

Charles McCabe

Himself

A Heady Question

A MAN I think about quite a lot is Justice Caulfield, of the London bench. I've never seen the man. He made himself memorable to me last year, when he asked a v. peculiar question in his courtroom.

The matter under judgment at the time he asked the question is little known and will not long be remembered. Some gent flouted a court order not to molest a lady he had been living with. The sort of thing which benumbs the minds of judges and shrinks and bartenders.

The bewigged barristers of the Law Courts in the Strand were practically thrown into panic when Caulfield asked a question to which no one could supply a simple answer. The barristers, the solicitors, the clerks and court officials stared aghast as the Justice asked *where it was stated* that he could imprison a person for contempt of court.



The question, it seems, had never been asked before. Countless judges had over the centuries committed countless thousands of contemptibles to prison. None of these, or their counsel, had ever asked whence their power to do so originated.

No one in court knew the answer.

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EXCITEMENT mounted at the possibility that over the years thousands of people had been wrongfully imprisoned. But it was not to be. A relieved counsel announced he had found the answer. From "time immemorial" judges had "an inherent power" to commit to prison for

contempt of court. Justice Caulfield pronounced himself satisfied.

That's more than I would have been; and that is why both the incident and Justice Caulfield stick in my mind, as Mr. Wilkerson, a clergyman, stuck in the mind of Max Beerbohm. (Or have I got that wrong?)

I keep thinking, in connection with the question of Justice Caulfield, about the extraordinary things people in our own lovely democracy do without the slightest legal authority for so doing, not even "immemorial inherent power."

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TAKE THE extraordinary offenses committed in the name of "national security" by recent Presidents. The good Johnson legitimized his Vietnam adventure by lying Congress into passing the Tonkin Gulf resolution. The good Nixon started a war in Cambodia without discussing it with anyone save his invading troops, and justified it later with baloney about "national security."

Nixon had invaded the premises of a harmless shrink in Southern California because he didn't like the guy the shrink was shrinking and justified the burglary in the name of "national security." He did quite a few other things in the name of that same sacred cause.

Yet my reading of the Constitution at no point persuades me that the President has any powers under which, in the name of "national security," he can rise above the law and take it into his own hands. Only Congress, in that document, has the power to declare war, in which state the President does indeed have extraordinary powers. War has not formally been declared in this country since the day after Pearl Harbor.

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THE SHADIER doings of the FBI and the CIA simply do not stand up under the scrutiny of Justice Caulfield's heady question. "Presidential prerogative," which has been invoked for the shadier doings of all of our recent Presidents, including the sainted Kennedy with his wiretaps, has no authorization whatever in the Constitution.

Why doesn't anyone bring up these questions seriously, a Ralph Nader concerned with more serious things than faulty automobile transmissions? Just because the questions are too serious, and the answers too frightening? Let's settle for a President's "immemorial rights" to "inherent power." Like the good Justice Caulfield himself, who must have been frightened to death by the question he brought up.