

PLATE XXVIII



Platograph by Blackton Studios, New York City, 1934

SIR GECIL CARR, K.C.B., Q.C.

CECIL THOMAS CARR

1878–1966

‘HE was a wonderful man, I can’t say more.’ So wrote Professor S. E. Thorne of the Harvard Law School on learning of Cecil Carr’s death. This memoir will have failed if the reader does not agree.¹

The second half of Carr’s remarkable life was punctuated with honours. It will be convenient to list them now. He was created a Knight Bachelor in 1939 and promoted K.C.B. in 1947. He received honorary Doctorates of Law from Columbia University in 1940, from London University in 1952, from the Queen’s University of Belfast in 1954. He was elected a Master of the Bench of the Inner Temple in 1944 and appointed a King’s Counsel in 1945. He was elected a Fellow of the British Academy in 1952, President of the Selden Society in 1958, and an Honorary Fellow of Trinity College, Cambridge, in 1963.

Cecil Thomas Carr, who died on 13 May 1966, was born on 4 August 1878: his father was Thomas Carr of Poolemeade, Twerton, near Bath; his mother was Susan Arnell Creed.

His school education was at Bath College, under T. W. Dunn, one of the most successful headmasters of the day. Of the seventeen members of the Classical Sixth of Carr’s year all won awards at Oxford or Cambridge. After going into residence at Trinity College, Cambridge, in 1897 he was elected a Major Scholar of the College and a University Stewart of Rannoch Scholar. In those days Part I of the Classical Tripos was a degree-bearing examination intended to be taken at the end of the third year, but often taken by scholars at the end of the second. Carr took it in 1899 and was placed in the second division of the first class.

¹ The writing of it has been a labour of love. I was six years junior to Carr at Trinity, but a friend introduced us when he was at the bar and I was a B.A. Since then our paths crossed at intervals. But I could have done nothing without the patient co-operation of Lady Carr, who told me to whom I should write, and answered innumerable questions. I offer her my warmest thanks, as I do to all those named in the text who gave me information. I am also more grateful than I can say to Professor S. F. C. Milsom, Literary Director of the Selden Society, who read my first draft and suggested a number of additions all of which I accepted.

It should be recorded that *The Times* obituary, which I found most useful, was written by Mr. Reeve Wallace, who was Carr’s senior by six years and survived him.

Then during his third and fourth years he read for Part II of the Law Tripos. In 1901 he was placed in the third class. It is improbable that anyone now living can explain this vagary. It seems likely that he neglected his technical studies in favour of wide reading. It is known that in 1901 he was a candidate for the Members' Essay Prize, the set subject being 'The Office of Prime Minister under the Hanoverian dynasty'. He received an honourable mention in distinguished company.

Though a reserved man he had, as a Trinity contemporary¹ recalls, a genius for friendship, as well as an outstanding personality. Tall, well built, and athletic, he was good at all ball games. He played hockey for the university, though not getting his Blue, and later he occasionally turned up for various county sides: for Middlesex at Rugby football, for Somerset at hockey and lawn tennis, and later still for Cornwall at golf. The pleasure which he took in trying his skill, and perhaps the varied companionship which these activities brought to an austere man, drew a thread throughout his life. The player of a daily round within months of his death, the president of the Senior Golfers in his eighties, was the young barrister who in the last years of King Edward VII was running a cricket team to make August tours in the West Country, and whose recruits included John Christie of Glyndebourne and A. A. Milne.

On going down from Cambridge he spent a year reading for the Bar in solicitors' offices. He was called by the Inner Temple in 1902, and joined the Western Circuit. He was a pupil in the chambers of Clavell Salter, then the leading junior on the circuit, and there formed a lifelong friendship with Reginald (afterwards Sir Reginald) Hills. Among other friends of that period who survived him were Lord Goddard and Sir Austin Jones.

Life was hard in those days for young men starting at the Bar. Even a man of the commanding ability of R. A. Wright almost gave up in despair. When 1914 came Carr's practice was still small. But not being entirely dependent on his earnings he had been able in 1911 to enter upon his very happy marriage with Norah, daughter of the eminent engineer Sir Alexander Binnie. They had no children.

Like many young men waiting for briefs Carr spent his spare hours in literary work. In his case it took the form of legal research. He was twice a successful candidate for the Yorke prize, which at that time was awarded for a thesis on a subject not selected by the candidate but prescribed by the examiners.

¹ Sir Samuel Gurney-Dixon.

Carr's books, which were duly published, were on *The General Principles of the Law of Corporations*, the subject for the year 1902, and on *Collective Ownership*, that for the year 1905. Chapter IX of the former book was revised by him for inclusion in the three-volume collection of *Select Essays in Anglo-American Legal History* published in 1909 by the Cambridge University Press for the Association of American Law Schools.

Those volumes were an authoritative collection of writings scattered over many periodicals and two or three decades; and it is with something of a shock that one reads the list of contributors, and sees Carr's name alongside those of Maitland, Ames, Langdell, and even Lord Bowen and Stubbs. There was, however, a more definite association with Maitland, who, in the last year of his life and probably as the last project he initiated for the Selden Society, invited Carr to undertake a volume of trading company charters. The idea was Maitland's and he had been seeking an editor for at least five years. Of Carr he wrote that 'there seemed to be a chance that he would turn out to be just the sort of recruit that we want. We do want young men, don't we, with a little enthusiasm.'¹ The book, a large one with a learned and perceptive introduction, appeared in 1913 as volume 28 of the society's publications. Nearly fifty years and exactly fifty volumes later another was to come from the hand of Maitland's recruit, then its president.

In September 1914 Carr joined the 2/4th Wiltshire Regiment on its formation, and when it was sent to India in December went with it as a subaltern. His wife was allowed to join him there. After distinguishing himself as a musketry officer he was appointed Station Staff Officer Poona Brigade, and then, in 1916, D.A.A.G. 6th (Poona) Divisional Area, covering an enormous territory. In 1917 he was transferred to a similar post at General Army Headquarters in Delhi and Simla under General Sir Charles Munro. His fellow officer Lieutenant-Colonel Neville Awdry writes that Carr 'was immensely popular not only for his outstanding ability and willingness to help anyone asking his advice but for his extraordinary modesty. In addition to all his other qualities he was a high class performer on the hockey field and the tennis court.'

At the end of 1918 Carr had reached the age of 40 without the slightest clue as to how his future was likely to develop. But fate took charge by offering him the post of assistant to Alexander

¹ *The Letters of Frederic William Maitland* (ed. by C. H. S. Fifoot, 1965), No. 471.

Pulling, the editor of the Statutory Rules and Orders. For this offer the intervention of his friend Hills was responsible. He accepted it because, on account of the shortage of staff officers in India, there was little chance of his being released unless he were officially applied for. He threw himself with zest into his new work, and succeeded Pulling as editor in 1923.

Meanwhile he had resumed contact with Cambridge through his friendship with several senior members of the Law School. He proceeded to the degree of L.L.D. in 1920, and in the following year accepted an invitation to give a course of three lectures on *Delegated Legislation*. These lectures were something of a milestone in his career. Their delivery was a *tour de force*, for the wit so native to him played with such skill over the unpromising material that the audience at the third lecture was larger than that at the first. And their publication made him widely known in legal circles as a man capable of the highest achievement.

Five years later he was again associated with the Cambridge Law School by his contribution to the volume of essays presented to Bond, Buckland, and Kenny. His subject was the *Citation of Statutes*: he gave to it the sub-title '*The Mansfield Park Standard*', after an incident in Jane Austen's novel. He ended his article with the hope that perhaps the next millennium might be inaugurated by the abandonment of the tradition of citing statutes by reference to the session in which they had been passed. Surprisingly enough the change was made earlier by the Acts of Parliament Numbering and Citation Act 1962. In his speech moving the second reading in the Lords Lord Kilmuir gave full credit to Carr for originating the reform and read the conversation between Fanny's cousins and their aunt which Carr had quoted in his essay.

As to the brilliance of Carr's work in what is now called the Statutory Publications Office we are fortunate in having the testimony of the Honourable Sir Albert Napier, whose career of public service (first as Deputy Clerk and then as Clerk of the Crown) was virtually coincident with Carr's and closely associated with it.

Carr became [he writes] the editor of a number of annual volumes of an unglamorous nature but of indispensable utility to legal advisers and practitioners. The Chronological Table of Statutes, the Index to the Statutes in Force, the volumes of Statutory Rules and Orders (now called Statutory Instruments) were devised for indicating how to find one's way about the ever-increasing spate of legislation and sub-legislation. There was also the business of cutting away the dead wood.

Carr was the Editor of several volumes of Revised Statutes in which everything which had been repealed was omitted. Many repeals were deliberately brought about by the consolidation of statutes of different dates relating to the same subject matter. Consolidation was done by Parliamentary Counsel during the periods—all too short—when the demands of the Cabinet for current legislation permitted. Carr had to lift the schedule of repeals from each Consolidation Act and note the contents for the next volume of Revised Statutes. But a more onerous task for him was to discover by research what enactments buried in the Statute Book had become obsolete, so that he could get them repealed in a Statute Law Revision Act. Carr would make a list of suspected enactments and write letters to the appropriate departments asking for confirmation that each of them was really obsolete and could be safely repealed. His knowledge of the history of law helped him greatly, and confirmation was usually forthcoming. Between the wars Carr drafted all the Statute Law Revision Bills with his own hand.

All Carr's official work was impeccable in quality, but he was absurdly understaffed and under-equipped with labour-saving devices. While in office he never complained, perhaps because conditions of that sort were the handicap which the priority of other public business had usually imposed on those who tried to improve the machinery of justice or reform the law. Carr had a wonderful memory and enormous energy and industry. In spite of the conditions his official output was amazingly great.

No one in official circles was surprised that when the Counsel to the Speaker retired in 1943 Carr, in spite of his age, was appointed to the post. He held it until his resignation in 1955.

In the same year, 1943, Carr became Chairman of the Statute Law Committee, a body that had existed since 1868. He stepped down in 1947 when it was decided that the Lord Chancellor of the day ought to be chairman. He remained a member until 1965: on his resignation Lord Gardiner wrote to him on behalf of the committee a letter of warm thanks for his services. They had indeed been outstanding. Sir Albert Napier writes:

Carr gave invaluable help in the new drive for consolidation and the revision of the Statute Book which was inaugurated by Lord Jowitt in 1947, with the indispensable support of the Secretary to the Treasury, then Sir Edward Bridges, and Sir Granville Ram to both of whom an immense debt of gratitude is also due. It was arranged that Ram should be released from other duties as Parliamentary Counsel, to devote himself to consolidation and to the work of the committee. On Carr's advice a new set of Revised Statutes was decided on and a clerical staff of ten was added to Carr's former office. In spite of the permanent pressure of current legislation the re-constituted Statute Law Committee

succeeded in expediting the consolidation of statutes and all the kinds of books that Carr had produced officially between the wars.

Another duty which Carr undertook at the outset of his tenure of office as Speaker's Counsel was that of serving as Chairman of a departmental committee to consider electoral law reform. The committee was appointed in 1944: it made an interim report in February 1945 (Cmnd. 6606) and a final report in November 1947 (Cmnd. 7286). Both reports were unanimous.

For my account, necessarily brief, of Carr's service as Speaker's Counsel I am deeply indebted to Mr. R. D. Barlas, Second Clerk Assistant of the House of Commons. The duties of the office (set forth in May's *Parliamentary Practice*¹) are mainly concerned with Private Bills. One of Carr's special contributions was to preside over the Model Clauses Committee which undertook the renovation of the Model Bill and Standard Clauses. Both were generally regarded as obsolete but previous counsel had quailed before the task of revision. Considerable tact was required from the chairman as the interests of parliamentary agents and of departmental representatives did not always coincide. But the work was satisfactorily completed in 1953, and Carr then arranged for the committee to be reappointed to review each session the form of Model Clauses in the light of new legislation, variances allowed by the Private Bill Committee, and the criticisms of interested parties.

In his last year of office Carr gave evidence before the Joint Committee of both Houses on Private Bill Procedure. It included a concise and permanently valuable account of the history of Private Bill development.²

An important feature of Carr's tenure of office was his work for the Select Committee on Statutory Rules and Orders, established in June 1944 on the motion of Mr. H. Molson, now Lord Molson. This committee, described by Lord Molson as the watchdog committee, was based on a recommendation of the Donoughmore Committee of 1932. It was called after 1946 the Select Committee on Statutory Instruments. Carr was closely concerned with the drafting of the order of reference. In recognition of his unique mastery in the field of delegated legislation

¹ 17th ed. at p. 255.

² See Minutes of Evidence taken before the Joint Committee on Private Bill Procedure. House of Commons Paper 139-1, pp. 410-19.

For full treatment of the subject reference should be made to a two-volume work by Carr's friend Orlo Cyprian Williams entitled *History of Private Bill Procedure* (1948-9).

the order provided for the assistance of Speaker's Counsel to be given to the committee. It became the practice of the committee to meet fortnightly and to present reports indicating which instruments had been considered and which of them ought to be drawn to the attention of the House. At each meeting Carr provided the committee with notes on every instrument to be considered, the dossier often running into very many pages. It is doubtful whether anyone else could have set the committee on the right path.

Mr. Barlas gives a vivid description of Carr's room, containing a desk and four or five tables each filled four or five feet high with statutes and miscellaneous books and papers.

The uninitiated might make for the desk, but they would usually be wrong: those who were more experienced at the game of hide and seek would make for one of the corner windows where Carr was usually to be found making notes on half-sheets of paper or the backs of circulars, completely concealed by his protective screen. It cannot be pretended that he was very tidy in the way he kept his books and papers. But he could always lay his hand on anything he wanted. And his mind was tidy enough to satisfy the most fastidious registry clerk.

Sir John Mellor voiced in *The Times*¹ the gratitude of the backbenchers of those days.

Carr taught all those who sought his guidance the essential principles of parliamentary control and how they should be guarded. One always found a welcome in his room stacked with books and papers from which he extracted with amazing dexterity cases to illustrate his point. To listen to him was sheer delight.

Carr's mental and physical equipments were such that his gruelling duties did not exclude a number of extraneous public-spirited undertakings. For instance, he was responsible for many years for the annual summaries of the laws of the United Kingdom in the journal of the Society of Comparative Legislation. And he gave many hours to the interests of the Athenaeum, to which he was devoted. He was from 1943 to 1954 honorary election secretary of the committee: the late Sir Sydney Roberts describes him as appearing with a bulky dossier and reciting with a poker face the candid replies to his inquiries. He served as Chairman for the two years 1955 and 1956, and as trustee from 1953 to 1962.

When he retired from the chair in 1956 a dinner was given in his honour. The menu card, so Mr. M. T. Tudsbury tells me, carried, to his intense delight, the following lines from Book VI

¹ 18 May 1966.

of the *Aeneid*: *Stabant orantes primi transmittere cursum, tendebantque manus ripae ulterioris amore.—Navita sed tristis nunc hos nunc accipit illos, ast alios longe submotos arcet arena.* A member of the club¹ translated the last two lines: 'Our sad-faced skipper said, "I think we might accept that lot and possible those at once", but as for the rest he defers for an indefinite period their admission to the club'.

Carr also found time during his terms of office for three semi-professional visits to the United States. It all started with the fact that Mr. Lindsay Rogers, then Burgess Professor of Public Law in the University of Columbia, met Harold Laski in a Paris bookstore and that they chanced to speak of a committee of Congress set up to plan the systematic publication of administrative rules and regulations. Laski told Mr. Rogers that Carr was the outstanding English authority on the subject. Consequently Mr. Rogers arranged with Guy Moffett, executive of the Spelman Fund of New York, for a travelling fellowship to be given to Carr in 1935 for the purpose of his visiting Washington and advising the Committee as to the best technique for compiling the Federal Register recently authorized. He combined visits to Yale, Princeton, Columbia, Michigan, Chicago, and Harvard, at all of which he gave informal talks which were received with enthusiasm. The Federal Register was first published in March 1936: to the experts Carr came to be known as its father.

A letter written by Carr in America in 1959 contains the following passage:

As I passed through Trenton and the junction of Princeton I vividly remembered the time that Guy took me to an Interstate Conference on Crime at the former place in 1935, and how I listened to Henry Toll, and sat next to Colonel Schwatzkoff and heard the low-down on Hauptmann, the kidnapper of the Lindbergh baby. And out of that 1935 adventure came all the wonderful interests and acquaintanceships which have come my way in America ever since.

'These words move me deeply,' writes Lady Carr, 'for America meant so much to him ever since that first visit with lasting friendships made over there.'

The reputation which Carr made in the United States in 1935 led to his being invited to give the Carpentier lectures at Columbia in 1940. It was obviously in the national interest that the invitation should be accepted. He and Lady Carr went over in October. He gave six lectures on 'Aspects of Administrative Law'. They were published in the following year under the title

¹ Dr. E. V. Rieu.

Concerning English Administrative Law. It is a very characteristic work. To a debate which still too largely lay in the opposition of dogmas, Carr brought not just his astringent wit, but the authority of a man who knew how the problems appeared to those actually confronted with them, and how similar problems had appeared in the past. The legal historian of the future will surely find the search for principle and method in this field among the most interesting developments of our century. He will learn a good deal from Carr's book; and he may decide that we learned something from it too. The dedication was to Professor and Mrs. Lindsay Rogers, whose guests Sir Cecil and Lady Carr were throughout their visit. Another of his closest American friendships began during this visit, that with Professor Walter Gellhorn, who introduced him at one of his lectures. 'Somebody', he writes, 'should collect Cecil's correspondence. He was one of the most delightful letter writers in the world.' And, I would add, a writer of inimitable postcards.

The Carrs returned to England in December: their ship was torpedoed on the 14th.

It was fourteen years before Carr visited America again. In 1954 the University of Columbia celebrated its bicentenary, and invited him to be one of the three orators at the dinner on 6 January with which the festivities opened. The invitation will not have been surprising to anyone who had heard Carr make an after-dinner speech, for no such person would rate his performance as other than alpha plus. The visit was a hectic one of about three weeks, including Philadelphia and Virginia in its range. It was crammed with addresses, informal talks, and cocktail parties.

When in 1955 Carr retired he was destined to have ten more years of healthy and happy life, during which most days were filled more than those of many men in their prime. There was the daily round of golf. Sometimes it was two rounds; and to expostulation on one of those days he replied tersely that at his age there did not seem too much time left. There was travel, whether for its own sake, or to lecture, or with the Senior Golfers' Society, but always enjoyed and exploited to the full, both at the time and in retrospect.

In 1955 he toured South Africa with Lady Carr, lecturing at the Universities of Cape Town, Stellenbosch, and Witwatersrand. They visited the Kruger National Park and the Victoria Falls.

In 1959 he spent ten strenuous November days captaining the

British Seniors in the British, American, and Canadian tournament at the Pine Valley Golf Club, U.S.A., being the oldest of the forty-eight players. He also addressed the American Philosophical Society at Philadelphia, the law students and faculty at the University of Pennsylvania, and the faculty of the Columbia Law School.

In 1961, having in that year succeeded Bernard Darwin as President of the Senior Golfers' Society, he took a team to South Africa. He was accompanied by Lady Carr, who gives the following laconic summary of their tour. 'Cape Town, George, Port Elizabeth, East London, Durban, Mont-aux-Sources in the Drakensberge Mountains, Johannesburg, Kruger Park, Salisbury, Kariba Dam, Salisbury, Home.' How many couples could stand up to such a tour in their golden wedding year? Mr. T. A. Duff of Johannesburg writes: 'Throughout the tour Carr was called upon to make speeches on many occasions. It was a joy and an education to hear him. His shrewd and beautifully chosen words captivated us. . . . All South Africans who heard him consider him to be the finest speaker of English they have ever heard.' Dr. Stevenson of Durban writes to the same effect, and recalls the farewell dinner in London on the occasion of the most successful return visit of South African Senior Golfers in 1964. 'Carr's speech was delightful and the grasp he showed of conditions in South Africa was amazing considering the short time he had spent in the country.'

There was also the Selden Society,¹ still struggling as in Maitland's day with the two problems of finding scholars to do its work and of attracting the necessary encouragement and support. Carr addressed himself to both. He lectured to the society in 1955, became its president in 1958, and in 1960 produced a volume for it, the only one ever to have been edited by a president in office. Its basis was a manuscript Pension Book of Clement's Inn which had belonged to Maitland's friend and helper, G. J. Turner, whose memoir in these *Proceedings* was also Carr's work. In 1960, too, Carr lectured again to the society, this time in Washington in recognition of the fact that most of the membership, most of the support for the study of English legal history, now comes from the United States. It was a memorable occasion; and the address, which is in print, preserves something of the flavour of Carr as a public speaker.

That trip was made when Carr was 82, and he never gave up. He was discussing Selden Society affairs within a few weeks of

¹ For the remainder of this memoir I am indebted to Professor Milsom.

his death, and sharing his pleasure at the growth of a tree in his garden, and reflecting on the basis of a judgment which is under appeal as this memoir is written. A book about parliamentary institutions now in the press will contain a chapter contributed by him. The untidy piles in his study, of clear notes about all kinds of things, were growing almost to the end.

But it was not just superior vitality that kept him busy, any more than it was just superior talents that gained such various success, or easy sociability that won friendships so wide and deep. Reserved and independent by habit, he was tenacious and whole-hearted about whatever engaged him, a person or an institution, a game or a scholarly problem. The golfer¹ in his eighties once uncharacteristically put his ball in the water; but he was in character when he took off shoes and socks and went in after it. The delegate to a parliamentary conference in Stockholm in 1949 met there a Swedish colleague; and Nils Herlitz, in memoirs published shortly before Carr's death, tells how a lasting friendship grew up in correspondence about their respective institutions although they never met again.² The playing president of his golf club was the working president of the Selden Society. The boy who left in 1897 a school which ceased to exist in 1909 arranged for (and was himself chosen to unveil) a memorial to members killed in the first war; and he kept going an association among the survivors long after the second. The motto of that forgotten institution came from Book V of the Aeneid: *possunt quia posse videntur*. It might have been Carr's.

H. A. HOLLOND

¹ Carr had in 1937 built himself a house at Rock, in Cornwall, on the edge of the St. Enodoc golf course. Lady Carr writes that he had the greatest possible affection for his home, and that among his principal pleasures there were visiting stone circles and swimming in the sea. His last swim was in October, 1963, when he was 85.

² Nils Herlitz, *Tidsbilder* (Stockholm, 1965), pp. 190-1.