

The American Mercury

COMMUNISM AND THE INTELLECTUALS

BY

SIDNEY HOOK

THE enthusiasm generated by the Russian Revolution produced an impressive body of literature in affirmation of the philosophy, program and practices of the Soviet régime. This literature of affirmation was in no way unique (except in volume), for the American and French Revolutions, as well as the national upheavals in Italy and Germany during the nineteenth century, had also given rise to libraries of passionate and interpretive sympathetic studies. But what does seem to be truly unique about the cultural and literary phenomena associated with the Russian Revolution is the literature of disil-

lusionment with which the spiritual Odyssey of so many converts to the Bolshevik faith has terminated, so that they now recognize with Auden:

O Freedom still is far from home
For Moscow is as far as Rome
Or Paris.

This literature of disillusion constitutes a distinct genre of writing in contemporary letters if only because of its international character and the common pattern of rediscovery and rededication to certain values of the Western tradition that had not been so much denied as ignored. Russell, Auden, Spender and Orwell in Eng-

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land; André Gide, Souvarine and Serge in France and Belgium; Ignazio Silone in Italy; Panait Istrati in Greece; Arthur Koestler in Central Europe; Anton Ciliga in the Balkans; Eastman, Dos Passos, Wilson, Hicks and Farrell in the United States are among the more noteworthy figures who have contributed to this literature. The evolution of attitudes in most of these men differs from the apostasies of Wordsworth and Dostoyevsky, whose early revolutionary enthusiasm and doctrines became transformed into their polar opposites. We do not find in their works sentiments comparable to those expressed in Wordsworth's *Ecclesiastical Sketches* or *Devotional Incitements*; and if their writings do not reach the great artistic heights of Dostoyevsky's bitter legend of the *Grand Inquisitor*, neither do they celebrate the central rôle which Dostoyevsky assigned to miracle, mystery and authority in human life.

If we ask what led so many sensitive and generous spirits to ardent, and sometimes sacrificial, support of Soviet Communism, we find a mixture of motives inexplicable in terms of the hedonistic determinism of Bentham or the economic determinism of Marxian orthodoxy. Neither self-interest nor fear nor vanity moved them to break with the conventional pieties and allegiances of the world in which they had been nurtured. In almost equal measure, they were impelled by a revulsion against the dismal spectacle of the postwar West which tottered without faith and with little

hope from one crisis to another, and by an enthusiasm for the ideals of equality and human liberation broadcast in the official decrees and laws of the early Soviet régime. Both the revulsion and enthusiasm were rooted in a moral sensibility whose fibres had been fed from sources deeply imbedded in the traditions of the West. Not one of the neophytes to the Communist faith was conscious of accepting an alien creed, no matter how foreign the idiom in which it was clothed. The words in which one English convert to the Soviet idea describes her road to the Kremlin holds true with minor variations for the entire band of fellow-pilgrims:

I came to Communism *via* Greek history, the French revolutionary literature I had read in childhood, and the English nineteenth-century poets of freedom. . . . In my mind Pericles' funeral oration, Shelley's and Swinburne's poems, Marx's and Lenin's writings, were all part and parcel of the same striving for the emancipation of mankind from oppression. [*Lost Illusion*, by Freda Utley.]

Stephen Spender, another English poet, in an effort to show that there is a continuity between the liberal idealists and philosophical radicals of the past century, on the one hand, and the Communists of the present century, on the other, between Blake, Godwin and J. S. Mill and Lenin, Trotsky and Stalin, writes:

I am a Communist because I am a liberal. Liberalism seems to me to be the creed of those who, as far as it is possible in human affairs, are disinterested, if by disinterested-

ness one understands not mere passivity but a regard for objective truth, an active will towards political justice. During an era of peace and progress, the liberal spirit is identical not only with political discussion, but also with scientific inquiry, speculative thought and the disinterested creation of works of art. [*Forward from Liberalism*, 1937.]

What Spender was saying is that he was a Communist because he believed in disinterestedness, objective truth and justice, free political discussion and inquiry, and creative integrity — a cluster of values every one of which, oddly enough, has been vehemently denounced as bourgeois prejudice by the pundits of dialectical materialism.

Compare these strains of rationalism and humanism with the *motifs* in the apologies of those adherents to National Socialism like Rauschnig, Thyssen and Strasser who renounced the Nazi régime. What elements in the Nazi practice and doctrine magnetized *their* minds, emotions and wills? “A national awakening,” “a surface discipline and order,” “a vast display of energy and achievement” whose new tempos and accelerated rhythms lift men out of the “humdrum of daily life” — these are some of the things of which they speak. No ideals continuous with the heritage of either secular or Christian humanism moved these men and their fellows; there was only the pull of the dynamism of power. Here was no attempt to achieve either a revolution from within or a transformation of basic institutions, but, in Rauschnig’s

phrase, “a revolution of nihilism.” Not principle — even mistaken principle — drew them on. They were sucked into the movement by a frenetic national enthusiasm, and a mysticism centered on the person of Hitler. “I looked into his eyes and he into mine; and at that I had only one desire, to be at home and alone with that great, overwhelming experience.” This extravagant outburst, Rauschnig tells us, came not from an hysterical woman “but from a judge in a high position, talking to his colleagues.”

A candid appraisal of the literature of Nazi disillusion shows that it is qualitatively of an entirely different order from that of the erstwhile partisans of the Soviet idea. Those who broke with Hitler did so because their stomachs were not strong enough to assimilate, as a constant diet, the atrocities to which they had originally resigned themselves as incidental and temporary — like Rauschnig; or because their private interests were jeopardized by someone they had thought would be their creature — like Thyssen; or because their personal ambitions were frustrated — like Strasser.

I have contrasted these two types of literature of disillusion to underscore how misleading is the simple equation often drawn between Bolshevism and Nazism. In respect to their repudiation of many features of the democratic process they are, of course, identical; but in respect to the power of the Soviet and Nazi myths to at-

tract the liberal spirits of the West they are vastly different. One need not agree with Toynbee that Russian Bolshevism is a species of Christian heresy to recognize the seductive effect of its use of categories drawn from the Western culture it would destroy. Just as the early Christian used the temples of pagan worship to make the new religion more palatable to peoples whose rulers had been converted, so the ideology of Bolshevism parades with a vocabulary of freedoms and rights freighted with connotations precious to all genuine humanists. That is why it is a more formidable opponent of free cultures than movements openly dedicated to their destruction. It is especially formidable in drawing to itself politically innocent men and women of good will and strong emotions whose minds are unfortified with relevant information, and who have not yet learned that only an intelligence hardened by skepticism is a safeguard against the credulities born of hope.

II

It is worthy of note that most of those who succumbed to the Soviet myth were devoid of political experience. They were led to their first political affair by emotional compulsion rather than by sober computation of the consequences of adopting a given proposal and its alternatives, which constitutes the every-day life of rational politics. Just as the necessity for loving creates its own object, so the necessity for believing selects the

myth that appears best fitted to one's need and hopes. And, given the cultural climate, what seemed more congenial than the Soviet idea, the apparent offspring of moral idealism and scientific law? It not only held out guarantees of fulfillment of their highest hopes but provided a metaphysics to give them cosmic support.

All the great myths of history, from Augustine's *City of God* to Sorel's *General Strike*, have been able to sustain themselves because nowhere could they be exemplified, lived with, tested in terms of their fruits in experience. The Soviet myth of a humane, rationally ordered, classless, democratic society, however, was glorified not as an other-worldly ideal but as an historical fact with a definite locus in space and time. In staking out a claim in history, it subjected not only its power but its intent to the logic of events. We have no way of knowing the actual extent to which those who are native to the Soviet Union believe in the Soviet myth, carefully inculcated as it is in every textbook from the kindergarten to the university, and reinforced by an omnipresent secret police. But we do know, judging by the literature under review, that the first doubts in the minds of the pilgrims from other countries arose when they actually lived in the land of their dreams or pondered on the critical reports of those who had.

Some day a psychologist or poet will do justice to the drama of doubt in the minds of these political be-

lievers. Few individuals ever surrendered their belief in God with more agony, soul-searching and inner resistance than these latter-day apostles of revolutionary brotherhood surrendered their belief in the monolithic validity of the monolithic Soviet system.

It is an elementary truth of the psychology of perception that what a man sees often depends upon his beliefs and expectations. The stronger the beliefs, the more they function like *a priori* notions whose validity is beyond the tests of experience. Hopes can be so all-consuming that they affect even the range and quality of feeling.

It was to be expected that the Western intellectuals who saw the Soviet Union first hand would screen their impressions through the closely knit frame of doctrinal abstractions. It took some time before the cumulative shock of events tore a hole in this frame through which the facts of experience could pour. Only then did the agony of self-doubt begin. With varying details each one tells the same story. Once the evils of the system were recognized as evils, it was hoped they would disappear in time. When they grew worse with time, they were justified as necessary elements of the future good. When this necessity was challenged, the mind dwelt upon worse evils that could be found in other countries. But this provoked two gnawing questions. Were the evils in other countries really worse? And in any case, in the countries they

came from, could not evils be publicly criticized?

The process of disenchantment was all the harder because in the course of their original conversion so much tortured dialectic had been expended in defense of what now seemed to be indefensible. As a rule, it requires more intellectual courage to renounce an illusion than to espouse one. For others are usually involved in such renunciations. These men and women felt a moral responsibility for those, and to those, who had been influenced by their enthusiasms. They knew that they would be showered with abuse, defamed as turncoats, that their former friends would construe the avowal of any doubt as evidence of personal fear or self-seeking—this despite the overwhelming evidence that neither popular favor nor material goods ranked high in their scale of values. They knew they faced loneliness and isolation. Bertrand Russell, the first of this group, and, as one would expect, the quickest to see through the myth, once confessed that he lost more friends by his criticism of Soviet terror than by his absolute pacifism during a war in which his country was locked in a battle of life and death with Germany.

Much graver considerations kept their lips sealed. They shrank in dismay at the prospect that reactionaries would seize upon their criticisms for their own purposes. More important still, a substitute faith to which they could wholeheartedly dedicate themselves was not available to them.

They had lost their belief but not their hunger for belief. The man who cries, "O! Lord I believe. Help thou my *unbelief*," is usually on the way to a belief in which he may find peace, but he into whose soul the more radical acids of *disbelief* have entered can never again find peace in returning to the now-corroded original belief. He has lost his innocence, and in the end can only be useful as a Party functionary.

III

But as excess followed excess in a bloody succession, as intolerance and internal coercion increased in direct proportion to the strength and stability of the Soviet State, they felt compelled to make public their disavowal of their former allegiance. In every case it is clear that the ultimate grounds for their disavowal were the very same moral sentiments which had originally led them to the Kremlin. It was not the State, they discovered, which had withered away, but every vestige of political freedom, and with it all the brave ideals of the heroic period of the October Revolution.

None of the writers of this school could honestly be called sentimental dreamers or utopians. Most of them considered themselves Marxists of a sort. They had been trained to take a long view toward the stern necessities of history. Without swallowing Hegel, they agreed with him that what appears evil is often the negative dialectical moment in a cycle of prog-

ress, or what Toynbee today calls the ever-renewed challenge, necessary for a creative response on a higher level at a later time. They therefore allowed many times over for the blunders and crudities and rough edges of a new social justice.

It is one thing, however, to explain a phenomenon historically; it is another thing to justify it. Where explanation and justification are confused, then whatever is, is right. But if whatever is, is right, condemnation of capitalism and fascism, too, becomes meaningless wherever *they* exist, and the nerve of moral indignation which led to Communism in the first place becomes paralyzed. If history not only raises moral problems but settles them, then Gletkin's train of thought as he argues with Rubashev in Koestler's *Darkness at Noon* becomes inescapable. A mistake is a crime; successful might is always right; the weak are *ipso facto* wrong; every lost cause is a bad cause. Such a philosophy may be professed in words but in experience no sensitive human being can consistently act on it. That is why, for all their historical naturalism and scientific determinism, these enthusiasts were compelled to recognize that *not* everything they saw was necessary, and that some things could have been *different*.

What, then, were the specific experiences which led to disenchantment with the Soviet myth? At the outset it must be declared that it was *not* the discovery of the miserable living conditions of the Russian

masses. Although they had been sadly unprepared for what they found—they had read too many extravagant claims made by Soviet partisans abroad—they could at least find reassurance in the promises of future five-year plans. What struck them most forcibly was the *cruelty*, the unnecessary cruelty, which pervaded almost every aspect of Soviet administrative practice.

This cruelty was not sadistic or demonic as in some fascist countries; it was systematic, a matter of State policy, carried out to teach object lessons to those who could not possibly profit by it because they were destroyed in the process. The use of bread as a political weapon had not been unknown in the past, but its calculated withdrawal for purposes of insuring absolute conformity was something new. Similarly the use of correctional labor camps for political prisoners. Ciliga, Serge and others bitterly contrast the conditions in which political prisoners, including Lenin and his lieutenants, lived under the Tsar with the conditions under which those charged with political offences lived under Stalin. And in a nationalized economy under dictatorial controls almost any offence can be regarded as political. Even theft of a handful of grain from a collective farm, moving from one town to another, not to speak of crossing a border without proper papers, are crimes against the State and punishable as such.

This cruelty was manifest not only

in bureaucratic indifference but in official reminders that mercy, charity or pity were evidence of bourgeois decadence. According to our informants there was a total absence of concern for the individual person, an attitude in high official quarters and low which regarded the lives of *human* beings as if they were so much raw material, like iron, coal and scrap, to be consumed in the fires of production in order to swell the figures of output.

Of course bureaucratic indifference to the individual case, to personal need and suffering is not a Soviet phenomenon. In some degree it is found everywhere, as these men well knew. And cruelty, where State interests appear to be genuinely threatened, could be extenuated as a necessity, even if it was harshly and mistakenly conceived. But when it was coupled with wholesale injustice, it became unendurable to those nurtured in Western traditions. Two examples of this injustice, judging by the literature, were found especially outrageous. The first was the charge of “ideological complicity” directed against anyone whose views were similar to an individual believed guilty of any offence against the régime. Thousands were in consequence punished, sometimes by liquidation, for “ideological complicity” in the alleged act of someone they had never known or heard of. The second example, which particularly exercised Koestler, was the practice of holding entire families hostage for the exemplary behavior of its members. One

decree provided that in the case of an individual's flight from the Soviet Union even those members of his family who had no knowledge of his act were to be "deported for five years to the remote regions of Siberia." Such sentences are served in penal work camps and are renewable by administrative decision.

As if to put a doctrinal seal upon these moral outrages and answer the unuttered protests on the lips of sympathizers, the People's Commissar for Justice proclaimed in the official organ of the Soviet régime: "In the opinion of liberals and opportunists of all kinds—the stronger a country is, the more lenient it can be to its opponents. . . . No, and again no! The stronger the country is, the mightier it is . . . the more justified are we in taking stern measures against those who disturb our socialist construction." (*Izvestia*, No. 37, Feb. 12, 1936.) Not long after, *he* was liquidated for not being stern enough. If this was socialist humanism, those who in the name of humanism had fought against such practices in countries under the heel of fascism could not swallow it.

IV

Most of the excesses against which the disillusioned intellectuals of the West protested did not at first concern their own professional fields. They protested as *human beings* against the degradation imposed on other human beings; or as *socialists* against mounting inequalities of power

and position which, in fact, produced new class distinctions; or as *Marxists* against the willful disregard of objective historical conditions, and the blindness to the limits of endurance of human flesh. To all such protests came the reply "reasons of State." Those who received this reply confess that although they could not *see* these "reasons of State," they were puzzled and confused by the retort. After all, there are so many variables in history, the future is so indeterminate, who knows with certainty what is necessary for what?

But there was one kind of persecution for which the excuse "reasons of State" could not be offered with the slightest plausibility. This was the cultural terror which raged in every field of the arts and sciences. All of these Western intellectuals lived in countries in which the slightest attempt to suppress a book or painting or a piece of music was sure to meet with fierce public opposition, even when the censorship was tangential. And at the worst, restrictions affected sales, not one's freedom and not one's life. To undergo the experience of a *total* censorship and control shocked and stunned them. For it was a control not only over what was written but also over what was painted and sung, not only over political thought but over thought in philosophy and science, not only over *what* was created but also over *how* it was created—the style and manner as well as theme and content. Nothing like it had ever existed in the modern world. In mak-

ing art and philosophy a matter for the police, it violated the sense of dignity and authenticity among these writers and artists and thinkers of the West. It also affronted their sense of integrity as craftsmen.

It had been hard enough for them to accept Stalin's description of the intellectual as "an engineer of the human soul." When the engineer was required, however, to build not only to another's specifications but according to technical rules and laws laid down by those who had never undergone the discipline and training of the craftsman, they felt that some kind of atavistic cultural barbarism was being forced upon them. When on top of this, the penalties and sanctions of refusing to knuckle under entailed, because of the State monopoly of all means of publication and communication, the withdrawal of the means of life from the independent thinker and writer and his family, and in stubborn cases, like that of Vavilov, deportation and death, mystification gave way to passionate revulsion.

They were mystified because of the demonstrable uselessness of these cultural purges to the declared objectives of the Soviet régime. What bearing, for example, on any declared social policy was involved in the purge of physicists and astronomers for expressing disbelief in absolute space and time, a corollary of the theory of relativity? Or the condemnation of abstractionism in modern art, romanticism in the novel,

formalism in poetry, and atonality in music? The decrees laid down with the awful authority of the Central Committee of the Communist Party and specifying the correct line in these fields must be read in order to realize how minutely this control extended to the very details of the arts and sciences. Or one could cite the dogmas of "Soviet biology"—a phrase reminiscent of the late unlamented "Nazi biology"—which renders taboo the Mendelian-Morgan theory of gene transmission in favor of Engels' Lamarckian notion, already disproved in his day, concerning the inheritance of acquired characteristics.

Not even this theory has any logical consequences of a political nature. Professor H. J. Muller, the famous American geneticist and Nobel Prize winner, who witnessed at first hand the tragic purge of Russian biologists, has observed that one can just as well argue from the theory of inherited acquired characteristics that the children of the ruling classes, because of the advantages of their environment, become superior types of human beings in comparison with the children of the masses, as that any human being can be transformed by environmental changes into a genius. Needless to say, both inferences are false. In insisting that the truth of a scientific theory had to be judged by its alleged social or political consequences, the Soviet régime, to the amazement of the Western intellectuals, was challenging what had been axiomatic since Galileo's time.

There was another horrible consequence of the operation of the Party line in cultural matters reported by those who observed it. Inasmuch as the line was a function of changing domestic and international conditions, it took sharp turns and shifts. Those who administered the Party decrees often became the victims of subsequent decrees. Since there was a normal risk in any utterance, a greater risk in silence, and even a risk in ferreting out deviations, there resulted a frenzied effort to purchase immunity by professions of orthodoxy, displays of ferocity towards scapegoats, and glorifications of Stalin in language as extravagant as anything that can be found in the sacred literature of Byzantinism. Everyone was caught up in an ever-expanding spiral of adulation and fear. It was this which moved André Gide, who had braved contumely in denouncing Western colonial practices, to write after he returned from the Soviet Union: "I doubt whether in any country of the world, even Hitler's Germany, is thought less free, more bowed down, more terrorized."

There were other elements in the common saga of disenchantment which received varying emphasis in the accounts written by those who had awakened from their dream. Edmund Wilson felt that the apotheosis of Stalin had reached a point at which the Russian people could react to him only neurotically, both on a conscious and unconscious level.

One of the initial impulses which

led these Western intellectuals to accept Communism was a strong feeling of internationalism. They thought of themselves as citizens of the world, dedicated to an ideal of a universal parliament of free peoples. They looked to the Soviet Union as a fortress of a world movement to achieve this ideal. But when they saw that the road to power in Russia was imposed as a pattern for every other country they were disturbed. When they realized that socialist movements elsewhere were regarded as expendable border guards of the Soviet Union, active doubt set in. When, finally, cultural signs multiplied on all sides of aggressive Russian nationalism and pan-Slavism, when even Ivan, the Terrible, and Peter, the Great, were venerated as precursors of national Bolshevism, they felt themselves once more spiritual aliens. And with this they experienced a new resurgence of kinship with the West and their own countries, which until now they had seen only through a thick ideological fog.

The decay of faith led rapidly to two discoveries. One was that the rough economic equality which both Marx and Lenin assumed as a principle of socialist distribution was as far distant in the Soviet Union—in some respects even farther away—than in the countries of the middle way. The other was a nausea, more acute for being so long delayed, at the falsity of Soviet propaganda, its employment of semantic corruption as a weapon, illustrated, *e.g.*, in the use

of the term democracy for a system in which expression of dissent was a grave penal offence.

v

It would be inappropriate to conclude this survey of political disillusionment without some evaluation of the weaknesses in the outlook of these Western intellectuals which contributed to their tragic self-deception. Even granting the partial truth of their plea that it was not so much *they* who changed as the Soviet system, it still remains undeniable that they were at fault in not conceiving the possibilities of change. But much more than this can be said in criticism. Even when all allowances are made for human fallibility, their responsibility for their own illusions remains heavy.

First, they looked to politics for something politics alone can never bring to the life of men—that absolute certainty, that emotional “sumptuousness of security,” to use James’ phrase, which, if attainable at all, can be most easily reached through a revealed religion they had properly rejected. In identifying themselves with those in the seats of power, they abdicated their true functions as intellectuals—to be the critical conscience of the smug and contented; and to fulfill their mission as the creatively possessed, the eternal questers after truth under all conditions. There is no loyalty to any community or State or party or church which absolves the individual from loyalty to himself. Whatever good the “sav-

ing remnant” can bring to the world, it must at least save the purity of the enkindling flame which by accident of natural grace burns within them.

Second, in their zeal for salvation by total political faith, they forgot that politics is always made by men, and that no doctrine or institution is a safeguard against its own abuses. They were doomed to be disillusioned because they forgot that no social change can make gods or even angels out of men, that to be human is to be tempted, and that no one can be forever tempted without erring.

Third, they made the mistake of all the typically *religieuse* of forgetting that in the affairs of *this* world, at least, faith can never be a substitute for intelligence. The transformation of the economic order is not a single problem that can be settled by fiat, poetic or philosophical. It is a series of problems, all very difficult, requiring prolonged study, in the absence of which a talent with paint or words or tones is not a sufficient qualification. They were immature in imagining that the field of economic behavior, from which as a youth, the great physicist, Planck had withdrawn because of its difficulty, could be stormed with weapons of moral indignation.

Fourth, they had abandoned too soon their own heritage of political democracy. They grossly underestimated the power of the self-corrective procedures of democracy to remedy, and perhaps to remove, the major economic disabilities and injustices of our age. Intent upon viewing every-

thing *else* in historical perspective, they refused to take an historical perspective to Western democracy, and to observe the substantial progress that had been made since the time Marx described the pitiful conditions of the English proletariat in *Capital*, a book so sacred to most of them that they never read it. They failed to see that so long as the processes of political democracy remained intact, it was possible to carry the moral imperatives of the democratic way of life just as far as our courage, effort and powers of persuasion reached.

Fifth, they did not understand the genuine sense in which the social problem is a moral problem, *i.e.*, that no social institution or system is an end in itself but a means for realizing the primary value of security, freedom, justice, knowledge and kindness. Since the world is just as much a consequence of the means we use as of the end we profess, the end that actually comes to be depends upon the moral qualities of the means used. They had often heard that the end justifies the means but they never stopped to examine the evidence, in order to see whether the means used were *actually* bringing the end-in-view closer or pushing it farther away.

Whatever the responsibility of these writers for their own illusions, the record of their disillusionment is a record of growing intellectual and emotional maturity. No one has a right to be censorious of them, and least of all those who complacently

accept any social change, whose emotions of sympathy for their fellow-men are never engaged, and who leave all the risks of thought and action to others. The very existence of this literature is a challenge to subsequent generations of writers who feel called to enlist themselves as foot-soldiers in a political crusade. We should be grateful to them for providing texts not only in the costs of human folly but in the grandeur of human faith and humility.

So long as there are human beings there will always be ideals and illusions. They cannot be foresworn. But this literature demonstrates that good sense in the quest for the good life in the good society depends not so much on *what* ideals are held as on *how* they are held; not so much on the nature of our beliefs as on the methods by which they are reached.

Underlying all other differences among human beings is the difference between the absolutist and the experimental temper of mind. The first converts its unreflective prejudices into first principles, and its shifting certitudes into a fanaticism of virtue which closes the gates of mercy against all who disagree. The second, although resolute in action, knows that finality of judgment is not possible to men, and is therefore prepared to review the evidence on which it stakes its ultimate commitments. It is this willingness to reconsider first principles in the light of relevant evidence and other alternatives which is the sign of the liberal and mature mind.

COMMON SENSE AND THE LAW

BY WILLIAM A. STERN, 2ND

IN THE sense of a fixed body of rules which, correctly interpreted, should bring about a single outcome to any matter coming before a court, there is no law. Despite lawyers' verbiage and judges' solemn obeisances to precedent, practically all lawsuits are decided on the basis of judges' and juries' simple convictions of what is right and what is wrong; moral sentiments lie between the lines of the most learned, long-winded decisions. Far from creating confusion, this essentially ethical approach affords greater assurance of justice than could a collection of black or white pronouncements generally considered to be The Law.

Seldom, of course, does a court frankly state in an opinion that in the light of the facts no other outcome would be just; the myth of The Law is maintained, and prior decisions are cited as supporting authority. It does not seem to matter that a precedent may not be to the point, or that more apposite precedents would bring about a different result. Far-fetched analogies and devious reasoning can ac-

complish wonders in justifying an opinion apparently based on established rules but actually on plain horse sense.

Rarely, too, do lawyers admit what the ablest of them really try to do: present the facts so the tribunal will be convinced their clients are in the right. Once a Court reaches this conclusion, it is unimportant what precedent is cited, for even a dubious one will be welcomed. Since tons of tomes of law reports contain decisions, many contradictory, on nearly every question, finding appropriate precedents is the least of a lawyer's job.

If my law school made any attempt to teach this fundamental of applied law, that decisions go to the parties who present the most convincing factual demonstration of the rightness of their causes, it must have been on a day I was absent. I was assigned case after case to study, and though I found many whose principles conflicted, I was always given the idea that one case expressed the true law while its opposite was not the law. Had all these cases been in different

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