HOW BERTRAND RUSSELL WAS PREVENTED FROM TEACHING AT THE COLLEGE OF THE CITY OF NEW YORK*

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I

After the retirement of the two full professors of philosophy, Morris Raphael Cohen and Harry Overstreet, the members of the Philosophy Department at the College of the City of New York, as well as the administration of the college, agreed to approach an eminent philosopher to fill one of the vacant positions. The department recommended that an invitation be sent to Bertrand Russell, who was at the time teaching at the University of California. This recommendation was enthusiastically approved by the faculty of the college, the acting president, the administrative committee of the Board of Higher Education, and finally by the board itself, which passes on appointments at this level. Nobody comparable in fame and distinction had ever before been a professor at City College. Nineteen of the twenty-two board members attended the meeting at which the appointment was discussed, and all nineteen voted in favor of it. When Bertrand Russell accepted the invitation, Ordway Tead, the chairman of the board, sent him the following letter:

*In writing this account I have been greatly helped by the excellent book *The Bertrand Russell Case*, edited by Professor Horace M. Kallen and the late John Dewey (The Viking Press, 1941). I am particularly indebted to the essays by Kallen, Dewey, and Cohen.

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MY DEAR PROFESSOR RUSSELL:

It is with a deep sense of privilege that I take this opportunity of notifying you of your appointment as Professor of Philosophy at the City College for the period February 1, 1941, to June 30, 1942, pursuant to action taken by the Board of Higher Education at its meeting of February 26, 1940.

I know that your acceptance of this appointment will add luster to the name and achievements of the department and college and that it will deepen and extend the interest of the college in the philosophic basis of human living.

At the same time Acting President Mead issued a statement to the press to the effect that the college was singularly fortunate in securing the services of such a world-renowned scholar as Lord Russell. The data of this was February 24, 1940.

In view of later developments it is necessary to emphasize two facts. Bertrand Russell was to teach the following three courses and no others:

Philosophy 13: A study of modern concepts of logic and of its relation to science, mathematics, and philosophy.

Philosophy 24B: A study of the problems in the foundations of mathematics.

Philosophy 27: The relations of pure to applied sciences and the reciprocal influence of metaphysics and scientific theories.

Furthermore, at the time Bertrand Russell was appointed only men could attend day-session courses in liberal arts subjects at City College.

II

When Russell's appointment was made public, Bishop Manning of the Protestant Episcopal Church wrote a letter to all New York newspapers in which he denounced the board's action. "What is to be said of colleges and universities," he wrote, "which hold up before our youth as a responsible teacher of philosophy … a man who is a recognized propagandist against both religion and morality, and who specifically defends adultery. … Can anyone who cares for the welfare of our country be willing to see such teaching disseminated with the countenance of our colleges and universities?" Returning to the offensive a few days later, the Bishop said, "There are those who are so confused morally and mentally that they see nothing wrong in the appointment ... of one who in his published writings said, 'Outside of human desires there is no moral standard.' " It should be remarked in passing that if it were a requirement for teachers of philosophy to reject ethical relativism in its various forms, as Bishop Manning implied, half or more of them would have to be summarily dismissed.

The Bishop's letter was the signal for a campaign of vilification and intimidation unequaled in American history since the days of Jefferson and Thomas Paine. The ecclesiastical journals, the Hearst press, and just about every Democratic politician joined the chorus of defamation. Russell's appointment, said *The Tablet*, came as a "brutal, insulting shock to old New Yorkers and all real Americans." Demanding that the appointment be revoked, it editorially described Russell as a "professor of paganism," as "the philosophical anarchist and moral nihilist of Great Britain ... whose defense of adultery became so obnoxious that one of his 'friends' is reported to have thrashed him." The Jesuit weekly, *America*, was even more polite. It referred to Russell as a "desiccated, divorced, and decadent advocate of sexual promiscuity ... who is now indoctrinating the students at the University of California ... in his libertarian rules for loose living in matters of sex and promiscuous love and vagrant marriage. ... This corrupting individual ... who has betrayed his 'mind' and 'conscience.' ... This professor of immorality and irreligion ... who is ostracized by decent Englishmen." The letters to the editor in these periodicals were even more frenzied. If the Board of Higher Education did not rescind its action, said one correspondent in *The Tablet*, then "Quicksands threaten! The snake is in the grass! The worm is busy in the mind! Were Bertrand Russell honest even with himself, he would declare, as did Rousseau, 'I cannot look at any of my books without shuddering; instead of instructing, I corrupt; instead of nourishing, I poison. But passion blinds me, and, with all my fine discourses, I am nothing but a scoundrel.' " This letter was a copy of a telegram which had been sent to Mayor La Guardia. "I beg Your Honor," it continued, "to protect our youth from the baneful influence of him of the poisoned pen—an ape of genius, the devil's minister to men."

Meanwhile, Charles H. Tuttle, a member of the board and a leading layman of the Protestant Episcopal Church, announced that at the next board meeting on March 18 he would move to reconsider the appointment. Tuttle explained that he had not been familiar with Russell's views at the time of the appointment. He would have voted against it if he had known about them at the time. With the meeting only a few days away, the fanatics now did all they could to frighten members of the board and to expand the catalogue of Russell's sins. "Our group," said Winfield Demarest of the American Youth League, "does not favor the Russell idea of coeducational dormitories." Demanding an investigation of the Board of Higher Education, Hearst's *Journal* and *American* (now the *Journal-American*) maintained that Russell favored "nationalization of women ... childbearing out of wedlock ... and children reared as pawns of a godless state." By the device of quoting out of context from a book written many years previously, it also branded Russell as an exponent of Communism. In spite of Russell's well-known opposition to Soviet Communism, he was from then on constantly referred to as a "pro-Communist" by the zealots. Of all the features of this campaign of hate none perhaps was uglier than this deliberate travesty.

Motions demanding Russell's ouster, and also as a rule the ousting of board members who had voted for his appointment, were passed daily by numerous organizations well known for their interest in education, such as the Sons of Xavier, the New York branch of the Catholic Central Verein of America, The Ancient Order of Hibernians, the Knights of Columbus, the Guild of Catholic Lawyers, the St. Joan of Arc Holy Name Society, the Metropolitan Baptist Ministers' Conference, the Midwest Conference of the Society of New England Women, and the Empire State Sons of the American Revolution. These were reported in the press together with profound orations on the part of clerical luminaries whose attacks centered more and more around two charges—that Russell was an alien and therefore legally barred from teaching at the college, and that his views on sex were somehow really incitements to crime. "Why not get the G-men after your Board of Higher Education?" demanded the Reverend John Schultz, Professor of Sacred Eloquence at the Redemptorist Seminary at Esopus, New York. "Young people in this city," the noted scholar proceeded, "are taught that there is no such thing as a lie. They are taught that stealing is justified and so is robbery and plunder. They are taught, as Loeb and Leopold were taught at Chicago University, that inhumanly cruel crimes are justified." Needless to say, all these dreadful things were closely connected with the appointment of Bertrand Russell—"the master mind of free love, of sex promiscuity for the young, of hatred for the parents." As if that were not bad enough, Russell was also linked by another orator with "pools of blood." Speaking at the annual communion breakfast of the Holy Name Society of the New York Police Department, Monsignor Francis W. Walsh recalled to the assembled policemen that they had, on occasion, learned the full meaning of the so-called "matrimonial triangle" by finding one corner in a pool of blood. "I dare say, therefore," he continued, "that you will join me in demanding that any professor guilty of teaching or writing ideas which will multiply the stages upon which these tragedies are set shall not be countenanced in this city and shall receive no support from its taxpayers. . . . ”

While Mayor La Guardia remained studiously silent, numerous Tammany politicians went into action. Their conception of academic freedom was well revealed by John F. X. McGohey, first deputy district attorney of New York State and president of the Sons of Xavier (now Judge McGohey), who protested against the use of taxpayers’ money “to pay for teaching a philosophy of life which denies God, defies decency and completely contradicts the fundamentally religious character of our country, government, and people.” On March 15, three days before the board was to reconvene, Borough President of the Bronx James J. Lyons, one of the inquisitors’ big guns, introduced a motion in the City Council calling upon the board to cancel Russell’s appointment. The motion was carried by a vote of sixteen to five. It must be recorded, as a permanent testimony to his courage and indifference to mob sentiment, that Republican Stanley Isaacs spoke out vigorously in defense of Bertrand Russell and the Board of Higher Education. In addition to introducing his resolution, Lyons announced that at the next budget discussion he would move to “strike out the line which provides for compensation of this dangerous appointment.” Borough President Lyons, however, was meek and mild compared to Borough President George V. Harvey of Queens, who declared at a mass meeting that if Russell were not ousted, he would move to strike out the entire 1941 appropriation of $7,500,000 for the upkeep of the municipal colleges. If he had it his way, he said, “the colleges would be godly colleges, American colleges, or they would be closed.” At the same protest meeting other eminent and dignified speakers were heard. Referring to Russell as a “dog,” Councilman Charles Keegan remarked that “if we had an adequate system of immigration, that bum could not land within a thousand miles.” But now that he had landed, Miss Martha Byrnes, the Registrar of New York County, told the audience what to do with the “dog.” Russell, she shouted, should be “tarred and feathered and driven out of the country.” This, I take it, is what the speakers meant by the “godly” and the “American” way.

III

If the zealots were powerful in local politics, the supporters of independent scholarship were powerful in all the major colleges and universities throughout the nation. To Russell’s defense came numerous college presidents, including Gideonse of Brooklyn, Hutchins of Chicago (where Russell had taught the previous year), Graham of North Carolina, who later became a U. S. Senator, Neilson of Smith, Alexander of Antioch, and Sproule of the University of California, where Russell was at the time "indoctrinating the students in his libertarian rules for loose living in matters of sex and promiscuous love." To Russell's defense also rallied the current and past presidents of the learned societies—Nicholson of Phi Beta Kappa, Curry of the American Mathematical Association, Hankins of the American Sociological Association, Beard of the American Historical Association, Ducasse of the American Philosophical Association, Himstead of the American Association of University Professors, and many others. Seventeen of the country's most distinguished scholars (including Becker of Cornell, Lovejoy of Johns Hopkins, and Cannon, Kemble, Perry and Schlesinger of Harvard) sent a letter to Mayor La Guardia protesting the "organized attack upon the appointment of the world-renowned philosopher, Bertrand Russell. ..." If the attack proved successful, the letter went on, "no American college or university is safe from inquisitional control by the enemies of free inquiry. ... To receive instruction from a man of Bertrand Russell's intellectual caliber is a rare privilege for students anywhere. ... His critics should meet him in the open and fair field of intellectual discussion and scientific analysis. They have no right to silence him by preventing him from teaching. ... This issue is so fundamental that it cannot be compromised without imperiling the whole structure of intellectual freedom upon which American university life rests." Whitehead, Dewey, Shapley, Kasner, Einstein—all the nation's foremost philosophers and scientists went on record in support of Russell's appointment. "Great spirits," Einstein remarked, "have always found violent opposition from mediocrities. The latter cannot understand it when a man does not thoughtlessly submit to hereditary prejudices and courageously uses his intelligence."

Support for Russell was by no means confined to the academic community. Russell's appointment and the independence of the appointing authority were of course endorsed by the American Civil Liberties Union and the Committee for Cultural Freedom, whose president at the time was Sidney Hook. Russell's aide was also taken by all the leading spokesmen of the more liberal religious groups, including Rabbi Jonah B. Wise, Professor J. S. Bixler of the Harvard Divinity School, Professor E. S. Brightman, the Director of the National Council on Religion and Education, the Reverend Robert G. Andrus, counselor to Protestant students at Columbia University, the Reverend John Haynes Holmes, and the Reverend Guy Emery Shipler, who disputed Bishop Manning's right to speak for the Episcopal Church. Nine major publishers, including Bennett Cerf of Random House, Cass Canfield of Harper, Alfred A. Knopf, and Donald Brace of Harcourt, Brace, issued a statement commending Russell's selection "as one which reflects only the greatest credit on the Board of Higher Education." Speaking of Russell's "brilliant achievements in philosophy" and his "high qualities as an educator," the publishers declared that it would be "a pity for students in New York City not to benefit from his appointment." As publishers, they continued, "we do not necessarily subscribe personally to all the views expressed by those whose books we publish, but we welcome great minds to our lists, particularly now at a time when brute force and ignorance have gained such ascendancy over reason and intellect in many parts of the world. We think it more important than ever to honor intellectual superiority whenever the opportunity presents itself." Similar sentiments were expressed by *Publishers' Weekly* and the New York *Herald Tribune*, both editorially and by Dorothy Thompson in her column "On the Record." "Lord Russell is not immoral," she wrote. "Anyone who knows him is aware that he is a man of the most exquisite intellectual and personal integrity."

At City College itself there was great resentment, among students and faculty alike, over ecclesiastical and political interference in college affairs. At a mass meeting in the Great Hall, Professor Morris Raphael Cohen compared Russell's situation to that of Socrates. If Russell's appointment were revoked, he said, "the fair name of our city will suffer as did Athens for condemning Socrates as a corrupter of its youth or Tennessee for finding Scopes guilty of teaching evolution." At the same meeting Professor John Herman Randall, Jr., the distinguished historian of philosophy and himself a religious man, denounced the opposition of churchmen to Russell's appointment as "sheer effrontery" and "a gross impertinence." Three hundred members of the City College faculty signed a letter felicitating the Board of Higher Education upon the splendid appointment. Nor were the parents of City College students alarmed over the prospect of having their children exposed to the corroding influence of "the master mind of free love." Although most of Russell's opponents paraded as spokesmen of "offended parents," the Parent Association of City College voted unanimously in favor of the board's action.

IV

Amid the shouts of the zealots, some members of the board lost their nerve. Nevertheless, at the meeting on March 18, the majority remained true to their convictions, and the controversial appointment was confirmed by a vote of eleven to seven. The opposition had expected this defeat and was ready to move on all fronts. Having failed so far to get an annulment of Russell's appointment to City College, they tried to prevent him from teaching at Harvard. Russell had been invited to give the William James Lectures there in the fall semester of 1940. On March 24, Thomas Dorgan, "legislative agent" for the city of Boston, wrote to President James B. Conant: "You know that Russell advocates companionate marriage and the loosening of bonds that restrain moral conduct. To hire this man, please note, is an insult to every American citizen in Massachusetts."

At the same time, the New York State Legislature was asked to call on the Board of Higher Education to rescind Russell's appointment. Senator Phelps Phelps, Manhattan Democrat, introduced a resolution which would put the Legislature on record as holding that "an advocate of barnyard morality is an unfit person to hold an important post in the educational system of our state at the expense of the taxpayers." This resolution was adopted, and so far as I know not a single voice was raised in opposition.

The resolution was the prelude to more drastic action. Eleven members of the Board of Higher Education had been so headstrong as to defy the orders of the hierarchy. The heretics had to be punished. They had to be shown who wields the real power in the State of New York. Basing his opinion on the statements of Bishop Manning and President Gannon of Fordham University, Senator John F. Dunigan, the minority leader, told the Senate that Russell's philosophy "debauches religion, the state, and the family relationship." He complained about "the godless, materialistic theories of those now governing the New York City school system." The attitude of the board which "insisted on Russell's appointment despite great public opposition," the Senator argued, "is a matter of concern for this Legislature." He demanded a sweeping investigation of the educational system in New York City and made it clear that such an investigation would be aimed principally at the college facilities under the Board of Higher Education. Senator Dunigan's resolution was also adopted with only a small modification.

But these were only minor skirmishes. The main maneuver was carried out in New York City itself. A Mrs. Jean Kay of Brooklyn, not previously noted for her interest in public questions, filed a taxpayer's suit in the New York Supreme Court to void Russell's appointment on the ground that he was an alien and an advocate of sexual immorality. She declared herself concerned over what might happen to her daughter, Gloria, if she were to become a student of Bertrand Russell's. The fact that Gloria Kay could not have become one of Russell's students at City College was apparently not considered relevant. Later Mrs. Kay's attorneys presented two further grounds for barring Bertrand Russell. For one thing, he had not been given a competitive examination, and for another, "it was contrary to public policy to appoint as a teacher anyone believing in atheism."

Mrs. Kay was represented by a lawyer named Joseph Goldstein, who, under the Tammany administration preceding La Guardia, had been a city magistrate. In his brief Goldstein described Russell's works as "lecherous, libidinous, lustful, venerous, erotomaniac, aphrodisiac, irreverent, narrow-minded, untruthful, and bereft of moral fiber." But this was not all. According to Goldstein, "Russell conducted a nudist colony in England. His children paraded nude. He and his wife have paraded nude in public. This man who is now about seventy has gone in for salacious poetry. Russell winks at homosexuality. I'd go further and say he approves of it." But even this was not all. Goldstein, who presumably spends his spare time studying philosophy, concluded with a verdict on the quality of Russell's work. This ruinous verdict read as follows:

> He is not a philosopher in the accepted sense of the word; not a lover of wisdom; not a searcher after wisdom; not an explorer of that universal science which aims at explanation of all phenomena of the universe by ultimate causes; that in the opinion of your deponent and multitudes of other persons he is a sophist; practices sophism; that by cunning contrivances, tricks and devices and by mere quibbling, he puts forth fallacious arguments and arguments that are not supported by sound reasoning; and he draws inferences which are not justly deduced from a sound premise; that all his alleged doctrines which he calls philosophy are just cheap, tawdry, worn-out, patched up fetishes and propositions, devised for the purpose of misleading the people.

According to the *Daily News*, neither Mrs. Kay nor her husband nor Goldstein would say who was paying the costs of the suit.

Russell up to this point had refrained from any comments except for a brief statement a the very beginning of the campaign, in which he had said, "I have no wish to answer Bishop Manning's attack. . . . Anyone who decides in youth both to think and to speak honestly, regardless of hostility and misrepresentation, expects such attacks and soon learns that it is best to ignore them." Now, however, that the assault had been carried into a court of law, Russell felt obliged to publish a reply. "I have hitherto kept an almost unbroken silence in the controversy concerning my appointment to the City College," he remarked, "as I could not admit that my opinions were relevant. But when grossly untrue statements as to my actions are made in court, I feel that I must give them the lie. I never conducted a nudist colony in England. Neither my wife nor I ever paraded nude in public. I never went in for salacious poetry. Such assertions are deliberate falsehoods which must be known to those who make them to have no foundation in fact. I shall be glad of an opportunity to deny them on oath." It should be added that Russell also never "approved" of homosexuality. But this is a point which I shall discuss in detail later on.

Mrs. Kay's suit was heard before Justice McGeehan, who had been associated with the Bronx Democratic machine. McGeehan had already, before this case, distinguished himself by trying to have a portrait of Martin Luther removed from a courthouse mural illustrating legal history. Nicholas Bucci, Assistant Corporation Counsel, represented the Board of Higher Education. He very properly refused to be drawn into a discussion of Russell's wicked opinions and incompetence as a philosopher. He confined himself to the only legally relevant point in the brief—that an alien could not be appointed to a post in a city college. Bucci denied that this was the case and accordingly asked for a dismissal. McGeehan ominously replied, "If I find that these books sustain the allegations of the petition I will give the Appellate Division and the Court of Appeals something to think about." The books here referred to were those introduced by Goldstein to back up his charges. They were *Education and the Good Life*, *Marriage and Morals*, *Education and the Modern World*, and *What I Believe*.

V

Two days later, on March 30, the judge revealed his meditations. Basing himself on "normae and criteria ... which are the laws of nature and nature's God," he revoked Russell's appointment and described it, like the clerical orators before him, as "an insult to the people of the City of New York." The board's action, he concluded, was "in effect establishing a chair of indecency," and in so doing it had "acted arbitrarily, capriciously, and in direct violation of the public health, safety, and the morals of the people and of the petitioner's rights herein, and the petitioner is entitled to an order revoking the appointment of the said Bertrand Russell." According to the Sunday *Mirror*, the judge admitted that his verdict was "dynamite." That his mind was not on the law alone, if it was there at all, is also evident from his further statement that "this decision has laid the groundwork for the legislative investigating committee, and I dare say the will be interested in finding out how Bertrand Russell's appointment was brought about."

The *New Republic* pointed out that McGeehan's judgment "must have been produced at superhuman speed." John Dewey expressed the suspicion that the judge never read the books which were introduced as evidence by Mr. Goldstein.

What is certain is that judgment was pronounced in unbecoming haste. It is impossible that in the course of two days McGeehan should have given careful study to four books in addition to writing his lengthy opinion. That the judge made no attempt whatever to guard the rights of all parties, as any conscientious judge should, is also evident from several other features of the case. Thus, he made no attempt to allow Russell to deny Goldstein's charges but accepted them apparently without further ado. McGeehan gave Russell no opportunity to say whether his interpretation of Russell's views was correct. Nor did he try to ascertain whether Russell still held the views expressed in books which had been written between eight and fifteen years previously. All this would seem to be required by elementary canons of common decency, if not judicial fairness as well.

As we saw, Mr. Bucci, who represented the Board of Higher Education, had confined himself in his answer to the charge that, as an alien, Russell could not be lawfully appointed to the faculty of the City College. McGeehan, however, based his voiding of the appointment chiefly on other charges in Mrs. Kay's petition. He published his decision without giving Mr. Bucci an opportunity to respond to the other charges. The respondent, McGeehan said, had "informed the Court that he would not serve an answer." This Mr. Bucci categorically denied in a sworn affidavit which was never challenged. He had been given to understand by the judge, Mr. Bucci swore, that he would be permitted to set forth the board's answer after a denial of his motion to dismiss the suit.

These procedural outrages, however, were nothing as compared with the distortions, libels, and *non sequiturs* contained in the judgment itself, which deserves the most careful study. It shows what apparently can be done in broad daylight, even in a democratic state, if an ardent partisan has achieved a position of judicial power and feels himself supported by influential politicians. It is necessary to quote extensively from this amazing document, since otherwise the reader will not believe that this sort of thing actually took place. Moreover, I have no wish to emulate the judge's practice of distortion by culling quotations from their context. Judge McGeehan, as we shall see, showed himself to be an accomplished practitioner of this ignoble art and frequently succeeded in making Russell appear to be advocating the opposite of what he actually stood for.

The appointment was revoked on three grounds. Firstly, Russell was an alien:

> Petitioner contends, in the first place, that Section 550 of the Education Law requires that "No person shall be employed or authorized to teach in the public schools of the state who is … 3. Not a citizen; the provisions of this subdivision shall not apply, however, to an alien

> teacher now or hereafter employed, provided such teacher shall make due application to become a citizen and thereafter within the time prescribed by law shall become a citizen." It is conceded that Bertrand Russell is not a citizen and that he has not applied to become a citizen. The corporation counsel contends that he has a reasonable time after appointment to make application. He further contends that the section does not apply to teachers in the colleges of the City of New York, contending that if Section 550 did apply, most of the teachers in the colleges of the City of New York would be holding their appointments illegally because they are neither graduates of a normal state school nor have they licenses from the commissioner of education. ... It does not seem logical that the section was ever intended to cover a case similar to the case of Bertrand Russell, who has been in this country for some time and who has never made any application for citizenship and who apparently, as shall hereafter appear, would be denied citizenship. The section applies generally to "teachers and pupils" and is not limited to elementary and secondary schools, and the court therefore holds that Bertrand Russell is not qualified to teach by reason of the provisions of this section, but the decision herein made is not based solely upon this ground.

One does not need to be an expert to detect the legal howlers in the judge's reasoning. The statute invoked refers quite clearly to public schools and not to colleges. It contains a great many other provisions which are never applied to college professors. But even in the public schools, the law allows an alien to teach if he declares his intention to become a citizen. Russell had nearly a year in which to do so. McGeehan had no right to assume that Russell would not apply for citizenship. Nor had he any right to speak for the authorities of the Immigration and Naturalization Bureau. Because of this usurpation of powers alone, a higher court could not conceivably have upheld McGeehan's judgment. The flimsiness, furthermore, of his constant implications that Russell was a person of "bad character" and guilty of moral turpitude may be gauged from the fact that the immigration authorities did not, either before or after the verdict, make any attempt to deport Bertrand Russell.

Secondly, Russell's appointment was declared null and void on the ground that he had not been given a competitive examination:

> The second contention of the petitioner is that no examination of any kind was given to Bertrand Russell at the time of his appointment,

> and this is borne out by the minutes of the Administrative Committee of the City College of the City of New York and of the Board of Higher Education at the time of his appointment.

The law contains a provision recognizing the possibility that a competitive examination may not be practicable and that in any case it is up to the Board of Higher Education to decide whether this is so. McGeehan could not entirely ignore this provision. But Russell had to be found unfit at all costs. Hence this provision was circumvented by the following ingenious argument:

> While it is not necessary for this court to adjucate the action of the Board of Higher Education in proceeding by assuming that a competitive examination for the position of Professor of Philosophy in City College was impracticable, such assumption on the part of the Board of Higher Education is held to be unwarranted, arbitrary and capricious, and in direct violation of the plain mandate of the Constitution of the State of New York. If there were only one person in the whole world who knew anything about philosophy and mathematics and that person was Mr. Russell, the taxpayers might be asked to employ him without examination, but it is hard to believe, considering the vast sums of money that have been spent on American education, that there is no one available, even in America, who is a credit both to learning and to public life. Other universities and colleges, both public and private, seem to be able to find American citizens to employ, and to say that the College of the City of New York could not employ a professor of philosophy by an examination of some sort is an assumption by the Board of Higher Education of the power which was denied them by the people of the State of New York in the Constitution, and no legislature and no board can violate this mandate.

It is difficult to take seriously McGeehan's contention that the board was acting "unwarrantably, arbitrarily, and capriciously" in not subjecting Russell to a competitive examination. It is even more difficult to suppose that the judge was maintaining this in good faith. If a competitive examination were really a legal requirement for college teachers, then every professor in every state-supported college would have to be dismissed. Every member of the Board of Education would have to be charged with making illegal appointments. The New York State Commissioner of Education would have to be punished for allowing so many professors to teach illegally. But in any event a competitive examination is not a legal requirement, and there is nothing in the law which prevents the board from judging circumstances to render an examination impracticable in the case of aliens any more than in the case of citizens.[1]

By McGeehan's logic, distinguished foreign teachers could hardly ever be engaged, since presumably in most cases there are Americans who could also fill the posts competently. Everyone knows that all major institutions of higher learning in the United States regularly employ foreigners. Prior to the McCarran immigration law, this was officially recognized by exempting foreign teachers from the usual immigration quotas. I note that recently the distinguished Catholic philosopher, Jacques Maritain, was appointed to the faculty of one of the municipal colleges. Every sensible person must welcome this appointment, but as far as I know Maritain is an alien who has never applied for naturalization. Nor was he given a competitive examination. There has been no taxpayer's suit to void the appointment. I also wonder how seriously Judge McGeehan would treat these grounds if they were made the basis of a petition in Maritain's case.

The third ground of his opinion the judge approached with great relish. In the first two a certain apologetic tone was still noticeable. Not so in the third, when "morality" had to be defended against the corrupter of youth and his suspicious promoters on the Board of Higher Education. Now McGeehan became a ferocious crusader. As Russell later commented, "The judge let himself go." The opinion at this stage became rather muddled, and rational argument, whatever there was of it in the earlier portions, petered out. Fury and holy wrath took undisputed possession. It was not always easy to determine on what ground the judge based his order to bar Russell, since he himself curiously admitted that a great many of his observations were irrelevant to the decision. Clear beyond the faintest doubt, however, were Russell's "immoral character" and the "salacious" nature of his teachings:

> The foregoing reasons would be sufficient to sustain the petition and to grant the relief prayed for, but there is a third ground on which the petitioner rests and which, to the court, seems most compelling. The petitioner contends that the appointment of Bertrand Russell has

[1]This aspect of McGeehan's judgment is discussed at greater length in three articles in legal journals: Walter H. Hamilton's "Trial by Ordeal, New Style," *Yale Law Journal*, March 1941; Comment, "The Bertrand Russell Litigation," (1941), 8 *University of Chicago Law Review* 316; Comment, "The Bertrand Russell Case: The History of a Litigation" (1940), 53 *Harvard Law Review*, 1192. I am indebted to these articles for several points concerning the illegalities and irregularities of McGeehan's procedure.

> violated the public policy of the state and of the nation because of his notorious immoral and salacious teachings of Bertrand Russell and because the petitioner contends that he is a man not of good moral character.
>
> It has been argued that the private life and writings of Mr. Russell have nothing whatsoever to do with his appointment as a teacher of philosophy. It has also been argued that he is going to teach mathematics. His appointment, however, is to be in the Department of Philosophy in City College.

In this consideration, the judge proceeded, he was "completely dismissing any question of Mr. Russell's attacks upon religion." This, one is constrained to admit, was very generous of the judge. Perhaps now and then it is worth pointing out that, in spite of the power of such dignitaries of Councilman Charles Keegan and Senator Phelps Phelps, New York City is in the United States of America, a secular nation, and not part of Franco Spain or the Holy Roman Empire. In any event, the judge was prepared to exercise all possible leniency on the question of Russell's criticism of religious theories. On other matters, however, it was necessary to speak in sterner language:

> … but there are certain basic principles upon which this government is founded. If a teacher who is a person not of good moral character is appointed by any authority the appointment violates these essential prerequisites. One of the prerequisites of a teacher is good moral character. In fact, this is a prerequisite for appointment in civil service in the city and state, or political subdivisions, or in the United States. It needs no argument here to defend this statement. It need not be found in the Education Law. It is found in the nature of the teaching profession. Teachers are supposed not only to impart instruction in the classroom but by their example to teach the students. The taxpayers of the City of New York spend millions to maintain the colleges of the City of New York. They are not spending that money, nor was the money appropriated for the purpose of employing teachers who are not of good moral character. However, there is ample authority in the Education Law to support this contention.

It should be noted that in spite of the numerous assertions throughout his judgment that Russell was a person of "immoral character," McGeehan nowhere condescended to list Russell's real or supposed conduct, which supposedly supported such a conclusion. It is impossible to be sure, for instance, whether the judge based his conclusions on Russell's imprisonment over his pacifism during the First World War. It is equally impossible to know whether he accepted Goldstein's charge that Russell and his wife had "paraded nude in public" or that Russell had "gone in for salacious poetry." I do not know how such a procedure of making derogatory statements without offering a shred of evidence appears to people blessed with insight into "God's normae." To people like myself who are less fortunate, it appears highly unethical; and if it comes from a judge, in the course of his official duties, it seems a serious abuse of his position.

Russell's character was pretty bad, but his doctrines were even worse:

> The contention of the petitioner that Mr. Russell has taught in his books immoral and salacious doctrines is amply sustained by the books conceded to be writings of Bertrand Russell, which were offered in evidence. It is not necessary to detail here the *filth*[2] which is contained in the books. It is sufficient to record the following. From *Education and the Modern World*, pages 119 and 120: "I am sure that university life would be better, both intellectually and morally, if most university students had temporary childless marriages. This would afford a solution to the sexual urge neither restless nor surreptitious, neither mercenary nor casual, and of such a nature that it need not take up time which ought to be given to work." From *Marriage and Morals*, page 165 and 166: "For my part, while I am quite convinced that companionate marriage would be a step in the right direction and would do a great deal of good, I do not think that it goes far enough. I think that all sex relations which do not involve children should be regarded as a purely private affair, and that if a man and a woman choose to live together without having children, that should be no one's business but their own. I should not hold it desirable that either a man or a woman should enter upon the serious business of a marriage intended to lead to children without having had previous sexual experience." "The peculiar importance attached, at the present, to adultery, is quite irrational." (From *What I Believe*, page 50.)

Perhaps the judge did not detail any "filth" contained in Russell's books for the simple reason that none is to be found there. As John Dewey put it in an article in *The Nation*, "The persons, if there be such, who go to Mr. Russell's writings in

[2] My italics.

search of filth and obscenity will be disappointed. These things are so lacking that the intemperate and morally irresponsible way in which they are charged against Mr. Russell is good reason for believing that those who put them forth hold such an authoritarian view of morals that they would, if they had power, suppress all critical discussion of beliefs and practices they want to impose on others." As for the judge's language—"filth," "chair of indecency," and other expressions of a like order—it was pointed out by several writers that if he had repeated those remarks outside his court, he would have been open to libel action.

McGeehan appeared to realize that what had so far been demonstrated about Russell and his teaching was not quite enough. Russell's doctrines had been shown to be "salacious," it is true; but this fact itself did not give the court the right to intervene. Something more was needed. Something more drastic or, shall we say, more dramatic. The situation called for a display of creative imagination, and the judge rose to the challenge brilliantly. Like the Rev. Professor Schultz and other specialists in sacred eloquence, he hit upon the idea of linking Russell with incitements to violate the Penal Law.

> The Penal Law of the State of New York is a most important factor in the lives of our people. As citizens and residents of our city, we come within its protective scope. In dealing with human behavior the provisions of the Penal Law and such conduct as therein condemned must not be lightly treated or completely ignored. Even assuming that the Board of Higher Education possesses the maximum power with which the Legislature could possibly confer upon it in the appointment of its teachers, it must act so as not to violate the Penal Law or to encourage the violation of it. Where it so acts as to sponsor or encourage violations of the Penal Law, and its actions adversely affect the public health, safety, and morals, its acts are void and of no legal effect. A court of equity, with the powers inherent in that court, has ample jurisdiction to protect the taxpayers of the City of New York from such acts as this of the Board of Higher Education.

After this high-minded defense of the Penal Law, the judge proceeded with evident gusto to cite a number of its provisions:

> The Penal Law of the State of New York defines the crime of abduction and provides that a person who uses, or procures to be taken or used, a female under eighteen years of age, when not her husband,

> for the purpose of sexual intercourse, or a person who entices an unmarried female of any age of previous chaste character to any place for the purpose of sexual intercourse is guilty of abduction and punishable by imprisonment for not more than ten years (Section 70). Furthermore, the Penal Law provides that even a parent or guardian having legal charge of a female under eighteen years of age and who consents to her being taken by any person for the purpose of sexual intercourse violates the law and is punishable by imprisonment for not more than ten years (Section 70).
>
> As to the crime of rape, the Penal Law provides that a person who perpetrates an act of sexual intercourse with a female not his wife under the age of eighteen years, under the circumstances not amounting to rape in the first degree is guilty of rape in the second degree and punishable by imprisonment for not more than ten years (Section 2010).
>
> Section 100 of the Penal Law makes adultery a criminal offense.
>
> Section 2460 of the Penal Law, among other things, provides that any person who shall induce or attempt to induce any female to reside with him for immoral purposes shall be guilty of a felony and on conviction punishable by imprisonment for not less than two years, nor more than twenty years, and by a fine not exceeding $5,000.

Of these provisions only that relating to adultery has even any superficial relevance. Russell nowhere advocated "rape" or "abduction" and he never urged anybody to "induce a female to reside with him for immoral purposes." Not even McGeehan, with all his skill in quoting out of context, could subsequently produce any passages that might be construed as incitements to these crimes. Why then quote these provisions? Why quote them unless it was the judge's intention to establish in the public mind, especially among people unacquainted with Russell's books, an association between these crimes and Russell's name? I doubt that this sort of demagogic device has ever before been employed by the judge of an American court.

I shall reproduce the remainder of the judgment without interruption so as not to disturb the train of the judge's thoughts. His profound reflections on the academic freedom "to do good" and his remarkable doctrine of "indirect influence" by means of which a teacher, lecturing on the philosophy of mathematics or physics, can cause "sexual intercourse between students, where the female is under the age of eighteen years" deserves the attention of serious students. The latter of these theories, which might perhaps be called the doctrine of "extraordinary influence," should surely interest psychologists and those concerned with extrasensory perception.

> When we consider the vast amount of money that the taxpayers are assessed each year to enforce these provisions of the law, how repugnant to the common welfare must be any expenditure that seeks to encourage the violation of the provisions of the Penal Law. Conceding *arguendo* that the Board of Higher Education has sole and exclusive power to select the faculty of City College and that its discretion cannot be reviewed or curtailed by this court or any other agency, nevertheless such sole and exclusive power may not be used to aid, abet, or encourage any course of conduct tending to a violation of the Penal Law. Assuming that Mr. Russell could teach for two years in City College without promulgating the doctrines which he seems to find necessary to spread on the printed pages at frequent intervals, his appointment violates a perfectly obvious canon of pedagogy, namely, that the personality of the teacher has more to do with forming a student's opinion than many syllogisms. A person we despise and who is lacking in ability cannot argue us into imitating him. A person whom we like and who is of outstanding ability does not have to try. It is contended that Bertrand Russell is extraordinary. That makes him the more dangerous. The philosophy of Mr. Russell and his conduct in the past is in direct conflict and in violation of the Penal Law of the State of New York. When we consider how susceptible the human mind is to the ideas and philosophy of teaching professors, it is apparent that the Board of Higher Education either disregarded the probable consequences of their acts or were more concerned with advocating a cause that appeared to them to present a challenge to so-called "academic freedom" without according suitable consideration of the other aspects of the problem before them. While this court could not interfere with any action of the board in so far as a pure question of "valid" academic freedom is concerned, it will not tolerate academic freedom used as a cloak to promote the popularization in the minds of adolescents of acts forbidden by the Penal Law. This appointment affects the public health, safety, and morals of the community and it is the duty of the court to act. Academic freedom does not mean academic license. It is the freedom to do good and not to

teach evil. Academic freedom cannot authorize a teacher to teach that murder or treason are good. Nor can it permit a teacher to teach directly or indirectly that sexual intercourse between students, where the female is under the age of eighteen years, is proper. The court can take judicial notice of the fact that students in the colleges of the City of New York are under the age of eighteen years, although some may be older.

Academic freedom cannot teach that abduction is lawful or that adultery is attractive and good for the community. There are norms and criteria of truth which have been recognized by the founding fathers. We find a recognition of them in the opening words of the Declaration of Independence, where they refer to the laws of Nature and of Nature's God. The doctrines therein set forth, which have been held sacred by all Americans from that day to this, preserved by the Constitution of the United States and of the several states and defended by the blood of its citizens, recognizing the inalienable rights with which men are endowed by their Creator must be preserved, and a man whose life and teachings run counter to these doctrines, who teaches and practices immorality and who encourages and avows violations of the Penal Law of the State of New York, is not fit to teach in any of the schools of this land. The judicial branch of the government, under our democratic institutions, has not been so emasculated by the opponents of our institutions to an extent to render it impotent to act to protect the rights of the people. Where public health, safety, and morals are so directly involved, no board, administrative or otherwise, may act in a dictatorial capacity, shielding their actions behind a claim of complete and absolute immunity from judicial review. The Board of Higher Education of the City of New York has deliberately and completely disregarded the essential principles upon which the selection of any teacher must rest. The contention that Mr. Russell will teach mathematics and not his philosophy does not in any way detract from the fact that his very presence as a teacher will cause the students to look up to him, seek to know more about him, and the more he is able to charm them and impress them with his personal presence, the more potent will grow the influence in all spheres of their lives, causing the students in many instances to strive to emulate him in every respect.

In considering the power of this court to review the determination and appointment of Dr. Russell by the Board of Higher Education this court has divided the exhibits in this proceeding into two classes, namely, those exhibits which dealt with controversial measures not *malum in se* as far as the law is concerned, even though abhorrently repulsive to many people, and those considered *malum in se* by the court. Dr. Russell's views on masturbation such as expressed in his book entitled *Education and the Good Life*, at page 211, in which he goes on to state: "Left to itself, infantile masturbation has, apparently, no bad effect upon health, and no discoverable bad effect upon character; the bad effects which have been observed in both respects are, it seems, wholly attributable to attempts to stop it. … Therefore, difficult as it may be, the child should be let alone in this respect"; his views on nudity as expressed in the same book, on page 212, in which he goes on to state: "A child should, from the first, be allowed to see his parents and brothers and sisters without their clothes whenever it so happens naturally. No fuss should be made either way; he should simply not know that people have feelings about nudity"; his views on religion and politics; his own personal life and conduct, with the incidental convictions and libel, are all matters that this court holds to be proper subjects to be considered by the Board of Higher Education in appraising the moral character of Dr. Russell as a professor, and on these subjects the determination of the Board of Higher Education is final. If the standards of the Board of Higher Education in these respects are lower than common decency requires, the remedy is with the appointing power who may be held responsible for appointing individuals with moral standards below that required for the public good. But as to such conduct this court is powerless to act because of the power conferred by law on the Board of Higher Education. But where the matter transcends the field of controversial issues and enters the field of criminal law, then this court has the power and is under a duty to act. While in encouraging adultery in the language used in the book *Education and the Good Life*, at page 221: "I shall not teach that faithfulness to our partner through life is any way desirable or that a permanent marriage should be regarded as excluding temporary episodes," it might be urged that he is only encouraging the commission of a misdemeanor rather than a felony, yet that mitigating argument must fall when we are confronted with Dr. Russell's utterances as to the damnable felony of homosexualism,

> which warrants imprisonment for not more than twenty years in New York State, and concerning which degenerate practice Dr. Russell has this to say in his book entitled *Education and the Modern World*, at page 119: "It is possible that homosexual relations with other boys would not be so very harmful if they were tolerated, but even then there is danger lest they should interfere with the growth of normal sexual life later on."
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> Considering Dr. Russell's principles, with reference to the Penal Law of the State of New York, it appears that not only would the morals of the students be undermined, but his doctrines would tend to bring them, and in some cases their parents and guardians, in conflict with the Penal Law, and accordingly this court intervenes.

The judge obviously implied that Russell was *encouraging* "the damnable felony of homosexualism"; and this was the worst charge against him where all "mitigating arguments must fall." As far as I know there are only two passages in Russell's many books in which homosexuality is discussed. One is that quoted by the judge. The other occurs in *Marriage and Morals* (page 90) and reads as follows: "Homosexuality between men, though not between women, is illegal in England, and it would be very difficult to present any argument for a change of the law in this respect which would not itself be illegal on the ground of obscenity. And yet every person who has taken the trouble to study the subject knows that this law is the effect of a barbarous and ignorant superstition, in favor of which no rational argument of any sort can be advanced." It is clear from this that Russell is opposed to existing laws against homosexuality. I note in a recent dispatch from London that influential Roman Catholics have lately, it seems become converts to Russell's position and now also support abolition of these laws.[3] It is just as clear that Russell is not inciting anybody to break the law he opposes. In the passage quoted by the judge Russell is not even criticizing existing laws. So far from encouraging homosexuality, he is stating a possibility and then pointing out some of the *harmful* effects of homosexual relations. This is the logic of *1984*: Black is

[3]"A Roman Catholic Commission of laymen and clergymen has recommended to the Home Office that 'consentual acts done in private' by adult male homosexuals be considered no crime," it was reported today. . . . On the problem of homosexuality, the commission said: "Imprisonment is largely ineffectual to reorientate persons with homosexual tendencies and usually has a deleterious effect upon them. A satisfactory solution to the problem is not to be found in places of confinement usually reserved for homosexuals." (The New York *Post*, October 4, 1956.) It is to be hoped that these humane and sensible members of the church will never have to appear in a court presided over by Judge McGeehan to answer for encouraging the commission of a "damnable felony."

white and peace is war and freedom is slavery. How true it is that all fanatics are fundamentally alike, on this or the other side of the Iron Curtain!

It is also not true that Russell, either in the passages quoted by the judge or anywhere else, *encouraged* adultery. What Russell maintains is, firstly, that sexual relations between unmarried people are not morally wrong if they have sufficient affection for each other and that this is a purely private matter in which the state should take no interest. Secondly, he maintains that occasional extramarital relations are not necessarily a ground for dissolving a marriage. This, as he insisted in public statements which McGeehan carefully ignored, is not at all the same things as "encouraging" adultery. If anything, Russell's advocacy of legalized companionate marriages may be regarded as an argument against adultery. But in any event the section of the New York Penal Law which makes adultery a criminal offense is not and has not been acted on for a long time. Everybody knows this. Perhaps the best evidence that it is a dead law comes from McGeehan's own record when he was District Attorney of Bronx County. During this period a large number of divorces were granted on the legally sufficient ground of adultery. Yet McGeehan, like all other district attorneys, never prosecuted a single one of his parties whose guilt had thus been officially registered.

Russell's views on nudity, though not "*malum in se,*" were condemned as "abhorrently repulsive" by the judge. He quoted from Russell's early book, *Education and the Good Life*, in which Russell had written that "a child should, from the first, be allowed to see his parents and brothers and sisters without their clothes whenever it so happens naturally. No fuss should be made either way; he should simply not know that people have feelings about nudity." This was presented as evidence that the chair of philosophy at City College would become one of "indecency" if the appointment were to stand. McGeehan apparently hoped to make Russell appear as "lustful, venerous, lecherous, erotomaniac" (to use Mr. Goldstein's colorful language) and advocating a kind of intra-family strip-tease. The judge carefully refrained from quoting the other parts of Russell's discussion in which the reasons for his view were explained. In these other passages, which McGeehan suppressed, Russell made it clear that he offered his recommendation and condemned the opposite practice of hiding the human body at all costs because the latter evoked "the sense that there is a mystery, and having that sense, children will become prurient and indecent." The judge also carefully refrained from quoting the discussion of the same subject in *Marriage and Morals*, one of the books submitted by Goldstein and allegedly read by McGeehan. Goldstein's charge that Russell had "conducted a nudist colony" were presumably derived from some statements in this passage. It reads as follows:

> The taboo against nakedness is an obstacle to a decent attitude on the subject of sex. Where young people are concerned, this is now recognized by many people. It is good for children to see each other and their parents naked whenever it so happens naturally. There will be a short period, probably at about three years old, when the child is interested in the differences between his father and his mother, and compares them with the differences between himself and his sister, but this period is soon over, and after this he takes no more interest in nudity than in clothes. So long as parents are unwilling to be seen naked by their children, the children will necessarily have a sense that there is a mystery, and having that sense they will become prurient and indecent. There is only one way to avoid indecency, and that is to avoid mystery. There are also many important grounds of health in favor of nudity in suitable circumstances, such as out of doors in sunny weather. Sunshine on the bare skin has an exceedingly health-giving effect. Moreover, anyone who has watched children running about in the open air without clothes must have been struck by the fact that they hold themselves much better and move more freely and gracefully than when they are dressed. The same thing is true of grown-up people. The proper place for nudity is out of doors in the sunshine and in the water. If our conventions allowed of this, it would soon cease to make any sexual appeal; we should all hold ourselves better, we should be healthier from the contact of air and sun with the skin, and our standards of beauty would more nearly coincide with standards of health, since they would concern themselves with the body and its carriage, not only with the face. In this respect the practice of the Greeks was to be commended.

I must confess that I cannot conceive of any more wholesome attitude on this subject than that expressed in these remarks. McGeehan's reaction reminds me of a cartoon which became famous in the early years of this century when Anthony Comstock, one of the judge's spiritual ancestors, was campaigning against pictures and statues depicting the undraped human form. It showed Comstock dragging a woman into a courtroom and saying to the judge, "Your Honor, this woman gave birth to a naked child."

On the subject of masturbation, the judge was, as usual, guilty of a twofold misrepresentation of Russell's views. He first quoted Russell out of context in such a way as to misrepresent the real intention of his discussion. On top of that, McGeehan misinterpreted the passage he reproduced in his judgment. The judge tried to represent Russell as advising or sponsoring the practice of masturbation. In the passage quoted by the judge Russell did no such thing. He merely claimed that it was better to leave a child alone than to suppress masturbation by dire threats. The passage, furthermore, occurred in a context in which Russell, so far from promoting masturbation, recommended methods, other than direct prohibition, to *prevent* masturbation. As for Russell's actual views, they are and have for a long time been medical commonplaces. In this connection the *New Republic* aptly remarked that the judge merely showed himself ignorant "of a whole generation of scientific thought in the medical and psychological field." Perhaps rather than subject professors to competitive examinations one should make a certain minimum acquaintance with medical psychology a requirement for prospective judges.

McGeehan not only distorted Russell's views on specific topics. The worst feature of his opinion was probably the distortion of Russell's over-all purpose in his criticism of conventional morality. Nobody would have gathered from the judge's opinion that Russell approached the whole subject of sexual morality in a spirit of high seriousness and that his intention was not to abandon moral restraints but to formulate a kindlier and more humane code. "Sex," Russell wrote in a passage which the judge probably never read, "cannot dispense with an ethic, any more than business or sport or scientific research or any other branch of human activity. But it can dispense with an ethic based solely on ancient prohibitions propounded by uneducated people in a society wholly unlike our own. In sex, as in economics and politics, our ethic is still dominated by fears which modern discoveries have made irrational. … It is true that the transition from the old system to the new has its own difficulties, as all transitions have. … The morality which I should advocate does not consist simply of saying to grown-up people or adolescents: 'Follow your impulses and do as you like.' There has to be consistency in life; there has to be continuous effort directed to ends that are not immediately beneficial and not at every moment attractive; there has to be consideration for others; and there should be certain standards of rectitude." "Sex morality," he said elsewhere in *Marriage and Morals*, "has to be derived from certain general principles, as to which there is perhaps a fairly wide measure of agreement, in spite of the wide disagreement as to the consequences to be drawn from them. The first thing to be secured is that there should be as much as possible of that deep, serious love between man and woman which embraces the whole personality of both and leads to a fusion by which each is enriched and enhanced. … The second thing of importance is that there should be adequate care of children, physical and psychological." Russell is not an advocate of "wild living." Nor is he an enemy of the institution of marriage. Marriage, in his view, is "the best and most important relation that can exist between two human beings," and he is most insistent that it "is something more serious than the pleasure of two people in each other's company; it is an institution which, through the fact that it gives rise to children, forms part of the intimate texture of society and has an importance extending far beyond the personal feelings of the husband and wife."

It may be doubted that these views are really so dangerous. But in any event it does not seem likely that McGeehan and the assorted champions of "morality" had any fears for the innocence and purity of the students at City College, whether older or younger than eighteen. It should not have been difficult to ascertain whether Russell's presence at City College was likely to lead to "loose living," "abduction," and other dreadful practices. Russell had been a teacher most of his life—in England, in China, and in the United States. It would surely have been very simple to ask for reports about his influence from the presidents of the universities where he had taught, his colleagues there, and the students who had attended his classes. Such reports were indeed available, but the judge showed no interest in them. He showed no interest in them because all, without exception, spoke of Russell in terms of the highest praise. President Hutchins of the University of Chicago, where Russell had been the previous year, assured the Board of Higher Education of his "important contribution" and vigorously supported the appointment. President Sproule of the University of California took a similar stand and spoke of Russell as "a most valuable colleague." Richard Payne, the editor of the student newspaper at U.C.L.A., sent a telegram to a protest meeting at City College saying, "You have the complete support of the U.C.L.A. students who know this great man. Good luck!" Dean Marjorie Nicolson of the United Chapters of Phi Beta Kappa also volunteered a statement. She had attended two of Russell's courses at the British Institute of Philosophical Studies. According to Dean Nicolson, "Mr. Russell never introduced into his discussions of philosophy any of the controversial questions which his opponents have raised. … Mr. Russell is first and foremost a philosopher, and in his teaching he always remembers that. I should have had no way of knowing Mr. Russell's opinions on marriage, divorce, theism, or atheism, had they not been given an exaggerated form in the newspapers." Testimony of the same kind came from many other quarters. I said above that Judge McGeehan's eyes were not on the law. I think it is fair to add that they were not upon the facts, either.

VI

The reactions to the verdict were as one might have expected. Russell's supporters were dismayed, while the opposition was jubilant. Russell's supporters were fearful lest heavy political pressure would prevent the board from making an effective appeal in the higher courts. These fears, as we shall see, proved only too justified. The national council of the American Association of University Professors, meeting in Chicago, unanimously adopted a resolution urging both Mayor La Guardia and the board to fight McGeehan's judgment. So did numerous other bodies, including the American Association of Scientific Workers and the Public Education Association. A special Academic Freedom-Bertrand Russell Committee was formed, with Professor Montague of Columbia as chairman and Professor John Herman Randall, Jr., as secretary. It numbered among its sponsors Dr. William A. Neilson, President Emeritus of Smith College, Presidents Sproule and Hutchins, Dr. J. S. Bryn, President of William and Mary College, Dean Nicolson, Dr. Frank Kingdon, and numerous other distinguished personalities from the academic world. Sixty members of the faculty of Northwestern University immediately sent financial contributions to the committee, praising Bertrand Russell's high-minded and courageous approach to moral questions. The Committee for Cultural Freedom sent a telegram to Mayor La Guardia in which it pointed out that McGeehan had made Russell appear to be a "profligate and a scoundrel." This, the committee added, was "at crying variance with the known and easily veriable facts, attested to by the presidents of American universities at which Mr. Russell has taught."

A protest meeting was organized by the American Committee for democracy and Intellectual Freedom at which the speakers included Professor Walter Rautenstrauch of Columbia, Professor Franz Boas, the anthropologist, Dean N. H. Dearborn of New York University, and the Rev. H. N. Sibley. At City College itself, where the students were apparently pretty corrupt even before Russell had a chance to further undermine their health and morals, a mass meeting was held in the Great Hall. A message of support came from one of the most illustrious graduates of the college, Upton Sinclair, who declared that the judge and the bishop had "publicized the fact that England has loaned us one of the most learned and generous men of our time." The advocates of sex dogmas, he concluded, "should not be allowed to rob us of Bertrand Russell's services." The main speakers at the meeting were Professors Bridge of the Department of Classical Languages, Wiener of the Philosophy Department, Morris of the History Department, and Lyman Bryson of Teachers College, Columbia. "If publicly supported colleges are not to be as free as others," Professor Bryson remarked, "they have no hope whatever of playing an important part in the intellectual progress of our lives." This last consideration would perhaps not weigh too heavily with Judge McGeehan, Bishop Manning, and the Tammany scholars who supported their valiant efforts.

Corruption must have been rampant at City College for many years prior to this whole affair. For the board of directors of the Associate Alumni of City College voted unanimously to urge the board to take an appeal. This motion was introduced by Dr. Samuel Schulman, Rabbi Emeritus of Temple Emanu-El, an organization well known for its subversive activities. One of the eighteen directors supporting the resolution was Supreme Court Justice Bernard Shientag, who perhaps had not been properly instructed in the doctrine of "indirect" influence.

The fact that not all judges were as well versed in the Penal Law and had as profound a conception of academic freedom as McGeehan was also evident from certain events in California. On April 30, the removal of Bertrand Russell from his position at the University of California was demanded by Mr. I. R. Wall, a former minister, who filed a writ of prohibition in the District Court of Appeals in Los Angeles. Mr. Wall charged that Bertrand Russell's doctrines were "subversive." In California, unlike New York, the writ was immediately thrown out of court.

VII

It goes without saying that McGeehan's judgment was considered a deed of great heroism by Russell's enemies. The judge now became the object of lyrical hymns of praise in the journals of the inquisitors. "He is an American, a virile and staunch American," wrote the Jesuit weekly *America*. More than this, "he is a pure and honorable jurist and … rates among the best as an authority on law." He also "lives his religion, in mind and soul," and "well over six feet in height, he is brimming with wit and kindliness." Nor were these his only virtues. Russell's charge that the judge was a "very ignorant fellow" was quite untrue. A classical scholar, a man "keen in mind and brilliant in scholarship … he reads Homer in the original Greek and Horace and Cicero in the original Latin." Many other voices joined the Jesuit periodical in a chorus of adulation. One of these was Francis S. Moseley, president of a Catholic teachers' association, who called McGeehan's decision "an epic chapter in the history of jurisprudence" and "a great victory for the forces of decency and morality as well as a triumph for true academic freedom." *The Tablet*, after demanding an investigation of Ordway Tead, Acting President Mead, and other revolutionaries responsible for Russell's appointment, editorially declared that "the decision of Justice McGeehan ... carries a note of simplicity and sincerity that immediately win acclaim."

It must have become obvious by now that Russell was not the only malefactor who had to be punished. The majority of the Board of Higher Education were almost equally blameworthy, and suitable action against them had to be taken. At a meeting of the New York State Education Council, which I believe is generally considered part of the "lunatic fringe" of right-wing politics in the United States, Professor John Dewey and Mrs. Franklin D. Roosevelt were denounced for preaching tolerance ("a sickly, anemic thing") in the place of "common decency" and "fair play," as exemplified, I assume, in McGeehan's procedure. At the same meeting, Lambert Fairchild, chairman of the National Committee for Religious Recovery, denounced the majority of the Board of Higher Education who had favored Russell's appointment as "renegade Jews and renegade Christians" and urged their replacement by persons "who still believe in their country and in religion." Charles E. Keegan, the polite gentleman whom we met before when he referred to Russell as a "dog" and a "bum," raised the matter in the City Council. Comparing Russell with the "fifth columns" that aided in Nazi victories and calling him an "avowed Communist," he urged that the board members who had persisted in their attempts to "place Russell on the City College faculty" should be dismissed. He introduced a resolution calling on the mayor to reorganize the board and to appoint members who would serve the city "more creditably." This resolution was adopted by a vote of fourteen to five. It should be added, however, that the mayor cannot simply dismiss the members of the board, and Councilman Keegan's motion amounted to no more than a noble gesture.

In addition to preventing Russell's appointment and castigating the board members who had favored it, there remained the task of enlightening the public on the true nature of freedom—a subject on which many Americans had serious misconceptions, probably through the influence of such deluded heretics as Jefferson and Paine. The McGeehan-Moseley conception had to be made known more widely. In this campaign of enlightenment Monsignor Francis W. Walsh, the "pools of blood" orator, played a prominent part. Taking the rostrum once again at the Hotel Astor, this time at the annual communion breakfast of the New York Post Office Holy Name Society, he first alluded briefly to the epic court decision. The last time he stood on this platform, he said, "I discussed a problem known to professors of mathematics as the matrimonial triangle. But since Q.E.D. has been written to that by the Hon. Justice John E. McGeehan, we will pass on to a related subject." Monsignor Walsh went on to discuss "a very much abused word"—namely, "liberty." Since human beings, he said "can continue to exist only by obedience to the law of God—the law of nature, the law of the Ten Commandments—then in this America of ours no one shall be permitted in the name of liberty to scoff at the law of God. No one shall be permitted to stand on the platform of liberty in order to stab liberty in the back. And this applies to all Communists and their fellow travelers, to all Nazis and Fascists who put the law of the state above the law of God, to college professors, publishers of books, or anyone else within the territorial limits of the United States." That Monsignor Walsh had a right to be considered an expert on the abuse of the word "liberty" can hardly be denied.

VIII

This account would not be complete without a few words about the role of *The New York Times* in this affair. When religious pressure groups are not involved, the *Times* is usually quick to protest against abuses of power. In the Russell case the news coverage was, as always, fair and comprehensive. However, throughout the entire month of March, when Russell and the members of the Board of Higher Education were daily maligned in the most outrageous terms, the *Times* kept completely silent. For three weeks after the McGeehan judgment there was not a word of editorial comment. Finally, on April 20, the *Times* published a letter by Chancellor Chase of New York University, which pointed out some of the implications of the McGeehan decision. "The real question," Mr. Chase wrote, "is now one which, so far as I know, has never before been raised in the history of higher education in America. It is whether, in an institution supported in whole or in part by public funds, a court, given a taxpayers' suit, has the power to void a faculty appointment on account of the individual's opinion. . . . If the jurisdiction of the court is upheld, a blow has been struck at the security and intellectual independence of every faculty member in every public college and university in the United States. Its potential consequences are incalculable."

The *Times* now felt obliged to take a stand in an editorial on the subject. It opened with some general comments deploring the unfortunate effects of the controversy which had been aroused. The dispute over the appointment of Bertrand Russell, the *Times* wrote, "has done great harm in the community. It has created a bitterness of feeling which we can ill afford when the democracy of which we are all a part is threatened on so many sides." Mistakes of judgment, the editorial proceeded, with an appearance of neutrality, had been made "by all the principals involved. The original appointment of Bertrand Russell was impolitic and unwise; for wholly aside from the question of whether Bertrand Russell's scholarship and his merits as a teacher, it was certain from the outset that the sentiments of a substantial part of this community would be outraged by the opinions he had expressed on various moral questions." Whether an appointment is "politic" or "impolitic" should apparently count more than the question of the teacher's competence and scholarship. This, surely, is a remarkable doctrine for a liberal newspaper to advocate.

As for McGeehan's decision, the *Times* could only say that it was "dangerously broad." The main indignation of the liberal newspaper was reserved neither for the judge who had abused his position nor for the mayor whose cowardly conduct I shall describe in a moment, but for the victim of the malicious assault, Bertrand Russell. Mr. Russell himself, the *Times* stated, "should have had the wisdom to withdraw from the appointment as soon as its harmful results became evident." To this Russell replied in a letter published on April 26:

> I hope you will allow me to comment on your references to the controversy originating in my appointment to the College of the City of New York, and particularly on your judgment that I "should have had the wisdom to withdraw ... as soon as the harmful results became evident."
>
> In one sense this would have been the wisest course; it would certainly have been more prudent as far as my personal interests are concerned, and a great deal pleasanter. If I had considered only my own interests and inclinations I should have retired at once. But however wise such action might have been from a personal point of view, it would also, in my judgment, have been cowardly and selfish. A great many people realized that their own interests and the principles of toleration and free speech were at stake were anxious from the first to continue the controversy. If I had retired, I should have robbed them of their *casus belli* and tacitly assented to the proposition of opposition that substantial groups shall be allowed to drive out of public office individuals whose opinions, race, or nationality they find repugnant. This to me would appear immoral.
>
> It was my grandfather who brought about the repeal of the English Test and Corporation Acts, which barred from public office anyone not a member of the Church of England, of which he himself was a member, and one of my earliest and most important memories is of a deputation of Methodists and Wesleyans coming to cheer outside his window on the fiftieth anniversary of this repeal, although the largest

> single group affected was Catholic.
>
> I do not believe that controversy is harmful on general grounds. It is not controversy and open differences that endanger democracy. On the contrary, these are its greatest safeguards. It is an essential part of democracy that substantial groups, even majorities, should extend toleration to dissentient groups, however small and however much their sentiments may be outraged.
>
> In a democracy it is necessary that people should learn to endure having their sentiments outraged. . . .

At the conclusion of its editorial on April 20, the *Times* made a special point of supporting Chancellor Chase in the hope that McGeehan's judgment would be reviewed by the higher courts. Later, when such a review was artfully prevented by the joint efforts of the judge and Mayor La Guardia, it did not utter a word of protest. So much for the record of the "world's greatest newspaper" in this case.

IX

When the McGeehan decision was made public, some of Russell's enemies were frightened that the courts would overrule it. Thus Alderman Lambert, after rejoicing in "the great victory for the forces of decency," pointed out that the fight was not yet won. Showing his great respect for the independence of the judiciary, he added that "decent citizens must show such a front that no court will dare reverse this decision."

The alderman's fears were quite unnecessary. Mayor La Guardia and several members of the City Council went to work to make certain that even if the courts upheld an appeal against the McGeehan judgment, Russell could not be restored to to his original post. The mayor simply struck from the budget the appropriation for the lectureship to which Russell had been appointed. This he did in a particularly sneaky fashion. He published his executive budget without saying a word about the matter. A few days later reporters noted the elimination of the line in the budget. When asked about it, the mayor gave the hypocritical answer that the decision was "in keeping with the policy to eliminate vacant positions." Roger Baldwin, the director of the American Civil Liberties Union, thereupon sent the mayor a telegram of many observers. "This action of negating the action of your Board of Higher Education," he wrote, "seems to us even more objectionable than the decision of Justice McGeehan upon his own prejudices." The mayor's move was unprecedented and, in the opinion of experts, had no legal force, since school boards alone control any expenditure within their budgets.

It was not enough, however, to strike the appropriation for Russell's lectureship from the budget. Every avenue had to be closed. To make sure that Russell could not be appointed to some other position, Borough President Lyons introduced a resolution at the meeting of the Board of Estimate which was made part of the terms and conditions of the next budget. "No funds herein appropriated," the resolution said, "shall be used for the employment of Bertrand Russell."

These measures made it most unlikely that any appeal in the courts would result in Russell's actual reinstatement. Nevertheless, as a matter of principle, the majority of the Board of Higher Education decided to take the matter to the higher courts. At this stage Mr. W. C. Chandler, the Corporation Counsel, informed the board that he would not take an appeal. He shared the board's opinion that the McGeehan decision was "not legally sound" and even advised the board that it could ignore the decision in making future appointments. In spite of this, he recommended that the case should not be pursued any further. Because of the "religious and moral controversies" involved, the higher courts, he said, might confirm the decision. At the same time the mayor announced that he fully "supported" Mr. Chandler's refusal to appeal. Perhaps "inspired" would have been a more accurate term to use.

The majority of the board now turned to private counsel, and the firm of Root, Clark, Buckner & Ballantine volunteered its services without fee. Mr. Buckner was a former United States Attorney for the Southern District of New York, and he was assisted by Mr. John H. Harlan. Basing himself on a number of precedents, Mr. Harlan applied to Judge McGeehan to have his law firm substituted for the Corporation Counsel as legal representative of the board. He also emphasized that the board had not interposed a formal answer before McGeehan's ruling and contended that it was entitled to have the decree vacated in order to do so. It will come as no surprise to the reader that the crusader found no merit in Mr. Harlan's submission. He decided that the Corporation Counsel could not be replaced without his consent, and contemptuously referred to the majority of the board as a "disgruntled faction" which "cannot now relitigate what has already been adjudicated." All appeals from *this* ruling were rejected by the higher courts, and since the Corporation Counsel refused to act, the board was powerless to appeal McGeehan's judgment revoking Russell's appointment.

After McGeehan's judgment had been published with its slanders on his character, Russell was advised to be represented by independent counsel. He retained Mr. Osmond K. Fraenkel, who was suggested to him by the American Civil Liberties Union. Mr. Fraenkel, on Russell's behalf, immediately applied to have Russell made a party to the proceeding. He also applied for permission to file an answer to Goldstein's scandalous charges. McGeehan denied the application on the ground that Russell had no "legal interest" in the matter. This decision was taken by Mr. Fraenkel to the Appellate Division of the Supreme Court, which unanimously upheld McGeehan without giving any reason for its action. Permission was then asked of the Appellate Division for carrying an appeal to the Court of Appeals, and this was denied. The few remaining legal moves open to Mr. Fraenkel were similarly fruitless. It is astounding indeed that Mrs. Kay, whose daughter could not have become a student of Bertrand Russell's, had a legal interest in the case while Russell, whose reputation and livelihood were at stake, had none. Professor Cohen aptly remarked that "if this is the law, then surely, in the language of Dickens, 'the law is an ass.' "

In this way both the Board of Higher Education and Bertrand Russell himself were prevented from making an effective appeal, and the McGeehan judgment became final. "As Americans," said John Dewey, "we can only blush with shame for this scar on our repute for fair play."

X

From California Russell went to Harvard, whose President and Fellows had perhaps insufficiently taken to heart Judge McGeehan's pronouncement that Russell was "not fit to teach in any of the schools of this land." In reply to Thomas Dorgan they issued a statement saying that they had "taken cognizance of the criticism of this appointment" but had concluded, after reviewing all the circumstances, that it was "for the best interests of the university to reaffirm their decision and they have done so." Russell's lectures at Harvard proceeded without any incidents, though I suppose that the statistics for rape and abduction were somewhat higher than usual. Russell then taught for several years at the Barnes Foundation in Merion, Pennsylvania. In 1944 he returned to England, where a few years later King George VI bestowed upon him the Order of Merit. This, I must say, showed regrettable indifference on the part of the British Monarchy to the importance of the Penal Law.

In 1950 Russell delivered the Machette Lectures at Columbia University. He was given a rousing reception which those who were present are not likely to forget. It was compared with the acclaim received by Voltaire in 1778, on his return to Paris, the place where he had been imprisoned and from which he had later been banished. In 1950 also, a Swedish committee, whose standards were presumably “lower than common decency requires,” awarded Bertrand Russell the Nobel Prize for Literature. There were no comments from Mrs. Kay, Mr. Goldstein, or Judge McGeehan. At any rate, none have been published.