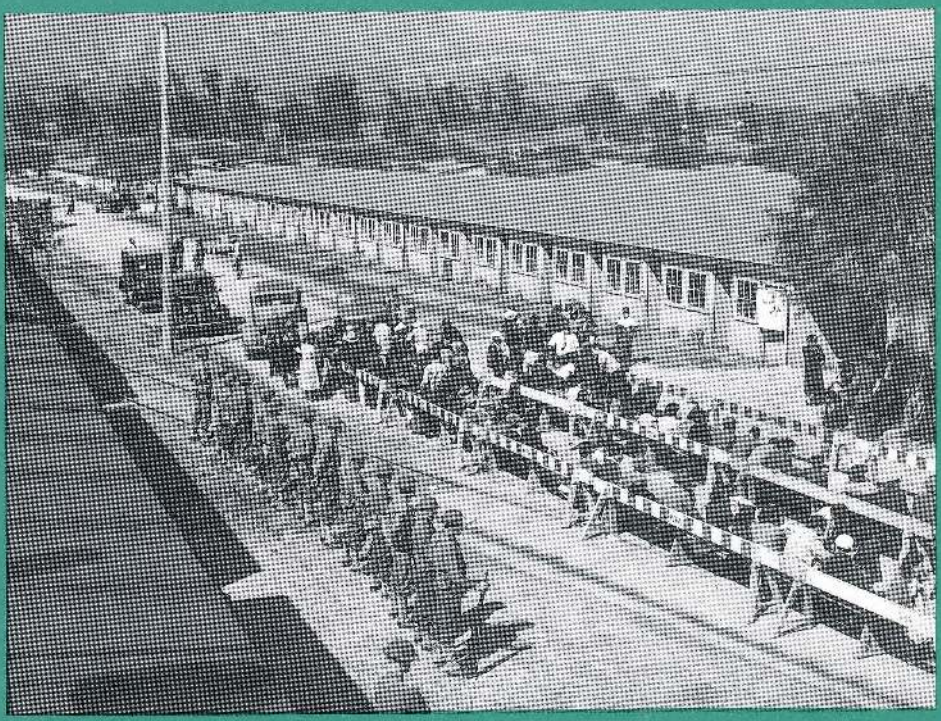
THE VALUE OF DISSENT



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A CRM PUBLICATION

ABOUT THIS SERIES

The theme of this series is that progress depends on the free exchange of conflicting ideas. Not merely good government, but the development of civilisation — cultural, scientific, economic — requires this.

Conceived of in response to a specific situation, it was found that the first in the series, which was distributed internationally, struck an important chord in many societies. The idea for this project originated in the context of the appalling violence which has disfigured Sri Lanka in recent years, accompanied by a terrifying rise of intolerance. In this background, CRM identified as a priority the need to promote understanding of not only the right to dissent, but also the intrinsic value of dissent. This simple truth has to be reaffirmed and illustrated. CRM is therefore compiling and translating a variety of material relevant to this theme, including the writings of political scientists, philosophers and other thinkers; legal decisions; scientific case histories; literature and drama inspired by or depicting the conflict between individual conscience and established forces; and other interesting examples of individual dissent, including commentary on current issues.

Threats to the free exchange of ideas certainly do not come from governments alone. They can and do come from other sources too; from various social and political groups, from communal and individual attitudes, even from majority public opinion. Indeed, the suppression of opposing views by the state is often with the support of society at large; governments in many ways reflect society's prejudices. However — and this is the point of the series — intolerance from whatever source is dangerous to society, and must be identified and opposed.

Publication is in English, Sinhala and Tamil. The material is not now being brought out in any particular grouping or sequence; later it may be reorganised into a more orderly collection. Compilation is a continuing process and it is hoped that this publication will stimulate suggestions and contributions from readers.

A fuller description of this project is given in The Value of Dissent No.1. See inside back cover.

THE VALUE OF DISSENT

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CIVIL RIGHTS MOVEMENT OF SRI LANKA

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Cover
Evacuation of Japanese-Americans, April 1942, California

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Stephen C. Neff

UPHOLDING THE RULE OF LAW IN EMERGENCIES

Stephen Neff, a senior lecturer in the Department of Public International Law at the University of Edinburgh, contributes this account of emergency measures taken by the United States Government during the Second World War. US Supreme Court Justice Robert H. Jackson (1892-1954), dissenting from the majority opinion of the US Supreme Court, spelt out the dangers of the courts enforcing emergency measures which contravene the Constitution.

There can be no doubt that states of emergency, by their very nature, pose serious threats to human rights and individual liberties. Among the many countries to have discovered this fact is the United States, when it imposed a state of emergency during the Second World War. The steps taken included some of the most controversial initiatives ever undertaken by an American government: a series of measures directed against persons of Japanese descent living in the West Coast states.

There had been a long history of resentment of Japanese immigrants in the United States, which had found expression in various discriminatory pieces of state legislation — most notoriously the "Alien Land Law" of California, which forbade aliens from owning land, and which was clearly motivated by anti-Japanese sentiment. During the war, this endemic prejudice against persons of Japanese descent flared up into open resentment, with demands for the internment of these people.

At first, the federal government hesitated to act. The military, most notably, at first opposed taking any such action. But it later changed its mind and pressed the Roosevelt administration into adopting three restrictive measures: a curfew, forbidding ethnic Japanese from being on the streets between 8:00pm and 6:00am; then, an exclusion order, prohibiting ethnic Japanese from residing in the three Pacific states of California, Oregon and Washington; and finally, most famous of all, an order confining ethnic Japanese to detention camps. These measures were racialist in the strict

sense of the term, since they applied to persons of Japanese descent regardless of nationality and irrespective of any evidence of actual loyalty to the United States in the war.

United States Attorney General Francis Biddle was not in favour of these steps, but he felt that the national hysteria, combined with pressure from the military, was too great to withstand. President Roosevelt was apparently of a like mind. Without any consultation with his cabinet, he signed the order in February 1942. The initiative had the strong support of the Attorney General of California, Mr Earl Warren.

Two of the three measures were challenged in the United States Supreme Court. The curfew was challenged, and upheld, in *Hirabayashi v. US*, 320 US 81 (1942). More famous was the challenge to the exclusion order by a certain Fred Korematsu, a life-long United States national. (Contrary to the belief of many, the third and most severe of the orders, confining the designated persons to detention camps, was never considered by the Supreme Court.)

In *Korematsu v. US*, 323 US 214 (1944), the Supreme Court held, by a six-to-three margin, that the exclusion order was constitutional. Speaking for the majority was Justice Hugo Black, later known as a resolute, even dogmatic, champion of personal liberties.

This case, and the supervision policy that gave rise to it, have attracted a great deal of attention as racialist matters. A neglected aspect of it has been the Court's holding — and the vigorous dissent from it — on the subject of the relation between a state of emergency and the normal law of the land.

Justice Black, for the majority, conceded that "only the gravest imminent danger to the public safety" could justify the exclusion order. But he immediately went on to hold that "exclusion from a threatened area ... has a definite and close relationship to the prevention of espionage and sabotage". The exclusion policy was "deemed necessary" by the military "because of the presence of an unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country". The Court "could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal ...". Consequently, the exclusion of the entire group of ethnic Japanese from the three states was justified. The

measure, in short, was justified as "a military imperative". The power of the military to protect the country "must be commensurate with the threatened danger". The exclusion order, in sum, was constitutional "because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders — as inevitably it must — determined that they should have the power to do just this. There was evidence of disloyalty on the part of some, the military authorities considered that need for action was great, and time was short."

Chief among the dissenters was Justice Robert H. Jackson. Jackson had never attended law school, qualifying as a lawyer instead simply by studying for and passing the bar examination. He went on to become a highly successful lawyer, Democratic Party activist and then Attorney General for Roosevelt, before his appointment to the Supreme Court in 1941. (The only opposition to his appointment, incidentally, came from one disgruntled senator who resented Jackson's refusal to prosecute a newspaper columnist for allegedly defaming him.)

Jackson had no particular reputation as a civil libertarian, but he spoke out strongly against two elements of the Japanese-supervision program: its racialist basis, and its roots in military necessity rather than in the general law of the land. The first part of his dissent forcefully condemned the policy for basing criminal liability on racial attributes rather than on personal conduct. The second part called upon the courts to play a scrupulously independent role as guardians of the general law of the land. This second section is therefore an eloquent plea for independence of the judiciary even in the face of the severest emergencies.

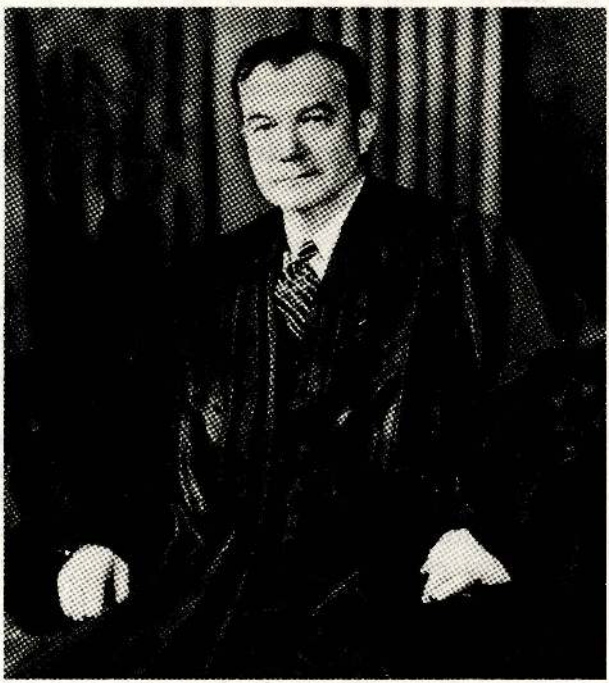
Mr Justice Jackson, dissenting:

Korematsu ... has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof

he is a citizen, near the place where he was born, and where all his life he has lived.

Even more unusual is the series of military orders which made this conduct a crime. They forbid such a one to remain, and they also forbid him to leave. They were so drawn that the only way Korematsu could avoid violation was to give himself up to the military authority. This meant submission to custody, examination, and transportation out of the territory, to be followed by indeterminate confinement in detention camps.

A citizen's presence in the locality, however, was made a crime only if his parents were of Japanese birth. Had Korematsu been ..., say, a German alien enemy, an Italian alien enemy, [or] a citizen of American-born ancestors, convicted of treason but out on parole [he would not have been subject to the order]. [Korematsu's crime resulted] not from anything he did, said, or thought, ... but only in that he was born of [Japanese] racial stock.



Justice Robert H. Jackson

Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all of one's antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him .... But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign ....

[A] commander in temporarily focusing the life of a community on defence is carrying out a military program; he is not making law in the sense the courts know the term. He issues orders, and they may have a certain authority as military commands, although they may be very bad as constitutional law.

But if we cannot confine military expedients by the Constitution neither would I distort the Constitution to approve all that the military may deem expedient. That is what the Court appears to be doing, whether consciously or not .... [On the majority's view], we may as well say that any military order will be constitutional and have done with it ....

[A] judicial construction of the due process clause [of the American Constitution] that will sustain this order is a far more subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency .... But once a judicial opinion rationalises such an order to show that it conforms to the Constitution, or rather rationalises the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition embeds that principle more deeply in our law and thinking and expands it to new purposes ....

I should hold that a civil court cannot be made to enforce an order which violates constitutional limitations even if it is a reasonable exercise of military authority. The Courts can exercise only the judicial power, can apply only law, and must abide by the Constitution, or they cease to be civil courts and become instruments of military policy ....

The military reasonableness of these orders can only be determined by military superiors .... I do not suggest that the courts should have attempted to interfere with the Army in carrying out its task. But I do not think that they may be asked to execute a military expedient that has no place in law under the Constitution.

Justice Jackson's views have received the vindication of history, even if they failed to carry the day at the time. The anti-Japanese measures of this period have come to be widely acknowledged as one of the most shameful trespasses upon civil rights in the history of the United States. Nor was the incident quietly forgotten. In the 1980s, a special commission was set up which recommended compensation for the victims of the measures (or, as the case may be, their descendants).

As for Justice Jackson himself, he went on to take other famous stands for human rights and the rule of law. He became the chief prosecutor at the Nuremberg Trials in 1945-46. In 1952, most outstandingly, he wrote a famous concurring opinion (overshadowing a perfunctory opinion of the Court by Black) in the "Steel Seizure Case", firmly rejecting the contention that the executive possesses an inherent right to transgress the law of the land (*Youngstown Sheet and Tube Co. v. Sawyer*, 343 US 579 [1952]).

For these reasons, Jackson tends to be rated by Supreme Court commentators in such terms as "near great". Given the importance of the causes that he championed, that may be an underestimate.

S. Nadesan QC (1902-1986)

A STORY

S. Nadesan QC applied his intellect and passion for justice to an amazingly wide range of human rights issues throughout his life. A brilliant practising lawyer, he also played a leading role in national affairs through the Senate where he served as an independent member almost continuously from its inception in 1947 until its abolition in 1971. A founder member of the Civil Rights Movement, Nadesan was once himself charged in respect of a report he wrote for CRM and had published in the press.

Nadesan was a colossus in a vanishing breed of lawyers who excel in every sphere of the profession. He was equally at ease, and equally a master of his field, whether applying his extraordinary talent to a criminal trial, a tax case, a constitutional issue, a trade union dispute, a complex commercial arbitration, or a case involving international human rights standards. This versatility marked his career from its beginning right up to his last days.

When a new Constitution was being drafted in 1971, Nadesan wrote a book[1] *as a contribution to the debate. In it he dealt lucidly with basic issues relating to fundamental rights, the legislature, the administration of justice, and the language question. We reproduce below an extract from one chapter which is entitled "A Story", in which Nadesan uses to good effect the device of an imaginary debate to make his point. It illustrates how the free exchange of conflicting ideas, together with a spirit of tolerance, may help to arrive at a consensus. It also reflects Nadesan's own clarity of thinking, and the impish sense of humour which was one of the endearing characteristics of this great Sri Lankan.*

An imaginary illustrative story may throw some light on the mysteries of Constitution making.

An independent small island inhabited by five or six thousand people decided to frame a Constitution for their country.

1. S. Nadesan, Some Comments on the Constituent Assembly and the Draft Basic Resolutions (Colombo: Nadaraja Ltd., 1971. 129pp.)

They all met together and constituted themselves as a Constituent Assembly for the purpose of adopting, enacting and establishing a Constitution for their land. They first agreed on what their fundamental rights were. Then they decided that these fundamental rights should be included in the Constitution and be adequately safeguarded.

They next addressed their minds to the question as to whether they should vest all their powers, legislative, executive and judicial in one organ of state power or in more than one. One of the members of this Constituent Assembly was a young graduate of a foreign university. He had taken the trouble to read up all the constitutions of the world and had made copious notes to be able to be of assistance on this momentous occasion. This young graduate spoke of the needs of society and the fundamental social changes taking place, and how the Assembly should devise a suitable machinery for the establishment of a socialist society to end the exploitation of man by man, and wound up by saying that the sovereignty of the people could only be truly reflected by a sovereign Parliament, a Parliament with supreme powers, and therefore it was necessary in the Constitution to provide for all legislative, executive and judicial power to be vested in a Parliament called the National Assembly. The young graduate also suggested that this National Assembly should consist of 21 persons elected by all citizens over the age of 18 years.

There was a long discussion on this proposal. Among the members of the Assembly was a shrewd sturdy farmer who had, under the earlier dictatorial regime, been arbitrarily arrested and kept in jail for over two years without trial, until he was set free by the revolution which overthrew the previous regime. This farmer was one of those who had insisted that there should be included among the fundamental rights a right which ensured freedom from arbitrary arrest and imprisonment. He now raised a pertinent question as a result of his unfortunate experience in the past. He asked, "If the National Assembly either unanimously or by a majority vote, in the exercise of its executive power, orders one of its servants to arbitrarily arrest me and imprison me without trial, what is my remedy and to whom can I go for relief? I have to go to the judges. Who are the judges? They are this very same National Assembly of 21 persons in whom all judicial power is vested. If I appeal to them to exercise their judicial

power in my favour, will they ever hold that the exercise by the National Assembly of its executive power in ordering my arrest was unlawful, and order my release? It appears to me to be impossible, and I certainly don't propose to run the risk of repeating my past experience."

The discussion of this aspect went on for some time. A teacher who was the live wire of a newly formed political association said, "A similar problem will arise if the National Assembly, in the exercise of its legislative power, enacted a law making it an offence for a person to be a member of a political association of a kind which the majority of members of the National Assembly do not like. If anyone of us who is member of such an association is arrested and prosecuted by the Police before the National Assembly in the exercise of its judicial power, will the Assembly ever say that the law enacted by it in the exercise of its legislative power is invalid, as it is repugnant to a fundamental right which we all cherish, and on which we have already agreed, namely the right to freedom of association?" At this a worker in a factory interjected, "At this rate the National Assembly in its legislative capacity can pass a law banning all trade unions and then where will the worker be?"

To all this criticism the young graduate's answer was, "After all, the members of the National Assembly will not do such unreasonable things. If they do, the people will throw them out at the next elections. So the Sovereign People will always have the last say." Then the farmer said, "That may be so. If the National Assembly misbehaves its members can no doubt be thrown out at the next elections, but in the meantime I will have been in jail. I may still be in jail when the next elections are held and may not even have the pleasure of campaigning against the people who put me there." The teacher then said, "My friend is talking about the next elections, but suppose the National Assembly passes a law extending its period, we may not have elections, at any rate not in the lifetime of some of us."

The discussions went on and on. All speakers professed to have the interest of the common man at heart. In the course of the discussions one young man inquired as to how one can make out whether the sitting of the National Assembly was for the purpose of exercising judicial power or legislative power, and the young graduate replied that this was a simple

matter. When the National Assembly sits to exercise judicial power the members could wear red robes. Someone else suggested black, and some others blue, and this discussion would have delayed proceedings further had not the Chairman ruled out of order this discussion about robes. As difficult questions had been raised the Constituent Assembly then adjourned for a few days to enable members to fully consider these problems.

On resumption, the young graduate said that he had found a way of meeting the difficulties raised by some members at the earlier meeting of the Constituent Assembly. The solution that he suggested was that the National Assembly of 21 persons should exercise its executive powers through a Council of Ministers consisting of five members of the National Assembly, the chief of whom would be called the Prime Minister, and that this Council of Ministers would be responsible to the National Assembly for all its actions. As for the judicial power of the National Assembly, it would exercise this indirectly through judges to be appointed by the Council of Ministers. The National Assembly however would have the right to remove any of the judges at any time for any reason.

But most of the members of the Constituent Assembly did not think that this arrangement would ensure an independent judiciary which would hold the scales evenly between the executive on the one hand and the subject on the other, and which would resist encroachments by the legislature on the fundamental rights of the people. They raised the question as to how a judge can be independent in such matters, when if he gives a decision adverse to the National Assembly, he may be removed from office by the Assembly. What is more, they argued, independent and competent persons may not be appointed as judges by the Council of Ministers, who may be tempted to appoint only pliable stooges.

When all these questions were raised the young graduate suggested that the problem could be solved by the insertion of a specific clause stating categorically "that the judges are independent and subject only to the law". Such a provision, he said, was found in the constitutions of several progressive socialist countries of the world in which all power legislative, executive and judicial was vested in the National Assembly.

This suggestion provoked considerable mirth among some of those present. The leader of a group known as the Revolu-

S. Nadesan QC
In the verandah of the Law Courts, Hulftsdorp, Colombo (about 1985)

tionary Marxists disapproved of this frivolity, and said that he wished at the outset to dissociate himself from those who are always only too ready to sneer at the socialist camp. There was a serious problem here which must be approached in a constructive spirit. However it was true that the mere inclusion of such a clause in a constitution was by itself not a sufficient safeguard. In several of those countries, people had been convicted of political crimes and later were admitted to have been innocent. In one such country a Minister had been convicted of being a foreign agent. Later the Prime Minister of that country was removed for gross abuse of office, and was found to have been suffering from paranoia. It was then discovered that the accused had been completely innocent, and that the now discredited Prime Minister had ordered the judges to find him guilty. The accused had since been fully rehabilitated. This was not of much practical benefit to him as he had been executed straight after the trial. However as a result there was a debate taking place in the progressive movement throughout the world, including within the country concerned, as to how to prevent the possibility of such departures from socialist legality in future. Therefore, although we must be ever ready to learn from the spectacular achievements of the progressive socialist countries in other spheres, in this particular matter a study of the provisions of their constitutions was of limited value.

In the end the young law graduate's suggestion that the legislative, executive and judicial powers be vested in one body of persons, namely the National Assembly, was rejected by the vast majority of members present. The Constituent Assembly considered that while the executive and legislative powers may be exercised by the same body of persons, or the legislative power by one body and the executive power by another body, there could be no question of the people's judicial power being entrusted either to the body that exercises executive power or to the body that exercises legislative power, as this would open the door to tyranny. The entire people of the island functioning as a Constituent Assembly then decided that they would vest their legislative power in a National Assembly consisting of 21 members, the executive power in either a President or in a Council of Ministers, and their judicial power in the judges of the Supreme Court and other minor court judges.

The young graduate then raised another question which he said was of the greatest importance. He proposed that a clause be included in the Constitution saying that no judge shall have the power to inquire into or pronounce upon the validity of any law passed by the National Assembly. Such a provision was, he said, essential to safeguard the sovereignty of the people. After all, he argued with some force, the National Assembly consists of the elected representatives of the people. In legislating it therefore expresses the will of the people. If anybody else can nullify what the Assembly does, that is clearly a curtailment of the sovereignty of the people, which cannot be tolerated in a true democracy. What is more, he added, it is essential that there should be certainty about the validity of laws. Therefore we may set up some machinery whereby draft laws will be very carefully scrutinised before they are adopted, but once they have been passed by the Assembly, then that must be an end of the matter.

Then the trade union leader said that he was a simple working man who did not know the meaning of fine legal phrases. However one thing he did know and that was that if, after spending all this time deciding what their fundamental rights should be, and in what precise words they should be phrased, we are now going to decide that you cannot enforce them in the courts, then this whole Constituent Assembly business was a complete waste of time and he was sorry he had ever come to it. In fact he intended to walk out of the deliberations forthwith in sheer disgust and take all the workers with him.

At this there was general consternation. Several members pointed out to this trade unionist that he must accord to the young graduate that freedom of speech and respect for the beliefs of others which he himself had insisted must be secured in the new Constitution. The trade union leader then allowed himself to be prevailed upon to remain.

A student then spoke and said that just because we elect the members of the National Assembly that does not mean we authorise them to do anything they please. As our trade union comrade has pointed out a large part of the labours of this gathering has been devoted to laying down what the National Assembly may do, and what it may not, and we have all agreed that it may not pass laws which infringe certain rights, which we have defined. If the National Assembly

nevertheless passes such a law, it is not expressing the will of the people, but is contravening the will of the people and is going directly counter to the mandate which we gave it. Just as in legislating the members of the National Assembly act (or should act) as our servants, so, in considering whether their legislation is in accordance with the Constitution that *we* have framed, the judges are acting as our servants. *We*, the people, decide to have judges, to ensure that the National Assembly which *we* have created conforms to the principles that *we* have chosen to lay down, and how that is supposed to curtail *our* sovereignty I just cannot see. As for the question of certainty, — if some possible uncertainty as to the validity of good laws is the price that we have to pay for the right to challenge the validity of bad laws which take away our basic rights, then we, the people of this island, are prepared to pay that price. Let us take a vote on it without more ado.

Another student, who was following a postgraduate course in political theory, spoke in support of his colleague, and said that the idea that true democracy means that an elected National Assembly must be the sole repository of power originated in the olden days when Parliament had to fight against a despotic king, who was a rival source of power. Now however this idea was being perverted and was being used to try to deny the power not of a monarch, but of the people themselves. Under cover of this it is sought to say that the only role of the people is to exercise their vote once every so many years, and that electing a National Assembly must mean abdicating all the people's powers to that one body. He further said that the fiction that Parliament is the people, and that therefore when it acts it is always expressing the will of the people, and that if anyone interferes that is defeating the will of the people, was both fallacious and dangerous. He started to cite various authors on this subject, but the Chairman said that they had all got the point and stopped him.

The young graduate then withdrew his suggestion that the courts should have no power to question the validity of laws, and the Assembly took up the next item.

Noam Chomsky

TURNING THE TIDE

As well as being one of the founders of modern linguistics, Noam Chomsky — who is a professor at the Massachusetts Institute of Technology — is probably the United States of America's best-known "dissident". For more than 25 years he has been a tireless and prolific scourge of US foreign policy, and of its advocates and apologists in American politics, administration, universities and the media.

In the following passages, from the closing pages of one of his books, Chomsky reflects on the success and failure of American anti-war protest over recent decades.

It is possible even for those who are not saints or heroes to come to understand the world in which we live, and to act to stop the terror and violence for which we share responsibility by turning the other way.

It can be done. Our own recent history shows that, and we need not pretend to ourselves that we do not know the way. The mass popular movement against the war in Indochina undoubtedly had significant effects. It raised the costs to the war criminals who conducted it. It prevented the state from declaring a true national mobilization, so that the war had to be fought on deficit financing, with guns and butter, leading to serious economic problems that finally impelled elite groups to turn against it as an investment that should be liquidated. Anti-war sentiment at home fueled dissidence within the military, which began to collapse, much to its credit. US elite groups learned a lesson familiar to their imperial predecessors: a citizens' army is unable to fight a war against a civilian population. That task requires professional murderers. Principled opposition to the war was minimal among elite groups, but became widespread among the population. As late as 1982, after years of dedicated brainwashing with no audible response, over 70% of the general public regarded the war as not merely a "mistake" but "fundamentally wrong and immoral", a position held by only 45% of "opinion makers" (including clergy, etc.) and by a far smaller proportion of elite intellectuals, to judge by earlier

studies that showed that even at the height of anti-war activism after the Cambodia invasion of 1970, only a tiny fraction of them opposed the war on principled grounds.

None of this "just happened". It was the product of dedicated and committed efforts over many years by innumerable people, the most important of them unknown outside of the small circles in which they worked. The same is true of every form of social struggle, whether narrowly focused on some particular atrocity, or devoted to enlarging the domain of freedom and justice.

The consequences of the American war in Vietnam were terrible enough. They could have been worse yet, and would have been had it not been for the mass popular anti-war movement, spontaneous and with little leadership, spearheaded primarily by courageous young people whose achievement is measured by the hatred and contempt they inspired among the commissars who trembled with fear and indignation at the sight of young men and women who dared to defy the Holy State in one of the finest moments of American history, a real achievement by people who cared about their country and are thus condemned as unpatriotic scum by those who prefer to march in parades singing the praises of their leaders.

A standard argument of the reactionary jingoists who dominate discussion of the matter today is that Hanoi (always taken to be The Enemy, since the existence of our attack against South Vietnam cannot be conceded) expected the war to be won on the streets of America, and was proven right, sure proof that the protestors were an evil lot. A more accurate perception was received by a delegation of peace movement activists visiting Hanoi in 1970, who were told by high officials that what impressed them most was something they had read in the press about people in a Midwestern town who had visited a cemetery to place wreaths on the graves of fallen soldiers in a silent protest against the war. But the state worshippers nevertheless have a point. Had it not been for the public opposition that became quite a remarkable force, the government could have moved on without needless distraction to a total victory instead of the partial one they achieved, much as the Nazis won a total victory over the Jews of Europe in a campaign that they too described as "self-defense".

The limited successes of the peace movement are now often heralded as a triumph of American democracy. That is hardly accurate, for two basic reasons. First, consider what was not achieved. There was barely a peep of protest when the US provided the essential means for the French war of conquest [in Vietnam], finally coming close to using nuclear weapons, then undermined the political accords and launched a campaign of violent terrorism while blocking the political settlement sought on all sides. By the time protest reached a noticeable level, perhaps a million Vietnamese had already been killed in almost two decades of US-organized terror and violence. That protest, furthermore, was largely directed against the attack on North Vietnam, which carried risks of international war, hence a threat to us. The true nature of the US war against South Vietnam was never widely understood, a crucial fact with implications that persist, playing their part in facilitating the cruel postwar policies aimed at maximizing suffering and repression in the countries we devastated. Protest reached a truly significant level when the US had expanded its aggression to all of Indochina, with half a million troops fighting in South Vietnam. While the popular movement that escaped the bounds of the doctrinal system was effective, this alleged "triumph of democracy" nevertheless left three countries utterly in ruins with many millions dead, hardly an occasion for great self-congratulation.

Secondly, the successes of the peace movement were largely achieved outside of the system of formal political democracy, by direct action, which raised the cost of aggression. Without these actions, lobbying of Congress, letter-writing, political campaigning and the like would have proceeded endlessly with as much effect as they had in 1964, when the American people voted overwhelmingly against escalation of the war in Vietnam, voting for the candidate who at that time was secretly preparing the escalation that he publicly opposed. There was, indeed, a feature of American democracy that made these limited successes possible: the inability of the state to use massive violence against its own citizens. This permitted the public to make a rare and indirect contribution to decision-making, by affecting the calculus of costs of the planners. As I have emphasized throughout, this feature of American democracy is not to be lightly dismissed.

Nevertheless, we may note that even the most violent totalitarian state is not free from such calculations of cost. The leading Nazi planner Albert Speer writes in his memoirs that "it remains one of the oddities of [World War II] that Hitler demanded far less from his people than Churchill and Roosevelt did from their respective nations". Hitler was never able to carry out "the total mobilization of labor forces" and other measures of mass mobilization that could be undertaken in the democracies, because of "the regime's anxiety not to risk any shift in the popular mood". This necessity to pacify the domestic population severely hampered the Nazi war effort, he points out, setting back armaments production by several years, according to his estimate.

Consider a more recent and much different example, the case of East Timor, where a huge massacre proceeded under [US Presidents] Ford and particularly Carter, with a death toll of 1-200,000, perhaps more, roughly a quarter of the population by fairly conservative estimate, thanks to the support of the US and its allies and the servility of the media and the intellectuals — who, meanwhile, feigned great agony about the simultaneous and in many ways comparable atrocities of Pol Pot, which they had no way to alleviate, in sharp contrast to the Timor massacre, which they could have terminated at once by pressure to withdraw the crucial US support for the Indonesian aggressors. The Timorese remnants were reduced to the level of Biafra and Cambodia, as was finally conceded after the fact, and the killing and subjugation still go on under the cover of Western silence or deception. But some barriers were placed in the way of the consummation of genocide. The Red Cross was finally permitted to enter — intermittently — after four years, and some relief flowed. The murderous assault was limited though not ended. Tens if not hundreds of thousands of people were saved. This was the result of the dedicated work of — literally — a handful of young people, who devoted their lives to bringing the facts to the public, ultimately reaching parts of the government and the press. The personal costs have not been trivial. They will receive no notice of thanks, any more than the courageous war resisters of Vietnam days, certainly not the Nobel Peace Prize they richly deserve. But they have a different reward, the knowledge of what they have accomplished. Many of us can share in such rewards, if we choose to do so.

Chomsky now turns to the nuclear threat and the anti-nuclear movement. While anti-nuclear activism is indispensable, he argues, the movement must not let its present political weakness deter or discourage it from attempting to construct "realistic alternatives" to the current militaristic world-order.

One effect of the development of nuclear weapons has been to induce a feeling of powerlessness on the part of much of the population, and at the same time, to reinforce the doctrine that the state must be free to conduct its affairs without popular interference or even scrutiny, given the awesome forces that it and its enemy command. These, no doubt, are among the reasons that induce planners to expand their nuclear arsenals and refine the systems of destruction in ever more exotic ways: apart from everything else, they serve as a means of strengthening state power and domestic social control, one reason why they have such appeal to "conservatives" of the modern variety. Another effect of these developments has been a tendency to stare at apocalyptic visions, dismissing political analysis and past approaches to action as now irrelevant in the face of imminent total destruction. While understandable, this is a most serious error. The primary threats — the "deadly connection" [that is, the connection, both technological and political, between the nuclear power industry and nuclear weapon manufacture] and technical advances in weaponry — can be addressed, and must be if we are to survive. What is needed is clear-headed analysis and action over a broad range, often with quite specific and limited goals, not the paralysis that results from contemplation of awesome visions of destruction.

The threat of nuclear war is real enough. There is much that can be done to reduce the threat, and it would be wrong, even criminal, to fail to do what can be done to constrain the military system and to reduce the tensions and conflicts that may lead to its employment, terminating history. Nevertheless, to concentrate all energies on delaying an eventual catastrophe while ignoring the causal factors that lie behind it is simply to guarantee that sooner or later it will occur. There are reasons why states devote their resources to improving the technology of destruction, why they seek international confrontation and undertake violent intervention. If these

reasons are not addressed, a terminal conflict is a likely eventuality; only the timing is in doubt. It is suicidal to concentrate solely on plugging holes in the dike without trying to stem the flood at its source. For us, that means changing the structures of power and dominance that impel the state to crush moves towards independence and social justice within our vast domains and that constantly drive it towards militarization of the economy. There is no simple formula to determine how limited energies should be distributed among these many tasks; all must be addressed if there is to be a chance of survival in a world in which a decent person would want to live.

As our society is constituted, public policy will be guided by the imperatives of intervention and military Keynesianism; protests against particular excrescences, however successful, will lead to pursuit of the same objectives by similar means along other paths, since the state — in the broad sense of earlier discussion — relies on them for its survival *in its present form*. Alternatives to existing forms of hierarchy, domination, private power and social control certainly exist in principle, and are well-known, and even supported by much of the population despite their remoteness from the intellectual scene, as already briefly noted. But to make them realistic will require a great deal of committed work, including the work of articulating them clearly. Similarly, opposition to slavery would have failed if no realistic alternative had been advanced: rental rather than ownership of labor, in our own history, not the end to which we should strive, but a major advance nonetheless. Determined opposition to the latest lunacies and atrocities must continue, for the sake of the victims as well as our own ultimate survival. But it should be understood as a poor substitute for a challenge to the deeper causes, a challenge that we are, unfortunately, in no position to mount at present though the groundwork can and must be laid.

Those who own and manage [American] society, *Chomsky continues*, want a disciplined, apathetic and submissive public that will not challenge their privilege and the orderly world in which it thrives. The ordinary citizen need not grant them this gift. Enhancing the [so-called] Crisis of Democracy by organization and political engagement is itself a threat to power, a reason to undertake it quite apart from its crucial import-

ance in itself as an essential step towards social change.

We can also learn from history. There is substantial evidence that the fear of domestic disruption has inhibited murderous plans. One documented case concerns Vietnam. The Joint Chiefs of Staff recognized the need that "sufficient forces would still be available for civil disorder control" if they sent more troops to Vietnam after the Tet Offensive, and Pentagon officials feared that escalation might lead to massive civil disobedience, in view of the large-scale popular opposition to the war, running the risk of "provoking a domestic crisis of unprecedented proportions". A review of the internal documents released in the *Pentagon Papers* shows that considerations of cost were the sole factor inhibiting planners, a fact that should be noted by citizens concerned to restrain the violence of the state. In such cases as these, and many others, popular demonstrations and civil disobedience may, under appropriate circumstances, encourage others to undertake a broader range of conventional action by extending the range of the thinkable, and where there is real popular understanding of the legitimacy of direct action to confront institutional violence, may serve as a catalyst to constructive organization and action that will pave the way to more fundamental change. In contrast, without a background of popular understanding, it may be only a form of self-indulgent and possibly quite harmful adventurism.

US foreign and domestic policy, *Chomsky says*, has roots in institutional structures; only in a limited way does it reflect the personal preferences and commitments of particular individuals who happen to hold office. The institutional structures fix these policies within certain bounds .... Within the constraints of existing state institutions, policies will be determined by people representing centers of concentrated power in the private economy ....

[But,] looking beyond the ever-present need to deter particular crimes of state, there is little reason to accept the doctrine that existing institutional structures represent the terminus of historical social evolution, that their principles are graven in stone. There is no need for people to accept as a permanent condition that the vast majority of the population, in order to survive, must rent themselves to those who control capital and resources, means of production and dis-

tribution, while decisions over investment and other crucial matters are removed in principle from democratic control, with the further consequence that democratic politics includes a very limited range of social choices, operating within parameters set elsewhere in the state system. The groundwork for great social movements of the past was laid through many years of searching, intellectual interchange, social experimentation and collective action, organization and struggle. The same will be true of the coming stages of social change.

Those who wish to play a meaningful role in influencing public policy or changing its institutional base must begin with honest inquiry, in community with others if it is to be effective. Whether one sees oneself as dedicated to reform or revolution, the first steps are education of oneself and others. There will be little hope for further progress unless the means to carry out these first steps are preserved and enhanced: networks of local organizations, media and publishers who do not bend to the state and private power, and so on. These first steps interact: the organizations will not function without access to information and analysis, independent media and publishing will not survive without the participation and intellectual and financial contributions of popular organizations that grow and develop on the basis of shared concerns, optimally based in the community, workplace, or other points of social interaction. To the extent that such a basis exists, a range of possible actions become available: political pressure within the system, community organizing, civil disobedience, constructive efforts to create wholly new institutions such as worker-managed industry, and much else. As activity undertaken in such domains, including conventional political action, extends in scale, effectiveness, and popular engagement, it may well evoke state violence, one sign that it is becoming truly significant.

There are no magic answers, no miraculous methods to overcome the problems we face, just the familiar ones: honest search for understanding, education, organization, action that raises the cost of state violence for its perpetrators or that lays the basis for institutional change — and the kind of commitment that will persist despite the temptations of disillusionment, despite many failures and only limited successes, inspired by the hope of a brighter future.

Soli J. Sorabjee

THE SPIRIT OF TOLERANCE

The writer is a senior advocate of the Supreme Court and former Attorney General of India.

Tolerance is the basis of a democratic and pluralistic society. The recent resurgence of various forms of intolerance and fanaticism in India poses a serious threat to democracy in our country. The basic postulate of democracy is consent of the governed which should be free and well-informed. Consequently freedom of expression covering widespread dissemination of views from different and antagonistic sources is essential. Right conclusions are more likely to emerge from a multitude of tongues than from a single voice preaching the official gospel. That is the rationale of the free speech guarantee in our Constitution and the reason why our Supreme Court regards freedom of expression as "the most cherished and valued freedom in a democracy".

Dissent is *sine qua non* in a democracy. The true test of a democratic government is the measure of latitude and security it ensures to those who strongly and annoyingly differ from others about matters that touch the heart of the existing order. Dissenters have no place in an authoritarian regime because intolerance is its basic premise. Intolerance principally stems from an invincible assumption of infallibility about the truth of one's beliefs and practices and the conviction that those who hold contrary views are perverse or dangerous and need to be set right.

In keeping with our Vedic prayer, "let noble thoughts come to us from all sides", judicial tradition in India has been in favour of tolerance and broad-mindedness. Our Supreme Court has emphasised that freedom of expression must guarantee not only the thought that we cherish but also the thought that we hate. The Court has endorsed the celebrated dicta of Justice Holmes that the ultimate good desired is better reached by free trade in ideas and the best test of truth is the power of the thought to get itself accepted in the competition of the market. In a case relating to preventive detention the Court stressed that voicing of a contrary opinion is a powerful and wholesome weapon in the democratic repertoire.

Never was the right to dissent more endangered and the spirit of intolerance more menacing than during the spurious emergency declared on June 25, 1975. Stringent pre-censorship of the press was imposed for the first time in independent India. Anything that smacked of criticism of governmental measures or actions was almost invariably banned. The censor's scissors were applied arbitrarily and in a few cases its decisions bordered on the farcical.

The Indian judiciary courageously upheld the right of criticism and dissent even during the emergency. The High Court of Bombay in the landmark judgment of *Binod Rao v. Masoni* declared "... It is not the function of the Censor acting under the Censorship Order to make all newspapers and periodicals trim their sails to one wind or to tow along in a single file or to speak in chorus with one voice. It is not for him to exercise his statutory powers to force public opinion into a single mould or to turn the press into an instrument for brainwashing the public. ... Merely because dissent, disapproval or criticism is expressed in strong language is no ground for banning its publication ...".

The High Court of Gujarat in its judgment in *C. Vaidya v. D'Penha* castigated the censorship directives for imposing upon the people "a mask of suffocation and strangulation". It observed: "To peacefully protest against any governmental action with the immediate object of educating public opinion ... is the primary need of every democracy".

During the emergency the Police Commissioner, Bombay, refused permission to hold a public meeting because there was likely to be criticism of the emergency as well as the measures taken under it. The High Court of Bombay unhesitatingly struck down the order. Justice Tulzapurkar in his concurring judgment drawing inspiration from Micklejohn characteristically thundered: "Even during the emergencies that are currently in operation it is legitimate for any citizen to say that the proclamations of emergency, which are legislative acts on the part of the President, are unjustified or unwarranted: it is legitimate for any citizen to say that these emergencies are being kept alive for suppressing democratic dissent and criticism and that these should be ended ...".

In India religion plays an important and pervasive role in the people's lives. Understandably, religious feelings are easily ruffled by attacks on religious beliefs or practices. But let

us not forget India is a secular democratic State and the religious and the atheist both have been guaranteed fundamental rights under the Constitution. If it is permissible to extol the blessings of religion and condemn atheism and castigate agnostics it is also legitimate to opine that religion is the opium of the people and has bitterly divided humanity. Courts in India have tried to balance the values underlying freedom of expression with the maintenance of peace and order. Courts are not concerned with the truth or falsity of the beliefs which are criticised. The trend of the decisions is that sober and temperate criticism of a religion and religious beliefs is permissible. It must not descend to vile abuse of any religion or its Founder or its practices. In judging the effects of a speech or a writing courts have adopted standards of reasonable human beings, not those of fanatics who perceive offence in every adverse opinion and criticism.

Intolerance was not tolerated by our Supreme Court in *S. Rangarajan v. P. Jagjivan Ram.* Certain sections of a community who perceived the theme and treatment of a film as hostile to the policy of reservations in public employment threatened to stop its exhibition by recourse to violence. The Madras High Court revoked the certificate granted by the Board of Censors and restrained the exhibition of the film. The Supreme Court promptly reversed. The Court held that freedom of expression cannot be suppressed on account of threats of violence because that would be tantamount to negation of the Rule of Law and a surrender to blackmail and intimidation.

Deep regard for tolerance impelled the Supreme Court to strike down the expulsion from school of three students belonging to the Jehovah's Witnesses faith who refused to sing the national anthem though they respectfully stood up in silence when it was sung. Justice Chinnappa Reddy speaking for the Court declared: "Our tradition teaches tolerance; our philosophy preaches tolerance; our Constitution practises tolerance; let us not dilute it".

The compelling need of the hour is to heed the ringing message of the Court. We should strive to inculcate the spirit, the temperament of tolerance amongst our people, always remembering that the heresy of one age has often become the orthodoxy of the next.

Marianne Semmel

THE VALUE OF NONCONFORMISM IN SCIENCE

Marianne Semmel, who writes especially for this issue, is a distinguished virologist. She was educated in Holland, Switzerland and Germany and has doctorates in Veterinary Medicine (Munich), Bacteriology and Serology (Pasteur Institute, Paris), and Biochemistry, Biophysics and Cell Physiology (Strasbourg). For over 30 years a Research Fellow of the National Centre of Scientific Research, Paris, she has worked on amongst other things cancer research and AIDS.

Widely travelled particularly in Asia, Marianne Semmel has taught at summer schools at the University of Havana. She has visited Sri Lanka several times where she has done experimental work on the rabies and cancer viruses at the Medical Research Institute, Colombo, and has lectured to postgraduate students.

The acquisition of scientific knowledge is a continual process. Natural phenomena are observed and the accuracy of the observation depends on the technology used. On the basis of observations, explanations are worked out to account for the observed facts. These explanations are given first in the form of hypotheses, that is, suppositions which do indeed appear to account satisfactorily for the facts observed, while no other hypothesis does. If validated adequately, hypotheses acquire the status of theories and come to be regarded as natural laws. These are accepted until additional observations show that the laws cannot account for all the observed facts; they have to be amended or replaced by new theories. In other words, a true natural law cannot be violated. If it is, the law is wrong, never the facts. Facts are discovered by observation and if the observation is accurate, facts are necessarily true. Scientific theories, which are interpretations of the facts, can be true, but they are rarely the whole truth. The questions raised by new scientific knowledge are: is the observed fact really a fact, that is, was the technology used for the observation correctly applied? Does the interpretation take all known facts into account? Is no other theory capable of explaining all the known facts?

If acquisition of scientific knowledge were a natural process, like, for instance, the growth of a tree, there would be no dispute and no call to agree (conform) or disagree (nonconform), but it is not. New knowledge generates new technologies which can completely modify a way of life. And scientific theories coexist with philosophical, political and theological theories, which are the bases of laws. In contrast to natural laws, these laws are man made and as such subject to error; the more so as they are often based on beliefs which cannot be proved. When these laws are violated they are not automatically wrong, as happens with natural laws. On the contrary, the law is upheld and the transgressor is punished.

Confusion tends to arise because of the use of the same term "law" for what are really two different things. Man made "laws" do not have the same characteristics, they need to be thought of and treated differently. When there is a conflict between a natural law and a man made law there is a choice; conform to the man made law or uphold the natural law. In this case, nonconformism can lead to punishment.

The issue is complicated by the fact that scientific knowledge is not easily accessible to a non-specialist, and this is particularly true for new discoveries. The theories can be more or less understood, but the facts may be difficult to ascertain for anybody not familiar with the technology used to ascertain the facts. For old established theories, that is, "natural laws" which have been believed for a long time, there are often popular "proofs" which make them more visible, though not necessarily more valid.

Two "case histories" of conflict between natural laws and man made laws will illustrate the consequences of conformism and nonconformism.

GALILEO'S LAW OF THE HELIOCENTRIC UNIVERSE

Since antiquity people believed that the earth was the centre of the universe and that the sun, the moon and the stars went around the earth along spherical paths. This theory accounted for the apparent movement of the "heavenly bodies" as observed from the earth with the naked eye, and allowed for the calculation of calendars and navigational tables. But

the calculations showed that the spheres were not perfect; simultaneous movements of different spheres were necessary to account for these movements.

The Greek philosophers, in particular Aristotle, founded this theory and Plato ascribed the creation of the spheres to a god, Demiurgus. This philosophy was transmitted to the Arabian scientists, the best known of whom was Averroes, and from them to the Christians who accepted it. The Greek god Demiurgus was replaced by Allah by the Arabs and by Jehovah by the Christians. The Christian Fathers decided that this theory of the universe was true and that it was borne out by the Bible too. So, in the Christian world, the theory of Aristotle became both a natural and a man made law, without conflict between them and remained so for a thousand years. In the 15th century Copernicus presented a new hypothesis, according to which the earth and the planets were supposed to move round the sun. This hypothesis made calculations easier and was accepted as a helpful fiction by the mathematicians, though the Church viewed it with suspicion. For a hundred years there were discussions; some astronomers and mathematicians took Copernicus' view but most upheld the old beliefs, since they were in accordance with the Bible. During these hundred years the Church became less tolerant of heretics, and the Inquisition became more powerful and aggressive. In 1633 Giordano Bruno who upheld the theories of Copernicus — but without further proofs — was considered a heretic (that is, a nonconformist) and burned alive. A few years later Galileo Galilei used the newly invented telescope to observe the moons of the planet Jupiter, and saw that at times the moons disappeared behind Jupiter. Now, this would not have been possible if Jupiter had been fixed to a sphere. Therefore, the theory of the spheres and with them the whole theory of Aristotle had to be wrong. Galileo expounded a new theory: the sun is the centre of the universe, the earth turns around itself and the sun, the moon turns around the earth as the moons of the planets turn around them. This new theory was in complete contradiction to the law of the Church which considered the earth to be the centre of the universe and man to be the supreme creation, the image of the God who had created the universe. The Church reacted and the Inquisition arrested

Galileo as a heretic. He had to choose between recanting his theory — to conform — or to be treated as a heretic, and he chose to recant. He lived the rest of his life under the surveillance of the Inquisition. The Church rehabilitated Galileo only in 1992, without, however, totally disavowing the Inquisition. Galileo's teachings were followed, first in countries where the Inquisition had little power, and led to modern physics. We now know that neither the earth nor the sun are the centre of the universe, but part of a galaxy, among other galaxies of the universe.

LYSENKO'S THEORY OF THE HEREDITARY TRANSMISSION OF ACQUIRED CHARACTERISTICS

The question of the hereditary transmission of acquired characteristics was not new at the beginning of this century. For a long time people had believed that characteristics, whether acquired during a lifetime or innate, were transmitted to the descendants. No sharp division was made between acquired and innate characteristics. Darwin postulated that all physical characteristics are hereditary, that genetic variations appear, and that these variations are selectively transmitted if they confer advantages over the original type in a given environment. In the middle of the 19th century Gregor Mendel presented mathematical proof that physical characteristics are transmitted from parent to child. Fifty years later, Morgan and Weissman laid the basis for modern genetics; they showed that transmissible characteristics are linked to a particular constituent of the cell, the chromosome. Gregor Mendel used sweet peas[1] for his experiments, Weissman and Morgan the fruitfly *Drosophila*, because these organisms were convenient for the experiments. Of course, neither the sweet peas nor the fruitflies were important for agriculture or animal husbandry. That came much later when the physical basis for genetic transmission had been discovered. In 1953 Watson and Crick showed that deoxyribonucleic acid (DNA) molecules carry the genetic information. Lwoff, Jacob and Monod showed how this information is translated into other molecules, the proteins which determine the characteristics of

1. Sweet peas are a species of flower which are red or white if genetically pure, or pink if of mixed origin.

an individual. From these discoveries stem modern inventions such as genetic varieties of plants resistant to parasites or extreme temperatures, or, more recently, the possible treatment of genetic diseases. But at the time of Lysenko, from 1920 to 1950, genetics was largely theoretical.

Lysenko was an agronomist; he based his theories on the results he and Michourine obtained with plants. They had observed that by changing the environment, the characteristics of plants could be modified. Winter grain could be made to give better yields if stored for some weeks at near freezing temperatures; potatoes planted in summer gave better yields than when planted in spring. Grafting between species of fruit trees gave new and better fruit. From these facts Lysenko deduced that the environment and not genetics determines the characteristics of an individual, and he generalised from plants to all living things. The observation of the facts was correct, but the interpretation of the observations was erroneous; storing of the winter grain at near freezing temperatures triggers a plant hormone which starts the development of the grain; when this grain is planted it finds optimal conditions for bearing fruit. But plant hormones were not yet discovered at that time. The potatoes used for Lysenko's experiments were infected with a virus which developed rapidly in humid springs, but slowly in dry summers. Therefore the potatoes planted in summer were much less affected by the virus than the potatoes planted in spring, and yielded better crops. But the virus was unknown at the time of Lysenko's experiments. When plants are grafted, whether with a graft from the same or another species, the graft and the graftee exchange chemicals which can trigger growth. Besides, crossing of species can lead to polyploidy, that is, an increase in the number of chromosomes, and this can lead to greater vigour of the plant. The last example is, in fact, a genetic phenomenon, but was not recognised as such.

Though the environment certainly modifies the characteristics of a plant, or of any other living thing, these characteristics are not transmitted to the progeny. The basic nature of the plant is not modified and each new generation has to be submitted to the same environmental factors to obtain the same results. At the time Lysenko proclaimed his theories, the official line in the Soviet Union was that people's nature

was determined by their class, that is, the environment, and that there was no predestination, that is, genetics. There were also food shortages, and anything which promised higher crop yields was supported by the politicians, led by Stalin. There were of course geneticists in the Soviet Union at that time who, while not saying that Lysenko's observations were wrong, maintained that his theories were misleading, and that genetics was the origin of the variety of living things. There was a debate in the Academy of Sciences of the Soviet Union, the outcome of which was that the teaching of genetics and research in this field were banned. The geneticists who refused to work on the basis of Lysenko's theories lost their jobs and many were later imprisoned and died as dissenters from the state's philosophy. As a result, the biological sciences were retarded for 20 years in the Soviet Union; few discoveries were made and there were no young geneticists. Lysenko's theories were applied to agriculture, with disastrous results. The practices he advised were successful only in a given environment, not in the others which were the majority. This led to crop failures and the economy of the country suffered.

In this case, an erroneous theory was treated like a man made law and upheld, instead of like a natural law which should have been revised as soon as it became obvious that it could not account for all the known facts.

Dissent is difficult in a totalitarian state like the former Soviet Union and the dissenters suffered. But many who did not dare to dissent openly did so in private and continued to study genetics; this allowed a rapid recovery of the biological sciences once the ban on genetics was lifted after Stalin's death.

The two examples show that dissent from an official scientific theory can indeed be valuable. Whenever there is a conflict between a natural and a man made law it is as well to question the man made law — a natural law that is erroneous will in any case cease to be a law if contradicted by the facts; widespread dissent can pre-empt the consequences of bolstering an erroneous natural law by man made laws. It is not necessary and in most cases impossible to understand all the technical issues. It is enough to be sceptical if the reasons given for a theory are based on anything but facts;

any "natural law" which needs to be enforced should be viewed with suspicion. Enforcement can take different forms, ranging from physical or economic pressure on dissenters, to the spreading of lies in order to discredit any theories other than the approved ones with the aim to discourage dissent.

Lies in the form of propaganda can often be detected. Instead of presenting facts, and weighing their validity to a theory, an appeal is made to emotions and beliefs. It is more difficult to detect falsified facts; to do so one has to compare the reports from different sources and to be sure that at least some of them are from disinterested parties.

When dissent creates conditions in which scientific theories can be confronted, and the facts freely debated, it proves of great value to the protagonists, the people who will be affected by the consequences of the theories and for the development of science.

Czeslaw Milosz

NOBEL PRIZE SPEECH (1980)

The Polish poet Czeslaw Milosz (born 1911) was awarded the Nobel Prize for literature in 1980. In his speech of acceptance, he discussed several of the themes close to his heart, including exile (he has lived in the United States for many years) and the obligation upon poetry to be loyal not to political authority but to reality and to language. Part of his speech ran thus:

The exile of a poet is today a simple function of a relatively recent discovery: that whoever wields power is also able to control language and not only with the prohibitions of censorship but also by changing the meaning of words. A peculiar phenomenon makes its appearance: the language of a captive community acquires certain durable habits; whole zones of reality cease to exist simply because they have no name .... In any case, there is no reason why the state should not tolerate an activity that consists of creating "experimental" poems and prose, if these are conceived as autonomous systems of reference, enclosed within their own boundaries. Only if we assume that a poet constantly strives to liberate himself from borrowed styles in search of reality is he dangerous. In a room where people unanimously maintain a conspiracy of silence, one word of truth sounds like a pistol shot.

David Boulton

FRANTISEK KRIEGEL: THE LONE DISSENTER

In this article David Boulton finds a forgotten Czech hero of the Prague Spring — the period of liberalising reforms in the mid-1960s — and the Warsaw Pact invasion which crushed those reforms in August 1968.

The best known politician from that period is Alexander Dubcek, the advocate of "socialism with a human face", then the Communist Party leader who was forced to negotiate his own downfall with the Soviet Union. After the so-called "Velvet Revolution" in November 1989, Dubcek was rehabilitated in the fullest possible way: he became the chairman of the Czechoslovak Parliament.

Another hero of 1968, much less well known abroad, is Frantisek Kriegel. As David Boulton argued in this article, Kriegel's "ghost has a telling message for those who work to restructure their country in 1990".

Since this article was first published in 1990, Alexander Dubcek has died, and the Czech and Slovak Federal Republic has been replaced by two separate states, the Czech Republic and the Slovak Republic.

A new name is nudging its way into the conversation of the students and radicals who made the democratic revolution in Czechoslovakia. It is the name of a ghost: Dr Frantisek Kriegel.

Kriegel was the one member of the Czech leadership "delegation" held prisoner in Moscow in 1968 who refused to sign the protocol which killed the reforms of the Prague Spring. Dubcek resisted, but signed in the end. Kriegel resisted, and Brezhnev never got his signature.

Today, as every detail of the shotgun "negotiations" which followed the invasion 21 years ago is exhumed by a new generation hungry for truth, Kriegel's ghost has returned to haunt those who launched the Prague Spring and then presided over the numbing betrayals of the winter.

Kriegel was a Communist veteran. He had put both his medical and military skills at the service of the International Brigade in the Spanish civil war. (Ironically, one of the Soviet

army officers who forcibly removed him to Moscow in 1968 turned out to be an old Brigade colleague.) He rose in the ranks of the underground Communist Party during the resistance to Hitler, and took part in the 1948 seizure of power and the purges and show trials of the 1950s.

But, by 1967, Kriegel had emerged, with Dubcek, as one of the few Central Committee members prepared to mount a challenge to Stalinist party and state leader Antonin Novotny. The first mild winds of the coming spring had begun to blow through Prague, and Novotny's stock response was repression. Dubcek urged caution. Kriegel recklessly proposed a secret ballot of Presidium members, in effect a vote of no confidence.

When Novotny was overthrown in January 1968 (a process hastened by the brutal suppression of student demonstrations), Kriegel was appointed chairman of the National Front, the one lawful forum in which non-Communist parties and groups were allowed a voice, subject to the leading role of the Communist Party. For 20 years the Front had been a party rubber-stamp, but Kriegel proposed to revive it as a genuine policy-making body, a "place of conversations, of diverse opinions". There were those within the Front who wanted to go further by legalising open oppositional activity, identifying the new "human face" of socialism not with Dubcek's reformed Communism but with a revived, independent social-democratic party. Kriegel did not yet go that far. But his Front was seen by reformers as a sleeping beauty, awaiting the kiss which would awaken pluralist passions.

The Soviet Union saw it in much the same light: a vehicle of reform, which for them meant subversion. At the famous Cierna conference in July, when the entire Soviet Presidium met the Czech leadership for four days in a special railway carriage which shuttled backwards and forwards over the Czech-Soviet border, Brezhnev's first demand was the sacking of Kriegel. This, according to the account given later by Czech National Assembly chairman Josef Smrkovsky, came before the other demands: a ban on the social-democratic party and the reimposition of press controls lifted in the spring. It was the Czechs' refusal to comply which precipitated the invasion three weeks later.

Party secretary Zdenek Mlynar later pieced together the fullest account we have of what happened to the Czech leadership when the Soviet tanks tore their way into Prague.

Dubcek, Kriegel and Smrkovsky were arrested by Soviet troops in Dubcek's office at party headquarters. They were held at gunpoint throughout the early hours of 20 August and the following day. Kriegel, who knew the price Brezhnev had placed on his head, was the calmest. When it seemed that they would be kept there indefinitely, Kriegel announced that it was past his bedtime, cleared a space on the floor and promptly fell asleep, conserving his energies far better than his colleagues, who were soon disorientated with shock and fatigue.

Dubcek was eventually detached from the group and the detailed circumstances of his removal to Moscow await his own first-hand account. Kriegel and Smrkovsky were transported by plane, first to Legnica in Poland and then to Sub-Carpathian Russia. All but Kriegel eventually met up in Moscow where the Czech President, Ludvik Svoboda, had refused to negotiate without Dubcek, who in turn refused to talk without his Presidium.

Kriegel too was taken to Moscow, but he was kept under permanent arrest, separated from his colleagues. The Soviets clearly recognised him as the most intransigent of Dubcek's close colleagues, and the Czech Presidium — deprived of Dubcek's leadership, since he collapsed on arrival in Moscow — probably shared the view that Kriegel was not the man to help them patch up an understanding with the invaders. In any event, they seem not to have fought hard for him to join them.

Kriegel's isolation meant that he was not subjected to the mix of naked terrorism and sham negotiation by which the Czechs were driven to renounce their reforms and acknowledge the right of the Soviets and the Warsaw Pact to render "fraternal assistance". Mlynar — who was there — tells the melancholy story of how, one by one, the Czechs reached the conclusion that the best service they could render their shattered country was to sign their confessions, their only passport back to Prague and a resumption of the appearance, if not the substance, of government responsibilities. Dubcek and Mlynar were the last to hold out, until persuaded by

their own colleagues that only by holding on to what was left of their power could they hope, after a decent interval, to get the tanks off the streets and the reforms back on the road.

The protocols signed and the eternal friendship of the Soviet and Czech peoples re-affirmed in Russian champagne, a dishevelled but not disorientated Kriegel was at last re-united with his Presidium colleagues. His Soviet guards had told him of their capitulation but he had refused to believe it. Now they told him themselves. It was the only course open to them, it didn't mean a thing, it was his duty as a Communist to add his name to theirs.

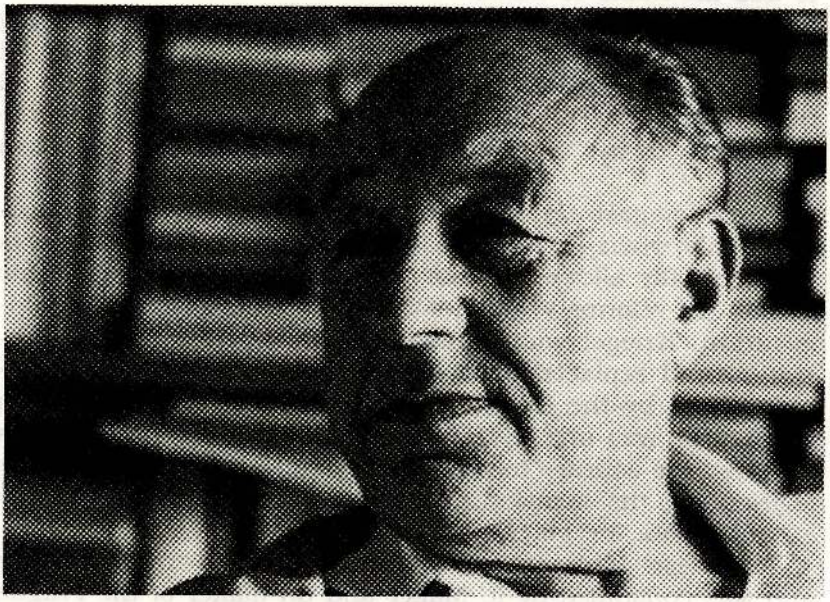
Kriegel told them they were fooling themselves and selling out their followers at home. To return on Soviet terms would be to rule as puppets. They would be forced to dismantle all their reforms, or be replaced by monkeys better attuned to the music of the organ-grinders. He would rather die than sign.

Brezhnev gave orders that Kriegel was to be kept in Moscow. Only when Dubcek refused to return without him was he eventually allowed to join them on the plane home. One by one the reforms were demolished by Dubcek's new administration. Kriegel was immediately dropped from the Presidium and replaced as chairman of the National Front — purged not by the Russians but by his Czech comrades. In October he was one of only four National Assembly deputies who had the courage to vote against the secret treaty formally legitimising the invasion. The following May he was finally expelled from the party.

As Kriegel had predicted, Dubcek failed to ride his tiger and was consumed by it. Maker and un-maker of the Prague Spring, he disappeared from view for nearly 20 years. Kriegel too was under house arrest, but could not be silenced. He was one of the mainsprings of the new human rights charter in 1977 and thus a direct link between the reformers of 1968 and those of 1989.

Frantisek Kriegel died in 1979. The state police refused him a formal burial. But his ghost has a telling message for those who work to restructure their country in 1990. It is that the 1968 capitulation was *not* inevitable, the betrayals were avoidable, honour and courage and resistance *were* options.

Some will say that if Dubcek had followed Kriegel's line the Soviets would have imposed direct military rule in Prague. But it is the more optimistic view which chimes with the new spirit of 1990. Dubcek will be loved and respected as one who tried and failed, but Kriegel will be remembered as the man who refused to unmake the reforms he had made, refused to surrender, refused to be silent. He will for ever point an accusing finger at the Dubcek generation. Vaclav Havel is president and Dubcek chairman, but Frantisek Kriegel will be the new Czechoslovakia's patron saint.



Frantisek Kriegel
Prague, 1979

Acknowledgments

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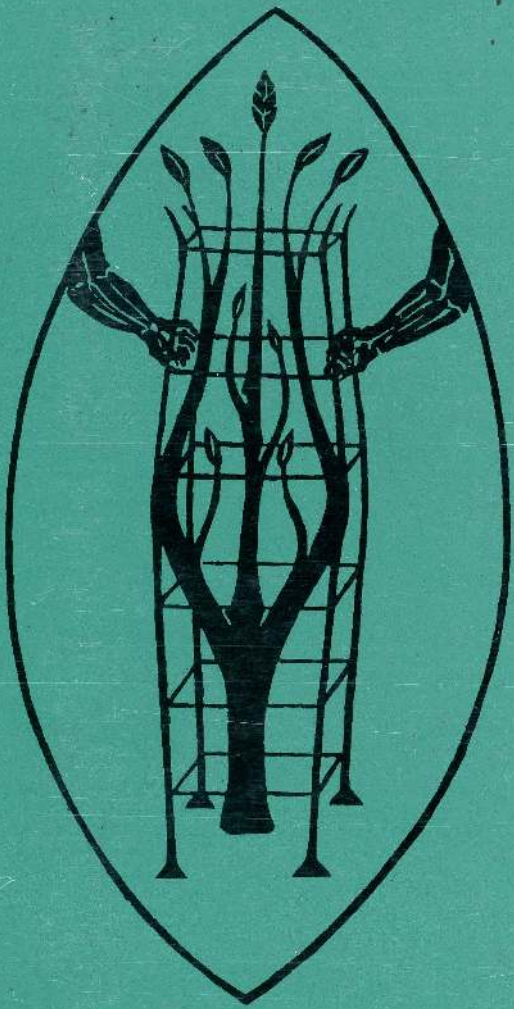

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