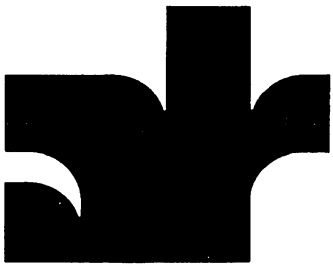

ARTICLES

*Ian Holloway**

"I STAND FOR LIBERTY":[1] WINSTON CHURCHILL AS SOCIAL REFORMER

INTRODUCTION

SIR Winston Churchill is without doubt one of the most studied figures in modern history.[2] Over the years, there have been several dozen biographies of him published. Moreover, however one defines it, and quite apart from whether or not one sides with his

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1 These are said to have been the opening words of Churchill's first public speech. See Gilbert, *Churchill's Political Philosophy* (OUP, Oxford 1981) p1.

2 Churchill's 'official' biography was published in eight volumes by William Heinemann Ltd under the title *Winston S Churchill* between 1966 and 1988. The first two volumes were written by his son, Randolph S Churchill, and the remainder by Martin Gilbert, a Fellow of Merton College, Oxford. Each of the volumes of the biography has one or more 'companion volumes' which contain reproductions of documentary sources. After completing the official work, Gilbert wrote a single volume abridged biography: Gilbert, *Churchill: A Life* (William Heinemann Ltd, London 1991). Reference will also be made to the second volume of the official biography: Churchill, *Young Statesman 1901-1914*, as well as its *Companion Volume*.

points of view, his is invariably spoken of as a life of greatness. Yet, almost all of the comment on his life and times revolves around his role as warrior. Churchill's Premiership during the Second World War is seen by most as the main focus of his life's work. All that came before was in preparation for the monumental struggle. All that went afterwards was in the nature of a dénouement.

In one sense, of course, this is perfectly understandable, for there is little question that had it not been for his leadership of the British nation during the years 1940 to 1945,[3] the world would be a much different place than it is. But at the same time, one cannot help but feel it a shame that so little ink has been devoted to Churchill's early life as a politician.[4] This is especially so for the student of legal development or the proponent of radical change, because in the three years between 1908, when he was first appointed to the Cabinet, and 1911, when he was given the office of First Lord of the Admiralty and consequently left the field of domestic politics,[5] Churchill was involved - either as chief architect or passionate champion - in a tremendous amount of legal and social reform; reform, moreover, which went to the very foundation of British society. Indeed, the legal change that Churchill wrought was more profound and revolutionary in its contextual nature than even the vast program of nationalisation ushered in by the Labor Government after 1945. Nor was its scope restricted to the United Kingdom. On the contrary, the reforms introduced during Churchill's tenure in domestic office in Westminster begat similar initiatives throughout the whole of the British Empire, not least of all in Australia.

So in simple historical terms, if for no other reason, the early chapter of Churchill's political life deserves closer examination by anyone interested in the story of the evolution of common law society from the late Victorian period of classic liberalism and *laissez-faire* to the modern day of collectivism and state intervention. Beyond that, there is much that those involved in the debate over law reform can gain from a review of Churchill's parliamentary activity during these years. Not only does it provide insight into the competing forces which have shaped our

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3 And his *de facto* leadership of much of the rest of the British Empire.

4 One of the few books devoted to Churchill's non-military life is Addison, *Churchill on the Home Front 1900-1955* (Jonathan Cape, London 1992). Even this work, however, spends a considerable amount of time discussing his war leadership.

5 *Albeit* temporarily. He was to return to domestic issues after the First World War.

conception of the role of the state in modern life, and hence which infuse much of today's political debate in Australia, but it also says a great deal about the possibilities of law reform as a tool of social evolution.

CHURCHILL'S EARLY LIFE[6]

Before examining the reforms themselves, however, it is perhaps worthwhile to take a moment to look at the course of events which led Churchill to take up his seat on the Treasury Bench. In a purely narrative sense, the story is one of high adventure and stands on its own as a piece of history, but its real interest to the lawyer lies in its foundation as a thirst for social reform, for Churchill's was not the sort of upbringing that most people of our age would consider to be the stuff of innovation or revolution.

Churchill was born at Blenheim Palace, the seat of the Dukes of Marlborough, on November 30 1874. His father, Lord Randolph Churchill, was the third son of the seventh Duke.[7] His mother was an American. Born Jennie Jerome, she was the daughter of Leonard Jerome, a prominent New York stockbroker and financier.[8]

Churchill's father was also a politician. He was first elected to the House of Commons[9] in 1873 as a Conservative.[10] His mother, in turn, was one of

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6 In my opinion, the best account of Churchill's early life was that written by Churchill himself, *My Early Life* (George Newnes, Toronto 1930). Taking into account what Tom Stoppard has said about the necessity of scepticism when reading autobiographies ("[O]f all forms of fiction autobiography is the most gratuitous" (in *Lord Malquist and Mr Moon*, Pt 2)), *My Early Life* is both tremendously engaging and self-effacing.

7 Churchill himself wrote a biography of his father, *The Life of Lord Randolph Churchill* (MacMillan, London 1906) which for a long period was accepted as one of the finest examples of political biography in the English language.

8 A tepid biography of Jennie Churchill was written by her great-niece (and Churchill's cousin), Leslie: *Jennie: The Life of Lady Randolph Churchill* (Hutchinson, London 1969).

9 As a younger son, Lord Randolph was not a peer, and thus was entitled to sit in the House of Commons. The "Lord" in his name was what is known as a 'courtesy' title.

10 Lord Randolph was widely regarded as one of the most powerful orators in the late Victorian era. During his tenure in Parliament, he held two Cabinet posts: in 1885, he was made Secretary of State for India, and in 1887, he was appointed Chancellor of the Exchequer, an office which his son was to occupy 37 years later. He also served as Government Leader in the House of Commons.
Lord Randolph was a proponent of what he called 'Tory Democracy', ie conservatism with an appeal to all classes of society. As such, he fought to gain

the most successful hostesses of her day, befriending in the course of her lifetime most of the rich and powerful people in Great Britain, including the high-living Prince of Wales (later King Edward VII). As for their children, however, the elder Churchills were typical upper class parents of the period. Looking back from middle age, Churchill said of his father that he had only ever had "three or four long intimate conversations with him".[11] The same was true of his mother. Though she eventually became an ally in furthering Churchill's ambition, in his youth she was more pre-occupied with her own amusement than with her children's upbringing. Churchill was to write that Lady Randolph "shone for me like the Evening Star. I loved her dearly - but at a distance."[12]

After the requisite years in public (ie, private) school, at which by his own admission he did not excel,[13] Churchill entered the Army. In 1895, at the age of nineteen, he passed out of the Royal Military Academy at Sandhurst. A year later, in September 1896, Churchill went to India with his regiment, the Fourth Hussars. Churchill's military career was, however, most unlike that of the typical young Victorian officer. In his own words, as a young man he was "eager for trouble".[14] Using all the

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power for local representatives within the Conservative Party's central organisation. Similarly, while he opposed home rule for Ireland, he was in favour of the devolution of local self-government. His political career came unstuck, however, even before his first budget had been introduced. In an attempt to force the Admiralty and the War Office to reduce their estimates, he threatened to resign. Unfortunately, he had miscalculated the level of his influence, for Lord Salisbury, the Prime Minister, immediately accepted his offer. As Churchill put it, "Lord Randolph had divested himself by a single short letter of all that authority which is centred in a political chief and a Minister of the Crown": Churchill, *The Life of Lord Randolph Churchill* p629.

11 Churchill, *My Early Life* p45.

12 As above p19.

13 Churchill later spoke in amusing terms of his experience with examinations:

> These examinations were a great trial to me. The subjects which were dearest to the examiners were almost invariably those I fancied least. I would have liked to be examined in history, poetry and writing essays. The examiners, on the other hand, were partial to Latin and mathematics. And their will prevailed. Moreover, the questions which they asked on both these subjects were almost invariably those to which I was unable to suggest a satisfactory answer. I should have liked to be asked what I knew. They always tried to ask what I did not know. When I would have willingly displayed my knowledge, they sought to expose my ignorance. This sort of treatment had only one result: I did not do well in examinations.

Churchill, *My Early Life* p29.

14 As above p258.

ingenuity he could muster, and not hesitating to ask his mother to intercede with her society friends on his behalf, by the time he was 24 Churchill had managed to involve himself in no less than three wars.[15] What is more, in each he doubled as a war correspondent - one, moreover, who did not hesitate to criticise those in authority whenever he felt it appropriate.[16]

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15 The first of his "adventures", as he called them, took place in October, 1895, when he and an Army friend sailed for Cuba as journalist-cum-military observers to see the Spanish put down an uprising in Cuba. In the summer of 1897, he wangled an appointment to the staff of the commander of a 'punitive' expedition against the native tribes of the North-West Frontier (what is now the border area between Pakistan and Afghanistan). As in Cuba, Churchill sought to combine his soldierly efforts with journalistic ones. Throughout the campaign, he acted as a correspondent for two newspapers, and shortly after its completion, he published his first book, a history of the operation, entitled *The Story of the Malakand Field Force* (Longman, London 1899).

No sooner had Churchill returned to his regiment in the south of India, however, than he began to agitate for another special appointment, this time to the staff of General Sir Herbert Kitchener, the British Commander-in-Chief of the Egyptian Army, who was about to embark upon a mission to quell the tribes of the Sudan and to avenge the death of General Gordon, a British Officer who had been killed by them some years beforehand. Despite the fact that Kitchener clearly indicated that he wanted nothing to do with the brash young officer, Churchill called upon all the connections that he could muster: he had his mother write directly to Kitchener, and he himself arranged for the Prime Minister's Secretary to make a request for the appointment after he learned that Lord Salisbury, the Prime Minister, had been impressed with his history of the North-West Frontier campaign.

16 Today, it might be said that Churchill did not pull any punches. An early instance of his willingness to state his mind, even when it irritated those in power, can be seen in his despatches from the Cuban war, which were printed in the London *Daily Graphic*. Despite the fact that he was a guest of the Spanish forces, Churchill wrote of the justness of the rebel cause and the corruptness of Spanish administration in Cuba: Gilbert, *Churchill: A Life* pp58-60. Similarly, he wrote an account of the Sudan campaign in which he excoriated Kitchener. Speaking of Kitchener's decision to destroy the Tomb of the Mahdi, the spiritual leader of the Sudanese, for example, he wrote:

> If the people of the Soudan cared no more for the Mahdi, then it was an act of Vandalism and folly to destroy the only fine building which might attract the traveller and interest the historian ... If, on the other hand, the people of the Soudan still venerated the memory of the Mahdi - and more than 50,000 had fought hard only a week before to assert their respect and belief - then I shall not hesitate to declare that to destroy what was sacred and holy to them was a wicked act, of which the true Christian, no less than the philosopher, must express his abhorrence.

Churchill, *The River War: An Historical Account of the Reconquest of the Soudan* Vol II (Longmans, London 1899) p214.

It was in India that Churchill first became interested in political affairs beyond the martial and partisan spheres. As he himself put it, "I began to feel myself wanting in even the vaguest knowledge about many large spheres of thought".[17] To remedy the situation, he "resolved to read history, philosophy, economics, and things like that".[18] While his brother officers passed the hot hours of the day in siesta, Churchill studied: "All throughout the long glistening middle hours of the Indian day, from when we quitted stables til the evening shadows proclaimed the hour of Polo, I devoured Gibbon."[19]

In 1899, after only three years of active service, Churchill decided to leave the Army and to enter politics. In June of the same year, he fought his first electoral campaign, standing as a Conservative candidate in a by-election for Oldham, a prosperous cotton-milling town in Lancashire, in north-east England.[20] Despite a strenuous effort, Churchill lost. Accordingly, when the Boer War broke out in the autumn, Churchill was free to go to South Africa.

He initially went as a war correspondent, but before the year was out, he was back in uniform.[21] He remained in Africa for six more months, until the summer of 1900, when he returned to Britain. The apparent intensity with which Churchill had thus far lived his life did not abate, though, for just five days after landing in England, he was again adopted as the

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17 Churchill, *My Early Life* p123.

18 As above p125.

19 As above. Churchill also described the loneliness of his self-directed course of learning:

> It was a curious education. First because I approached it with an empty, hungry mind, and with fairly strong jaws; and what I got I bit; secondly because I had no one to tell me: 'This is discredited'. 'You should read the answer to that by so and so; the two together will give you the gist of the argument'. 'There is a much better book on that subject', and so forth. I now began for the first time to envy those young cubs at the university who had fine scholars to tell them what was what; professors who had devoted their lives to mastering and focussing ideas in every branch of learning; who were eager to distribute the treasures they had gathered before they were overtaken by the night.

As above pp126-127.

20 Churchill once described it as part of "Cottonopolis": Churchill, "John Morley", in *Great Contemporaries* (MacMillan, London 1937) p81.

21 In fact, less than a month after his arrival in South Africa, Churchill had been taken prisoner by the Boers when they derailed an armoured train in which he was travelling. After only a month in captivity, however, he managed to escape, and a few weeks later, he was commissioned as a temporary officer in the South African Light Horse.

Conservative candidate for Oldham for the upcoming general election. This time being more successful in his efforts, he was elected by a small majority, and at the age of 26, he took up his seat in the House of Commons.

Churchill's initiation into parliamentary life was exceedingly stormy. Being both a national hero in his own right and a son of the old Tory, Lord Randolph Churchill, he was naturally accepted by the Conservative caucus with open arms, but even in his maiden speech in the House of Commons, he offended the Imperialist group in the House (which included most Conservatives) by suggesting that if he were a Boer, he hoped that he would be fighting in the field against the British.[22] As it turned out, this would prove to be just the beginning of Churchill's gradual falling out with his father's old party.

Interestingly, in light of the fact that he is so often portrayed as a militarist, the initial focus of Churchill's conflict with his party colleagues was the Government's proposal to increase military spending. Churchill went on the attack by writing in *The Times* that "[a] better army does not necessarily mean a bigger army" and that "[t]here ought to be ways of reforming a business, other than merely putting money in it".[23] Remaining true to the sentiment expressed in his maiden speech, Churchill also continued to attack the Government's attitude towards the Boers, and its policy towards South Africa generally, but the issue which led to his ultimate breach with the Conservative Party, at least until 1924, was one which will be very familiar to the reader of today: free trade.

Though Disraeli had proclaimed in the 1850s that the policy of the Conservative Party was free trade, the notion of 'Imperial preferences' (tariff barriers applied against non-British and Imperial products) as the key to unity and continued prosperity within the Empire began to take hold amongst influential people in the party as the nineteenth century drew to a close. The chief architect of 'protection', as it was known - and one of the most zealous Imperialists in England - was Joseph Chamberlain. In a sense, this is ironic, since Chamberlain was very much a 'self-made man' who had earned his fortune making and selling screws to Europe and the United States, and who in his younger days had been an ardent

22 "If I were a Boer fighting in the field - and if I were a Boer I hope I should be fighting in": (in response to a suggestion that the House of Commons send a message of sympathy to the Boer forces in an attempt to induce them to end the war) UK, Parl, *Debates* HC [18 February 1901] at 407.

23 *The Times*, 23 April 1901.

republican.[24] But human nature is seldom sensitive to irony. As he became older, the "ruthless Radical" became the "Jingo Tory and Empire Builder".[25] As Colonial Secretary, Chamberlain devoted himself to the expansion and consolidation of the Empire, but his fiercest battle was for the economic soul of the Conservative Party. Among his foes on this front was Churchill, and in 1904, when the Party declared itself for protectionism,[26] Churchill crossed the floor to the Liberal Party.

Churchill's relationship with the Liberals, while not without its moments of strife, was from the start much more harmonious than had been his affiliation with the Conservatives. Perhaps most importantly, Churchill was much closer to them in political ideology and temperament. As Churchill himself put it, he shared a "solid basis of agreement and harmony of outlook" with his new colleagues.[27] This being the case, when Sir Henry Campbell-Bannerman formed his administration in December 1905,[28] Churchill was offered the position of Under-Secretary of State for the Colonies. Since the Secretary, Lord Elgin, sat in the House of Lords, the Under-secretaryship carried with it the not inconsiderable responsibility for the conduct of the Department's business in the House of Commons.

Churchill entered upon his government business with ardour. Much of his work, as it turned out, was connected with his old *bête noire*, South Africa.

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24 He was also the father of Neville Chamberlain, the appeaser of Hitler, and Prime Minister between 1937 and 1940.

25 Churchill, "Joseph Chamberlain" in *Great Contemporaries* p48. Writing in the 1930s, a quarter century after Chamberlain's passing, Churchill described his legacy:

> [A]ll our British affairs to-day are tangled, biased or inspired by his actions. He lighted beacon-fires which are still burning; he sounded trumpet-calls whose echoes still call stubborn soldiers to the field. The fiscal controversies which Chamberlain revived are living issues not only in British but in world politics to-day. The impetus which he gave to the sense of Empire, in Britain and even more by repercussion throughout the world, is a deep score on the page of history.

As above.

26 Although not before AJ Balfour, the Prime Minister, had engineered Chamberlain's resignation from the Cabinet in protest over the party's vacillation on the issue.

27 Churchill, "Lord Roseberry" in *Great Contemporaries* p5.

28 On December 4 1905, AJ Balfour, who had succeeded Lord Salisbury as Prime Minister in 1902, resigned in a calculated risk that the Liberals would be too divided internally to form a government. Much to his surprise (and chagrin), the prospect of power drew together the various factions of the Liberal Party, and Sir Henry Campbell-Bannerman, the Liberal leader, was able to assemble a Cabinet.

Among other things, Churchill oversaw the drafting of new constitutions for the Transvaal and the Orange Free State, which had been granted self-government in 1906 and 1907 respectively. Equally, though, he repeatedly (and, no doubt, to the Civil Service, irritatingly) showed himself willing to involve himself in less 'stately' aspects of the Colonial Office's responsibilities than reconciliation with the now vanquished Boers. During his two years in office, for example, he addressed the problem of a railway conductor in Ceylon whom he felt had been wrongfully dismissed, the improper treatment of native people in Natal by some British soldiers and the question of local government in Malta and Cyprus. He also carried out a five month tour of Britain's Mediterranean, Near Eastern and East African territories.[29]

In March 1908, Campbell-Bannerman resigned as Prime Minister due to ill-health, and was succeeded by Herbert Henry Asquith, who served in office until 1916.[30] Churchill later expressed the opinion that his promotion by Asquith to the position of President of the Board of Trade was due to what one might call his "staff work" rather than his performance in Parliament.[31]

The British Board of Trade as it existed during the Victorian and Edwardian periods[32] was technically just a committee of the Privy Council, but it enjoyed a broad mandate relating to trade and commerce generally. In this respect, it corresponded to what we would understand as a department of industry, trade and commerce, but with a number of the

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29 One historian has described Churchill's approach while at the Colonial Office in the following way:

> He had a generous and sensitive, if highly paternalistic, sympathy for subject peoples, and a determination to see that justice was done to humble individuals throughout the empire. He had this sympathy to a degree which was rather rare among British administrators, and even politicians, at this time ... He insisted on questioning the colonial office assumption that officials were always in the right when complaints were made against the government by Africans or, as was more probable, by Asians. He campaigned for an earnest effort to understand the feelings of subject peoples in being ruled by alien administrators 'to try to measure the weight of the burden they bear'.

Hyam, *Elgin and Churchill at the Colonial Office, 1905-1908: The Watershed of the Empire-Commonwealth* (MacMillan, London 1968) pp503-504; quoted in Addison, *Churchill on the Home Front, 1900-1955* p54.

30 When he was in turn succeeded by David Lloyd George.

31 Churchill, "Herbert Henry Asquith" in *Great Contemporaries* p114.

32 The Board was merged into a Department of Trade in 1974.

responsibilities of departments of industrial relations[33] and consumer affairs[34] added in.

After serving as President of the Board for just one month shy of two years,[35] Churchill was appointed Home Secretary, by tradition the senior of the secretaryships of state.[36] His responsibilities have waggishly been described as "police, prisons and prisoners",[37] but in a broad sense, the Home Secretary is responsible for law and order, a position not unlike that of a modern Australian State Attorney-General. Churchill remained at the Home Office until October 1911, when he was appointed First Lord of the Admiralty. It was during this 42 month period - April 1908 to October 1911 - that Churchill embarked on his great scheme of social and legal reform: the "cause of the left-out millions", as he was to describe it.[38]

CHURCHILL AND THE "SOCIAL NET"

In actual fact, however, while Churchill's action in the social field did not begin until he assumed office in the domestic portfolios, the first expressions of his social conscience could be seen as early as 1901, when he was still a brand-new Conservative MP. After having dined together one evening, John Morley, a former friend of his father and a leading Liberal of the period,[39] recommended that Churchill read a book entitled

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33 See fn 90 and accompanying text.

34 Among other things, the Board had certain responsibilities for the management of bankruptcy law: see *Halsbury's Laws of England* Vol II (Butterworths, London, 1st ed 1908) "Bankruptcy and Insolvency" at para 7.

35 In February 1910, after the Liberals were returned in a General Election.

36 The others being at the time (in order of seniority), the Foreign Secretary, the Secretary of State for War, the Colonial Secretary, the Secretary of State for India and the Chief Secretary for Ireland: see *Halsbury's Laws of England* Vol VII, "Constitutional Law" at para 55.

37 Gilbert, *Churchill: A Life* p210.

38 In a speech of 11 October 1906 entitled "Liberalism and Socialism": Reprinted in James (ed), *The Speeches of Winston Churchill* Vol I (Chelsea House, New York 1974) pp671, 675. Addison, *Churchill on the Home Front, 1900-1955*, used the expression as the title for his chapter covering this time period.

39 John Morley (1838-1923) served as Secretary of State for India from 1905-1910, during which time he was one of the co-authors of the so-called "Minto-Morley Reforms", by which the first steps were taken to provide for indigenous representation in the Imperial Government of India. Churchill wrote of him:

> [T]o me John Morley was always a fascinating companion, a man linked with the past, the friend and contemporary of my father, the representative of great doctrines, an actor in historic controversies, a master of English prose, a practical scholar, a statesman-author, a repository of vast knowledge on almost every subject of practical

Poverty: A Study of Town Life.[40] An account of impoverishment in the city of York, *Poverty* may well have been Churchill's first conscious encounter with privation, for thus far his had been a life of privilege and comfort;[41] whichever personal risks he had hitherto taken had been for adventure and amusement, rather than necessity. Either way, it gave rise to a profound reaction in him.

After completing the book, Churchill wrote a review of it. Writing in an extremely cynical tone, Churchill voiced disgust with the emphasis that British governments of the Victorian era had placed on foreign and Imperial affairs at the expense of domestic concerns. "Consider the peculiar case of these poor", he wrote:

> Although the British Empire is so large, they cannot find room to live in; although it is so magnificent, they would have had a better chance of happiness if they had been born cannibal islanders of the Southern seas; although its science is so profound, they would have been more healthy if they had been subjects of Hardicanute.[42]

Shortly afterwards, he wrote in a similar vein to a constituent that he saw "little glory in an Empire which can rule the waves and is unable to flush its sewers".[43]

Seven years later, in March 1908, while he was still at the Colonial Office, Churchill revisited some of the points that he had made in his book review. In a long letter to the editor of *The Nation*, a radical periodical, entitled "The Untrodden Field in Politics", he wrote:

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interest. It was an honour and privilege to consult and concert with him on equal terms, across the gulf of thirty-five years of seniority, in the swift succession of formidable and perplexing events.
Churchill, "John Morley" in *Great Contemporaries* p87.

40 Rowntree, *Poverty: A Study of Town Life* (MacMillan, London 1901). Chairman of the famous chocolate manufacturing firm, Rowntree (1871-1954) was also a sociologist and anthropologist of some repute.

41 I say "thus far", because in later life, Churchill was actually to experience not inconsiderable financial worry. It was partly for that reason that he wrote so much - he had to earn a living.

42 Reprinted in *Companion Volume II*, Pt 1, pp105, 111 (Hardicanute was King of the English from 1040-1042).

43 Letter to J Moore Bayley, 23 December 1901: reprinted in *Companion Volume I*, Pt 1, pp104, 105.

> Science, physical and political alike, revolts at the disorganization which glares at us in so many aspects of modern life. We see the curse of unregulated casual employment steadily rotting the under side of the labour market. We see the riddles of unemployment and underemployment quite unsolved.[44]

In Churchill's view, this exacted a particularly heavy and odious toll from the young:

> Swarms of youths, snatched from school at the period in life when training should be most careful and discipline most exacting, are flung into a precocious manhood, and squander their most precious years in erratic occupations, which not only afford no career for them in after life, but sap and demoralize that character without which no career can be discovered or pursued. Thousands of children grow up not nourished sufficiently to make them effective citizens, or even to derive benefit from the existing educational arrangements. Thousands of boys are exploited in depressing men's wages, and are discharged when they demand such wages for themselves.[45]

The point, Churchill wrote, was that "political freedom, however precious, is utterly incomplete without a measure at least of social and economic independence".[46]

Similarly, in a letter to Asquith just prior to Asquith's offer to Churchill of the Presidency of the Board of Trade, Churchill spoke of his emerging belief in a national "minimum standard" of living which should extend to all citizens.[47] Not surprisingly, therefore, when he assumed the Presidency

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44 *The Nation*, 7 March 1908 pp812, 813.

45 As above.

46 As above p812.

47 He wrote:

> Dimly across gulfs of ignorance I see the outline of a policy which I call the Minimum Standard. It is national rather than departmental. I am doubtful of my power to give it concrete expression.

Letter to HH Asquith, 15 March 1908, reprinted in *Companion Volume II*, Pt 2, pp754, 755.

As to the inevitability of social reform, he wrote at more-or-less the same time:

> No legislation at present in view interests the democracy. All their minds are turning more and more to the social and economic issue. This revolution is irresistible. They will not tolerate the existing system

of the Board of Trade, Churchill threw himself into his work with considerable briskness.[48] His usual level of zeal was now intensified, however, by the new partnership in which he found himself. Some have said that Asquith's first Cabinet was the finest in British history,[49] but whether or not such a broad statement is true, there can be no doubt that in the duo of Churchill at the Board of Trade and David Lloyd George as Chancellor of the Exchequer, British politics saw a combination unlike any that had been seen for many years. Lloyd George's natural-born radicalism, coupled with Churchill's energy and his own reformist instincts, made for a powerful alliance.[50]

> by which wealth is acquired, shared and enjoyed. They may not be able, they may not be willing to recognise themselves unable, to devise a new system. I think them very ready to be guided and patient beyond conception. But they will set their faces like flint against the money power - heir of all other powers and tyrannies overthrown - and its obvious injustices. And this theoretical repulsion will ultimately extend to any party associated in maintaining the status quo. But further, however willing the working classes may be to remain in passive opposition merely to the existing social system, they will not continue to bear, they cannot, the awful uncertainties of their lives. Minimum standards of wages and comfort, insurance in some effective form or other against sickness, unemployment, old age, these are the questions and the only questions by which parties are going to live in the future. Woe to Liberalism, if they slip through its fingers.

Letter to JA Spender, Editor of the *Westminster Gazette*, 22 December 1907 quoted in Addison, *Churchill on the Home Front, 1900-1955* p59.

48 After, that is, he had re-secured a Parliamentary seat. Until the enactment of the *Re-Election of Ministers Act* 1919 (9 Geo V c2), it was the custom for people appointed to the Cabinet to resign from Parliament and seek re-election. The practice was intended as a means of ensuring popular, rather than party, control over the Executive. Given the current level of concern over the lack of government accountability - what Lord Hailsham once spoke of as "elective dictatorship" (*Richard Dimbleby Lecture*, BBC 1 radio broadcast, 14 October 1976) - perhaps it is an idea worth revisiting.

49 See, eg Bonham-Carter, *Winston Churchill as I Knew Him* (Eyre & Spottiswode and Collins, London 1965) p160. It included, in addition to Asquith (PM) and Churchill (Board of Trade), David Lloyd George (Exchequer), Sir Edward Grey (Foreign Office), RB Haldane (War Office), John Morley (India Office) and Herbert Samuel (Chancellor of the Duchy of Lancaster).

50 Though in fact, the 'alliance' may have been somewhat one-sided. Lady Violet Bonham-Carter, Asquith's daughter and Churchill's long-time friend, weighed the two in the following way:

> To me the most curious and surprising feature of their partnership was that while it exercised no influence whatsoever on Lloyd George, politically or otherwise, it directed, shaped and coloured Winston Churchill's mental attitude during the next few years. Lloyd George was throughout the dominant partner. His was the only personal

As he had done after the Boer War, Churchill began his career as a Minister of the Crown by attacking defence expenditures. When RB Haldane, the Secretary of State for War,[51] proposed a broad set of military reforms which would have included the creation of a standing expeditionary force, Churchill argued that the proposed force would be too big by half, and also - in language which would no doubt startle the modern-day peace activist - that the establishment of such a body would seem "dangerous and provocative" to the continental European powers.[52] In a like voice, he argued against a proposed expansion of the Royal Navy.

Instead, Churchill and Lloyd George pressed the Government to focus its attention on domestic, rather than foreign, concerns. At the heart of their stand lay a three-pronged plan for social reform. It consisted of the introduction of a scheme of social insurance, the creation of a network of employment offices (or "labour exchanges", as they were to be known) and the adoption of a statutory minimum wage. All three were aimed at improving the daily lot of the British working person, something about which Churchill felt very strongly. It was simply not acceptable, he said, that working life should amount to "mere alternatives between bed and factory".[53]

In fact, in 1905, the Campbell-Bannerman administration had formed a Royal Commission to inquire into the workings of the Poor Law.[54] Just

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> leadership I have ever known Winston to accept unquestioningly in his whole political career. He was fascinated by a mind more swift and agile than his own, by its fertility and resource, by its uncanny intuition and gymnastic nimbleness, and by a political sophistication which he lacked.

As above p161.

51 And later, as Viscount Haldane, Lord Chancellor from 1912-1915, and in 1924.

52 Quoted in Addison, *Churchill on the Home Front, 1900-1955* p68.

53 He said:

> [T]he general march of industrial democracy is not towards inadequate hours of work but towards sufficient hours of leisure. That is the movement among the working people all over the country. They are not content that their lives should remain mere alternatives between the bed and the factory. They demand time to look about them, time to see their homes by daylight, to see their children, time to think and read and cultivate their gardens - time, in short, to live.

UK, Parl, *Debates* HC [6 July 1908] at 1330.

54 The Poor Law, actually the *Poor Law Amendment Act* 1834 (4 & 5 Will IV c76), was the subject of considerable controversy in the late Victorian era, of which Dickens' novels represent probably the most enduring examples. At the risk of oversimplification, the philosophy underlying the Poor Law was that the life of

prior to Churchill's appointment to the Board of Trade, the Commission had heard evidence as to the feasibility of adopting a system of unemployment insurance in connection with a scheme of labour exchanges, but showing his characteristic impatience for result, Churchill decided to act in advance of the Royal Commission's report.

The first of his efforts was directed at the statutory regulation of wages. The notion of an across-the-board minimum wage was clearly politically unacceptable, even to many moderate Liberals,[55] so the measure was initially restricted to four of the so-called 'sweated trades', ie, occupations which demanded a high level of output, but which paid exceedingly low wages and which were made up of a high proportion of women. As Churchill's son described it:

> It was [difficult] to arouse sympathy for those trades which remained almost immune to public scrutiny. The competition of sempstresses, tailors, shirt-finishers and fine sewers was conducted more quietly and privately and was less intense than the open labour market of the docks. The influx of Eastern European immigrants into London, Leeds and Manchester in the 1890s and 1900s made the problem worse ... This uncontrolled entry of the unskilled and the poor accentuated the difficulties imposed by the lack of effective legislation to maintain minimum wages and standards in the multiplication of private workshops which sprang up.[56]

The sweated trades had been the subject of discussion among social reformers for some time, but Churchill was the first to take definite action. In March 1909, he introduced into Parliament a Bill which provided for the creation of "Trade Boards" which had the power to set minimum wage levels and to levy fines against employers who were in breach of the law. Interestingly, Churchill's Trade Boards were among the first administrative bodies to be set up according to the tri-partite model of representation of both labour and management with an independent chair that has become so familiar a model in industrial legislation of today.

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poverty should be as unpleasant as possible, so that there would be every impetus for self-improvement.

55 See, eg, Addison, *Churchill on the Home Front, 1900-1955* pp77-78.

56 Churchill, *Young Statesman, 1901-1914* p297.

As enacted, the *Trade Boards Act* 1910 covered four trades:[57] ready-made tailoring, paper box-making, machine lace-making and chain making, although in 1913 it was extended by regulation to cover five more. Approximately two hundred thousand employees fell within the initial ambit of the legislation, of whom about one hundred and forty thousand were women.

Churchill's second major initiative at the Board of Trade was the creation of a system of labour exchanges. At first, the exchanges were intended to be an adjunct to a more ambitious plan for a scheme of unemployment insurance,[58] but because of some hostility to the breadth of the proposal (including from within the Cabinet),[59] a decision was taken by the Government to delay introduction of the unemployment insurance until Lloyd George had prepared his plan for a scheme of health insurance, at which time the two would be implemented together. Accordingly, the Labour Exchanges Bill was introduced by itself in May 1909, and the unemployment insurance was left to wait for another two years.[60]

In a speech to the House of Commons announcing that the Labour Exchanges Bill would soon be introduced, Churchill spoke of its twin aims

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57 9 Edw VII c22 (in force 1 January 1910).

58 He said:

> The establishment of Labour Exchanges is necessary for the efficient working of the insurance scheme; for all foreign experiments have shown that a fund for insurance against unemployment needs to be protected against unnecessary or fraudulent claims by the power of notifying situations to men in receipt of benefit as soon as any situations become vacant. The insurance scheme, on the other hand, will be a lever of the most valuable kind to bring the Exchanges into successful operation; for the employers, interested in reducing friction in the passage of workmen from job to job, and in not drawing fresh men into a trade while any man already insured in it is standing idle, will turn naturally to the use of a Labour Exchange.

Quoted in Addison, *Churchill on the Home Front, 1900-1955* p73.

59 In a letter to his wife, Churchill described the hostility:

> My Unemployment Insurance plan encountered much opposition from that old ruffian Burns [John Elliot Burns (1858 - 1943), President of the Local Government Board] and that little goose Runciman [Walter Runciman (1870-1949), President of the Board of Education], and I could not get any decision yesterday from the Cabinet. Asquith is however quite firm about it, and I do not doubt that in the end it will come safely through.

Letter dated 27 April 1909, reprinted in *Companion Vol II*, Pt 2, pp886-887.

60 It was eventually introduced by the *National Insurance Act* 1911, 1 & 2 Geo V c55.

of both providing a more efficient means for the supply of labour and easing the psychological and financial burden imposed on ordinary working people by the vagaries of the free market. The speech is interesting, for it is illustrative not only of his awareness of the conditions in which working class people had to live, but also of his realisation that unemployment was a systemic, rather than individual, problem.

"Modern industry is national", Churchill proclaimed.[61] "The facilities of transport and communication knit the country as no country has ever been knitted before." The only loser, as he could see it, was the working class:

> Labour alone has not profited by this improved organization. The method by which labour obtains its market to-day is the old method, the demoralising method of personal application, hawking labour about from place to place, and treating a job as if it were a favour.[62]

A system of exchanges, however, would help alleviate some of the stress that the search for employment placed on people who did not have the luxury of a private income:

> The movement of labour when it is necessary should be effected with the least friction, the least suffering, the least loss of time and of status to the individual who is called upon by the force of economic conditions to move.[63]

In addition, and just as importantly, the exchanges would act as a bureau of statistics, a gathering place for information about employment opportunities:

> As to lack of information, labour exchanges must afford information of the highest value in the sphere of social subjects on which we are lamentably ill-informed. In proportion as this system comes to be used it will afford us accurate contemporary information about the demand for labour, both as to the quantity and quality of that demand, as between one trade and another, as between one district

61 UK, Parl, *Debates* HC [19 May 1909] at 501.
62 As above.
63 As above.

> and another, and as between one season and one cycle and another.[64]

Like the Trade Boards Bill before it, the Labour Exchanges Bill did not attract any serious opposition in Parliament.[65] It did, however, raise some concern among both the unions and employers. The former feared that the exchanges would end up being little more than a source of supply of 'scab labour' (or 'blackleg labour', as it is usually referred to in Great Britain), while the latter thought that they (and the hotels near them) would be gathering places for social revolutionaries and trade union recruiters (who, in many employers' minds, were one and the same). To surmount this, Churchill showed a side of his character that is often forgotten today, that of consensus-builder.

Churchill clearly recognised that if his radical measures for social change were ever to function as they were intended, the principles they embodied had to be embraced by the people whom they sought to benefit and/or regulate. Accordingly, while the Bill was still before the House of Commons, Churchill met separately with representatives of labour and industry,[66] and persuaded each to believe that while the legislation would both give and take, the net effect would be an advantage in favour of the party to whom he happened to be speaking at the moment. To the unions, he tacitly encouraged the belief that the exchanges could be a fertile recruiting ground, while to the employers, he hinted at the opposite - that the exchanges could also act as a source of additional help during periods of industrial strife.[67]

In addition to his readiness to adopt a bi-partisan approach to law reform, something which today's observer might not normally associate with the Victorian and Edwardian periods, Churchill showed a willingness to look beyond British shores for the source of ideas. This says a great deal, for England was viewed by most English people, even the very learned, as the most advanced country in the world in virtually every respect, but

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64 As above at 502.

65 It received Royal Assent on 20 September 1909 (9 Edw VII c7). As an aside, the Act stands as a very early example of the modern social welfare enactment: it contained just six sections, spoke in very general terms, and provided for a large-scale delegation of regulation-making authority to the bureaucracy.

66 For a fascinating account of the hoops through which Churchill had to jump to get both labour and management 'on side', see Harris, *Unemployment and Politics; A Study in English Social Policy, 1886-1914* (Clarendon Press, Oxford 1972) pp288-292.

67 Addison, *Churchill on the Home Front, 1900-1955* p75.

especially with respect to matters of law and social regulation. It had only been 24 years, after all, since Dicey had written scornfully of the continental system of administrative government that it was "utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs".[68]

Yet, in his quest for 'a better way', Churchill was not above taking leaves from foreign books. In particular, he thought that there was a good deal that Britain could learn about social justice from Germany. One sees repeated references to Germany and German law in his speeches and writings of the time. After one visit to Hesse, for example, during which he saw the German version of labour exchanges in operation during a time of economic recession, he said in an address to his constituents:

> When I was in Germany in October I visited the Labour Exchanges. I saw at each hundreds of workmen who were unemployed ... Some of these poor fellows, at the lowest level of German life, had returned twenty times to the Labour Exchanges in the vain search for work. But there was not one of them among the forty or fifty I questioned who had not in his pocket an insurance card stamped and in order which entitled him in sickness, in infirmity, invalidity, or old age, to an honourable maintenance proportioned in some degree to his skill and regularity as a worker.[69]

This sight, he said, filled his heart "with admiration of the patient genius which had added these social bulwarks to the many glories of the German race".[70] But it also filled him with ideas:

> I was also filled with the hope that we might soon in our own country, with our much greater national wealth, acting with the friendly societies,[71] establish broadly and for ever a system of national insurance which should embody and

68 Dicey, *Introduction to the Law of the Constitution* (MacMillan, London, 10th ed 1961) p203 (originally published in 1885).

69 Election Address, 28 December 1909: reprinted in James (ed), *The Speeches of Winston Churchill* Vol II, p1438.

70 As above.

71 That is, voluntary charities.

> carry further all the experience which the Germans have slowly acquired.[72]

Similarly, when he outlined the substance of the Trade Boards and Labour Exchanges Bills to Asquith prior to their introduction in Parliament, he said that "running through this organisation the same idea which the Germans call 'paritätisch' - joint and equal representation of masters and men, plus the skilled permanent impartial element".[73] And in another letter, he described the tenor of his ideas in characteristically robust, but unmistakably teutonic tones: "[T]hrust a big slice of Bismarckianism over the whole underside of our industrial system, and await the consequences whatever they may be with a good conscience".[74]

In what his social equals undoubtedly viewed as an even more disloyal act,[75] Churchill also took counsel from some of Great Britain's most active socialists. Sidney and Beatrice Webb were two of the leaders of the Fabian Society who had written extensively on the problem of unemployment.[76] Churchill accordingly sought their input when he was devising his proposal for the labour exchanges. Beatrice Webb exulted about one of their first meetings in her diary: "Winston Churchill dined with us last night, we talked exclusively shop. He had swallowed whole Sidney's scheme for boy labour and unemployment ... He is most anxious to be friendly and we are quite willing to be so."[77]

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72 In an address to constituents, 9 October 1908: Reprinted in James (ed), *The Speeches of Winston Churchill*, Vol II, p1093.

73 Letter dated 12 January 1909: Reprinted in *Companion Volume II* Pt 2, p870.

74 Letter to HH Asquith, dated 29 December 1908: reprinted as above pp862, 863.

75 In her biography of his mother, Churchill's cousin, Anita Leslie, wrote:

> The whole of Tory England loathed him for the energy with which he had defended Asquith's social reforms. 'Treachery to his class' was how Tories regarded Winston's attack on the House of Lords.

Leslie, *Jennie: The Life of Lady Randolph Churchill* p306.

76 The Fabian Society was (and is) a group of socialists whose creed included a belief in gradual, rather than revolutionary, change. Its early members included the Webbs, George Bernard Shaw and Annie Besant, who later became an ardent supporter of home rule for India. The Webbs were also the founders of the London School of Economics and Political Science. In later years, the couple began to lose faith in "gradualism", and in the 1930s, they came to champion Stalin as a hero of the working class.

77 Quoted in Churchill, *Young Statesman, 1901-1914* p301. Another sign of the hope that the socialist community had for Churchill can be seen in the fact that during the 1906 General Election campaign, HG Wells wrote an open letter to labour voters on Churchill's behalf (as above p255). It should not be thought, though, that *all* socialists were completely taken with him. The ambivalence felt

To the Fabians, Churchill owed one other great debt, namely their introduction to him of William Beveridge. Though he was later to become famous throughout Britain and the Commonwealth as the author of the Beveridge Report which laid out the blue print for the post-Second World War "welfare state",[78] Beveridge was at the time a young radical journalist. Like Churchill, he had developed an interest in the German system of labour exchanges and social insurance, and he had written several articles advocating their adoption in England. After being recommended to him by the Webbs, Churchill appointed Beveridge to the Board of Trade in 1908 with special responsibility for planning for, and later the administration of, labour exchanges. Beveridge also did much of the intellectual leg-work for the scheme of unemployment insurance which was eventually incorporated in the *National Insurance Act* of 1911.[79]

Another of Churchill's actions while a minister with responsibility for social policy further reveals the prescience that had been hinted at in his speech announcing the Labour Exchanges Bill.[80] The notion that in a country like Britain, which was so dependent upon foreign exports, oscillations in trade could result in fluctuations in employment levels was not new. However, Churchill was one of the first people with actual responsibility for policy development and government expenditure who took notice of the cyclical nature of unemployment and advocated state action to alleviate its effects upon people of limited mobility. In a speech delivered in 1908, but which could be taken from many a political notebook of today, Churchill posed the question and offered the response:

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for Churchill by the left wing of British society was nicely captured in a letter once written by Harold Laski to his long-time correspondent, Mr Justice Holmes:

> Winston Churchill was here the other day and we had a good political scrap ... I had not seen him at a long stretch for many years. Unquestionably he has a real genius; but he lacks staying-power and the egoism of his utterance would be appalling if he were not so obviously just a grown up child.

Letter of 25 August 1928, in M De W Howe (ed), *Holmes-Laski Letters: The Correspondence of Mr Justice Holmes and Harold J Laski, 1916-1935* Vol I (OUP, Oxford 1953) pp364, 365.

78 *Social Insurance and Allied Services* (Report of the Inter-Departmental Committee on Social Insurance and Allied Services), Cmd 6409/1942. William H Beveridge (1879-1963), later Lord Beveridge of Tuggel, was educated at Balliol College, Oxford. After serving as Director of Labour Exchanges, he was first Principal of the London School of Economics and then Master of University College, Oxford.

79 McBriar, *Fabian Socialism and English Politics, 1884-1918* (CUP, Cambridge 1966) p275.

80 See fns 61- 65 and accompanying text.

"What is the problem of the hour? It can be comprised in one word, unemployment."[81] He continued:

> The ordinary changes and transitions inseparable from the active life and growth of modern industry ... operate here with greater relative intensity than in other countries ... It has, therefore, become a paramount necessity for us to make scientific provision against the fluctuations and set-backs which are inevitable in world commerce and in national industry.[82]

As his son was later to describe it, he phrased his solution in almost Keynesian terms.[83] Great Britain was, he said, "particularly susceptible to any outside disturbance of international trade".[84] One of the chief problems was that unlike many of its competitors, there was in Britain neither a real national industrial policy, nor even an apparatus for predicting unemployment levels. On the contrary, Britain's industrial policy, and hence its employment policy as well, was one of *laissez-faire*. It lacked "any central organization of industry, or any general and concerted control either of ordinary Government work, or of any extraordinary relief works".[85] Yet this was the source of considerable hardship to working people. Moreover, it was absolutely unnecessary:

> It would be possible for the Board of Trade to foretell with a certain amount of accuracy the degree of unemployment likely to be reached in any winter. It ought to be possible for some authority in some Government office - which I do not care - to view the whole situation in advance, and within certain limits to exert a powerful influence over the general distribution of Government contracts.[86]

Nor need it be said that such a proposal was a matter of false economics:

> There is nothing economically unsound in increasing temporarily and artificially the demand for labour during a period of temporary and artificial contraction. There is a

81 In an address to constituents, 9 October 1908: reprinted in James (ed), *The Speeches of Winston Churchill*, Vol II p1093.
82 As above p1094.
83 Churchill, *Young Statesman, 1901-1914* p303.
84 Quoted in James (ed), *The Speeches of Winston Churchill* p1095.
85 As above.
86 As above.

> plain need of some averaging machinery to regulate and even up the general course of the labour market, in the same way as the Bank of England, by its bank rate, regulates and corrects the flow of business enterprises.[87]

Churchill's proposed solution seems as modern as his description of the problem:

> When the extent of the depression is foreseen, the extent of the relief should also be determined. There ought to be in permanent existence certain recognized industries of a useful, but uncompetitive character ... managed by public departments, and capable of being expanded or contracted according to the needs of the labour market, just as easily as you can pull out the stops or work the pedals of an organ. In this way, you would not eliminate unemployment, you certainly would not prevent the creation of unemployables; but you would considerably limit the scale of unemployment, you would reduce the oscillation of the industrial system, you would increase its stability, and by every step that you took in that direction you would free thousands of your fellow-countrymen from undeserved agony and ruin, and a far greater number from the haunting dread of ruin.[88]

Acting on his rhetoric, in the same year, Churchill submitted a memorandum to the Cabinet on the unemployment issue. Pointing to the fact that the rate of joblessness had risen four and a half per cent (from 3.6% to 8.2%) in the twelve months from June 1907, to June 1908, he noted that:

> taking the figures of unemployment in conjunction with the shrinkage in wages and comparatively high level of food prices, it is evident that a period of unusual severity for the working-classes has begun, and that conditions may become more stringent in the course of the winter.[89]

87 As above pp1095-1096.
88 As above p1096.
89 Memorandum dated 8 August 1908: reprinted in *Companion Volume II*, Pt 2, p834.

Among other avenues of attack, Churchill urged what Australians would readily recognise as a 'make-work' project. With a not too subtly disguised threat of industrial unrest being the price of inaction, Churchill convinced the Admiralty to advance its ship-building schedule, and to place its orders with shipyards on the Tyne and the Clyde, two areas particularly hard hit by the economic downturn.

By any measure, Churchill's legislative program as President of the Board of Trade was extraordinary. To be sure, he did not act alone. In addition to being able to draw upon the expertise of people like Beveridge and the Webbs, he had the partnership of the equally dynamic Lloyd George. Nonetheless, his feat - the bridging of the gulf between the high Victorian ethos of free-marketry and the modern notion of the state as active participant in day-to-day economic life - is even more remarkable when one considers that much of it was completed in just seventeen months, between April 1908, when he was appointed President of the Board of Trade, and September 1909, when the *Labour Exchanges Act* was given Royal assent.

CHURCHILL AND INDUSTRIAL RELATIONS

Just as impressive as his work to create a better society for the future, though, were Churchill's efforts to resolve problems in the Britain in which he lived at the time. The *Conciliation Act* 1896[90] provided that, on the application of either party to an industrial dispute, the President of the Board of Trade could appoint a conciliator to assist the parties in coming to a meeting of minds.[91] Churchill's first year as President of the Board of Trade, 1908, was a troubled one for employer-employee relations in Britain. Among other things, it was marked by the highest number of industrial disputes in any year since 1892, and the number of cases that came before the Board for conciliation was greater than in the two previous years combined.[92]

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90 59 & 60 Vic c30.

91 This legislation was copied virtually word-for-word in the Canadian *Conciliation Act* of 1900 (SC 1900 c24).

92 Churchill, *Young Statesman, 1901-1914* p285. In a Memorandum dated 1 September 1908, circulated to employers' associations and trade unions, Churchill noted the following statistics:

> In 1905 the Board of Trade intervened in 14 disputes and settled them all: in 1906 they intervened in 20 cases and settled 16: in 1907 they intervened in 39 cases and settled 32: while during the first eight months of the present year no fewer than 47 cases of intervention have

Viewing this more as a challenge than a threat, Churchill entered into his role as conciliator with relish. Indeed, he chaired his first conciliation on his way back to London after his Cabinet by-election.[93] He chaired his second just three days before his wedding, in September 1908.[94] In both cases, he was successful in helping the parties come to a mutually acceptable resolution.[95] Yet, despite his early triumphs, Churchill quickly developed the view that a more systematic process for governmental intervention than the ad hoc conciliatory process was necessary given the increasing workload. He accordingly sponsored the creation of a "standing court of arbitration" which could be called into play by the parties to an industrial dispute. The court, which heard its first cases in 1909, sat in panels of three or five members, depending on the wishes of the parties. Moreover, the court was formed along the same tri-partite representative lines (ie, both employer and labour representatives, with a 'neutral' chair) as the Trade Boards.[96]

When he moved to the Home Office, Churchill continued to be involved in the labour relations process, albeit from a somewhat different perspective. As has been mentioned, the British Home Secretary is traditionally responsible for overseeing the work of the Police and the Prisons Service, as well as the prisons themselves. In addition, the Home Office is responsible in a more general sense for the maintenance of 'law and order' within the Kingdom. It was through the exercise of the first and last of these functions that Churchill remained implicated in the nation's current of industrial strife.

In November 1910, a large coal strike broke out in south Wales. Being fearful of the prospect of civil unrest, the local Chief Constable made a request of his own accord for assistance from the Army. Without the knowledge of the Home Office, the military authorities complied with the request and dispatched a force of four hundred troops. When Churchill became aware of the situation, however, he ordered instead that only police be used to control violence. Furthermore, he made the strikers an

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occurred, of which 35 have been already settled, while some of the remainder are still being dealt with.

Reprinted in *Companion Volume II* Pt 2, pp836, 837.

93 Gilbert, *Churchill: A Life* p195.

94 As above p200.

95 In fact, the resolution of both involved an agreement to reduce wages in return for promises of no further reductions in staff.

96 Churchill's court led to the establishment in 1912 of a permanent Industrial Council. See Phelps Brown, *The Growth of British Industrial Relations* (MacMillan, London 1959) pp340-344.

offer of conciliation to resolve the dispute, something for which he received criticism from the Conservative press.[97] The following year, during a series of dock and railway strikes which threatened to disrupt the country's food distribution network, Churchill did agree to the employment of military personnel, but only to ensure the continued supply of foodstuffs and other essential goods. On the merits of the dispute, Churchill sided with the workers, as he had during the coal strike of the year before. They had, he said, "a real grievance".[98] In a letter to the King, he wrote that it was "greatly hoped" that a settlement would soon be reached as the strikers were "very poor ... miserably paid and now nearly starving".[99] He also advised the King that steps had been taken to ensure that the shipowners whose vessels were being prevented from being unloaded did not take "provocative action".[100]

Churchill also continued to speak in Parliament on labour relations subjects while he was Home Secretary. One of his repeated targets during this period, in fact, was the judiciary. In the debate on the 1911 Trade Unions Bill,[101] for instance, he spoke very critically of the way in which the courts had dealt with industrial cases. One of the Bill's aims, he said, was

> to relieve trade unions from the harassing litigation to which they have been exposed and set them free to develop and do their work without the perpetual check and uncertainty of frequent trials and without being brought constantly into contact with the courts.[102]

"It is a very unseemly thing", he continued,

> to have the spectacle we have witnessed these last few years of these workmen's guilds, trade unions, being enmeshed,

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97 Gilbert, *Churchill: A Life* p220.

98 As above p232.

99 As above.

100 As above.

101 The Trade Unions [No 2] Bill was designed to rectify the problems created by the House of Lords in its decision in the *Osborne case* (*Amalgamated Society of Railway Servants v Osborne* [1910] AC 87), in which it held that a compulsory levy on union members to fund political action was ultra vires. The 1911 Bill permitted unions to engage in political activity with the proviso that "dissenting" employees could opt out of any funding levy. It was enacted as the *Trade Union Act* 1913, 2 & 3 Geo V c30.

102 UK, Parl, *Debates* HC [30 May 1911] at 1022.

> harassed, worried and checked at every step and at every turn by all kinds of legal decisions, which come with the utmost surprise to the greatest lawyers in the country. It is not good for trade unions that they should be brought into contact with the courts, and it is not good for the courts.[103]

His conclusion was very pointed, and drew cries of protest from the House:

> The courts hold justly a high and, I think, unequalled prominence in respect of the world in criminal cases, and in civil cases between man and man ... *but where class issues are involved, and where party issues are involved, it is impossible to pretend that the courts command the same degree of general confidence. On the contrary, they do not, and a very large number of our population have been led to the opinion that they are, unconsciously, no doubt, biased.*[104]

Similarly, in a speech at the Home Office earlier the same year, he declared the Bench "extremely ignorant" in dealing with trade union cases, which had brought a "sense of distrust to the administration of the law".[105]

Not long afterwards, Churchill spoke on behalf of the Government on the Second Reading of the Coal Mines Bill.[106] This Bill, which he described as "an urgent matter",[107] was in some senses a forerunner to the modern occupational health and safety legislation in that it laid down a wide range of safety standards to be observed in coal mines, including provisions

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103 As above.

104 As above. Emphasis added.

105 He said that he joined with other speakers in

> deprecating any general expression of opinion from the Bench calculated to destroy or to weaken the confidence of the great mass of the wage-earning classes of the country in the impartial administration of justice. I am not going to mention names or cases, but it is true that on several occasions statements have been made from the Bench reflecting on trade unions in language which is extremely ignorant and out of touch with the general development of modern thought, and which have greatly complicated the administration of justice and added bitterness and a sense of distrust to the administration of the law.

14 March 1911, reprinted in James (ed), *The Speeches of Winston Churchill* Vol II p1722.

106 Which was enacted as the *Coal Mines Act* 1911, 1 & 2 Geo V c50.

107 UK, Parl, *Debates* HC [17 March 1911] at 2647.

relating to safety inspections,[108] lighting,[109] ventilation,[110] and the installation of pit-head bathing facilities for miners.[111]

The year before, in June 1910, Churchill had introduced a Shops Bill which was intended to accomplish three ends: to limit the working hours of shop employees to sixty per week, to provide for a standard closing hour of 8pm, and to guarantee that all shop workers be given a half-holiday every week. As modest as these proposals seem to the late twentieth century observer, they led to a huge outcry from shop-owners, chiefly because of the perceived advantage that the Bill would have conferred upon family owned and operated shops, since the Bill would only have applied to employees, and not to family members. Nonetheless, Churchill persevered, and in the end, the Bill passed.[112]

As with his more general social reforms while President of the Board of Trade, Churchill's activity in the field of industrial relations while at the Home Office is characterised by a consistent pattern of awareness,[113] if not complete understanding, of the conditions under which British working people lived and toiled. Some have accused Churchill of being a "paternalist".[114] This may be so to a certain extent, but equally there is no doubt that more than most people of his station - indeed, more than any of

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108 Sections 63-66. A hint of the revolutionary nature of the legislation can also be seen in s16, which allowed miners to elect two of their number to act as mine inspectors, with the right, "at least once in every month", "to go to every part of the mine and to inspect the shafts, roads, levels, workings, air-ways, ventilating apparatus, old workings and machinery". In addition, if an accident occurred, the employee mine inspectors were entitled to take their legal representative to the site in order "to make such inspection as may be necessary for ascertaining the cause of the accident".

109 Sections 32-35.

110 Sections 29-31.

111 Section 77.

112 The *Shops Act* 1912, 2 Geo V c3. In fact, the statute as it emerged was a poor relation to the original Bill: as enacted, it merely provided for the weekly half-day holiday and a mandatory meal period for employees.

113 Though it should not be thought that Churchill's activity as Home Secretary was restricted to the field of labour relations. On the contrary, he carried out a massive program of penal law reform which included change in the rules of sentencing, the creation of a category of "political prisoner" (see fn 139), the imposition of restrictions on the imprisonment of juveniles, a reduction in the circumstances in which solitary confinement would be ordered and the establishment of a system of prison libraries. See Gilbert, *Churchill: A Life* ch11.

114 See, eg Addison, "Churchill and Social Reform", in Blake & Louis (eds), *Churchill* (OUP, Oxford 1992) p65.

his colleagues in the Liberal Cabinet, except perhaps Lloyd George - Churchill saw a place for the ordinary person in the political process; that, as he put it, working people merited "the noble status of citizenship in all our legislation".[115] This populist view of democracy was to show up even more clearly during Churchill's third major domestic struggle prior to the First World War, the fight with the House of Lords over the British Constitution.

CHURCHILL AND THE BRITISH CONSTITUTION

Accompanying Churchill's reforms in a temporal sense, but underlying them in social democratic terms, was a constitutional debate over the relative powers of the two Houses of Parliament. As with so much that happened during the time, the result now seems so foregone as to have been almost indisputable,[116] but in constitutional terms, the crisis was for its participants of a magnitude that dwarfs virtually every other incident in British parliamentary history since the Glorious Revolution of 1688. It was in the context of this struggle that Churchill enunciated his view of democracy and British constitutionalism.

For something which took on such a monumental character, the crisis was born out of a fairly humble set of circumstances. In keeping with the Party's reformist creed, the 1908 Liberal Budget included a proposal for a national old-age pension. Though the proposed scheme was extremely modest (proposing a payment of only five shillings per week - about twenty dollars in today's terms - for those whose income was under £21 pounds per annum), it led to a storm of protest in the House of Lords whose vehemence made painfully obvious the degree to which the peers and the Liberals were of a different mind on social issues.[117] Nonetheless,

115 UK, Parl, *Debates* HC [30 May 1911] at 1015. He continued:

> We must in the House of Commons never lend ourselves to the view that a workman has not got the same rights to conscientious scruples or convictions in political or religious matters as any other class of the community or that his convictions are not as important to him, and not as important to our society of the present day, as the convictions of individuals in any other class. If we were to fail to recognise that we should take a most disastrous conception of democracy.

As above.

116 Although one might note that the recent fight in the Canadian Parliament over the introduction of the Goods and Services Tax bears a marked resemblance - even down to the Prime Minister's decision to 'stack' the Senate - to the British constitutional crisis of 1908-1911.

117 Lord Landsdowne, the Conservative leader in the upper house (and Governor General of Canada from 1883-1888), suggested, for example, that the

the Lords proceeded to pass the budget, pensions included. Later the same year, however, they rejected the Government's Licensing Bill which would have imposed certain restrictions on the sale of alcohol. Significantly, in light of what was to come, they did so notwithstanding advice from the King to Lord Landsdowne, the leader of the Conservative Party in the upper house, that if they were seen as obstructing measures which enjoyed a considerable degree of support amongst the people, the House of Lords might "suffer in popularity".[118] These two incidents set the scene for what was to follow. As one writer has put it, the question was a stark one: who was to rule? Six hundred Lords or six million voters?[119]

In 1909, as Chancellor of the Exchequer, Lloyd George introduced what became known as the 'People's Budget'. It attracted this title because among other things, it proposed to impose a series of special taxes on land, unearned income and income over £5000 pounds per annum (considered a great deal of money at the time). In a sense, the 1909 budget was a necessary corollary to the other reform measures being taken by the Liberals, for its intention was to raise revenue in order to offset the rising deficit.[120] Nonetheless, and like most efforts since to ensure that a Government's income is equal to its outlay, the budget came under intense attack from those who had most to lose, in this case, the landed interests, who enjoyed a virtually perpetual lock on power in the House of Lords.

As they had done with the pensions, the Lords eventually capitulated on the budget, but by that time, the fiscal issue had been overtaken by the broader question of parliamentary reform and the Lords' veto power. In 1911, the Government introduced a Parliament Bill which embodied three separate streams of reform, two of which were directed at the peers: the removal of the power of the Lords to either amend or reject money bills, the substitution of a two year power of delay in place of the upper house's former outright veto over legislation, and the reduction in the maximum

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introduction of a pension plan would "weaken the moral fibre of the nation and diminish the self-respect of the people": UK, Parl, *Debates* HC [20 July 1908] at 1417.

118 Bonham-Carter, *Winston Churchill as I Knew Him* p167.

119 Hazelhurst, "Introduction to WS Churchill" in Churchill, *The People's Rights* (Jonathan Cape, London 1970) (originally published Hodder & Stoughton, London 1909) p8.

120 Though some do claim that Lloyd George framed the budget as he did in a deliberate attempt to provoke the Lords. See, eg Bonham-Carter, *Winston Churchill as I Knew Him* p175.

length of parliaments from seven years to five.[121] Initially, Conservatives in the Lords fought this measure with tremendous ferocity,[122] but in the end,[123] the controversy over the Parliament Bill, too, was resolved by surrender on the part of the peers (though not until after two general elections had been held over the controversy) in the face of a statement by the King that he would assent to the creation of as many new peers as was necessary to ensure the passage though the upper house of the Bill in the same form as it had been passed by the House of Commons.[124]

Despite the fact that the Lloyd George budget of 1909 "touched and threatened the class interests of the aristocracy from which he sprang", as Professor Addison has put it,[125] Churchill throughout the crisis enunciated the same populist views that figured so prominently in his speaking and writing on social issues. In late 1909, during the first of the election campaigns during the constitutional crisis,[126] he delivered a series of speeches in Lancashire, his old parliamentary territory, in which he attacked the willingness of the House of Lords to exercise its ancient power contrary to the wishes of a popularly elected government.[127] As

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121 Which it had been since the *Septennial Act* of 1715 (1 Geo I c38). As an aside, the seven year length was introduced after the first Jacobite Rebellion as a result of concern by the government that a general election might destabilize the newly installed Hannoverian Royal House. In fact, however, notwithstanding the legislation, Parliaments seldom lasted more than six years.

122 Led, incidentally, by Lord Halsbury, the former Lord Chancellor and editor of the digest of the laws of England which now bears his name.

123 After, it is worth mentioning, a mutually agreed upon 'hiatus' after the death of King Edward VII in 1910. All parties agreed that it would be unfair to burden the new King, George V, with a constitutional crisis of this magnitude immediately upon assuming the throne. One wonders whether similar courtesies would be extended in today's political environment.

124 The Bill was passed as the *Parliament Act, 1911* 1 & 2 Geo V c13.

125 Addison, *Churchill on the Home Front, 1900-1955* p85.

126 Two general elections were held during the crisis. The first was in January, 1910, after the Lords initially rejected the budget. It resulted in a reduced Liberal majority. The second, held in December of the same year, after the Lords rejected the first version of the Parliament Bill, had a similar outcome.

127 Not surprisingly, this led to further charges of treachery to his class. One Conservative at the time said:

> [N]either excusable nor permissible is the lack of common decency shown by vulgar abuse of the dukes on the part of a man who is the grandson of one duke, the nephew of another, and the cousin of a third; who belongs to a family which has produced nine dukes; who figures in *Debrett* as boasting a dozen titled relatives; and who owes every advantage he possesses over those whom he contemptuously calls 'the small fry of public life' to his aristocratic connections.

Churchill saw it, the question was a very plain one of moral authority to govern:

> Why should five hundred or six hundred titled persons govern us, and why should their children govern our children for ever? ... There is no defence, and there is no answer, except that the House of Lords - the unreformed House of Lords - has survived out of the past ... It is the remains, the solitary reminder of a state of things and of a balance of forces which has wholly passed away.[128]

In addition, there was the matter of relative expertise. On one hand was the House of Commons which, after having been "called into being by [a] general election, meets together" to spend months "in the discussion of measures and in the discussion of the details of financial administration".[129] This was in contrast to the House of Lords which was merely "a lingering relic of a feudal order".[130] Though heredity may have fulfilled an important role in determining fitness to govern at one time, this had changed when Britain had embraced the notion of democratic authority:

> The whole movement of the world is against the intrusion of the House of Lords upon legislation. As democracy becomes more numerous and educated, more varied, more complex, and more powerful, it is necessary that the House of Lords should recede and retire.[131]

This latter statement reflected one of the chief tenets of Churchill's conception of constitutionalism. It would be in error to suggest that he supported universal franchise, for Churchill favoured limiting the vote to those who made a contribution to Britain's continuing prosperity. But those who did participate in the creation of wealth, rather than merely in its consumption, deserved in Churchill's view full political rights. It was for that reason that he favoured the extension of political rights to trade

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Quoted in Manchester, *The Last Lion: Winston Spencer Churchill, Visions of Glory, 1874-1932* (Little, Brown & Co, Boston 1983) pp409-410.

128 Churchill, *The Peoples' Rights* p23.

129 As above p21.

130 As above p23.

131 As above p37.

unions. During the debate on the 1911 Trade Unions Bill,[132] for example, he said in response to a query made by a Labour member:[133]

> I should have no hesitation in saying that it is quite impossible to prevent trade unions from entering the political field. The sphere of industrial and political activity is often indistinguishable, always overlaps, and representation in Parliament is absolutely necessary to trade unions, even if they confine themselves to the most purely industrial forms of action, and the moment you touch representation you reach the very heart and centre of controversial political life.[134]

Similarly, while Churchill is often accused of opposing women's suffrage,[135] the truth is that he merely disfavoured the extension of the right to vote solely on a property basis. When, in 1910, a Parliamentary Franchise (Women) Bill, which would have extended the franchise to women who owned real property valued at ten pounds or more, was before the House of Commons, Churchill took issue with it only on principled grounds. He acknowledged that as a matter of fact, a number of women were already involved in daily political life in Britain and that it was quite unfair to say at election time, as he put it, "Your assistance is not now required; you are unfitted to exercise the franchise, although you are fitted to exercise every other function leading up to it".[136] He acknowledged, too, a second, "more serious", grievance with the status quo: "that the denial of a recognised political status for the whole sex implies, and women think it implies, the slur of inferiority - a slur of inferiority, not to individuals, but to the entire race [sic] of women".[137] He said that in his view, "the State would be the gainer if [such women] had the vote, and if, in consequence of the vote, they had what I think myself follows from that - access in the fullest sense to all positions in our public life".[138]

But in Churchill's view, the Bill before the House would not properly address either concern. On the contrary, he thought that by embodying a "fancy franchise", as he termed it, which was totally unrelated to a voter's

132 See fn 113 and accompanying text.
133 The Labour MP was, in fact, Ramsay MacDonald who, in 1923 was to become the first Labour Prime Minister.
134 UK, Parl, *Debates* HC [30 May 1911] at 1015.
135 He was, for example, a favourite target for the Suffragettes.
136 UK, Parl, *Debates* HC [12 July 1910] at 223.
137 As above.
138 As above at 221.

contribution to society, the Bill was anti-democratic. "Fancy this proposition that we Members of Parliament are asked to commit ourselves to, and to defend on the platforms of the country", he said,

> that a young inexperienced girl of twenty-one should have the vote, and the mother of seven or eight children, who for twenty five years has kept and directed the policy and economy of a family, should be refused the vote ... We are asked by this Bill to defend the proposition that a spinster of means living on the interest of man-made capital is to have a vote, and the working man's wife is to be denied a vote even if she is a wage earner and wife.[139]

In our day and age, where citizenship has become completely divorced from any notion of civic duty or public responsibility, these words may sound a little antiquated, and possibly not a little offensive in tone, but they were perfectly in keeping with Churchill's vision of British society as expressed in the debates over the powers of the Lords and the rights of labour unions - one in which those who made a contribution, regardless of their social status or degree of wealth, were to be accorded political power. Conversely, those who only consumed, no matter how lofty their title or rank, were to be relegated to the periphery. Though he did not say it until after the First World War, Churchill himself best captured the essence of his view of British democracy when he said that "[c]ultured people are but the glittering scum on the deep river of production".[140]

CONCLUSIONS - CHURCHILL AS LAW REFORMER

Churchill's attempts at law reform can be analysed on two different levels. The first, and perhaps the more conventional, is the quantitative aspect: to what extent did he succeed in his efforts at substantive modernisation?

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139 As above at 226-227. The 1910 Bill died when Parliament was dissolved prior to the general election of that year, but when women's franchise was proposed again in 1917, Churchill supported it: see UK, Parl, *Debates HC* [19 June 1917] at 1747. It is also worthwhile to note that as Home Secretary, Churchill was responsible for the introduction of the category of 'political prisoner', with more privileges than the ordinary prisoner. The new category was largely introduced with the suffragettes in mind, for prior to it, all offenders of the law were treated the same.

140 Randolph Churchill's diary, 24 August 1929, quoted in Gilbert, *Churchill's Political Philosophy* p57.

If one measures success by comparison to stated intentions, the answer must surely be "a great deal". Simply put, a tremendous amount of legislation was passed during his tenure in the two domestic portfolios. Great Britain on the eve of the First World War was a very different place from the Great Britain at the end of the Victorian era. To be sure, Churchill was by no means solely responsible for the reform efforts, but the fact remains that, more than that of anyone else, it was his political leadership that was responsible for the translation of what had hitherto merely been ideas into concrete social policies.[141]

Nor can there be any question that Churchill's reforms 'took root' in British soil. Indeed, it is scarcely an exaggeration to say that Churchill's social reform efforts during the pre-First World War period continue to dominate the British political scene even now. From the involvement of trade unions in the political process to the provision of state benefits to the unemployed; from women's rights to 'law and order' and prison reform, virtually every one of his speeches of the time on domestic issues could just as easily fit into the pages of Hansard today. Furthermore, the language in which he spoke seems eerily familiar. Read from our vantage point, the young Churchill sounds not so much like the nephew of a Victorian Duke as he does a speech-writer for the Australian Labor left.

The second level of measure, however, is the qualitative aspect of his initiatives. Did his efforts - did the efforts of this individual, upper-class, Anglo-Saxon male - make a lasting positive difference to the lives of disadvantaged people in British society? In this respect, one must ask whether the urgency which animated his political activity was altogether a good thing. Much was certainly done during his tenure, but it is clear (although in this regard, he was in good company) that in his efforts to transplant German legislation and social schemes, for example, he did not pay heed to Montesquieu's caution about the interrelation of law and society: that the "spirit" of law is a function of society's broader anthropological and political structure.[142] What worked in Imperial Germany's regimented and highly disciplined society arguably has not functioned so well in an individualistic society like Great Britain's.

Similarly, his impatience for reform and his willingness to embark on large scale projects without full consideration of likely side effects may have in

141 Addison, "Churchill and Social Reform" in Blake & Louis (eds), *Churchill* p76.

142 For a discussion of Montesquieu's theorising in the context of modern attempts at law reform, see Kahn-Freund's *Chorley Lecture*, reprinted under the title "On Uses and Misuses of Comparative Law" (1974) 37 *Modern L Rev* 1 at 6-7.

some instances caused more harm than good (and may, therefore, provide food for thought for those modern-day advocates of 'revolutionary change' to our current system of law and government without first having in mind a concrete alternative). One wonders for example, whether Churchill's willingness to "thrust a big slice of Bismarckianism over the whole underside" of British industrial relations while "await[ing] the consequences whatever they may be"[143] may not have played at least some part in leading to the state of affairs which culminated in the tragic miners' strike of the early 1980s.[144] Either way, though, the conclusion remains: in war and in peace, the shadow cast by Churchill is a long and enduring one.

143 Letter to HH Asquith, dated 29 December 1908: reprinted in *Companion Volume II* Pt 2 pp862, 863.

144 Although even at the time, Churchill's efforts drew like criticism from some commentators. In his introduction to the second edition of *Law and Public Opinion in England* (MacMillan, London 1914), for example, Dicey wrote that: "The *National Insurance Act* will, in the long run, bring upon the State, that is, upon the taxpayers, a far heavier responsibility than is anticipated by English electors." ppxxxvii - xxxviii.