ture: it comes from the public record, from testimony before Congressional committees, public statements, and the overt actions of the Department itself. It sets out what amounts to a policy that is more concerned with rhetoric than with crime control, more interested in curbing political dissent than run-of-the-mill street crime, and which, so far, has shown little interest in pressing for the enforcement of the civil rights laws but considerable interest in getting them watered down. The book describes the shock of the outgoing members of the Department's staff on discovering what they regarded as the unfathomable ignorance of some of their high replacements—men who had no idea of the scope of the Department's work, of the size of the staff or its duties, and no sensitivity about Constitutional issues in the areas of civil rights and civil liberties. The new men were, in Harris's view, political people who, on moving into Justice, continued to do political jobs.

What makes it hard to be dispassionate is that Harris is not writing about some period of the past (occasionally the book reminds one of similar accounts of the McCarthy years) but about the present. It is an instant replay, and it becomes overwhelming when one realizes that everything described has taken place during the past twelve months and that the news of the day, far from promising change, indicates more of the same, and still more. For what Harris documents most of all is not the establishment of policy, not a series of individual acts, but the creation of a mood that seems to be affecting every area of public life and law.

The jurists who are making our headlines are not Earl Warren and Hugo Black or Learned Hand, but Clement Haynesworth, G. Harrold Carswell, and Julius Hoffman. Robert G. Morgenthau, perhaps the most effective federal prosecutor in America, is dismissed for what he feels was his interest not only in prosecuting hoods and Mafiosi but in investigating white-collar crime, the crimes of the rich and powerful, and the manipulations of fat cats who use Swiss bank accounts for tax evasion. There is increasing—and overt—use of wiretapping, not only in cases affecting national security (where previous attorneys general had used it) but in a variety of investigations, including those concerned with politically suspect organizations: peace organizations, the SDS, and similar groups of "subversives."

At the same time, federal funds to help modernize local police methods and training, and to do the expensive and painstaking job of routine law enforcement, are not available, or available only in small amounts. (Vietnam, you know.) While every major police force in America has stocked up on Mace and riot-control equipment, few, according to recent studies, have any idea of how to use it, or how to handle disturbances before they reach riot dimensions. Meanwhile, crime in the ghetto (which is where a disproportionate number of murders, assaults, burglaries, and other thefts occur) goes on.

The point of Harris's book is that—in its actions if not in its rhetoric—the Justice Department isn't terribly concerned about attacking the sources of crime, or even ordinary crime itself. In an interview shortly after he was appointed, Mitchell said that he was not interested in social reform but in controlling crime. Yet in ignoring the one he probably jeopardized his chances to do either. At the same time, the public fear of crime has not been appeased, and there is a chance that when the substantive changes fail to materialize, there will be more pressure, more rhetoric, more repression, and more contempt for Constitutional protections.

What the phrase "law and order" seems to mean, most of all, not only in Washington but in many other parts of the country, is a crackdown on those who are politically weak or socially offensive: the poor, the black, the young militants, and those who side with them. And within the Justice Department, according to Harris's evidence, that means selective crime enforcement to compile a record which is politically popular and will not antagonize those people and regions that provide the administration's greatest support. The first representative of the new administration to move into Justice during the transition period in the winter of 1968-69 was Kevin H. Phillips, author of *The Emerging Republican Majority*. It was an indication of how the Department was to be used, and between the headlines and the Harris book you can read all about it. But the book alone is like a fire bell in the night, probably the most important volume to be published so far this year.

Peter Schrag

Peter Schrag is an editor-at-large for Saturday Review.

AMERICAN LAW:
The Case for Radical Reform

by John P. Frank

Macmillan, 216 pp., $5.95

THE GREAT VIRTUE of this book is its unashamed attention to the real world. Though John P. Frank has taught Constitutional law and written extensively about the Supreme Court, he writes here as a plain practitioner with clients for whom the rule of law boots not, because none of the judges in the courthouse seems to have time to hear their cases. Honor, Falstaff pointed out, hath no skill in surgery; and the great abstractions of justice and rights and due process, however rotundly they roll from the pens of high-school seniors and newspaper columnists and appellate judges, cannot remedy the wrongs of litigants who are waiting . . . waiting . . . waiting. Four years in Brooklyn, five years in Philadelphia, six years in Chicago—these are the averages for state court civil cases to come to a jury trial. If the loser then appeals, there is no average.

Mr. Frank runs over his own practice in the relatively speedy jurisdiction of Phoenix, Arizona: four years on this case, five years on that, nine years on a commercial litigation, seven on a case still pending with "at least two years more of life expectancy." And the situation grows steadily worse. "If a fundamental social value of the rule of law is to permit people to settle their disputes in an orderly and efficient way," Mr. Frank writes, "then the system itself is failing . . . The gloom is unadulterated by a ray of hope."

Until recently, nearly all lawyers and judges believed (some still do) that the condition could be cured by a dose of the sovereign American remedy: more money, more courtrooms, more judges. This was, as Mr. Frank puts it, "an unplayed ace in the hole." But during the 1960s judges and courtrooms were added in quantity to both the federal and state systems, and the delays grew worse. "We have now played it, and we have lost the pot, and we have nothing to show for it." Mere device will not work: pre-trial conferences in judges' chambers do shorten trials and prevent visible breakdown of the system, but they don't much reduce delay; farming out parts of the trial to special masters takes more time than trial itself; even automation of the trial calendar, which was done in Philadelphia too late for Mr. Frank to report on it, has dented rather than cracked the problem, and the dent is already filling in again.

Yet something, obviously, must be done. In one of his few purple passages, Mr. Frank proclaims that "What

we took from George Washington and John Marshall, what was preserved on this continent by Abraham Lincoln, what we cherish as the great contribution of the English-speaking people cannot be allowed to bloat into immobility." If neither expenditure nor technology will save the courts, a "radical reform" must be endured: we must have less law.

Mr. Frank would like to see both substantive and procedural reductions. In two areas—automobile accidents and divorce—he would rid the law of the burden of assessing blame, and thus of all the trial work of gathering evidence (or lies) as to "fault." Victims of automobile accidents would be compensated by some form of social insurance, with awards to be allocated by an administrative tribunal. Divorce, Mr. Frank suspects, should become consensual, but even if some grounds continue to be required and division of property must be established by third parties, the question should be taken out of the hands of judges.

"Assume," Mr. Frank proposes, "the all too frequent case: speedy acquaintance, speedy fornication, speedy marriage, speedy reproduction, and speedy repentance. Hypothetically, both parties were twenty when they met, and twenty-one when they had had enough ... We ... face the question of just how much time, energy, and money the community is willing to spend in ameliorating the consequences of the young couple's improvidence. Let me start with the brutal assertion that although this problem needs to be handled somehow, the young couple does not have a God-given right to tie up the legal system of the United States."

Regarding procedure, Mr. Frank is equally tough. He wants to reduce the number of "decision points" by adopting (or returning to) simple rules that prevent the introduction of evidence to support trivial or frivolous or farfetched arguments. He wants to see a great expansion in the judges' use of their powers of summary judgment, and a great deal more stipulation rather than contested proof of fact. Following Roscoe Pound's famous denunciation of the "sporting theory of justice" (which dates back to 1906), Mr. Frank is even willing to question whether the time-devouring adversary system is always and everywhere the best way to get at the truth of the matter.

Some of Mr. Frank's proposed medicines may not be strong enough. To remedy the dilatory habits of the bar, for example, he suggests nothing more than exhortation and education. (He would like to speed up what he charmingly calls "the case-of-the-month-club" law school course.) Much can be done, though, without increased education. It is within the power of the courts to require lawyers to be ready on a set trial date, with no postponements except in utter need. Judges have been reluctant to make such demands, supposedly because it's the innocent client who gets hurt if his case is thrown out or mangled by his lawyer's nonfeasance. But as Chief Judge J. Edward Lumbard of the Court of Appeals for the Second Circuit pointed out a few years ago (refusing to reinstate a case which a trial judge had dismissed when plaintiff's lawyer failed to show up due to the press of other business), the damaged client is not without recourse: he can, and should, sue his lawyer. Bar Associations presumably could insure representation to such victims of legal malpractice.

Elsewhere, Mr. Frank may be too draconian. It is by no means obvious that commercial disputes deserve the priority over personal injury actions and divorces which his radical reforms would, in effect, provide: the business community seems to have moved large numbers of such disputes out of the courts and into arbitration with no harm done to anyone. Expanding judicial powers of summary judgment is, as Mr. Frank notes, a dangerous business. A case can be made for even the excesses of the adversary system along the lines of Winston Churchill's case for democracy—a very bad form of government, except by comparison with the alternatives.

But those are merely lawyers' worries, for in fact the situation is much worse than even Mr. Frank has admitted. Underlying the crisis he describes is a severe and incurable mismatch between the handicraft nature of courtroom trials and society's need for volume processing of disputes. The present façade of adjudication conceals an unsound structure of bludgeoned settlements in civil cases and bargained guilty pleas in criminal cases. The insistence on detailed justice for each individual case may in fact be incompatible with a guarantee of fairness for all cases; by clinging to myths of law we may merely be avoiding the hard, sad job of building the new and better administrative processes we really need.

Mr. Frank is not to be faulted for choosing to examine the worms he knows well rather than the whole mysterious can. He is a lawyer writing for other lawyers, though his grace of expression and sense of the real world make this short book—which started as a set of three lectures in honor of former Chief Justice Earl Warren—easily approachable by anyone who is both literate and curious about what really happens in the world. Adoption of Mr. Frank's thirty-eight highly practical recommendations would do some good, too; but in one form or another the crisis he describes is going to be with us for a long time to come.

Martin Mayer

Martin Mayer is the author of "The Lawyers."

"I never let my left hand know what my right hand is doing. Hello ... hello ... operator! I've been cut off!"

Sovereignty

IMPERIAL SUNSET:
Vol. I: Britain's Liberal Empire, 1897-1921

by Max Beloff
Knopf, 387 pp., $8.95

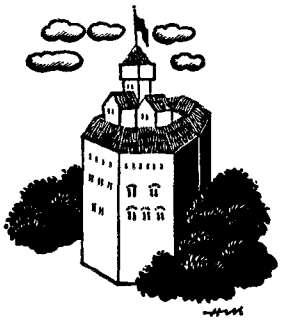
IN 1921 PAX BRITANNICA stood at a geographical and demographic zenith that has never been—and may never be—approached by any other global power. The Union Jack flew over 15 million square miles of our planet, and England's King George V claimed the allegiance of half a billion subjects. It was almost too big to be true. And, in fact, the immensity was deceptive, for although world maps in 1921 displayed more red than at any other time in history, Britain had to all practical purposes lost her largest and most virile overseas possessions. Only the frailest of ties bound Canada, South Africa, Australia, and New Zealand to the imperial framework; in a very real sense the dominions had become independent nations, with identities, needs, and aspirations no longer shaped by Westminster or Whitehall. Their withdrawal from the increasingly questionable protection of Britannia's shield marked the first major step toward the British Empire's ultimate collapse.

The elements that hastened the dominions' emergence into their own place in the sun between 1897 and 1921 are examined with considerable perception—and almost excruciating attention to detail—in Volume I of Max Beloff's *Imperial Sunset*. This is not a book for the casual reader. Beloff, a professor of government and fellow of All Souls College at Oxford, has written a work of prodigious scholarship on a phenomenon of such awesome complexity that it could at times confound the individuals closest to its workings. Even Lord Lothian, one of the more prominent figures in the tortuous drama, was able to recognize, as Beloff notes, that "imperial problems were too big for any single mind to grasp." Yet any single mind prepared to follow the labyrinthine path of *Imperial Sunset* will be rewarded with a clearer appreciation of how and why the Empire, at the summit of its sway, began to come apart at the seams.

Limitations of space make it impossible to do proper justice to this outstanding study, but attention should be drawn to the most conspicuous pattern that emerges: a struggle between what might be called centrifugal and centripetal forces seeking to guide the Empire's destiny. The former are specially visible in the growing role of the United States as a military-economic partner and rival, in the Indian question, and in England's mounting preoccupation with European affairs at the expense of imperial solidarity. The inner-directed drive is perhaps best seen in the efforts, inspired largely by Joseph Chamberlain, to impose sweeping tariff reforms that would jettison Britain's nineteenth-century free-trade practices in favor of an imperial preference system aimed at strengthening the bonds between the mother country and the dominions.

It is hardly news that the centrifugal impulses proved the more powerful. Imperial preference, bold in conception, also contained built-in drawbacks. Even before World War I, both the European continent and the United States were better customers in British overseas markets than was Britain herself. The prewar Liberal government, moreover, held to the strong conviction that if proposals such as Chamberlain's were put into effect, the result would have been to "set the interests of the homeland against those of other parts of the Empire, and render the whole idea of empire odious to the mass of the people." Despite some implementation of imperial preference in 1919 and 1932, it was erroneous to believe that Britain might "create out of her Empire a closed economic system that could enable her to ignore developments in the rest of the world."

From the standpoint of imperial aims, Beloff sees the American colossus as simultaneously indispensable and lethal. At the end of the war "it was obviously in Britain's interests that the two countries' policies should coincide as far as possible," but concord was more easily imagined than achieved, "in view of the revealed antagonism of the United States to British naval strength and to the British imperial system as a whole." In this connection it is worth noting that the harsh American attitude toward the Empire seems somewhat macabre today, when one considers the draconian character of our own imperialism in Southeast Asia. Yet Britain, her energies and resources badly depleted after four years of armed conflict, found herself obliged not only to swallow American sanctimoniousness but to accept an American role in the shaping of her postwar imperial program. In 1921, when it was decided that the Royal Navy would concentrate its strength in European waters, "the British government was in fact replacing a formal alliance with Japan by a mere understanding with the United States, and assuming that the latter's interests would be served by defending the security of the Pacific dominions." This move was welcomed by Canada, Australia, and New Zealand, which "found in the United States a power closer to



their own way of thinking and better placed to assist them than the distant mother-country." Clearly, however, "to place the defense of empire in the hands of the Americans was to accept its ultimate demise."

The decomposition process was also accelerated by the Empire's jewel and pariah. Uncertainty over the moral and political validity of British rule in India could be noted as early as 1907, when no less a figure than the Secretary of State for India, Lord Morley, remarked on "how intensely artificial and unnatural is our mighty Raj. And it sets one wondering whether it can possibly last. It surely cannot and our only business is to do what we can to make the next transition . . . something of an improvement." That transition, embodied in the India Councils Act of 1909, paved the way for the Government of India Act of 1919 and a correspondingly stronger Indian voice both in domestic and imperial councils.

But such advances were given a markedly cool reception by the dominions. In 1921 South Africa's Smuts "refused to contemplate any equality of treatment between Indians and white citizens," while the prime ministers of Australia and New Zealand, although "refusing to accept Smuts's basic principle of racial discrimination as compatible with the declared ideals of the Empire . . . defended the exclusion of Asian immigrants on economic grounds." Nor were the dominions alone in their distaste for the repeal of India's second-class citizenship. Beloff tells us that Clemenceau, during a visit to India in 1920, "was surprised to find so many Englishmen saying there was nothing left to do but to get out . . . being unprepared to envisage working as a team or on terms of equality with Indians." The Indians themselves tended to view the concessions toward constitutional advance as too little and too late. By 1920 "there was for the first time a powerful section of opinion in India contemplating full independence outside the Empire."

Finally, England herself, although she stood to gain the most from keeping the Empire intact, can be seen as the prime mover of dissolution, simply