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occurred. Such an instruction would, however, not serve any analytical purpose unless it were accompanied by an additional instruction requiring a higher degree of persuasion for similar fact evidence than for other links in the evidentiary chain. It is doubtful, however, that even such an instruction would materially affect the jury's deliberations. This is true because of the familiar difficulty of applying varying standards of persuasion to proof of different intermediate propositions and because of the unlikelihood that an instruction will cause a jury to disregard evidence which has been admitted. It is these considerations which presumably move prosecutors to oppose severance where each independent act of misconduct is the subject of a separate charge and which have also moved some American courts to hold a preliminary hearing for the purpose of determining whether similar-fact evidence which is provisionally admissible has sufficient weight to justify its reception.

The questions that I have raised about some of these essays reflect the difficult and complex task which the authors undertook. They are not a proper measure of the authors' achievement, which is an impressive one.

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This is a collection of some fifteen essays and speeches by Robert M. Hutchins over the past decade. Three of the essays were written in 1956 specially for this volume, and about half the speeches date from 1955. It is, therefore, for the most part, very recent Hutchins and relates either to his last days as Chancellor of the University of Chicago or to his recent experiences as President of the Fund for the Republic.

A collection of speeches makes for a somewhat unsatisfactory book to read, and to review. And this book is no exception. The speech, even in Mr. Hutchins' hands, is not a vehicle for sustained, tight analysis; it is likely to be too short and too simple. And a collection of speeches is likely to suffer from a lack of over-all coherence and to be repetitious of leading ideas without, in the repetition, developing them further.

There is an additional reason, in the case of Mr. Hutchins, why such a book is unsatisfactory. I have had the good fortune of being first a student and later a colleague of Mr. Hutchins, and it is time for me to disclose that my affection and admiration for him are such as virtually to disqualify me as a reviewer. It is my strong hunch that like legal heroes such as Holmes and Hand, Mr. Hutchins' power, stature, and impact cannot be measured by what he has, from time to time, written. In these cases, the man is larger than his works, and there is something in his personality and style that makes him at times seem larger than life.

But like Holmes and Hand, the style of the man is reflected in his literary style. Mr. Hutchins, too, is a great stylist. The style, as I see it, rests on three components: a stunning use of the really short, simple declarative sentence; a flair for the generalization uncompromised by the usual qualifying
adjectives and phrases; and a wonderful ironic and frequently outrageously daring wit. The combination is unusual. The generalizations, particularly when he talks about education, come quite literally and avowedly from Aristotle, but the saving wit is highly contemporary. He writes, therefore, with the special charm of a man of the world who is intensely interested in and amused by the homely phenomena of modern Americana and who is also a dedicated reader of Aristotle's *Ethics*.

It is most tempting to quote almost at random samples of Hutchinese. There is the celebrated observation that the Fund for the Republic is "a wholly disowned subsidiary." There is the observation on the Reece Committee that "Mr. Reece and Mr. Wolcott came bustling out in second-hand suits of anti-empiricism". At the end of a paragraph of gloom about modern mass communications, there is the point that astronomers claim to have discovered what looks like a moss on the surface of Mars—"I am convinced that Mars was once inhabited by rational beings like ourselves, who had the misfortune some thousands of years ago, to invent television." There is the apt phrase for a serious point. Foundations, we are told, should supply "the venture capital of philanthropy." A university, we are told, should not become "a service station for the community."

And there is always the brilliant use of the short sentence. Thus, in four sentences of from seven to fifteen words he states definitely the case for the free university. "Professors are not employees, either of the chief executive or of the board of trustees. They are members of an academic community. The aim of the community is independent thought. This requires the defense of the independence of its members."

The title is remarkably descriptive of the contents. There are four papers grouped under the rubric "freedom," two of which are on the press, one on academic freedom, and one on the Bill of Rights more generally. There are six papers on education which make up the bulk of the collection: two of these are on university and foundation administration, one is his farewell address to the students at Chicago, one is an arresting essay on morals and religion in education; in addition there is a long paper on the doctrine and policy of higher education, and a stunning speech on the university as a center of independent thought. Then, there are three papers specifically about the aims of the Fund. Finally, he has added an engaging brief autobiographical introduction and a short Jeremiah-sounding epilogue.

It is evident from even so simple an inventory that this is a book about education and freedom. He views the private newspaper, the private university, and the private foundation as three agencies of education. At the center of his discussion is the exploration of the purposes, problems, and traditions of higher education; with this as his model, he effectively comments on the purposes, problems, and traditions of the press and the foundation. It is a rewarding feature of the book that he is, in about equal doses, critical of the forces that would inhibit freedom for these institutions and critical of the institutions themselves for failing to operate so as to make their need for special freedom intelligible and persuasive.

The newest question of government intervention is with respect to the foundations. Does the government's grace in granting the tax exemption, which makes the foundation possible, render the foundation subject to government control? His answer is a clear and firm no. The private founda-
tion, as he notes, should have been looked upon as the ultimate flowering of private enterprise. Its very purpose is to permit private philanthropy in fields which might otherwise have to be occupied by government. In brief, he would give the foundation the same independence from government surveillance he would give the university. He suggests, and I would agree, that the foundation, too, is within the protection of the first amendment. And, thus, the celebrated Reece Committee investigation, which he succinctly calls a "fraud," would have been improper, even if it had been conducted far more ably and sensibly.

The most troublesome question of government control is with respect to the Communist teacher, an issue he touches on several times and deals with best in the piece "Education and Independent Thought." We are all, by now, a little weary of the issue, and this is not the place to explore fully its complexities. Mr. Hutchins' defense is a familiar one, but his statement of it reminds us of how thin is the line between him and his most indefatigable critics. Mr. Hutchins observes: "The presumption is strong that there are few fields in which a member of the Communist Party can think independently." And he has the candor to doubt seriously whether, in "the most unlikely event" of a qualified Communist teacher, he would have the courage to recommend his appointment to his board of trustees. What appears to be in debate, then, is not so much the rights of any flesh-and-blood Communist as the rights of the hypothetical Communist, that not quite impossible he, who is somehow unaffected and uncorrupted as a teacher and researcher. And the important issue is drawn not between Mr. Hutchins and his most vocal critics, but between Mr. Hutchins and the great universities. Were they in serious error in surrendering the rights of the hypothetical Communist in public debate in an effort to protect the actual faculties? The answer is not easy and involves at least two further points which, it seems to me, Mr. Hutchins does not adequately treat. First, can the academic community, realistically speaking, seriously scrutinize and evaluate competence—at least in the face of the presumption of Communist incompetence. Second, can a university community made up of different individuals with a diversity of viewpoints ever play the role of Thoreau and choose to go down fighting rather than yield an inch on principle. But in the end, I think Mr. Hutchins is right when he says of himself, and by implication of universities generally, "I ought to have had the courage." For even though in practice all cases might be decided against the Communist teacher, the formal ceremony of deciding the case on the basis of what the individual man is, and what his competence in teaching and research, embodies a principle worth considerable price.

It is, however, not the threat of government, but the threat of popular pressures that is at the center of his concern with freedom. The ugliest word in his lexicon is public relations. "Public relations means trying to find out what the prevailing opinion is before you act and then acting in accordance with it." He is appalled at the pressures on the press to please its subscribers and advertisers; on the university to please its alumni; and on the foundation to please everybody. He is sure-footed and superb in his insistence that the press, the university, and the foundation conduct themselves so as to deserve their freedom. Their need for freedom derives, as he sees it, from their special functions. The press is the great popular teacher; the
university, in his felicitous definition, is the center of independent thought; and the foundation, to repeat his phrase, is the supplier of the venture capital of philanthropy.

Perhaps another way of stating the analogy he sees running through these three agencies is that they are, or rather that they should be, outside the judgment of the market place. Prosperity and the balance sheet are not the measure of a great newspaper or university. If, then, the market is not the measure of their functioning or the appropriate discipline for them, how do we judge their performance and how do we supply the motive force to make them responsible? The essays on education return repeatedly to these questions. The answer, in so far as he gives one, is that they must be continuously conscious of and reflective about the end toward which their activity is directed. For all three, that end is the promotion of independent thought. Interestingly enough, he does not think that the legal form of organization matters. He compares the continental universities, which are under the formal control of government; the English universities, which are, in effect, owned by the faculty; and the American universities, where legal title is held by businessman trustees. What does matter is the animating tradition. That tradition is best exemplified here by the great universities, occasionally by the great newspaper, and hardly ever by the foundation. For the press, then, the Hutchins formula is the almost wistful suggestion of a distinguished commission which would periodically review the performance of the press in the public interest. For the university, it is the primary function of the administrator "to conceive of himself as presiding over a continuous discussion of the aim and destiny of the institution." For the foundation, even he is not fertile enough to make a companion suggestion.

If the essays on education add little to the views we already associate with him, it is, nevertheless, good and important to have these views restated. There is the admiration for the organization of the colleges at Oxford and Cambridge as against the Leviathan structure of the major American universities. There is the insistence that for the serious administrator "the strain is chiefly on his character rather than his mind." There is the expected irony about football. There is the insistence that the greatest waste in American education is in high school and that the last two years of high school should be abolished. Although, as he notes in one of his more persuasive four-word sentences, "the difficulty is money," there is much sensible and candid comment about the role of money in higher education. There is the reduction in size of the oft-noted dilemma today that the democratizing of higher education risks educating people beyond the station life will afford them. The true promise of education to the young, he insists, is not a better job, but a better life. There is the serious concern with adult education. Following Aristotle's dictum, he feels the young are too inexperienced to permit insight into the studies of social behavior. There is the expected defense of humanistic studies and the expected coolness toward empiricism in the study of human behavior and values.

And beyond such points, there is the urging that the educational community must be protected against the atomization of extreme specialization. A university should be a community of scholars, not a collection of specialists. And there is the important insistence that a university must limit its functions. It must protect itself from below by fending off the trivial and
the purely vocational studies. And it must protect itself from above by rec-
ognizing its limitations in teaching morality and religion.

The most recent papers in the book are on the Fund for the Republic. They suggest a troublesome question worthy of more serious consideration and study than I can give it here. I have not been a close student of the public response to the Fund or a close reader of the studies it has so far published. But my own impression, and I think it is shared, is that the Fund has not been a great success. It is true, of course, that were it permissible to measure the quality of its achievement inversely by the unceasing malice of its critics, it would rate as one of the accomplishments of all time. But the Fund's success in exacerbating, say, Mr. Fulton Lewis, Jr. is not, I think, a sign that it has been successful as a gadfly.

What is involved, therefore, is first, the question of action philanthropy in civil liberties; and second, if the Fund is not the right formula for strengthening our libertarian traditions, what is. The simplest point about the Fund is that it started too late. For an institution to speak with a powerful voice in a crisis, it must have been established prior to the crisis and carry a pre-existing reputation and prestige with it into the public forum. The next point is that its studies finish too late. The Stouffer study might have had great impact had it come out two years earlier, for it showed not so much that people were intolerant as that they were monumentally disinterested in both Communism and anti-Communism. The studies of the loyalty program similarly missed the crucial deadline. The ironic result, therefore, is that the Fund, dedicated to an action program of adult education on issues of the moment, will, in the end, have made its chief contribution in the writing of a history of a period of stress. Again, the emphasis on detailed empirical studies not only seems an ironic one for Mr. Hutchins, but an unsatisfactory idea in any case. It would seem to me to be clearly beyond the powers of private scholars to find out the truth as to the strengths and dangers of domestic Communism; and it would seem to me equally beyond their powers, given the security barriers, to find out much about the actual operation of the government programs.

Given the posture of public debate, the Fund should have anticipated that, like a mass meeting on civil liberties, it would find itself speaking to and persuading only those already persuaded.

Perhaps at the heart of the matter is the fact that, again ironically for Mr. Hutchins, the Fund was, in the short run, engaged in a battle of public relations—the public relations of our libertarian tradition. In the short run, only the unimpeachable conservative, if there were any left, could hope to be an effective spokesman against governmental and popular excesses. And the Fund was simply not the agency to move the conservative into action.¹

¹ Since this review was written, the Fund for the Republic has announced a major change in policy. A principal program for the remaining period of the Fund's operation is to be the study of "contemporary American life with the view to determining the conditions under which a free society may best be maintained." A group of ten consultants is to meet several times a year for extended study and analysis of the question and will, from time to time, publish. The consultants are Adolph A. Berle, Scott Buchanan, Eugene Burdick, Eric Goldman, Clark Kerr, Henry Luce, Father John Courtney Murray, Isidor I. Rabi, Robert Redfield, and Dr. Reinhold Niebuhr.
This last point suggests one other. When the period that has just passed recedes sufficiently, it will, I think, be seen that one of the great defaults was by the bar. With few exceptions, and even those late, the bar turned its back on the issues or offered as its chief contribution anti-Communist oaths for lawyers. It is hardly a new point that the bar is one of the principal keepers of our traditions of freedom, and it is perhaps one more point against the Fund that it was not legally-oriented enough.

We are all grateful to Mr. Hutchins and his colleagues for their recent efforts on behalf of freedom. It would be pleasant to find out that we are mistaken and that the Fund has had more impact that we now think. But I doubt if it is the answer to the emergency civil liberties crisis, and perhaps that means that there is, in the nature of things, no short-run answer.

But in any event, the strength of Mr. Hutchins' book lies not in what it has to say about loyalty oaths and congressional investigations, but in what it has to say about education. It remains true today, as it has been true since he first appeared on the educational horizon, that no one speaks of education with so great a sense of excitement and nobility.

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