

of all the taxing power, might be exercised, is proved by this very case of *McCulloch vs. Maryland*. The question at issue was whether Maryland had the right to tax the operations of the Bank of the United States. Counsel for the state urged that the state ought to be trusted to exercise its power reasonably and considerately, which argument Marshall answered with his famous maxim, that "the power to tax involves the power to destroy." In other words, concede the state the power to raise revenue from the bank and it would be free to use the same power to drive the bank from the state. It is submitted that this line of reasoning is fatally at variance with the doctrine of *Bailey vs. The Drexel Furniture Company*.

To sum up: The logic of the decision of this case, overriding previous decisions, makes the Court the supervisor of the purposes for which Congress may exercise its Constitutional powers. It thus cancels out the third dimension, so to speak, of the sovereignty of the national government within the field of its granted powers. At one stroke a new canon of constitutional interpretation is created and an out-of-date one revived: legislative motive becomes a test of legislative action; and any effort on the part of Congress to bring within its control matters heretofore falling to the states alone, raises the question of valid motive. The notion of the cooperation of the national government and the states in the furtherance of the general welfare, which was voiced a few years ago in *Hoke vs. United States* (227 U. S.) has apparently dropped out of view. The one thing to be said for the new doctrine is that it will probably prove so unworkable in practice that it will not long survive.

Meantime we may fairly retort upon the Court the question which it has put Congress: What was its "primary" motive? It is only a surmise, of course, but perhaps not too wild a one, that the Court has been influenced by the talk of a breakdown of local self-government within recent years, and especially in consequence of national prohibition. The reflection is prompted that if the Court will cast its eye back over the last thirty years, it will have reason to conclude that it must itself shoulder some of the responsibility or credit for national prohibition, since it was another happy idea which, overruling the precedents of half a century, in the case of *Leisy vs. Hardin* (135 U. S.), started the agitation which culminated in the eighteenth amendment. Judicial adventures in saving the country have not always worked out quite as they were planned to.

But a more important lesson, too, is suggested by this decision and the broadening discussion af-

fecting the whole doctrine of judicial review to which it has given rise. The Supreme Court is, first of all, a court of justice and justice is a matter which touches individuals much more immediately than it does governments. The Constitution contains many provisions designed to safeguard individual justice—for instance, those of the fifth and sixth amendments, and those of the first section of the fourteenth amendment—and the enforcement of these provisions the individual is entitled to claim directly from the Court. Of other provisions and principles of the Constitution, however, and especially of those which are designed to distribute power within the structure of government erected by the Constitution, the individual is only the indirect beneficiary. Yet even within this field the Court has a clear mandate from the Constitution to intervene to secure the supremacy of the Constitution itself and of the national laws, against conflicting state legislation. On the other hand, when we view the question of judicial review from the side of national power, a different principle is recognized both in the *Federalist* and in Marshall's decisions. This, in the words of the latter, was that "the wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at election" were "the sole restraints" upon which the people had relied to secure them from abuse of its powers by the national government. "They are," he adds, "the restraints on which the people must often rely solely. in all representative governments." Surely these words are still applicable. In the light of them, *Bailey vs. the Drexel Furniture Company* must be written down as a piece of grandmotherly meddling, certainly wrong in principle, even though it do not prove actually mischievous in the final result.

EDWARD S. CORWIN.

Ego

What though the world rolls round for untold years,
While seas, through aeons, toss their sands ashore,
Tracing old tales of time on ocean's floor,
Sifting more salt than dries in all our tears?
What though the winds the tallest pine tree hears
Still sing the songs they sang long time before,
Winding through stars a million years or more,
As whirling mist on meadows clouds and clears?
What comfort lies in this for heart and will?
I cannot live their length—fragile my prime,
Brief is my noon—so let the long lived hill
Endure the storms; its grass and snow are one.
Oh, let my days, that fill my short lifetime,
Be clovery sweet and bright beneath the sun!

ELISABETH WILKINS THOMAS.

Thomas Garrigue Masaryk *

TO the name of Thomas Garrigue Masaryk, founder and first President of the Czecho-Slovak Republic, attaches one of the most amazing achievements of practical statesmanship in all ages. A fugitive from Austrian "justice" in 1914, he carried against tremendous odds his campaign for the disruption of the Hapsburg empire and the liberation of the Czecho-Slovak people to a triumphant climax by October, 1918. Today he stands out, head of the most democratic and progressive of the Succession States, as the greatest champion of international sanity, of racial reconciliation, of economic reconstruction and social progress on the continent. Yet his brilliant record as a politician is merely incidental to his true greatness. He is the leader of his people not in a political, but in a moral and religious sense.

He spent his life in fighting official Christianity—stereotyped Protestantism as well as Popery. The conventionally religious regard him as the Anti-Christ, the incarnation of rationalism and freethinking. The truth is that Masaryk is perhaps the one real Christian among the practical leaders of contemporary Europe—the one statesman who not only bases his working code on Christian ethics, but who also translates that code into everyday practice.

In one of his writings he asks: "Has there ever been a better, more exalted, more divine life than that of Christ?" And he answers with Rousseau: "If Socrates suffered and died like a philosopher, Christ suffered and died like a God." In the next sentence he gives the clue of his religion. "Christ's whole life is Truth. God's Son is the highest simplicity; he shows purity and sanctity in the true sense of the word. Nothing external attaches to him and his life, no formalism, no ritualism; everything comes from the inner being, everything is thoroughly true, thoroughly beautiful, thoroughly good." Masaryk's life is devoted to the quest of truth as the highest simplicity, the disentangling of the substantial living thing, of reality, from the maze of the external, the incidental; his battle is against that formalism which stifles the essence of life. He calls himself a Realist. The political party which he founded and which ultimately achieved the liberation of his country was called the Realist party—the party seeking the salvation

of the nation through recognition and moulding of realities rather than in glamorous dreams of past and future.

Almost every person carries in his soul the image of some event or other, rising in an uncanny clarity from the mist of childhood's half-memories—a central impression, a kernel around which later experience crystallizes, something that gives color and direction to his whole life. Sometimes it is what Freudians call a complex; but it is not necessarily pathological; sometimes it is a trifling detail that acquires a disproportionate, and to other people often unintelligible, emotional emphasis without being of a traumatic character. Masaryk tells of two such epochal occurrences in his childhood. His father was a gamekeeper on one of the imperial estates in Moravia, and they were very poor. Once in a year the emperor came down with a retinue of nobles and generals and diplomatists, to shoot hares, partridges and pheasants. The company deposited their resplendent cloaks and fur-lined overcoats in the cottage of the Masaryks; and the whole neighborhood, poor peasants all of them, foregathered while the shoot was on, to behold and admire those fabulous garments, every one of which represented an unattainable fortune. Little Thomas alone refused to look at the display. "I did not like to see those things," the President of the Czecho-Slovak Republic once said of this experience of the cottager's boy. "I felt there was something radically wrong. Just what was not clear to me. But such a hate I had! That hatred lasted till today."

The other career-shaping episode happened when he was fifteen. Being barely able to read and write, he was, at the urging of his parents, about to take employment with the village blacksmith. But he disliked the idea. It was not interesting; he yearned to see the world, for knowledge, for adventure. So he packed his little bundle, went to Vienna and became apprenticed to a locksmith. He stood on the threshold of his dreams. He was in the imperial capital; the wide world lay around him; and the trade of locksmiths—how it attracted him! Locksmiths were magicians—they opened doors forbidden to others, doors behind which were stored he did not know what treasures of knowledge—locksmiths solved mysteries wrought in steel and iron. His fancy was aflame. Then came the disappointment. Instead of being initiated into the wizardry of locks he was put by his master to operate a machine of

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