

The Lord Chancellor who never was

Norman Birkett was one of the most prominent Liberal barristers in the first half of the 20th century and, in other political climates, would probably have become Lord Chancellor, the most senior legal appointment in the country.

Born in Ulverston-in-Furness on 6 September 1883, William Norman Birkett spent the first twenty-five years of his life in Ulverston. His father, Thomas, was a successful draper who was not only a leading Liberal in the North Lonsdale constituency and Chairman of the local council but also a prominent member of the local Wesleyan Church. His mother Agnes, neé Tyson, was the daughter of a local butcher. Norman Birkett was the fourth of five children, and the third son, but he had no memory of his mother, who died of tuberculosis in April 1887. In 1888 Thomas Birkett married Agnes Dodding, who lived in Ulverston as a companion to a widowed lady, and who bore him another daughter. She died in 1901 and Thomas Birkett died twelve years later, leaving the family firm in the hands of his eldest daughter, Edith.

Norman Birkett was a delicate child who inherited his father's red hair, and the schoolboy nicknames 'carrots' and 'coppernob'. He was educated at Ulverston's Wesleyan Day School and the Higher Grade School at Barrow. In 1898 Birkett began an apprenticeship in his father's drapery firm, combining this with night classes and lay preaching. It was on the Ulverston Methodist circuit that Birkett honed his oratorical skills, which were later of so much use in the courtroom.

In 1907, Birkett decided to become a Methodist minister and in pursuit of this he went to Emmanuel College, Cambridge, to read Theology and History, at the relatively advanced age of 24. He received his History Tripos in 1909 and this was followed the next year by a First Class degree in the

Theological final examination. Having followed his father into the Liberal Party and campaigned in the 1906 general election, Birkett became a leading figure in the Cambridge Union, being elected President in 1910.

Once he had graduated, Birkett had second thoughts about entering the Wesleyan Ministry and, after long discussions about his future, decided to become a lawyer and read for the Bar. He enrolled at the Inner Temple and obtained his law degree in 1911. He was also invited to be the Liberal parliamentary candidate for Cambridge – an invitation he refused as he had no income. Before being called to the Bar, he was invited to become Private Secretary to George Cadbury Junior at Bourneville where he became involved with Cadbury's philanthropic work in Birmingham for the next two years. In November 1911 he assisted George Cadbury's election as a Liberal member of Birmingham City Council and started the Selly Oak Branch of the League of Young Liberals.

In June 1913 Norman Birkett was called to the Bar and, after discussions with Stanley Buckmaster (later a Liberal Lord Chancellor), he was taken into the Chambers of John Hurst, a leading barrister in the Midlands Circuit. At the same time, he was chosen as the prospective Liberal candidate for North Birmingham, an unwinnable seat given the strength of the Chamberlain family in the city. At the outbreak of the First World War, Birkett tried to join the army but twice failed the medical and in 1916 he was diagnosed as suffering from tuberculosis. He spent six months convalescing in Ulverston. Throughout the war Birkett kept up his connection with the Cadbury family, and at the same time became well known on the Midlands legal circuit. In 1918, he took part in the general election, contesting the King's Norton Division of Birmingham as the 'official Liberal candidate'. This was the notorious

EAST NOTTINGHAM
PARLIAMENTARY ELECTION,
1931.



With the Compliments
of
Mr. Norman Birkett

'Coupon' election and the Coupon candidate for King's Norton was the Conservative Sir Hubert Austin – the well-known motor manufacturer. Birkett had no chance and came bottom of the poll.

Birkett's legal practice continued to grow and, in 1920 he joined Marshall Hall's chambers in the Inner Temple. Hall was one of the leading barristers of his day and had been impressed by Birkett's role in the prosecution in the notorious 'Green Bicycle Case', which concerned the death of a woman found shot in the head but otherwise untouched in a country lane, in which Hall was successful for the defence. Over the next three years Birkett teamed up with Marshall Hall and they became an almost unbeatable pair both in defence and prosecution and took part in many criminal trials in London and elsewhere.

For some years, Norman Birkett had known Ruth Nilsson, a Swedish girl known to friends as 'Billy', who was on the welfare staff at Bourneville, and a warm friendship had developed. Once or twice in the past Birkett had suggested that they should marry. The forthcoming move to London changed the situation. She decided to give up her post at Cadbury's and became

Birkett's wife. They were married on 25 August 1920 at St Pancras Registry Office. The Birketts set up home in Hampstead Garden Suburb. They had two children, Michael and Linnéa.

With the break-up of the Lloyd George Coalition Government, the death of Bonar Law, and the succession of Stanley Baldwin, there came a change in government policy towards tariff reform. Baldwin felt bound by previous pledges to put the new tariff policy to the electorate. Just two weeks before polling day in 1923, Norman Birkett was chosen as Liberal candidate for Nottingham East. The election was fought almost entirely on the tariff reform issue and the followers of Lloyd George and Asquith temporarily sank their differences and united. In Nottingham, where lace-making was the principal industry, Birkett argued that the town's prosperity depended upon the export of lace, and exports depended on imports. Tariffs would also mean dearer food for the housewife. Birkett and his wife plunged into a whirlwind campaign, fighting off the personal attacks of the Tory who said Birkett had no more than the 'the gift of the gab'. The result on 6 December gave Birkett a majority of 1,436, an outstanding victory as in 1918 the Tory majority had been over 4,000.

The new Parliament had 258 Conservative members, 191 Labour and 158 Liberals. The key to a new government was held by the Liberals. When Parliament met in January 1924, Asquith sided with the Labour Party to put them into power for the first time. A week later, Birkett made his maiden speech in a debate on a Labour backbench motion on state pensions for widows with children and wives and mothers where breadwinners had been incapacitated. Birkett supported the motion and went further, calling for consideration for unmarried mothers and, in some cases, divorced wives. His speech was a great success and the former Liberal Cabinet Minister C. F. G. Masterman described Birkett as a possible future Lord Chancellor. Birkett, however, had few political ambitions and his professional career remained his prime concern. Despite this, he was a

conscientious attender at Westminster and, in spite of the physical strain involved, regularly visited his Nottingham constituency. Being an MP prompted Birkett to take an important step in his career. He applied to the Lord Chancellor to be made a King's Counsel and his application was granted in April 1924.

The downfall of the first Labour Government led to another general election which took place on 29 October 1924. The result was a Conservative landslide, precipitated by a scare about the Government's links with the Soviet Union, which drove many Liberals to the right. The Liberals lost 118 seats, including Nottingham East which Birkett lost by 1,446 votes to the Conservatives, with a Communist candidate polling over 2,000.

Birkett's legal career prospered, however, and he was involved in numerous sensational court cases. Among them were the notorious Gladstone Libel case when he opened for the defendant, Lord Gladstone, son of W. E. Gladstone, and the obscene publication case of *The Well of Loneliness*, a novel on the theme of female homosexuality, against Jonathan Cape Ltd and Pegasus Press when he appeared for the defence. The former case concerned a book entitled *Portraits and Criticisms* by Captain Peter Wright, in which W. E. Gladstone's interest in the welfare of prostitutes was characterised as 'pursuing and possessing every sort of woman'. Gladstone's

A Personal Word
from
Mrs. Norman Birkett



two surviving sons wrote a deliberately insulting letter to the author in order to inspire a libellous reply which would allow the chance of a court case in which the allegations against their father could be tackled. Birkett, representing the Gladstones, won, but he lost the second as evidence of 'literary merit' was not permitted until the law was amended thirty years later.

In 1927 Birkett was able to move to a more substantial property in Chalfont, Buckinghamshire, where he lived for the rest of his life. He stood again for Parliament in 1929, regaining his old seat with a 3,000 majority. He reaped the rewards of nursing the constituency for some years, the retirement of the sitting Member, and the popularity of Lloyd George's fresh policy ideas. Birkett found only 58 Liberal colleagues in the Commons, however, and the Liberals were now firmly established as the third party. Ramsay MacDonald again formed a government and had difficulty in filling the legal posts. Much to the disgust of his Liberal colleagues, William Jowitt KC – who had sat as a Liberal in the two previous parliaments and had just been re-elected – decided to join the Labour ranks in order to qualify for the post of Attorney General which had been offered to him by the new Prime Minister.

Birkett was approached by Downing Street with the tentative offer of the post of Solicitor General if he would follow Jowitt's example. He replied that he, for one, could not change his politics in twenty-five minutes and those who knew him best felt that, even if the Liberal Party were to disintegrate completely, he would not be seen taking refuge in the Labour ark.

Legal practice continued to keep him very busy and he appeared in many high-profile cases, but he kept up his attendance record at the House of Commons as best he could. Together with Sir John Simon, he became one of the two leading Liberal spokesmen on the legal aspects of government legislation, although his speeches were infrequent. His attack on a far-reaching clause in the Finance Bill of 1930, which infringed the principle of individual liberty, drew tributes from many, including Winston

Churchill. He was the Liberal spokesman on the controversial Trade Disputes Bill which the Government introduced in 1931. He set about tearing the Bill to tatters and, at the Committee stage, masterminded numerous amendments which were carried.

Ramsay MacDonald would have liked Birkett as Solicitor General and another opportunity to offer him the post arose in 1930. Birkett was strongly pressed to reconsider his refusal but he again declined and the post went to Stafford Cripps. Birkett was determined that he would only fill the post as a Liberal, though there seemed little hope of there ever being a Liberal government in power again. However, he again came close to being appointed when Ramsay MacDonald formed his National Government in the summer of 1931. Herbert Samuel, the acting Liberal Leader, urged MacDonald to offer the post again to Birkett who was prepared to accept on learning that other Liberals, such as Lord Reading, Lord Crewe and Samuel were to join the new government. A difficulty arose, however, when it became clear that there would only be one vacancy for a Law Officer's post, with Cripps but not Jowitt intending to stand down, and that was claimed by the Tories. Birkett could not accept a non-legal office, which would entail giving up his legal practice, and so his chance of serving in government passed.

The serious economic situation in the summer of 1931 led the Government to appeal to the country for a 'Doctor's Mandate', to do anything that was needed to alleviate the crisis. Parliament was dissolved and Birkett went back to Nottingham to face the electorate. Birkett was the 'National candidate' but he found himself opposed by Conservative and Labour candidates. Birkett was a convinced free trader, the Tory was protectionist, and confusion reigned as Ramsay MacDonald, the Prime Minister, endorsed Birkett rather than the Labour man. Although the result of the election was a sweeping victory for the National candidates, Birkett failed to hold his seat in Nottingham East.

It proved to be the end of his career in the Commons. He was invited to

become the candidate for Torquay, a seat won by a Liberal in 1923, but declined. In 1932, after the death of the prominent Liberal Member Sir Donald Maclean, he was offered the candidature in North Cornwall, but again declined. The alignment of the Liberals with the Conservative 'establishment' under the National label and the strong protectionist influence on the Government offended him. He was not surprised when Herbert Samuel and his followers resigned from the Government later in the year.

Birkett now devoted himself to his legal practice where he was considered to be at the very top of his profession. He was involved in many of the most prominent trials of the decade. At the outbreak of war in 1939, the Home Secretary appointed Birkett to chair the Home Office Committee for Appeals Against Internment Orders, under the Emergency Powers Act, and, over the next two years, it examined and reported on more than 1,500 cases. At the same time, he was invited by the BBC to give a weekly talk by way of answering the German propaganda talks by 'Lord Haw-Haw'. He did this until June 1940 when the BBC replaced Birkett with J. B. Priestley. Birkett's work was rewarded with a knighthood.

Birkett was next despatched to the United States and Canada on a goodwill mission. On his return in November 1940, he was invited to submit his name for appointment as a judge, a position he accepted, and he took his seat for the first time on 24 November 1940. For the rest of the war, Birkett heard hundreds of cases. One noteworthy case in 1944 was an action brought by Learie Constantine, the West Indian cricketer, against the Imperial Hotel in London because it refused to receive and lodge him in accordance with its policy that it 'did not want to have niggers in the hotel'. After hearing the evidence, Birkett gave judgement for the West Indian.

On the last day of August 1945, Birkett was invited by Lord Jowitt, the Lord Chancellor, to be the British judge at the international German War Crimes trial to be held in Nuremberg. He accepted provisionally but, three or four days later, he was informed that



Birkett as a judge at the Nuremberg war crime trials

the Foreign Office wanted a Law Lord appointed, as there was a likelihood of the British judge being made President of the Tribunal. Birkett was offered instead the post of British alternate judge and, after discussion with Prime Minister Attlee, he accepted it.

The Nuremberg trial opened in November 1945 and lasted until October 1946, with Birkett attending all the sessions. It was a harrowing eleven months, which Birkett chronicled in his diary and numerous letters. His American counterpart, Judge Parker, wrote afterwards of Birkett that, 'although only an Alternative Member of the [International Military] Tribunal without a vote, his voice was heard in all its deliberations, his hand drafted a large and most important part of its judgement, and no-one connected with the Tribunal, Member or otherwise, had a greater part than he in shaping the final result'. In the Birthday Honours list in 1947, Birkett was created a Privy Councillor, although he was disappointed that this honour was rather less than the peerage awarded to Geoffrey Lawrence, the British member of the Tribunal. On 2 October 1950, Birkett was sworn in as Lord Justice of Appeal but, although he was proud of his promotion, he found the work dull. He kept himself busy broadcasting, speaking at public events and writing for numerous journals. In 1951, he gave a series of broadcasts on the work of the International

Court of Justice and the protection of human rights.

After some periods of ill health, Birkett retired from the Bench at the end of 1956 after fifteen years as a High Court judge. He did not retire from public life, however, and maintained his activities as Chairman of the Standing Committee on National Parks, where he had been responsible for setting up a National Parks Commission; at London University, where he was Chairman of the University Court; and as President of 'The Pilgrims'. He also remained in demand as a public speaker.

In the New Year Honours list of 1958, Birkett's name headed the list of the Prime Minister's nominations for a peerage, and he took his seat in the House of Lords on 20 February as Baron Birkett of Ulverston. Honours and Honorary Degrees showered on Birkett and he continued to take an active interest in legal questions in the upper house. He made his maiden speech in the Lords in 1959 on a motion calling attention to crime in Great Britain. This was prompted by the establishment of a Chair of Criminology at Cambridge University. Shortly afterwards, he moved the second reading of the Obscene Publications Bill. In his speech, he recalled his defence of *The Well of Loneliness* in 1928. The Bill became law. The first case brought after this change of law was the well-known publication of *Lady Chatterley's Lover* in October 1960.

His next and last appearance in the House of Lords was on 9 February 1962, when he moved an amendment to the Manchester Corporation Bill which sought to augment the city's water supply from Ullswater which he, and others interested in preserving the beauties of the Lakes, considered would seriously threaten to spoil them if carried out. Birkett carried the day by 70 votes to 36, but it was to be his final public appearance. The following day, he was rushed to hospital in considerable pain. An immediate operation was necessary and the doctors found that he was suffering from a fatal impairment of a vital blood vessel. There was no hope and he slipped away without regaining consciousness. 'It was the way for him to go – on the crest of a wave' said Lady Birkett as tributes to her husband flooded in from all parts of the world. Eighteen months later, a plaque, made of Westmorland green slate, was unveiled at the renamed 'Birkett Fell' on the Ullswater shore.

Birkett was a Liberal by instinct, who, like many of his generation, would have held high office in an earlier era. Unlike many of his contemporaries, he stuck with the Liberal Party, sacrificing any chance of climbing to the pinnacle of the legal profession for the political beliefs etched into him from birth. A simple man of unimpeachable integrity, he was one of the commanding legal figures of the mid-twentieth century, whose liberalism pervaded every aspect of his career, not least in his largely unrewarded work at the Nuremberg trials.

There is a comprehensive, if over-long, biography of Birkett by H. Montgomery Hyde (Hamish Hamilton, 1964), which contains a full bibliography.

Tom Dale has been a Liberal councillor, parliamentary candidate and a member of staff in Parliament and party headquarters; he was also President of the University of London Students' Union where, in 1957, he met Sir Norman Birkett. Robert Ingham is a historical writer and Biographies Editor of the Journal.