairs and cut its dirty throat!" was neither the advice given by Mr. Churchill to Ramsay MacDonald, the then Prime Minister, nor the advice which Mr. Churchill imagined that MacDonald received from Lloyd George. The joke was richer than that.

Lloyd George was widely suspected at the time of secretly conferring with the Prime Minister as to how his Liberals might keep the Labour Government in office; and in Mr. Churchill's lively imagination it was Ramsay MacDonald himself who had appealed for the Liberal leader's help. "We have never been friends—at least, not what you would call holiday friends—but we have both been Prime Minister, and dog don't eat dog. Just look at the monstrous Bill the trade unions and our wild fellows have foisted on me. Do me a service, and I will never forget it. Take it upstairs and cut its dirty throat!"

This is very much what afterwards happened. The Bill was dropped in Committee.

A Terrible Danger

The fact that twenty years have passed since the General Strike occurred, and that the personnel of the House of Commons has so largely changed in the interval, goes far to explain the indifference with which some speakers in the recent debate regarded that event in retrospect. There was a hope expressed that it would not occur again, but little recognition in some quarters, as it seems to me, of what a terrible danger was averted by its collapse. To stop all transport (including transport of food) and all printing (including newspapers), to stop the iron and steel industries, to stop the supply of gas and electricity for power purposes, and to threaten to keep this up until the Government was brought to its knees—this, surely, was a conspiracy against the community, and, if it had succeeded, would have been the exercise of an authority usurping the functions of Parliament.

No doubt vast numbers of participants did not fully realise that they were engaged in an attack on constitutional methods, and supposed that because they felt sympathy for the miners (as many other people did, too) they were acting within the law; but not all the leaders were so innocent of any understanding of what they were about. The leaders' mistake was that they imagined that Parliament and the nation could be coerced by such methods.

Sir Hartley Shawcross, of course, concedes that "the obviously revolutionary strike, which is intended to overthrow the Government by force or by non-constitutional means" is illegal, but he boggles at any admission that the General Strike was of that character. The Attorney-General insists that the correct answer in any given case turns on a question of fact; but the importance of that observation depends on whether the case is near the border-line. It was a wise judge who said that he could not define the point at which day turned into night, but he knew that noon was day, and midnight was night. Does any impartial person, who remembers or studies the facts, really question that, however strong the impulse may have been, and however genuine the sympathy, the object of the General Strike was to coerce the executive Government, and, if necessary, to overthrow it?

Doubt and Confusion

But, after it was over, large numbers of trade unionists and their advisers persisted in declaring that the General Strike was nothing but the ordinary exercise of trade union rights. Undoubtedly, this view was genuinely held and the result was doubt and confusion. The Act of 1927 (which the Socialists started to oppose before ever the Bill was produced) in its first clause was an effort to clear up such confusion and to make the law more definite. If the Act of 1927 does not do this effectively and justly, then it ought to be amended in the necessary particulars. But to repeal it out-and-out and to put nothing in its place is only to throw the subject back into uncertainty. It is deliberately fomenting a doubt where the legislature ought to do its utmost to prevent doubt existing.

There was a remarkable argument used in the recent debate in support of the repeal of the Act of 1927, to which special attention should be called. It was to the effect that if trade unions went in hereafter for an illegal General Strike nothing on the Statute Book which made it clear that their action was illegal would stop them. Therefore, it was argued, the best thing was to have no statutory provision at all! This seems to me to amount to an invitation to Parliament, which is the law-making authority, to abandon an essential part of its functions. If the law is obscure or doubtful, it is for Parliament to make it clear. If a course of action is against the rights and interests of the community as a whole and should be declared illegal, Parliament ought not to be deterred by threats, expressed or implied, from discharging its duty. In fact, I think it will be found that there are plenty of citizens who will decline to join in clearly illegal action, and plenty more who will support the authority of Parliament, whatever betides.

Towards the close of the General Strike a friend of mine, dressed in his uniform of the last war, was guarding a bridge over a railway. The country station, silent and deserted, was just below. My friend told me that the railway porter, out on strike, came daily for a friendly conversation. On the final occasion the porter approached him with a copy of the "British Gazette" in his hand. "Look here," said he, "here's a bloke in Parliament says this here strike isn't legal . . . We've been had. I'm going back."

Lawyers as a class may not be popular, but there is in the ordinary citizen an innate respect for the law. What a pity to make the ordinary citizen more doubtful as to where illegality lies when it is in everyone's interest to make it as clear as possible!

Sunday Times
Feb 24. 1946

A Happy Life

Portrait of My Mother. By Viscount Simon. (Hodder and Stoughton. 3s. 6d.)

In this brief memoir, written shortly after his mother's death in 1936, and now reprinted, Viscount Simon is concerned not so much to present facts, details and incidents as to sketch a character of singular freshness and charm. He has wholly succeeded in his aim, and in doing so disposes of the old idea that Puritanism and gaiety go ill together. For Mrs. Simon, wife and widow of a Congregational minister, enjoyed every moment of a long life in which strict religion enriched and enlarged a natural gaiety of temper.

D. T.

BOOK OF THE DAY
Mar: 26. 1946.

Portrait of a Mother

VISCOUNT SIMON has had reprinted the two short pieces entitled PORTRAIT OF MY MOTHER, which he wrote when Mrs Edwin Simon died in 1936 in her 90th year.

In the first few pages the outline of Mrs Simon's life is given in the form of a series of remembered incidents. Then follow impressions of her character from personal recollections and the letters of friends. From the whole there emerges a clear and affectionate portrait of one of those remarkable Victorian women who were completely unconscious throughout their lives of doing anything except what they regarded as their obvious duty, but whose sweetness and depth of character secured them the lifelong respect and affection of those who were privileged to know them.

A Real Test

The transplanting which followed Mrs Simon's marriage at the age of 25 was a real test of her fibre. She had been brought up in the English Midlands as the youngest girl in a large family of brothers and sisters in a house in the country. Edwin Simon and she were married when the young Welsh Congregational minister was appointed to his first charge in the Hulme district of Manchester.

For 12 years after her marriage she had to face the difficult role of "the minister's wife" in the forbidding surroundings and drab atmosphere of a Lancashire industrial suburb. But both there and later in Bath she accomplished to perfection "the endless round of visiting and condoling, with sewing parties and missionary teas." Quite apart from her tranquillity of outlook and serenity of mind, Mrs Simon had the right approach to the little incidents of day-to-day life. "If I don't like what he is saying," she declared about a prosy preacher, "I can always plant out my thoughts."

Brave Spirit

It is pleasant to think that a spirit so brave and so happily adjusted lived to experience a graceful and serene old age and the affection and devotion of her descendants. How charming that old age was can be seen from the reproductions given in Lord Simon's memoir of two portraits painted by Gerald Kelly, R.A.

The memoir is published by Hodder and Stoughton at 3s 6d. Lord Simon is to devote any proceeds from it to his wife's fund for assisting the abolition of present-day slavery.

Glasgow Herald

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Glasgow Herald.

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LEGE CHRONICLE [MAY 24, 1945

CARMEN EUROPAE

By

ARNOLD WARD
Newcastle Scholar 1895

Europa tandem libera barbaris
gaudet fugatis, laetaque conspicit
devicta Germani tyranni
agmina, Teutonicasque clades.

quinque heu per annos impius hostium
vastabat agros ductor et oppida,
saevique tortores feroci
supplicio populos premebant.

una inter omnes insula ~~patrios~~ nobilis
invicta monstri verbera reppulit,
solusque sub mundi ruinis
~~indomitus~~ viguit Britannus; impavidus

frustra sub undis missile ferreum,
frustra per auras torta falarica;
per tela, per flammas reluctans
sanguineo stetit ore salvus.

at mox in armis per mare ad Angliae
pervenit oras progenies pia,
fidique per campos superbam
constituere aciem coloni,

magnumque quae trans Oceanum jacet
praeclara florentissima civitas
classes et armatas cohortes
sponte sua sociata misit,

stirpisque linguaeque et Larium memor
enixa summis viribus institit,
sanctisque Libertatis aris
vovit opes generosa totas.

sed nec Britanni cum sociis suis
nec militum vis tanta Columbiae
Germana debellare signa
sufficerent, nisi mole magna

Eoa proles exoriens simul
bello bifronti Teutonicum latus
tergumque perfodisset atro
volnere letiferoque telo.

immanis instar denique beluae
percussa praeceps labitur occidens
Germania, et tu, dux latronum,
morte luis, scelerate, culpam.

nunc et Batavis fausta dolentibus
Fortuna Belgisque alma tuens simul
ridebit, et Gallis renatis
auxilium feret et salutem;

tuique semper, cara Polonia
totius orbis gens hominum memor
adsistet adjutrix, futuri
spem referens melioris aevi.

sed luctuosus ne redeat dies
fas est in aequo foedere gentium
collecta conjungantur arma,
pignora praesidiumque pacis.

hac lege bello libera et innocens
florebit aetas, et melior dies
hac arte per terras refulgens
luce nova refovebit orbem.

Oxford Union Memories

By VISCOUNT SIMON

READING the appeal recently issued on behalf of the Oxford Union Society for £8,000 to wipe off liabilities, I have been led to meditate on the Union as it was in my time, now just fifty years ago, and to recall the part played in Union debates by some of my friends at that period.

Hilaire Belloc, then a history scholar of Balliol, was our star performer when I joined the Union, and I agree with the late Lord Birkenhead that he was "undoubtedly a great orator." The full tones of his resonant deep-pitched voice might have come from the throat of his hero, Danton. His wide range and his imaginative outlook, together with the intensity of the feelings to which he gave utterance, made an unforgettable impression. At that time he was a French citizen; a few years later, I was one of those who stood sponsor when the Home Secretary naturalised him. He was swept into the House of Commons by the tidal wave of 1906, and remained a member for two Parliaments. He never got quite acclimatised to our Parliamentary ways, but I recall a tremendously good speech of his about Haldane's proposals for a Territorial Army, in the course of which he gave a most dramatic description of his experiences as a French conscript in the Horse Artillery at Toul.

Belloc's principal opponent in Union discussions was F. E. Smith, who outraced him for the prize of the Presidency. The two men had very different qualities, but they were perfectly matched as protagonists in undergraduate debate. I well remember Belloc proposing a motion to the effect that the House would "welcome any scheme for associating undergraduates with the government of the University." He recommended his proposal with rhetorical allusions to the principles of 1789; he brought in references to universities 'abroad,' and included a Latin quotation pronounced in the Continental manner.

"F.E.'s" Banter

Then came Smith's turn, and I have often thought since, when I have listened to him in the House of Commons and sometimes prepared to reply to him, how much of the smartness of repartee he then disclosed survived in his Parliamentary performances. The motion, he pointed out, called for approval of "any scheme," and accordingly Smith produced a scheme of his own and argued that no one could support the motion unless they accepted what he put forward. The scheme would have made Belloc Vice-Chancellor—"And then we must have a Hebdomadal Council—well, what could be more suitable than the Standing Committee? That will give its members something to do!" Belloc's Latin quotation was mercilessly parodied, and amidst shouts of laughter Smith swept on to his highly spiced peroration. F. E.'s powers of merciless banter and of coruscating phrase were, I think, just as great in those youthful days as when he made a reputation for these qualities in later years and on a wider stage.

There was a Union debate—it is said to have been the first in which Smith took part—when Sir Wilfrid Lawson, M.P., the genial leader of the Temperance Party, came down as a special visitor to support a motion in favour of "Local Option." F. E. followed him, and three-quarters of his speech was a seriously phrased argument against the proposal. But at the end his tone suddenly changed and he announced that he felt bound to refer to a past incident in the life of the Rt. Hon. Baronet. The mistaken benevolence of a relative had left to Lawson, according to Smith, a valuable cellar of wine.

"What did he do, Mr. President, with this noble gift?" demanded the indignant orator, who proceeded to describe the various vintages in ecstatic phrases, the only one of which I now remember being "the bottled laughter of the peasant girls of Spain." "What did he do with it? Why, he broke the neck of every bottle and poured its contents down the drain.

"And," continued the speaker in solemn tones, "when, in a future existence, I am lolling on Abraham's bosom, and a cry comes up to me from 'another place'—the cry of the Rt. Hon. Gentleman begging for a drop of water to cool his parched tongue, I shall reply, 'Not a drop! You have rejected more precious liquor.'"

Famous Names

Looking through the list of Union Presidents, it is really remarkable to find how constantly the undergraduate occupant of the chair has later in life become a prominent public figure. Here is the late Marquess of Salisbury; here are Archbishop Tait and Lords Bowen and Goschen and Bryce and Milner and many another. And here, in a later period, are John Buchan and Steel-Maitland and Hore-Belisha and the late Archbishop Temple, and a whole group who have since found their way to the House of Commons, or have become known in literature or learning or law.

The Union was founded in 1823 and at its centenary banquet everyone who spoke (it was a very long list) was an ex-President — among them Curzon, Asquith, Archbishop Lang and Viscount Cecil. The most famous of its early discussions was an occasion when a team from the Cambridge Union came over, including Monckton Milnes and A. H. Hallam, to maintain that Shelley was a greater poet than Byron. The Oxford speakers, who supported the claims of Byron, included the future Cardinal Manning.

Gladstone was there and his zeal for the Union—he was President in 1830—like his love for Oxford, remained constantly with him until the end of his life. On the day he died F. E. Smith moved, and I seconded, the motion "that in view of Mr. Gladstone's death this House do now adjourn." The President that day was a young man from Keble named Garbett — he is now the Archbishop of York.

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Sir,—The most brilliant speech I ever heard at the Oxford Union was delivered by Mr. Churchill in reply to Mr. F. E. Smith in or about the year 1907. I sat next the late Professor Marett. As I sat down, the Professor said: "I don't know who is responsible for asking Winston Churchill to reply to F. E. Smith. I mean to say, you know, F. E. Smith was a pretty considerable performer when he was here. I don't know much about Churchill, but I don't fancy he's a man of any education. He did nothing at Harrow and he never even went to a university. It does seem a most extraordinary thing to put him up against F. E. Smith at Oxford of all places. However, we shall see."

Hardly had Mr. Churchill begun to speak than the Professor burst into applause. He continued applauding throughout the speech and when Mr. Churchill sat down, he exclaimed "By jove! what a man; Gladstone was nothing to him."

Nobody enjoyed Mr. Churchill's speech more than F. E. Smith. Lord Birkenhead was not only a capital speaker; he was also a capital listener.

HUMPHREY PAUL.
Reform Club.

S. T. July 7.

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June 30

Oxford Union Memories

Sir,—The most brilliant speech I ever heard at the Oxford Union was delivered by Mr. Churchill in reply to Mr. F. E. Smith in or about the year 1907. I sat next the late Professor Marett. As I sat down, the Professor said: "I don't know who is responsible for asking Winston Churchill to reply to F. E. Smith. I mean to say, you know, F. E. Smith was a pretty considerable performer when he was here. I don't know much about Churchill, but I don't fancy he's a man of any education. He did nothing at Harrow and he never even went to a university. It does seem a most extraordinary thing to put him up against F. E. Smith at Oxford of all places. However, we shall see."

Hardly had Mr. Churchill begun to speak than the Professor burst into applause. He continued applauding throughout the speech, and when Mr. Churchill sat down, he exclaimed "By jove! what a man; Gladstone was nothing to him."

Nobody enjoyed Mr. Churchill's speech more than F. E. Smith, Lord Birkenhead was not only a capital speaker; he was also a capital listener.

HUMPHREY PAUL.
Reform Club.

S. T. July 7.

NUREMBERG—A REVIEW

By VISCOUNT SIMON

AFTER ten months of continuous and exacting toil—some of it in almost daily public sittings under the glare of world-wide observation, and some of it (not less exacting, we may be sure) in constant confidential consultation, the judges at Nuremberg have finished their task. It is an immense achievement—a milestone, and perhaps even a turning-point, in history. While the impression is fresh in our minds of the magnitude of the effort involved and of the unbroken dignity of the proceedings, it may be well to look back—to remind ourselves of the origins, to retrace the steps that have led to this impressive conclusion, and to estimate the true significance of what has happened.

Long before the war had ended the leaders and advisers of the Allies gave consideration to the perplexing question of the treatment which should be meted out to Hitler and his leading criminal associates when their conspiracy to enslave the world had been finally overthrown, and their frightful and pitiless atrocities had been investigated and exposed. In the meantime, the Inter-Allied War Crimes Commission, over which Sir Cecil Hurst, the late Viscount Finlay and Lord Wright successively presided, was set up for examining material bearing upon individual war-crimes.

On one matter there was complete agreement from the start. It was impossible to put on trial and punish the *small* men for individual war crimes—crimes which they were in some cases ordered to commit (though superior orders provide no defence)—unless adequate steps were taken against the *big* men who had inspired and contrived these enormities in the mass. But on the kind of steps to be taken against the latter, there were at first more views than one.

Some were inclined to dwell on the precedent of St. Helena—though any parallel between Napoleon and Hitler drew from Mr. Churchill a characteristically pointed protest. Some argued that the only sensible course was to shoot the Nazi leaders out of hand: why try a criminal if his crime was notorious? Besides, would not a trial end in farce, like the farce at Leipzig after the previous war? Would not the accused take advantage of legal proceedings to persist in Nazi salutes, and end by becoming national heroes? And so forth.

A RIGHT DECISION

HOWEVER, the alternative of a public trial before a bench of judges nominated by the chief Allied Governments grew steadily in favour. There must be few serious commentators who now regret the decision to adopt this course. The Moscow Declaration of November 1, 1943, signed by Mr. Churchill, President Roosevelt and Marshal Stalin, spoke of "the case of the major criminals whose offences have no particular geographical localisation" and announced, without more detail, that they would be "punished by the joint decision of the Governments of the Allies." But it was not till the last year of the war that agreement as to method had advanced so far as to justify negotiations in London, in which the Americans took a particularly active part, for drawing up a Four-Power pact under which the Nuremberg Court would be set up.

The present Government were heirs to these negotiations and carried them to an agreed conclusion with vigour and despatch. It was a masterly piece of work. Hence emerged the Charter of the Court, a document entirely without precedent which authorised the Tribunal, sitting as a court of criminal jurisdiction, to try those brought before it for breaches of international law and cognate war crimes, and to sentence those proved to be guilty.

The objection has been raised in some quarters that the course taken involved the condemnation, after the event, of men for acts which had not been declared to be crimes against international law at the time when they were perpetrated. The objection is misconceived: the Tribunal in the first part of its long and closely reasoned judgment has disposed of it most effectively. The substantive law that the Tribunal has applied already existed—the Kellogg-Briand Pact, for example, which condemned recourse to war as an instrument of national policy, is a Treaty of 1928, and Germany is one of its 63 signatories.

> "In the opinion of the Tribunal," the Nuremberg judgment runs, "the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact."

LORD JUSTICE LAWRENCE

THE defect in the past in these prohibitive provisions of international law has been that there was no Court with power to try and to punish the transgressor. It is the creation of the Court, not the enunciation of the law, that is the novelty; and few people will feel their sense of justice outraged because when Germany collapsed the Allies decided to create such a Court rather than to let those who were guilty of such deeds violate the law with impunity.

What is so remarkable is the smoothness with which the machinery devised by the Allies has worked. For this the chief credit must go to the presiding judge, Lord Justice Lawrence, with his faithful and self-effacing colleague, Mr. Justice Birkett, at his elbow. A Court engaged in trying Germans and composed of American, British, French and Soviet judges had great difficulties to surmount. Apart from differences in language, which required everything that was said to be translated into three other tongues, there was the contrast in traditional methods of procedure. For instance, neither in Soviet law nor in French law is an accused person sworn like an ordinary witness; I believe the same is true in German law. These and a dozen other contrasts in national practice were got over partly by the prescriptions of the Charter, and in large part by the patience and tact and wisdom of the presiding judge, and by the co-operative spirit of the Bench as a whole.

The present Lord Chancellor is indeed much to be commended for his choice of the two British judges. Sir Geoffrey Lawrence is, as his father the Lord Chief Justice was, the embodiment of good sense and good temper, always alive to the point and always considerate to the argument on both sides. His authority and reputation grew with every week of the hearing, and it is a proud thought for British lawyers—and for British laymen too—that by common consent the chief British representative became the most eminent and most respected figure of all the distinguished men engaged in the Nuremberg trial. He never missed a day.

Sir Norman Birkett, too, was an admirable choice. He threw himself into all the difficult work behind the scenes and promoted harmonious co-operation and good understanding, utterly regardless of the fact that, as things worked out, he had himself small opportunity of speaking before the footlights. Mr. Justice Birkett's broad humanity and fervent devotion to peace are known to all who have heard him on the wireless. Justice, with him, is not divorced from mercy, but when he tries the bully he does not forget the victim. The country owes much to him, as well as to Lord Justice Lawrence, for vindicating our conceptions of an impartial trial under the rule of law.

There are other British names which should be specially mentioned. Our team of prosecutors was a strong one, and from top to bottom of the list its members admirably illustrated the effectiveness, as well as the fairness, of British methods. The Attorney-General, though of necessity heavily engaged elsewhere, delivered an opening and a closing speech of outstanding power and eloquence. But it was upon Sir David Maxwell Fyfe's shoulders that the bulk of the heavy work fell, and the manner in which he discharged it has proved to the world what a wonderful instrument for establishing truth and exposing falsehood is the British way of cross-examination. He has sacrificed a whole year of Parliamentary opportunity to carry through his allotted task; he returns home with a world-wide reputation. Such public spirit makes his re-entry into the political arena doubly noteworthy.

I would add a word on the subject of the acquittal of three of the accused, and of the comment which this has aroused in certain quarters. In the first place, a long experience has convinced me that no one is really qualified to quarrel with a verdict unless he has first informed himself fully on the issues to be decided, and given to the whole of the evidence the full and concentrated attention which it has received from those who have had to pronounce a conclusion. And, secondly, we have to remember that highly qualified judges, endeavouring to do their duty without fear or favour, reach the view which they themselves believe to be right (even if it be not unanimous) in pursuit of justice without paying the least regard to any other consideration whatever. We cannot ask them to do more: they would never consent to do less.

A PRECEDENT

WHAT, then, is the true estimate of the importance of the Nuremberg trial? It has established the possibility of elevating the rules of international law for regulating or preventing aggressive war into effective provisions, for breach of which offenders may be brought before a criminal court with adequate powers to convict and to punish. For this is the first time that a joint Court of Nations with such powers has sat. That is a precedent (and a warning) of enormous consequence for the future peace of the world. And the story of Nuremberg teaches another lesson. It shows what can be done by steady and genuine co-operation between the representatives of nations, set to discharge a common task. The Charter which created the Court would never have been agreed without much give-and-take. The work of the Court could never have been carried to its dignified conclusion save in an atmosphere of friendly co-operation between all the eight members of the Bench throughout. The lesson of Nuremberg may well prove of value to some other international conferences, where such complete harmony is proving difficult to reach.