

An Analytical Study of Lord Hewart

An Analytical Study of Lord Hewart:

*Despotism Renewed,
Hewart Unburied*

By

Neil Hickman

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For James, Lyra, Tom and Oscar, with apologies for the country, and the world, that my generation is leaving you.

And to Nellie Harris (1914-1972), of James Turner Street, Birmingham, who won an exhibition to study history at university, but couldn't take it up because her father was out of work and the National Government had just come to power: to the extent that this is a historical study, this is for you.

dēs'potism, (de-spə-ti-zəm) n.

Arbitrary rule (*Concise Oxford English Dictionary*);

Oppressive absolute power and authority exerted by government (*Merriam-Webster Dictionary*).

“Writers on the Constitution have for a long time taught that its two leading features are the Sovereignty of Parliament and the Rule of Law. To tamper with either of them was, it might be thought, a sufficiently serious undertaking. But how far more attractive to the ingenious and adventurous mind to employ the one to defeat the other, and to establish a despotism on the ruins of both!”

[Lord Hewart, *The New Despotism*, p 17]

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(* Actually ex-judge; but as Parliament has still not deigned to give former District Judges any sort of official honorific, this will have to do).

I could not have completed this book without the truly amazing Kate Faulkner and her colleagues at the Squire Law Library, Cambridge.

I record my grateful thanks to Igor Judge, Lord Judge (1941-2023), Lord Chief Justice of England and Wales 2008-2013, who died just as this book was going to press. His kind words when I was starting out on writing this book offered me encouragement, and his wise and eloquent words in the House of Lords offered me a little hope.

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Oh, and I am also very grateful to Ian Dunt for his observation towards the end of his excellent volume *How Westminster Works...and Why it Doesn't* that

“I’ve discovered while writing books that they will absolutely destroy you in every conceivable way: mentally, spiritually, and physically”.

Which reassured me that it wasn’t just me. And I am grateful to Sue for putting up with me while I wrote this, and for gently chivvying me to get it finished.

The shortcomings of this book, and the errors which it still contains, are, of course, solely my responsibility. But now at least I shall not share the fate of my fellow chessplayer Henry Buckle (1821-1862), whose last words are said to have been “My book, my book! I shall never finish my book!”

Neil Hickman

November 2023.

INTRODUCTION

Is this book a biography, a historical study, a book about the law, or a book about politics? To an extent, it has to be all of those things, and I will take a moment to explain why.

In 1929, the then Lord Chief Justice of England, Gordon Hewart, published a passionate polemic entitled *The New Despotism*. Hewart had been a prominent Parliamentarian; and he declared himself concerned that the power of Parliament was being usurped by an unaccountable “Executive”. He wrote:

“Writers on the Constitution have for a long time taught that its two leading features are the Sovereignty of Parliament and the Rule of Law. To tamper with either of them was, it might be thought, a sufficiently serious undertaking. But how far more attractive to the ingenious and adventurous mind to employ the one to defeat the other, and to establish a despotism on the ruins of both!” [*The New Despotism*, 17]

...

“[The establishment of the New Despotism] will prove tolerably simple if [the would-be “despot”] can

- (a) get legislation passed in skeleton form;
- (b) fill up the gaps with his own rules, orders and regulations;
- (c) make it difficult or impossible for Parliament to check the said rules, orders and regulations;
- (d) secure for them the force of statute...
- (g) take power to modify the provisions of statutes and
- (h) prevent and avoid any sort of appeal to a Court of Law.

If the expert can get rid of the Lord Chancellor, reduce the judges to a branch of the Civil Service, compel them to give opinions beforehand on hypothetical cases, and appoint them himself through a businessman to be called “Minister of Justice”, the coping stone will be

laid and the music will be the fuller” [21]

Hewart appears to have regarded the “despotic” threat as coming from an over-powerful Civil Service. His relations with the Permanent Secretary to the Lord Chancellor, Sir Claud Schuster, were famously bad - regrettably, though perhaps unsurprisingly for a man with a fascination with the English language, Hewart took to referring to Schuster as ‘Shyster’¹. Although he had worked closely with one of the most unscrupulous men ever to be Prime Minister, he appears not to have appreciated that Government itself, as well as the Civil Service which does its bidding, might be an even more significant threat.

Although fairly well-regarded during his lifetime and, as we shall see, the subject of a flattering biography as late as 1959, Hewart’s reputation has declined dramatically; and that, means that his warnings are not given the respect which I believe they deserve. The extent to which he has been forgotten is exemplified by the fact that the “People” section of the Liberal Democrat History Group website², although including Ffion Hague (as the author of an excellent study of *Lloyd George and Women*) and Simon Heffer (as the author of a chapter on W. E. Gladstone), fails to mention Hewart at all.

In the pages which follow, I shall suggest that much of the denigration of Hewart is unwarranted, and that, over nine decades after its publication, *The New Despotism* has important messages for our times.

A substantial part of that denigration has stemmed from two assessments of Hewart as a judge, and I shall argue that those assessments were grossly unfair. That exercise necessarily involves a study of Hewart’s work as a judge, and consideration of the historical context in which that work was done. And because the denigration of him has caused Hewart to be largely forgotten, I have thought it sensible to include a relatively brief biographical note for the benefit of the reader who, reasonably enough, asks “Who was Lord Hewart?”

Although, towards the end of his life, he said³ that he regretted writing the book, this appears to have been based on a realisation that the establishment of the Welfare State (which, as a lifelong Lloyd George Liberal, he welcomed) would require, on a large scale, both the use of delegated legislation and the entrusting of decision making power to officials. However, the fact that both of these things have important uses does not justify their wholesale abuse; and there is much in the current

politics of England which, were he alive today, would arouse Hewart's anger and inspire his eloquence.

I have taken a conscious decision in what follows to avoid discussion of the COVID-19 pandemic or, save very peripherally, the decision of the United Kingdom to leave the European Union. Responding to a rapidly evolving threat such as COVID-19 inevitably requires rules to be put in place in a great hurry, and the competence, honesty and even-handedness with which those rules have been drafted and implemented will be a matter for debate in the future with the benefit of hindsight. The decision to leave the European Union (how Hewart, a lover of the English language as well as a master in its use, would have loathed the ugly neologism "Brexit") has divided the nation on a scale not seen since the Civil War. I believe that Hewart's message is important both for supporters of Parliament and for those they regard as Malignants—whichever way round you believe the labels should be applied.

Note:

At various points in the discussion, sums of money are mentioned. I have indicated their approximate modern value using the Bank of England Inflation Calculator at <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>.

An explanation for non-lawyers: Generally, I have used the conventional abbreviations J and LJ, thus "Smith J" rather than "Mr/Mrs Justice Smith" (a strange title, given that the bearer of it is invariably⁴ a Sir or Dame), "Jones LJ" rather than "Lord/Lady Justice Jones" (also, perhaps, a strange title, the bearer of it not being a Lord or Lady). Two or more High Court Judges are abbreviated to JJ; two or more Lords/Ladies Justices to LJJ. Justices. "Master of the Rolls" is abbreviated to MR, "Lord Chancellor" to LC, "President" to P, "President of the Supreme Court" to PSC, "Upper Tribunal Judge" to UTJ, "Chief Baron" (an obsolete title) to CB, "Chief Justice of the Court of Common Pleas" (another obsolete title) to CJCP, "Lord Chief Justice" to LCJ and "Chief Justice" to CJ.

Notes

¹ Robert Stevens, *The Independence of the Judiciary: The View from the Lord Chancellor's Office* (Oxford: Clarendon Press, 1993), 30.

² "Journal of Liberal History", The website of the Liberal Democrat History Group, accessed May 19, 2023. <https://liberalhistory.org.uk/people/>.

³ Robert Jackson, *The Chief* (London: George Harrap, 1959) (hereafter Jackson), 216.

⁴ It has, indeed, been suggested that when one individual was offered appointment to the High Court Bench in the 1990s, he was told that if he declined the usual knighthood he could not be appointed. There are, however, historical precedents to the contrary: William Lee (1688-1754) refused to accept a knighthood when he was appointed a Judge of the King's Bench in 1730, though he was persuaded to accept one when he became Chief Justice of the King's Bench in 1737 (Edward Foss, *The Judges of England* vol 8 (London: John Murray, 1864), 140). Edward Willes (1723-1787) declined a knighthood when appointed a Judge of the King's Bench in 1768, having also declined one when appointed Solicitor-General in 1766; John Heath (1736-1816), appointed a Judge of the King's Bench in 1779, resolved that he "would die plain John Heath", and did so (Edward Foss, *Biographica juridica: a biographical dictionary of the judges of England* (London: John Murray, 1870), 739, 337).

1. GORDON HEWART

Gordon Hewart was born in Bury, Lancashire, on 7 January 1870. He was the second of the seven children of Giles Hewart and Ann Elizabeth Hewart, née Jones. Like Lord Denning, he was the son of a draper.

His health was delicate, not improved by the polluted air of an industrial town, though his father's business prospered sufficiently to allow the family to live on the outskirts of the town where the air quality was better.

At first he was educated at home by a governess, but at the age of nine he was sent to Bury Grammar School, where, although hopeless at sport and games, he proved a brilliant scholar and a capable actor. He developed a particular love for the classics, though he disputed the story that he slept with a Latin grammar under his pillow! His biographer Robert Jackson quotes his sister Beatrice as saying after one school prize-giving "Mama, I was *ashamed* to see Gordon going up to collect so many prizes"¹.

When he was fifteen, he was encouraged by his headmaster to transfer to Manchester Grammar School, where he entered the Classical Sixth, going on to win an open classical scholarship to University College, Oxford, going up in the autumn of 1887. As he had been at Bury and Manchester, he was a diligent scholar, and made the most of his smallness of stature by becoming cox of the College boat; but his health continued to cause him difficulties, often driving him home before the end of term. Perhaps as a result of that, he failed to achieve the expected First and "only" graduated with a second-class degree. Had he secured a First he had hopes of securing a fellowship and becoming an academic; and I should not be writing this book.

His father was keen for him to read for the Bar, but Hewart was unhappy about doing that before he was financially self-sufficient, and resolved to apply his talent for writing by going into journalism.

He had had a piece published in the *Bury Guardian* when he was but fifteen years old, and had written other pieces since then. He contrived to secure from C P Scott himself an introduction to the London editor of what was then the *Manchester Guardian*; and he moved to London. For a

while, he lived a precarious existence as a free-lance journalist, but in 1892 he secured a staff position as a leader-writer on the *Star*².

He had become close to Sara Wood Riley, the daughter of a prominent manufacturer in Bury, and having secured salaried employment was in a position to marry. They married on 5 October 1892 at Brunswick Methodist Chapel, Bury, and had a daughter and three sons, as well as a fifth child who died in infancy.

Their eldest son, Gordon Morley Hewart, was born in 1893. Presumably—for Morley was not a family name—he was given his middle name in honour of Viscount Morley of Blackburn, sometimes referred to as “the last of the great nineteenth-century Liberals”.³ That is not without irony: at one point Morley declared that an Act to enforce an eight-hour working day was “thrusting an Act of Parliament like a ramrod into all the delicate and complex machinery of British industry”⁴; but when it came to legislation such as the Factories Acts, Hewart, as we shall see, was a firm believer in the ramrod.

“Dodo”, as he was known, proved to be as fine a scholar as his father, and won a scholarship to Balliol College, Oxford. He joined up on the outbreak of the Great War, and was commissioned as a Second Lieutenant in the 6th Battalion of the Lincolnshire Regiment. He was killed in action on 9 August 1915, at Suvla Bay, Gallipoli, aged just 22.

The Hewarts’ second son, Hugh Vaughan Hewart, was born on 11 November 1896. Like his older brother, Hugh attended Manchester Grammar School and went from there to Oxford, attending University College as his father had done. His enlistment papers survive and it appears that he enlisted in the reserves in March 1916 and was called up in November 1917. His actual war service was brief—he served on the Western Front but was invalided out of the Army on 3 April 1918—and he did not advance beyond the rank of Private. He was to survive his parents, though his health continued to be a concern long after the War had ended⁵.

“Dodo” and Hugh had a younger brother, Joseph Francis Reginald, born in 1901. Sadly, “Reggie” appears to have inherited his father’s weak constitution. He suffered a serious attack of pleurisy in 1908 and died suddenly in 1911.

The youngest of the Hewarts’ children was their daughter Katharine Mary, born in 1908. She married Eliot Hodgkin in 1927; the eldest of their children was the eminent painter Sir Gordon Howard Eliot Hodgkin CH

(1932-2017) who although professionally known as Howard Hodgkin was, as we see, named for his grandfather.

Although Hewart had salaried employment with the *Star*, his working life was arduous—he would attend Parliament, listen to debates late into the evening, and return to Fleet Street to hand in his copy before catching the train home. He was able to transfer to the *Morning Leader*⁶, which offered him slightly more civilised working hours, and continued to write a weekly leading article for the *Bury Times*. This task he plainly enjoyed.

“Hardly a week went by without a sneer at the bungling, the impotence, the stupidity, of ‘the strongest Government of modern times’. The phrase recurred. It infuriated supporters of the Government, who were obliged to read week by week a full and unfailing catalogue of shortcomings...”

writes Robert Jackson⁷. By the time of the 1901 Census, Hewart’s description of himself was “Editor (newspaper)”.

While doing all this, Hewart had found time to read for the Bar and eat the required dinners, and on 11 June 1902 he was called to the Bar, a member of the Inner Temple.

Apparently his wife wished him to continue with journalism while seeking to build a practice in London⁸; but Hewart shrewdly chose to go to the provincial Bar. Manchester, though offering plenty of good-quality work, was a much smaller community than London, and his eloquence and scholarship meant that he stood out.

His first case did not end well. He was briefed to defend an action for misrepresentation in the Court of Record for the Hundred of Salford⁹. The case concerned the condition of a horse, and Hewart, having prepared thoroughly, cross-examined the plaintiff and his witnesses in detail. Then one of the jurymen¹⁰ stood up.

“Your Honour, I cannot try this case.”

“Why not?”

“Because the defendant [Hewart’s client] did me the same way”.¹¹

He rapidly recovered from that somewhat unpropitious start, and became popular and successful, with the *Manchester Guardian*, for which he still wrote from time to time, making a point of reporting his cases.

Then came one of those happy accidents which most successful people need. A barrister on the Chester and North Wales Circuit by the name of Thomas Jones had adopted the additional Christian name of Artemus. As he was later to observe,

“Anyone afflicted with the surname Jones will appreciate the advantage of having something distinctive”.

The *Sunday Chronicle* of 12 July 1908 printed an article by its Paris correspondent purporting to describe events at Dieppe after the Grand Prix motor race:

“‘Whist! there is Artemus Jones with a woman who is not his wife, who must be, you know - the other thing!’ whispers a fair neighbour of mine excitedly into her bosom friend’s ear. Really, is it not surprising how certain of our fellow-countrymen behave when they come abroad? Who would suppose, by his goings on, that he was a churchwarden at Peckham?...”

The writer had, protested the newspaper, intended to refer to a fictitious person; he had in fact been discussing with a friend the American humourist Artemus Ward. And in response to a solicitor’s letter, the *Chronicle* published a half-hearted apology which, as half-hearted apologies tend to, probably made matters worse.

Jones consulted Hewart, who was a personal friend. Hewart advised that Jones had in fact been libelled. Witnesses were found who deposed that on reading the article they had supposed it to refer to Jones the barrister. Hewart presented the case before Channell J and a jury at Manchester Assizes in 1908 and secured damages of £1,750¹².

Led by Montague Lush KC, Hewart successfully defended the verdict before the Court of Appeal (though in the face of a furious and closely reasoned dissent¹³ from Fletcher Moulton LJ) and the House of Lords¹⁴. The *Law Reports* of the appeal before the Lords suggest that although nominally Lush’s junior, Hewart actually conducted the case—“Hewart (Lush KC with him)”.

Sometimes a good way of acquiring a client is to give the potential client a hard time; and so it proved with Hewart and the newspaper magnate Edward Hulton. Hewart received a note from Hulton after the jury’s verdict:

“I was most impressed by the way you handled the Artemus Jones case. We shall, of course, appeal, and you will be against us, no doubt. But if we are to be in trouble in future I want you on my side. I hope you will accept a general retainer to advise all my newspapers on any legal matters that arise.”¹⁵

Hewart’s practice continued to thrive, and in 1912, having been at the Bar for ten years, he took silk. When he did so, his eyes were already on a career in politics—Herbert Asquith, the leader of the Liberal Party in the House of Commons, wanted talented lawyers in Parliament and urged Hewart to take silk and, having done so, to stand in the next convenient by-election¹⁶. It should be remembered that at that time it was very much the accepted practice to combine a top-level career as an active KC with being a Member of Parliament.

He contested a by-election in the Liberal-held seat of Manchester North-West, where Winston Churchill had briefly been MP a few years previously¹⁷; but the Liberal Government was facing difficulties over Ireland and over its dealings with the House of Lords, and the Conservative candidate regained the seat, with a majority of 1,202¹⁸.

The following year, however, one of the two MPs for Leicester, Eliot Crawshay-Williams, resigned in unfortunate circumstances—he was named as co-respondent in a divorce case brought by another Liberal MP—and Hewart was invited to contest the by-election. Leicester at that time was a two-member constituency, and by virtue of an electoral pact between the Liberals and the fledgling Labour Party, the two parties put forward one candidate each, the other MP for Leicester being Ramsay MacDonald. Somewhat unenthusiastically, MacDonald advised his local party not to oppose Hewart, and no official Labour candidate stood in the by-election. Alderman George Banton, who had been intending to stand, withdrew. Unfortunately for Hewart, Edward Hartley of the British Socialist Party was nominated, and Hewart faced losing a second Liberal seat on a split vote. However, there was talk that if the Conservatives took the seat Ramsay MacDonald would regard that as showing a lack of confidence in him, and would consider his position. And, shortly before polling day, what purported to be an official Labour Party statement appeared, asserting that

“Every Labour voter who is concerned to preserve party discipline, and who agrees to the desirability of retaining [Ramsay] MacDonald in Leicester should not give encouragement to the candidature of Hartley which is not recognised by the official Labour Party...”

The provenance of this statement was never satisfactorily explained, but it did its work, and Hewart retained the seat, albeit with a reduced majority¹⁹.

Asquith's Government fell in 1916, and Lloyd George took over as the leader of the wartime Coalition. Hewart, who had only been an MP for three years, was invited to become Home Secretary, but declined, saying that he would prefer to become a law officer²⁰. Solicitor-General George Cave became Home Secretary, and Hewart became Solicitor-General in his place, receiving the knighthood which was then customary.

The Armistice was signed on 11 November 1918, and a General Election was called immediately; the election which should have taken place by 1915 had of course been postponed on account of the Great War. The Election was commonly known as the "Coupon Election", as the governing Coalition sought a vote of confidence ahead of the forthcoming peace talks—candidates who had the approval of the Coalition received official letters of support from Prime Minister Lloyd George, nicknamed "Coalition Coupons".

The Coupon Election, of course, changed British politics permanently. It resulted in an overwhelming victory for the Coalition, with 379 Conservatives elected alongside 127 "Coalition Liberals", led by Lloyd George, of whom Hewart was one. The Liberal Party split, with the non-Coalition Liberals led by Asquith losing a devastating 236 seats, including that of Asquith himself. Reduced to 36 seats, the party which had won a landslide as recently as 1906 would never form a Government again.

Hewart's constituency of Leicester had been reorganised and now had three single member divisions. Each was a straight fight, with a Coalition candidate and a Labour opponent. Hewart stood in Leicester East against Alderman Banton, and in Leicester West, Ramsay MacDonald was opposed by Joseph Green, of the short-lived National Democratic and Labour Party, who received "the Coupon".

Although, like most Liberals, Hewart had opposed the Boer War, he was an uncompromising supporter of Lloyd George, and vehemently condemned those who had expressed pacifist opinions during the Great War. And one such had been Ramsay MacDonald. Although he had probably owed his election in 1913 to MacDonald. Hewart denounced MacDonald forcefully and at length.

"I don't ask you. 'Do you any longer desire that he should be called your representative in the House of Commons?' I ask you rather, 'Who

shall repay him for what he has done?’ Greater disservice no man ever did his country in the hour of her greatest need”

wrote Hewart, in a pamphlet headed *J’Accuse*.²¹

Hewart had a majority of 11,327 over Banton. And in Leicester West, Green had a majority of 14,223 over MacDonald.

On face of it, this was a personal triumph for Hewart—but actions have consequences. And one consequence of Hewart’s personal evisceration of Ramsay MacDonald was a lasting hatred felt by MacDonald for Hewart in particular and for Liberals in general²².

“It would appear that Ramsay MacDonald, if he had wished, could have come to an agreement with the Liberals to carry a common programme of social reform which would have justified the Government in remaining in office for some years, and then have given them an opportunity of going to the country on a useful record of public service. But although the party had been put into office by Liberal votes, he always seemed to me to favour his Conservative opponents rather than his quasi-allies.

Whether this was due to his disgust with the defection of the Liberals in 1918, when he lost their support at Leicester, I do not know. Certainly he always spoke of them most disparagingly”

wrote the slightly unworldly Sir Henry Slessor in his memoir²³ in 1941. The anything but unworldly Birkenhead, writing about Hewart in 1924, by which time MacDonald was Prime Minister, saw things rather more clearly:

“Lord Hewart has steered his way so smoothly and so dexterously amid the shoals and perils of forensic and political life that it is doubtful whether he possesses two ill-wishers in England. I think it possible that he possesses one; for he drove the present Prime Minister from a Leicester constituency in a speech of vitriolic and merciless polish. And the great are not always placable.”²⁴

Returning to Parliament, Hewart was promoted to Attorney-General, Lloyd George bringing this about by promoting F. E. Smith from Attorney-General to be Lord Chancellor as Lord Birkenhead. Hewart was also Lloyd George’s choice as Liberal Party spokesman in the Commons when Lloyd George was absent²⁵.

A major issue which concerned the Government immediately after the end of the Great War was, of course, the question of Irish Home Rule; and

Hewart assisted in drafting both the Home Rule Bill and the Anglo-Irish Treaty of 6 December 1921. Indeed, even after he had ceased to be Attorney-General, in the circumstances which I shall discuss in a moment, he undertook to draft the constitution of the Irish Free State based on the terms of the Treaty.

In 1920, it was proposed that the Lord Chief Justice, the Earl of Reading, who had remarkably contrived to combine serving as Lord Chief Justice with serving as Ambassador to the United States, should be appointed Viceroy of India, with the consequence that the office of Lord Chief Justice would become vacant.

Now, there was an understanding that if the office of Lord Chief Justice fell vacant, the Attorney-General of the day virtually had an entitlement to be appointed if he so desired. It has been suggested that this practice was “a peculiar, and thoroughly undesirable, convention”²⁶, but that is historically illiterate. It was in fact a feature of English public life that appointments to the senior judiciary as a whole, not merely the appointment of the Lord Chief Justice, were heavily influenced by political considerations. The Conservative Lord Salisbury notoriously said²⁷ that

“It is...the unwritten law of our party system; and there is no clearer statute in that unwritten law than the rule that party claims should always weigh heavily in the disposal of the highest legal appointments”

but Liberal administrations tended to appoint Liberals, as well²⁸. Granted, a system which inflicted Ridley²⁹, Grantham³⁰ and Darling³¹ on the High Court Bench may have had little to commend it³². But, for example, in 1934, the Labour leader in the Lords, Lord Ponsonby of Shulbrede, said of Slessor LJ, who had been appointed to the Court of Appeal having been Solicitor-General:

“He was promoted to the Bench from being a Law Officer of the Crown. That is an absolutely usual, recognised and normal method of promotion...”³³

Another reason why it may have been thought sensible to appoint Law Officers as judges is that they understood how the system was meant to work. One of the most brilliant English judges of all time, Sir George Jessel³⁴, went from piloting the Judicature Acts through Parliament as Solicitor-General to implementing them as Master of the Rolls, and probably had much to do with the success of the reforms which they

brought about. Nearer our own time, Sir Jocelyn Simon, later Lord Simon of Glaisdale, went from being Solicitor-General to being a perfectly competent President of what was still the Probate, Divorce and Admiralty Division³⁵.

A related “understanding” has been that the “Treasury Devil”, as first Government counsel is colloquially known, could expect to be appointed to the High Court Bench. This had the advantage that the Administrative Court acquired a judge who was intimately familiar with the workings of Government. The consequence may not have been what you might expect. There is a story which has been widely repeated and which I suspect contains more than a grain of truth, of one “Treasury Devil” meeting his predecessor at a social function. As I have the greatest admiration for both of the gentlemen concerned, I shall name neither of them—but the greeting is said to have been “Hello, *****. You’ve been a judge for eighteen months now. Do you *still* have to decide *every* case against the Government?”

At all events, if Reading became Viceroy and resigned as Lord Chief Justice, Hewart regarded himself, and was regarded, as entitled to succeed Reading as Lord Chief Justice. Lloyd George, however, insisted that he could not do without Hewart in the House of Commons.

A perfectly outrageous scheme was hatched by which an expendable elderly judge would be appointed as a stop-gap on terms that he would furnish the Prime Minister with an undated letter of resignation. Lord Birkenhead protested that the arrangement was actually unlawful—one of the key features of the constitutional settlement after the “Glorious Revolution” of 1688³⁶ had been that judges of the High Court could only be removed from office by an address of both houses of Parliament, and as the incoming Lord Chief Justice was being rendered removable at will Birkenhead was surely correct—but reluctantly went along with it.

Who was the expendable judge to be? Entirely predictably, the insufferable Darling J let it be known that he would be happy to be appointed, even for ten minutes³⁷; but in the event an undistinguished judge of the King’s Bench Division, Alfred Tristram Lawrence, agreed to do the Government’s bidding. Born in 1843 and so 78 years of age, Lawrence was six years older than Darling, which prompted one of the very few of Darling’s innumerable attempts at humour to be tolerably amusing, as he remarked with a straight face that he supposed he was not old enough. And so for a limited season, Lawrence took office as Lord Trevethin.

In 1922, of course, the Coalition Government fell, an event commemorated to this day in the name of the “1922 Committee”. Hewart may have feared that the chance of becoming Lord Chief Justice had slipped away, but Lloyd George kept his word and “accepted” Trevethin’s undated “resignation”—Trevethin is said to have read of his resignation in the pages of *The Times*³⁸—and Hewart achieved his ambition. I shall look in the next chapter at Hewart the judge; but it has to be said that, adapting Malcolm’s words from *Macbeth*, nothing in his time as Chief Justice became him so little as his manner of beginning it. He was to serve as Lord Chief Justice for eighteen years, longer than any of his predecessors save Holt (1689-1710), Mansfield (1756-1788) and Cockburn (1859-1880).

His appointment as Lord Chief Justice of course precipitated a by-election in Leicester East, in which the Labour candidate, Alderman Banton, finally achieved his ambition of being elected to Parliament.

In 1930, Hewart was invited by the BBC to deliver the fifth in their series of broadcast National Lectures (the forerunner of the Reith Lectures), taking as his subject “Law, Ethics and Legislation”. It is worth noting the stellar company he was being invited to keep—the four lecturers who preceded him had been Robert Bridges, the Poet Laureate, Professor Eddington and J J Thomson, two of the greatest scientists of their time, and Professor G M Trevelyan³⁹.

As Lord Chief Justice, Hewart of course had a seat in the House of Lords, and continued to regard himself, and was regarded, as a Liberal—indeed, in the late 1930s he contemplated a return to politics⁴⁰. Accordingly, when in 1929 a Committee was formed to consider electoral reform among other matters, under the chairmanship of Lord Ullswater, a former Speaker of the House of Commons, the Liberal Party put forward Hewart as a member. Hewart agreed to serve; but when the membership of the committee was publicly announced, there were strong objections from the Conservative Party⁴¹ to the appointment of a serving judge.

Hewart withdrew his acceptance, while protesting in a letter to *The Times* that

“...in addition to being Lord Chief Justice of England, I am also a peer of the United Kingdom, and in that capacity am summoned by writ, issued from the Crown Office, to be present in the House of Lords ‘to treat and give Council’ upon the affairs of the State...”⁴²

but over seven years after becoming a member of the House of Lords he had at that time contributed little to the business of the House. He is on record as speaking⁴³, fairly non-controversially, in support of an address seeking to authorise the appointment of two further King's Bench Judges following the death of Fraser J and the elevation of Greer J to the Court of Appeal, and in 1928 he spoke on the Rating and Valuation Bill.

However, the House of Lords was not a forum in which Hewart felt at home, and *Hansard* records no contributions from him between 1928 and 1933. Jackson quotes him saying to an unnamed friend during 1934:

“Do I go much to the Lords? No, not often. [Carefully timed pause] I did go the other day. The first man I ran into was a man who had been gaoled for issuing a false prospectus, and the second was a man who had been fined heavily for company irregularities. I said to myself ‘This is not the House of Lords. This is the House of Frauds.’ No, I don’t go much...”⁴⁴

He made good that omission in spectacular fashion in December 1934. A Bill with the anodyne title of the Supreme Court of Judicature (Amendment) Bill was making its way through Parliament, and there were a number of matters, two of them contained in that bill, which concerned Hewart greatly.

The first was that an enquiry had been announced into the workings of the King's Bench Division. Hewart as the head of the judiciary ought in all courtesy to have been informed of this proposal, but, as he remarked to the House in hurt terms, he “was not consulted for one moment as to the terms of reference or as to the personnel of the Commission.”⁴⁵

The pretext for the enquiry was that the Judges of the King's Bench Division were unable to keep on top of their workload; as Lord Sankey suggested in speaking to the Bill,

“There is a heavy body of accumulated arrears, and no hope that the Bench could, in addition to dealing with its current work, dispose of those arrears within any reasonable time”⁴⁶.

Hewart retorted,

“During the early period of my judicial office the number of cases awaiting trial in the King's Bench Division was regularly 2,000 and more. The corresponding figure now is under 1,000... We have got it down, and down, and down...”⁴⁷

Had that been Hewart's only source of irritation, he would probably have let matters be, and grumbled quietly in private.

It is also possible that, had it stood alone, he would have been prepared to endure the provisions of clause 1 of the Bill, which not only provided for the appointment of two King's Bench Judges to bring their number back up to 17, but also of two more such judges, bringing the total to 19—but only on the basis that the appointment of those last two judges, and the appointment of their successors, should be subject to the requirement of a resolution of both houses of Parliament⁴⁸.

What had brought Hewart to the House, however, and what had brought him there in a mood of fury, was the third matter, a perceived slight to Slesser LJ. It is necessary to give a little of the background so that the position of Slesser and of Hewart may be understood.

Firstly, it is significant that the discussions were taking place in 1934. Three years previously, the second Labour Government of Ramsay MacDonald had collapsed, being succeeded by what had grandiloquently styled itself The National Government. The National Government of 1931-1935 was a Conservative-led coalition, nominally led by the former Labour Prime Minister Ramsay MacDonald, and including members drawn from both the Labour Party and the Liberal Party. Both Labour and the Liberals split, the relatively small "National Labour" group eventually being wound up in 1945, while the term "National Liberal" continued to be used by a significant number of individuals⁴⁹ before the National Liberal Party eventually merged with the Conservative Party in 1968.

Slesser had been Solicitor-General in the Labour Government of 1924. Prior to his elevation to the Bench, Hewart had been a prominent supporter of Lloyd George, and certainly saw himself as a Liberal rather than a National Liberal. Both men were suspicious of Sankey, who had been one of the relatively few Labour ministers to follow MacDonald into the National Government.

And secondly, the Court of Appeal at that time was very small. The maximum number of Lords Justices of Appeal at the present time is 39⁵⁰, to whom must be added the Lord Chief Justice, the Master of the Rolls, the respective Presidents of the Family and Queen's Bench Divisions, and the Chancellor of the High Court (effectively, the president of the Chancery Division). In 1934, the four ex officio members of the Court of Appeal were the Lord Chancellor (Sankey), the Lord Chief Justice

(Hewart), the Master of the Rolls (Hanworth) and the President of the Probate, Divorce and Admiralty Division (Sir Boyd Merriman, who was to serve until succeeded by Jocelyn Simon in 1962), in addition to whom there were just five Lords Justices, Greer, Slesser, Romer, Maugham and Roche.

There were generally two divisions of the Court of Appeal, Court 1 dealing mainly with Chancery appeals and presided over by the Lord Chancellor, the Master of the Rolls or the Lord Chief Justice, and Court 2 dealing mainly with common law work and being presided over by the senior Lord Justice, then Greer LJ. Greer's health was poor, and in his absence Slesser LJ had presided over the second division of the Court of Appeal. Slesser assumed, reasonably enough, that if ill-health forced Greer to retire, he (Slesser) would take over at the head of Court 2.

Now, actually, the division of work between the two divisions of the Court of Appeal presented a problem. Master of the Rolls Hanworth, like Slesser, was a common lawyer. He was not comfortable presiding over a court hearing Chancery appeals⁵¹. And what appeared to be a sensible solution was devised. Should Greer LJ retire, one of the Chancery Lords Justices, Romer or Maugham, would be appointed as Vice-President of the Court of Appeal, and would preside over the division of the court dealing with Chancery appeals.

However, that entailed passing over Slesser. And neither Sankey, whose department had devised the proposal that appeared in clause 2, nor Hanworth, who had nodded the proposal through, had had the elementary courtesy to discuss the matter with Slesser. It is entirely understandable that Hewart furiously demanded to know "What has Lord Justice Slesser done that this affront should be put upon him?"⁵² though it might have been preferable had he refrained from the wounding follow-up

"I suppose that some day, before very long, there will be a General Election. I wonder if the members of your Lordships' House think it desirable that, if this Bill is passed in the present form, when that General Election takes place there should be flaming posters on the wall: 'Rigging the Judicial Bench in order to affront a former Labour Minister'. Would that be in the interests of national unity? Would that serve the turn of the National Government?"⁵³

Admittedly, Hewart's comment was probably no more pointed than the celebrated comment of one of his distinguished successors, Lord Lane, in a debate on the reform of the legal profession in 1989:

“With all those powers in the hands of the executive, if these proposals become law, the one thing which at all costs must be avoided is likely to come about; and that is control by the executive of the principal means available to the ordinary citizen of controlling that same executive.

No doubt the fears which I have expressed will be pooh-poohed in some quarters: of course they will. But loss of freedom seldom happens overnight... Oppression does not stand on the doorstep with a toothbrush moustache and a swastika armband. It creeps up insidiously; it creeps up step by step; and all of a sudden the unfortunate citizen realises that it has gone.”⁵⁴

Be that as it may, as the Labour leader in the Lords, Lord Ponsonby, observed when the matter came back before the House three days later on 14 December 1934,

“...there can be no doubt whatever that the story related by [Hewart] ... is a story of the neglect—and one might almost say incivility—shown to a very high judicial authority”

It is depressing, but not entirely surprising, that when Lord Lane spoke, five-and-a-half decades after his predecessor had been shown that “incivility”, he was moved to comment

“It is Her Majesty’s judges to whom falls the task of operating the legal system, whatever that system may be. It would therefore perhaps have been courteous, or even helpful, if those responsible for drafting the paper on the organisation of the legal profession had seen fit to consult the judges upon the draft...”⁵⁵

When the 1934 Bill came back before the House, Hewart’s predecessor, the Marquess of Reading, proposed what was, with the wisdom of hindsight, the obvious solution—that Clause 2 should only take effect after the retirement of the existing members of the Court of Appeal.

The Government agreed to Reading’s suggestion, and Hewart, responding briefly, said:

“I have no desire to prolong controversy. On the contrary, I have an overwhelming desire to prolong and perpetuate friendships...

Now the noble and learned Viscount on the Woolsack [Sankey] has said that it is his part in life to play the part of peacemaker. Blessed are the peacemakers! ...