

The Future For America: Uncomfortable Change

"To Grow More Civilized" is the last of three lectures in the Oliver Wendell Holmes series delivered this year at the University, Oct. 1-3. Dr. Sutherland is Bussey Professor of Law at Harvard University.

By ARTHUR E. SUTHERLAND

A peculiar virtue of our political tradition is absence of any felt necessity to give it a doctrinal name. In this respect we live fortunately apart from a world overdominated by political theories. Wisely, and to our good fortune, we ascribe ourselves only an "American way of life" without stopping to analyze its elements. On balance this has been a good way of life; it has had its sorrows parts, but it has had its splendors; it gives us as good hope for a future as man in his uncertain existence may reasonably require of fate.

To a surprising extent we have deferred ourselves against the tyranny of labels. On the contrary, we make political and social changes quite lightheartedly, continuing to call new institutions by the old familiar names we used for the discarded institutions of the past, so saving ourselves the discomfort of acknowledged change, and so the necessity of apology for it.

Indeed we are more afraid of labels than we are of substance. In that remarkable paper, "Law and the Court" which Holmes read at a dinner of the Harvard Law School Association in 1913, he spoke of a vague terror which had gone over the earth when the word socialism began to be heard around 1893. I can remember hearing of socialism about 1913 when I was a boy. I recall mention of this frightening system by elders in my native western New York; it carried vague overtones of foreigners with strangely cut beards, consorting with women who smoked cigarettes. Of its economic substance I had no idea, nor I think, had many of the adult members of that profoundly conservative society. Our doctrinal ignorance

was a good thing for us; it saved us a lot of trouble. I remember, four decades later, a friend of mine, who was Supervisor of one of the hill towns in western New York. Except in its great cities, the State of New York is basically governed by such Townships in which the Supervisor is the principal officer. Not only is he the administrator of the town but he is the town's representative in the county legislature, known as the Board of Supervisors. My old friend, the Supervisor, was one of the most useful public officers I have ever known. He conducted most governmental affairs of about six thousand people from an office in the front parlor of his farm house, with equipment consisting of a steel filing cabinet and an old fashioned telephone. Like almost all human beings, he was profoundly conservative, in that he wished to see continued the formulas of life to which he was personally accustomed. He was willing to change only those things which, of course, ought to be changed. He was also a man of somewhat local views. I remember one time his denouncing to me the intrusion into our county of what he described as "foreign corporations." Our conversation went on for quite a while before I realized that he was talking about business entities having their principal office outside the boundaries of the County!

For generations our County's principal medical facility had been its Memorial Hospital. This had been founded generations earlier; for its original establishment and subsequent support we were indebted to the generosity of charitably-minded old ladies, who died leaving their comfortable estates to the hospital, and to the bounty of local businessmen, who came to the end of long lives in which they had risen if not to the rank of captains of industry, perhaps at any rate, to very honorable grades as second lieutenants. By the time I am talking about, in the 1940's, the Memorial Hospital had fallen on sad days. Inheritance taxation had been unkind to the settled fortunes or our county families. The old ladies were no longer as well to do as they used to be. Graduated income tax had somewhat impaired the capability of our local magnates to accumulate funds for the hospital. The many other services required for unfortunate people, not only from government but from multiplying private organizations, competed severely for the shrinking funds of the well-to-do. The hospital looked a little shabby. Its buildings dated from the 1890's. The diet kitchens were archaic. The radiological equipment was suited to a museum of science; and the roof of the nurses' cottage had begun to leak. My friend, the Supervisor, who was fully aware of the needs of people in our part of the State, and of the difficulty and expense of look-

ing to distant large cities for hospital services, gladly took over the chairmanship of a committee of the Board of Supervisors charged with matters of public health.

He showed energy and imagination on behalf of the hospital. If I had expostulated with him, quoting Herbert Spencer's supercilious chapter about the limits on the duty of the state to adopt measures for protecting the health of its subjects, he would quite rightly have said I was heartless and unrealistic. My friend's County Board, under his active leadership, appropriated County funds and rebuilt a better and brighter hospital. He brought in new equipment and subsidized new doctors with public funds. He saw to it that people in need of health services, not only in his town and our County, but in adjacent counties for whom the Memorial Hospital was most convenient, had medical services when they needed them, and had those services whether or not they had means to pay.

Now this was in a time when the British National Health Service were coming under heavy criticism in the papers of our country. England had a Labour Government which the Conservatives always took pains to denigrate the "socialistic" government. Something called "socialized medicine" was going on there at a great rate. I do not think my friend the Supervisor was widely read in philosophy of government, or in the comparative political theory of England and the United States. I do not think he knew very much about what was going on in England. But I am quite sure he viewed whatever it was with decided aversion. If I had suggested to him in our rock-ribbed County he was a leader in the substitution of public medicine for private enterprise; that he was indeed introducing socialistic practices into our polity, which had long been and continued to be distinguished for fidelity to quite opposite political slogans, I am sure he would have reacted with his infrequent and selective profanity and ended up calling me a certain kind of fool. And, on the whole, I think that my friend in this would have been entirely correct.

In our time, it has become fashionable, even among those who speak well of Holmes' general philosophy, to say that his views of economics were backward and naive. Here I discreetly express no judgment of these criticisms, for the vocabulary and the quantitative mathematics of the economic science is quite beyond my limited competence. Nevertheless, I am impressed with the wisdom of some things Holmes said, again in "The Law and the Court" in 1913.

"If I may ride a hobby for an instant, I should say we need to think things instead of words — to drop ownership, money, etc., and to think of the

stream of products; of wheat and cloth and railway travel. When we do, it is obvious that the many consume them; that they now as truly have substantially all there is, as if the title were in the United States; that the great body of property is socially administered now, and that the function of private ownership is to divine in advance the equilibrium of social desires which socialism equally would have to divine, but which, under the illusion of self-seeking, is more poignantly and shrewdly foreseen."

In our country we have achieved a political balance, a balance between that which is privately done and that which is governmentally done, a balance which we perpetually readjust. Indeed were it not for the fact that we accept the existence of a contrast between what we call public and what we call private without thinking too much about it, the difference would be somewhat puzzling. We call General Motors Corporation an example of greatly successful private enterprise — private, I suppose, because the whole public has no vote in who shall be its commander-in-chief and the commanders of its Corps and its Divisions. To be sure many, many thousands of our people get some voice, but one wonders whether they have a voice any more effective in selecting, say, the Undersecretary of State or the Chairman of the Joint Chiefs of Staff.

The function that General Motors performs, in everything but our habitual vocabulary, is surely a public one. The great agglomerates of people and machines which make up our cities could not exist without the bright colored automotive corpuscles that circulate in what are righteously called arteries, bringing the means of existence, both animate and inanimate, to every part, just as red and white corpuscles flow through the arteries of man, bringing the substances of life to every extremity. And General Motors Corporation in many respects comes under rather intimate governmental supervision, sometimes, I am sure, to the great irritation of its officers. Since 1937 there has been no doubt of the Constitutional competence of Congress to regulate the relation between General Motors and its employees, and the government does so in rather surprising detail. The Congress has recently enacted a statute governing the relations between motor manufacturers and their local dealers, who are nominally independent contractors, but who, viewed realistically, have a much more subordinate relationship to the whole entity. The federal government exercises a vigilant relationship to the whole entity. The federal government exercises a vigilant supervision over the pricing policies of great manufacturers like General Motors, and the reports of the Supreme Court frequently contain accounts of litigation in which favoritism in pricing is penalized. Governmental vigilance is not limited to the relation between General Motors and its employees, its dealers, and its customers; government vigilantly oversees any arrangements between General Motors and other great corporations. The Supreme Court of the United States has recently demonstrated that under the Anti-Trust Laws there has grown an unduly close relation achieved by stock ownership between General Motors and DuPont and has made a rather drastic decree about it. At any rate, one says to oneself, General Motors is in business for private profit; private people get its earnings. Well, so it is and so they do; except that a very large share of whatever profits General Motors may make is taken by the government which thus in a true sense becomes not only a supervisor but a sort of a partner in the enterprise; nor are General Motors' profits solely shared by virtue of taxes imposed on the corporation itself, for the government also demonstrates its participation in this profitmaking venture by taking a share in the evils of its products as they come to the hands of its officers and employees through pay-

checks, and to its stockholders in the form of dividends.

That is to say, something epitomizing the maximum of private enterprise under the terminology to which we have comfortably accustomed ourselves takes on, if we chose to look at it with a hard eye, a good deal of public coloration.

Furthermore, enterprises admittedly public have begun to be more and more like those traditionally private. The State of New York is a large public corporation; but it engages in the mineral water business and on its products pays taxes to United States of America, like any other manufacturer. Through her largest city, that State owns and operates one of the busiest railroad carriers of passengers in the world. She builds and rents dwellings. She lends money. She sells water, electricity, and gas. She runs schools, colleges, universities, hospitals, a radio broadcasting station. Is the Gideon Putnam Hotel on the Saratoga Springs Reservation an example of public or private enterprise? Perhaps the answer is that the political theory of that hotel is not very important to us. We do not give it thought.

I suppose that the dominant characteristics of life in today's America are its immensely increased population gathered in comparatively small areas; the steadily increasing complication of the inanimate and human machinery required to keep this great City-State going; and the continual increase in the degree of political control of all aspects of this great intricate mechanism. Another way to say the same thing is that not only in the United States but all over the world, men have suddenly become conscious of their collective ability to influence, by a union of voices and demands, their material fates. We saw this abundantly demonstrated in the peace-time period of the 1930's; we have seen it more abundantly demonstrated anew in the curiously intermingled war-and-peace that has been with us ever since.

So for the changes of the past century — 1863 to 1963. What may one reasonably foresee in

America as it will come to be the country of our great-grandchildren, three generations hence? A continued rapid increase in population, in technology and in our dependence on it for existence, in the volume and intimacy of government — all of these things seem clearly indicated for the future by the movement of the United States during the last few years. One wonders what to foresee that we must watch out for in these impending changes; what perils lie ahead.

Immediately one sniffs tyranny in the tainted breeze of gross government. But, of course, we are all governed by others to a large extent all our lives; we always have been; a great university regulates my goings out and my comings in, probably more than any political government does. A man who works for General Motors or the Bell Telephone Company probably has his daily existence much more specifically directed by his immediate industrial superior than by a policeman or a government administrator. The question one asks oneself is how far during the foreseeable future, how far, say during the century that begins in 1963 will political direction substitute itself for the present degree of our governance which we like to call private. Will increased public economic power diminish private control of property, private government, then? The century last past has seen a decided move toward economic leveling. Will this continue and will we then see no more great fortunes accumulated and hence no more Ford Foundations and Rockefeller Foundations established? Anyone who has worked to increase the endowment fund of a modern college or university knows that a multitude of small gifts can not accomplish the same success a few great ones will achieve. What is to be the fate of private universities? And if, as I believe quite possibly turn out to be the case, there cease to be truly private universities in the next century and all institutions of learning, some quite probably retaining private trappings, in fact become de-

pendent on government and subject to political direction, can we achieve the necessary independence of our universities, adequate support and still absence of intimate supervision, which will encourage the self-confidence essential to scholarship and intellectual progress? In nations where the state is the normal support and matrix of the university, there are great universities which have developed great scholars. It is not impossible that we should achieve this. But a vigilant man can be a little concerned at reading, in the reports of the Supreme Court of the United States, a discussion whether State authorities were justified in imprisoning a witness for refusing to answer certain questions put by the State's Attorney General to a man who had been delivering a university lecture.

"What was the subject of your lecture?"

"Didn't you tell the class at the university on Monday, March 22, 1954, that socialism was inevitable in this Country?"

"Did you in this last lecture on March 22nd, or in any of the former lectures espouse the theory of dialectical materialism?"

Have I, a crusty and tradition-bound lawyer and one-time soldier, now turned Professor, have I suggested some horrid heresy in these Holmes Lectures? This is to say, are we apt to have along with our material leveling, an intellectual leveling, in which a government settles for a sort of intellectual least common denominator; and one must speak softly of the obvious or run the risk of official visitation?

There are other perils in the future. As the national government grows, and the responsibilities and capabilities of the states diminish, there is necessarily lost some sense of local initiative. The more remote the government from the citizen, the less his sense of direct capability of changing its course; the more he feels himself resigned to watching the functioning of a great machine whose conduct he has little or no power

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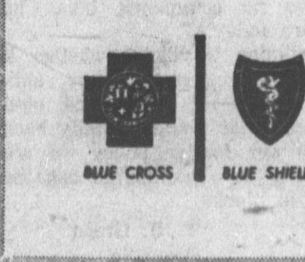
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UNC Gets NASA SSA-V Contract

The National Aeronautics and Space Administration has awarded a \$24,853.00 contract to the University for a Space Science Audio-Visual Media Workshop to be conducted by Kenneth M. McIntyre, director of the Bureau of Audio-Visual Education.

During this Workshop a team of eighth grade science teachers and audio-visual media and curriculum specialists will select, produce and evaluate audio-visual media and other materials for a new space science curriculum for eighth grade instruction in North Carolina schools.



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