

ENGLISH FREEDOM AND THE WELFARE STATE

Review of Sir Alfred Denning's Hamlyn Lecture by John Allen May in the "Christian Science Monitor," Boston—with acknowledgments.

In the city of Liverpool, England, recently, a sergeant of police arrested a citizen who pursued the humble trade of buying and reselling other people's waste odds and ends.

The zealous sergeant strongly suspected the rag-and-bone man of dealing also in stolen property. But the sergeant did not tell him that was the reason for his arrest. For this omission the ragman was freed and the policeman's act adjudged unlawful with all the panoply and majesty and the rolling periods of English law.

Lord Simonds thundered: "Blind unquestioning obedience is the law of tyrants and of slaves; it does not yet flourish on English soil."

So again was upheld the ancient right of every person in England, if arrested, to know at once why he is deprived of his freedom, "if only that he may, without a moment's delay, take such steps as will enable him to regain it."

This preoccupation with freedom—so significant in to-day's world—is also instanced by the procedure in English courts. When a judge has taken his seat a counsel (attorney) has only to stand and say, "M'Lud, I have an application which concerns the liberty of the subject," and forthwith the judge will put all other matters aside, no matter how important, and hear the application.

But is this freedom even now menaced by the advance of socialism and the welfare state?

This extremely urgent question has been put under the legal microscope here by the Right Honourable Sir Alfred Denning, one of the Lord Justices of His Majesty's Court of Appeal. Sir Alfred Denning recently gave a series of four lectures at London University on "Freedom and the Law," under the auspices of the Hamlyn Trust (established for spreading the knowledge of comparative jurisprudence, so that the man-in-the-street can hear and understand).

The Hamlyn lectures now have been re-printed in book form (Stevens, London, 8s.). They are as lucid as they are topical and deserve a wide public.

"Properly exercised the new powers of the executive lead to the welfare state; but abused they lead to the totalitarian state." This is the conclusion to which the learned judge comes.

He adds, "We have in our time to deal with changes which are of equal constitutional significance to those which took place 300 years ago. Let us prove ourselves equal to the challenge."

To-day in England, Sir Alfred Denning declares, procedure for securing personal freedom is efficient, but procedure for preventing abuse of power is not. Yet to-day, with the advancing claims and powers of the state, the problem before Britain is more subtle than, but is "in principle the same as," that which led to the Cromwellian civil war—touched off by John Hampden, who acknowledged the King's power to raise a levy of "ship money" but refused to pay because he contended that rightful power was wrongly used.

Sir Alfred shows how the fundamental safeguards of liberty in England always have been established "not so much by lawyers as by the common people of England."

In Northampton in 1367, one jurymen of twelve said he would rest forever in prison rather than cast a verdict with the other eleven against his conscience. The judge, accepting the verdict of the eleven, did send him to prison. But afterwards the Chief Justice of England declared this was "no verdict." The twelfth man was set free. His name is unknown; but his action has lasted. From that day to this, in England a jury verdict must be unanimous, and none may be forced to give a verdict against his or her judgment.

In 1770, a printer had been charged with seditious libel for publishing "open letters" to King George III which were very critical of the government. The judge directed that the question of libel or no libel was one of law, for the judge alone to decide, and he directed the printer be found guilty.

A contemporary records that half the population of London gathered in the streets near the Guildhall and waited as the hours ticked slowly by. When the judge went home, thousands followed in grand procession. "At last a shout, proceeding from Bloomsbury Square and reverberating from the most remote quarters of the metropolis, proclaimed a verdict of not guilty."

Individuals to-day need to be as aware of their rights and as loving of their liberty as were the men who made history. The law stands between the individual and the state. But the scales of freedom are so finely balanced that a weight which a man's hand may not directly feel can be enough to pull them down on one side or the other.

New duties and new rules have resulted in new tribunals, or administrative courts. There are rent tribunals, insurance tribunals, tribunals under the national health scheme, and many others. In a few of them there is no appeal. In some there is an appeal, but only to the minister who is enforcing the regulations involved, which, it is said, "reduces independence to vanishing point."

These administrative courts work hard with the best motives for the public good. But their rights and duties, as Sir Alfred Denning points out, are not altogether dissimilar to those of the people's courts of Soviet Russia. It just happens that there the balance of justice has been tilted and the Russian tribunals have simply become instruments for enforcing the will of a party.

It happened there. It mustn't here, says Sir Alfred Denning.

Give a right of appeal to a superior court from all tribunals, Sir Alfred Denning urges, and publish the decision of these superior courts. Insist always on a judgment with reasons, not just upon a judgment.

And in general let the courts and the people insist that new powers be tested and abuses brought to judgment.

"To be of the common people of England is one of the greatest privileges that any man could have, for the common people of England have succeeded to the greatest heritage of all—freedom under the law." It's maybe a right fine sign of the times that this is the way an English Justice of Appeal sees it. And the way he means to keep it.