THE EGYPTIANS

1964-65

YEAR BOOK

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HISTORICAL SKETCH

The Egyptians, "a club for the discussion of scientific, religious, economic and other topics pertaining to the welfare, culture and happiness of the people," was organized at a meeting of fifteen men held in the home of the late A. S. Caldwell on June 21, 1913. These men had been meeting as an unorganized group since 1911. The fifteen founders were: Charles N. Burch, A. S. Caldwell, J. B. Cannon, Elias Gates, Charles J. Haase, E. M. Markham, C. P. J. Mooney, Sanford Morison, J. Craik Morris, A. B. Pittman, J. W. Rowlett, A. Y. Scott, Bolton Smith, B. F. Turner and J. C. Wilson.

Before the organization was completed, fifteen others were enrolled as charter members, namely: Albert W. Biggs, E. C. Ellett, W. H. Fineshriber, J. R. Flippin, Thomas F. Gailor, Marcus Haase, Herman Katz, James P. Kranz, Walter Malone, R. B. Maury, H. Dent Minor, A. E. Morgan, Israel Peres, Alfred H. Stone and Luke E. Wright.

The name chosen for the organization was proposed by W. H. Fineshriber. The fact that ancient Memphis was in Egypt suggested the name. The by-laws stated that the membership should "consist of not more than thirty-three men of recognized standing, ability and influence in Memphis and Shelby County, Tennessee." It was further stated that members were to present their contributions in the form of papers and that all papers were to be issued in printed form. This clause has resulted in the largest and most significant literary production of a general nature ever made by any group of Memphians.

From the beginning, The Egyptians were guarded against internal friction by a constitutional provision that "no resolution shall ever be passed committing the club as a body to any proposition." The club is unique in the unwritten law that its name is not to appear in the press in any connection.

CONSTITUTION AND BY-LAWS

As Amended to May 31, 1960

ARTICLE I.—Objects.

Section 1. The subscribers hereto associate themselves for the purpose of discussing, at stated times and in a social way, such topics as pertain to the welfare, culture and happiness of the people, particularly of our own locality, state or nation. No resolution shall ever be passed committing the club as a body to any proposition.

ARTICLE II.—Name and Membership.

Section 1. This organization shall be known as THE EGYPTIANS, and shall consist of not more than thirty-three regular contributing members, who shall be citizens or residents of Shelby County, Tennessee, of recognized standing, ability and influence in the community, with other associates as provided in Section 2.

Section 2. Honorary membership may be tendered only to non-resident persons distinguished in the walks of education, literature, science or art; and such associates having no votes, shall be exempt from payment of all dues and assessments.

Section 3. Any member may nominate an individual for membership, submitting a brief statement of the candidate's qualifications to the officers of the club. If by majority vote of the officers, the candidate is acceptable, the officers shall circularize these qualifications to the members of the club at least one week prior to the following meeting. A secret ballot shall be cast by mail, with the minimum number of affirmative votes for election equalling at least two-thirds of the total membership, and if not more than two adverse votes be cast by the members, it shall be the duty of the secretary to invite such person to become a member.

ARTICLE III—Officers.

Section 1. The Officers of the club shall be a President, Vice-President and Secretary-Treasurer, each to be chosen by ballot at the last meeting in May, to serve one year, or until a successor shall be elected.

Section 2. As a compensation for his services, the Secretary-Treasurer shall be exempt from the payment of all dues, charges and assessments.

ARTICLE IV.—Meetings.

Section 1. Regular meetings of the club shall be held at 6:30 p.m., the third Thursday in each month, between October 1st, and June 1st, beginning the third Thursday in October, except as provided in Section 2.

Section 2. The club may, at any session, charge the date of a succeeding meeting, or the President, with reason therefor, may change the date of the next meeting or call a special meeting as may be required.

Section 3. In the event of change or call for special meeting, as provided in Section 2, the President shall direct the Secretary to notify members thereof.

Section 4. Any member who shall fail to attend at least three meetings during a season without excuse shall be conclusively presumed to have resigned and such implied resignation shall become effective without action of the club. He shall, however, be sent the publications of the club for the full period for which he has paid dues.

Section 5. The time consumed by any paper shall not exceed thirty minutes and in the discussion which follows, no member shall speak more than once and not exceeding ten minutes, until all other members present shall have had the opportunity of speaking.

ARTICLE V.—Dues and Assessments.

Section 1. The annual dues shall be nine dollars and ninety cents, payable in advance, provided that a member admitted after February 1st shall be required to pay only one half the annual dues for the balance of the year

Section 2. A special assessment, if necessity arises, may be levied at any regular meeting by an affirmative vote of a majority of all the members of the club.

Section 3. Failure to pay dues or assessments within sixty days of notice shall be considered as forfeit of membership.

ARTICLE VI.—Quorum.

Section 1. Eight members shall constitute a quorum for the transaction of business.

ARTICLE VII.—Amendments.

Section 1. This Constitution and By-Laws may be amended at any regular meeting, provided the proposed change has been announced at the previous meeting and is adopted by an affirmative vote of a majority of those present; and provided, that not less than eight affirmative votes shall be necessary.

Section 2. Article II may be altered or amended only at the annual meeting (last meeting in May), previous notice of proposed change having been given.

ARTICLE VIII.—Papers.

Section 1. Any member of the club who shall fail to present a paper or deliver an address on the date assigned him, without an excuse that shall be satisfactory to the Officers, shall thereupon forfeit his membership. The Secretary shall give each member, to whom a paper or address is assigned, at least three months notice of the date assigned to such member. The subject of any paper or address shall be selected by the writer with the advice of the Officers and the Secretary shall announce topics for discussion not less than two months in advance.

Addendum.

On January 10, 1922, the following rule was, on motion, unanimously adopted and recorded: That out of town guests brought by members of the club be welcome; That members introducing guests who are residents of Memphis, be charged $2.25 (or such an amount as shall be determined from year to year) per meeting for each guest.

THE EGYPTIANS

OFFICERS AND MEMBERS

1964-65

Officers

Dr. Newton S. Stern ..... President
Clark Porteous ..... Vice-President
Edward F. Thompson ..... Secretary-Treasurer

Honorary Member

Rabbi W. H. Fineshriber

Members

Otto H. Alderks
Walter P. Armstrong, Jr.
S. J. Buckman
Lucius E. Burch, Jr.
W. J. Michael Cody
T. Herbert Darnell
John E. Farrior
Frank Faux
Hubert Garrecht
Dr. Henry B. Gotten
A. Arthur Halle, Jr.
Wesley Halliburton
Francis G. Hickman
Dr. T. S. Hill
Ralph C. Hon
McDonald K. Horne
Ed Lipscomb
Arthur W. McCain
John F. Moloney
Clark Porteous
Peyton N. Rhodes
Rudi E. Scheidt
Elder L. Shearon, Jr.
Dr. Newton S. Stern
Dr. Thomas N. Stern
Edward F. Thompson
John H. Todd
Thomas F. Turley
C. Lamar Wallis
C. B. Weiss

THE POVERTY PROBLEM IN THE UNITED STATES

Ralph C. Hon

Read before "The Egyptians," October 15, 1964

Poverty has been the bane of human existence ever since Eve ate the apple and the search for solutions to reduce its burdens is as old as civilization. It is true that during the fifties some analysts, impressed with the long period of postwar prosperity, concluded that major economic problems had been solved and that the United States had reached a state of classless, homogenized affluence. However, a more realistic appraisal was forced by such events as the recession in 1958, which focused attention on depressed areas, chronic unemployment and the severe adjustment problems associated with automation; the surging agricultural revolution which poured millions of poor off the farms; increased longevity which put the spotlight on the economic problems of the aged; the Negro revolt which emphasizes civil rights but undoubtedly gained a considerable part of its momentum from the great poverty and high unemployment rate among nonwhites; and the greater emphasis on the development of human resources as a means of attaining more rapid economic growth which is considered of vital importance because of its relationship to international, nuclear and space matters.

Poverty is a relative thing. There is no objective definition of it, just as there is no objective definition of beauty. Fortunately, an analysis of the sources of poverty and the formulation of measures to cope with it do not depend upon a precise definition and measurement of its extent. In attempting to measure poverty, it is customary to select an income cut-off point below which it is assumed that it is not possible to maintain a tolerable level of living. Ideally, the dividing line should make allowances for differences among regions, size of cities, family size and composition and should take into consideration not only current money income but also nonmoney income of various types and the possession of assets. Unfortunately, we do not have the tools with which to accomplish such an ideal measurement. Since needs do vary from family to family, some concept of average need for a representative family must be

developed. Standards vary from time to time and differ from place to place but for our economy at the present time it has proved to be possible to arrive at a consensus on an approximate standard. A benchmark of $3,000 annual family income from all sources before taxes and $1,500 for a single person has come to be widely accepted as the dividing line. Since seven-eighths of the poor live in family units, we place primary emphasis on the figure relating to families. It is expected that approximately one-third of total expenditures at the $3,000 level will be for food. For a four-person family, this would amount to approximately five dollars per person per week. Housing, which includes rent or mortgage payments, utilities and heat, is allotted $800. This would leave only $1,200, less than twenty-five dollars a week, for clothing, transportation, medical and personal care, recreation, insurance, taxes and everything else. If a figure higher or lower than $3,000 were chosen, the size of the problem would be changed, but there would be little effect on the analysis of the sources of poverty or on the programs needed to cope with it. A single income level is, admittedly, a crude measure of poverty. Some people above the line are in much greater need than some others who are below the line. But it does give us a workable benchmark, one that proves that the popular view of the great abundance and affluence of the United States is greatly exaggerated, one that provides an effective antidote to self-satisfaction.

In 1962, there were 47 million families in the United States, of which 9.3 million or one-fifth, containing more than 30 million people, had total money incomes below $3,000. Over 11 million children, one-sixth of our youth, were members of these families. In addition, five million individuals living alone or in non-family units such as boarding houses, had incomes below $1,500. Thus, we conclude that approximately 35 million Americans, or one-fifth of our population, were living at or below the poverty line. Included are 17 per cent of the white and 44 per cent of the nonwhite population. By region, the figures are 14 per cent of the population in the Northeast, 15 per cent in the West, 18 per cent in the North Central and 32 per cent in the South. In 1959, the states with the highest percentages of families with incomes below $3,000 were Mississippi 51.6, Arkansas 47.7, South Carolina 39.5, Alabama 39.1 and Tennessee 38.3. These figures make it clear that a southerner's chance of being poor is roughly twice that of a person

living in the rest of the country. In view of the fact that the President's Commission on the Appalachian Region, in support of its appeal for special aid to that area, emphasized the fact that the per capita income of the people therein amounted to $1,405 in 1960, it is interesting to note that the corresponding figures for three states outside the area are $1,397 in South Carolina, $1,341 in Alabama, and $1,173 in Mississippi.

Substantial progress has been made during the last generation in the elimination of poverty. According to present standards, in terms of 1962 dollars, 51 per cent of the families and individuals in the United States were below the poverty line in 1929 as compared to 20 per cent at present. The role of rapid growth and ample job opportunities in reducing poverty is readily illustrated by our experience since the War. In the decade 1947-56, when incomes were increasing fairly rapidly and unemployment was relatively low, the number of families with incomes below $3,000 in terms of 1962 prices decreased from 32 per cent to 23 per cent, but during the period 1957 through 1962, when total growth was slower and unemployment higher, the number of families living in poverty fell less rapidly, from 23 per cent to 21 per cent. The sustained expansion, which began in 1961 and continued to the present, has undoubtedly resulted in a more satisfactory rate of poverty reduction in 1963 and 1964. The tax cut earlier this year, which will be analyzed by Dr. Horne at our next meeting, was designed to spur the economy to further heights, but so far as its effect on poverty is concerned, it can only lift out of that category those who have the education and skill to become permanent workers at jobs that pay above-poverty wages.

The progress made in reducing poverty during the last twenty years has resulted from increased production rather than from any major change in the distribution of incomes. The poorest fifth of the families and individuals received 5 per cent of the total income in 1944 and were still receiving 5 per cent in 1963. The fact that the percentage of wives with jobs outside the home increased from 15 in 1940 to 30 in 1957 doubtless enabled a large number of families to move above the poverty line. The welfare state has also played a part. Transfer payments, made primarily under social-security and public assistance programs, now account for 43 per cent of the

income of the poorest fifth of consumer units. However, only about half of the poor receive transfer payments.

Now, assuming that we are correct in thinking that approximately 20 per cent of our population is involved when we discuss the problem of poverty, let us turn to the question of who these people are and the outlook for their future.

Poverty is not a homogeneous phenomenon. It is not limited to one particular group in the population nor to any one geographical area. We can list certain major categories, some of them overlapping, which contain the bulk of the poor. Over three-fifths of the nation's poor families are headed by a person with no more than a grade school education, one-third are headed by a person over 65, over one-fifth are nonwhite and one-third of the poor are children. After looking at each of these groups briefly and considering the relationship between unemployment and poverty, we will take a quick look at the Economic Opportunity Act of 1964, the election-year legislation designed as a major step toward solving the problem of poverty.

Perhaps the biggest single cause of poverty is lack of education. In our population as a whole, only 35 per cent of the families are headed by individuals who did not go beyond the eighth grade but some 61 per cent of the nation's poor families are headed by such individuals. The median income of all men 25 years of age or older in 1961 was $4,800 but for those who did not complete the eighth grade, it was $2,300. There is no place in the world, so far as I know, where a well educated population is really poor. Some people may find it repulsive to hear the value of education discussed in such materialistic terms. As we all know, education tends to produce a more interesting, pleasant, satisfying and rewarding life and is essential to the effective operation of a democratic society. For these reasons, it would be worth the time, effort and money that it costs even though the economic advantages ceased to exist. However, from the point of view of demonstrating to the poor, whose children are sadly lacking in schooling, that education provides one of the best escapes from poverty available to them, it is worth while to indicate something of the relationship between education and economic well-being. Some minority groups, such as Negroes and Puerto Ricans, can rationalize their lack of interest in education on an economic basis since

the figures indicate that, regardless of whether they live in the South or the North, the median income of nonwhites who have finished four years of college is only slightly higher than that of whites with only high school training. Education pays off for nonwhites but not to the extent that it does for whites. There is not much point in making available to Negroes training as scientists, engineers, or even plumbers, if the best jobs for which they are to be eligible are as mail carriers and assembly line workers. In addition to general schooling, there is a great need for additional efforts in the field of vocational training. The federal government has indicated a recognition of this need in various ways including sponsorship of apprenticeship programs and the enactment of the Federal Manpower Development and Training Act, under which an extensive project was inaugurated in Memphis on July 13, 1964. Considerable work remains to be done in shifting the federally sponsored vocational education program from homemaking and agriculture to the skills required by a complex industrial society.

If there is one policy conclusion to be reached from surveying the poor, in which one can have confidence, it is that the soundest long-run basis for hoping for a sharp reduction in poverty lies in accelerating our efforts to provide more and better education for the underprivileged. A certain amount of optimism is justified by the fact that two-thirds of our school children now graduate from high school in contrast to the one-third who achieved this level a generation ago. In the five-year period between 1958 and 1963, the proportion of 16 and 17 year olds enrolled in school rose from 80.6 per cent to 87.1 per cent of all in this age group.

The aged constitute one of the largest groups among the poor. One-third of all poor families are headed by a person over sixty-five and one-half of the families headed by such a person are poor. In other words, a family headed by a person sixty-five or over is two and a half times as likely as the average family in the United States to have an annual income under $3,000.

Of course these families on the average contain fewer members than do families headed by younger persons. In 1900 only 4 per cent of the population was sixty-five or over. The figure is now over 9 per cent and gradually moving higher. During the period from 1947 to 1962, the per cent of poor families headed by a person sixty-five years of age or older in-

creased from 20 to 34. In 1960, only about half of them had liquid assets of as much as $1,000 that they could fall back on in case of emergency. Many of the so-called "senior citizens" are poor because they are not covered by social security. This situation will be improved considerably by legislation already enacted. More than 90 per cent of the labor force is now covered and the number of retired workers receiving payments will gradually move up toward this figure in the years ahead.

Older people often face a crucial problem in meeting obligations caused by illness. Approximately three-fourths of the aged poor have no hospital insurance and their medical care costs are two and a half times as high as those of younger persons. Much of the $1,000 median net worth possessed by the lowest one-fifth of all spending units is in the form of dwellings. This is helpful, of course, in reducing their housing costs but property in this form does not ordinarily provide income with which to meet current expenses.

The position of the 20.5 million nonwhite Americans, 92 per cent of whom are Negroes, has been thoroughly analyzed. All the census figures on housing, education, occupation and income, indicate that the Negro still ranks among the poorest of the poor. The importance of the Negro vote in the big cities of the heavily populated states invites courtship, in an election year, by both parties. But there are more permanent reasons why steps to broaden the economic opportunities of colored people are needed. One is that the recent explosion of population has been disproportionately Negro. In the past, the higher mortality rate among Negroes offset their higher birth rate but a reduction in their death rate, particularly among infants, has resulted in a life expectancy for a colored baby only six years less than for a white one. The effect of these trends is seen in the fact that between 1950 and 1960 the nonwhite population increased by 26.7 per cent while the white gain was only 17.5 per cent.

Another reason that national attention has been attracted to Negroes is that they are crowding into the centers of large cities which are failing to assimilate them. Between 1950 and 1960 nearly 1,500,000 Negroes left the South, over 300,000 moved west, but the great majority headed for cities in the North Central and North Eastern states. With little or no preparation, they left the most rural communities of the country to enter the most urban areas. Washington is the only one of the ten largest cities to have a Negro majority (54 per cent) but all the rest except New York (15 per cent) and Los Angeles (17 per cent) are from 23 to 35 per cent black. Within the South, a large proportion of the Negroes have migrated to the urban areas. About one-third of all the Negroes in this country live in southern urban areas, about one-fourth live in southern rural areas and the remainder live in the North and West. In a sense, the Negroes appear to be stymied. The census figures indicate that the average male Negro earned 53 per cent as much as a white male in 1949 and only 52 per cent as much in 1959. However, by achieving an earnings increase approximately in line with that of whites, the incidence of poverty among nonwhite families decreased from 66 per cent in 1947 to 44 per cent in 1962. From the standpoint of relative income, Negroes fare best, with median incomes equal to about 75 per cent of those received by whites, in such states as Michigan, Pennsylvania, and Indiana, which are characterized by unionized heavy industries. In 1959, Kentucky was the only state, classified by the census as Southern, in which the average income of Negroes was as much as 60 per cent of the white average. It was followed by Maryland with 57 per cent, Tennessee with 56 per cent, Florida 55 per cent, Virginia 51 per cent, Oklahoma 49 per cent, Georgia 44 per cent, North Carolina 43 per cent, Alabama 42 per cent, Louisiana 40 per cent, Arkansas 39 per cent, South Carolina 35 per cent and Mississippi 32 per cent. In several states the gap widened substantially during the fifties. For example, the average income of Negroes in relation to that of whites decreased from 87 per cent to 76 per cent in Michigan, from 68 per cent to 56 per cent in Tennessee, from 53 per cent to 39 per cent in Arkansas and from 41 per cent to 32 per cent in Mississippi.

In almost every group of jobs, Negroes earn less money than whites partly because they hold the lowest paid jobs in the group and partly because they get lower pay even when doing exactly the same work as whites. In April, 1960, approximately 3,600,000 Negro men were employed. Of these, 1,000,000 worked as laborers and another 500,000 were employed in the generally low-paying service trades, mostly at jobs of the janitor, porter, cook and elevator operator type. Not all service jobs are low-paid. Within this classification, average earnings for Negroes ranged from $2,500 for janitors and

porters to $4,300 for policemen and firemen. However, 37 per cent of the janitors were Negro in contrast to 4 per cent of the firemen and policemen.

Approximately one-fourth of employed Negro men worked as factory hands or in other semi-skilled jobs where their average earnings of about $3,000 were about 32 per cent less than those of the whites primarily because Negroes were concentrated in the lower paid jobs frequently in the lowest paying industries. For example, approximately one-third of all the men employed by laundry and dry-cleaning plants were Negroes with average earnings of only about $2,600.

Relatively more Negro women, 44 per cent, than white women, 32 per cent, work outside the home. Like the men, Negro women are highly concentrated in low-paying jobs. However, the earnings differential between white and colored women is less than in the case of the men. Over a third of all Negro women employed in April 1960 were private household workers, where their low average earnings of approximately $700 is largely a result of the fact that, even more than other women, they have part-time jobs.

The service trades provided jobs for over 500,000 Negro women, or about one-fifth of the total employed, as waitresses, cooks, charwomen, hospital attendants and practical nurses. Average earnings for nonwhite women in this field was $1,400, the same as that received by white women in the service trades.

About 310,000 Negro women were engaged in semi-skilled jobs, over half of them in manufacturing plants but about 100,000 worked in low-paying laundry and dry-cleaning plants which helped pull their overall average earnings down to $1,800 or about 23 per cent less than the white average. Nonwhite women who worked in plants manufacturing durable goods earned an average of $2,500 as compared with $2,900 for white women.

As a whole, those facts are rather grim. But in the period since 1950, the more able and better equipped Negroes have moved more and more rapidly up the economic ladder. There are over 300,000 Negroes in the federal civil service or approximately 13.3 per cent of the total number of civil service employees. True, they are largely concentrated in the lower grades, particularly in the Post Office Department and the

Veterans' Administration, but they are also gaining ground in the middle and upper ranks. The Air Force has a Negro Major-General and twelve Colonels. Five U. S. District Judges are Negroes and five Negroes, from New York, Chicago, Detroit, Philadelphia and Los Angeles are members of the Federal House of Representatives. A substantial Negro middle class is developing. More than 20 per cent of the nonwhite families have annual incomes of $6,000 or more but the Negro middle class differs from the white in that its incomes are derived more from government and education and less from business. The problem of low Negro incomes is obviously complicated. Both prejudice and a shortage of trained people are undoubtedly involved, and in seeking a solution it is important to work on both approaches.

The government is using defense contracts to weaken the color bar on jobs. A firm which practices discrimination may be barred, by the President's Committee on Equal Employment Opportunity, from bidding on such work. Partly as a result of social and political pressures but perhaps more because they feel that it is the right thing to do and the right time to do it, many leading American corporations are seeking Negroes for promising jobs. Since Negroes have been discriminated against in business so long, corporations that are interested in employing Negro college graduates as management trainees are reported to be having some difficulty recruiting them. Last June, recruiters from eighteen companies, including Boeing, Chase Manhattan, Equitable Life, Lever Bros., J. C. Penney, Xerox, and other giants, took over thirty-two rooms at the Waldorf-Astoria to interview more than six hundred college graduates with degrees of various types but one thing in common: they were all Negroes. One twenty-two year old Negro was interviewed on his college campus by seven companies, accepted invitations for four plant tours and decided to enter Ford's management program at $625 a month plus many valuable fringe benefits. But the fact remains that most Negroes must start from economic levels that are quite low.

Poverty tends to perpetuate itself as the poverty of parents often limits the opportunities of children and blunts their ambition. In the families of the poor there are 11 million children. They and millions of underemployed young adults are an important segment of the next generation of national life. They

have inherited a bleak and often hopeless outlook. It is among the youth that the greatest effort should be made to break the cycle of poverty and dependency. One of the interesting things about poverty is that relatively few people who are not born in it wind up in it. The problem of retrieving dropouts or retraining adults to a level of economic self-sufficiency is infinitely greater than the problem of preventing new generations of children from joining the lost generations. A program has the greatest chance for lasting effectiveness if it starts with children at the earliest age at which they can be made available. The public school system appears to be the institution which can be most helpful. It is already in existence, recognized as a permanent institution and well accepted in the public mind as having the major training responsibility in the low income areas. Its program can be authoritatively organized so that it does not have to depend on voluntary co-operation for its effectiveness.

For several years, unemployment has stood at the forefront of our nation's major economic and social problems. Although 1963 was a year of excellent economic growth, the disquieting fact remains that it was the sixth consecutive year in which 5.5 per cent or more of our civilian labor force was unemployed. Except for the depression of the 30's there is no other period of 6 years in this century when our rate of unemployment remained so high. In the average week in 1963, 4.2 million Americans seeking work were unemployed. This was 5.7 per cent of our labor force, an unemployment rate considerably higher than that of most industrialized countries.

The failure of the vigorous economic growth in 1963 to bring about a corresponding reduction in the rate of unemployment is accounted for by the fact that the first large group of the postwar baby boom reached working age during the year, resulting in an increase of 1.1 million in the labor force and at the same time technological developments were rapidly increasing productivity and changing the type of skills in demand. The improvement in productivity in 1963 represented the equivalent of almost 2 million jobs. In other words, a growth in employment opportunities of about 3 million jobs would have been required in 1963 in order to offset the increase in the labor force and in productivity and thereby prevent an increase in unemployment. The net increase in employment

actually fell a little short of equaling the growth in the labor force with the result that unemployment increased by 160,000 during the year. Employment of teenagers did not increase at all, so the entire increase in the number of people in this age group in the labor force was translated into unemployment.

When one looks at the structural dislocations resulting from the rapid shifts in the composition of employment in recent years, he is impressed by the fact that the economy has shown a rather high degree of resiliency and adaptability. There is a scarcity of highly educated and skilled labor which is reflected in the large amount of overtime worked by that select group. In contrast, manpower needs are shrinking in declining industries and in those where new machines and methods are replacing workers faster than new jobs are being created by new demand. For example, in the first quarter of 1964 as compared with the first quarter of 1957, output in the motor vehicle industry was up 34 per cent while total employment was down 6 per cent. Textile mills were turning out 23 per cent more goods with 11 per cent fewer people. Nonelectrical machinery output was 21 per cent higher while employment was off 4 per cent. Output of iron and steel was down 9 per cent but employment was down 19 per cent. The drop in agricultural employment in 1963 was slightly greater than the postwar annual average, totaling approximately a quarter of a million jobs which offset more than 20 per cent of the increase in nonfarm jobs. The mining industry, with 634,000 employees in 1963 had one-third fewer workers than in 1947 and only one-half the number employed in 1920. The increase in nonfarm payroll employment in 1963, 1.3 million jobs, was double the average for the preceding five years. Fully four-fifths of the increase occurred in trade, service and state and local government. These movements continue and reinforce major long-term structural changes in the demand for manpower. The proportion of all workers in the goods producing industries (agriculture, mining, manufacturing and construction) declined from 51 per cent in 1947 to 46 per cent in 1957 and to about 40 per cent in 1963. The service-producing sector of the economy has continued to increase its rate of employment growth largely as a result of the expansion of state and local governments which employ some 12 per cent of all nonfarm wage and salary workers but accounted for 25 per cent of the increase in nonfarm employment in 1963. Since greater efforts in the field of

education are of such paramount importance in fighting poverty, it is encouraging to find that over half of the increase in the number of state and local government employees in the decade ending with 1962 was accounted for by expansion in educational services.

The interrelationships between unemployment and poverty are interesting and contain some rather surprising aspects. Under the most commonly used definitions, a majority of the unemployed are not poor and a majority of the poor are not unemployed. Half of the workers who are unemployed are members of families with total incomes of $4,400 or more. Only a third of all families with unemployed heads have incomes under $3,000. These figures provide striking evidence of the temporary nature of most of our unemployment, which averages fourteen to fifteen weeks, and of the effective contributions made by working wives and unemployment insurance. The one-fourth of the poor who qualify as being unemployed, that is, willing and able to work, constitute an elite among the poor. For the most part, they are reasonably literate. They have worked with tools and machinery. A high percentage live in cities where training and job-placement services are available and they are made up largely of people who have known a better life and aspire to return to it. On the other hand, the poor do make up the bulk of the hard core unemployed whose unemployment benefits have expired.

Most poor families must blame their troubles on something other than unemployment. Only about 6 per cent of all poor families are headed by a man or woman who is seeking employment and unable to find it. About 70 per cent of the poor families have at least one income earner and 23 per cent have two or more. In comparison with our four million unemployed, we have seven million men and thirteen million women earning less than $3,000 a year. Obviously, it is not necessary to upgrade all these low-paid jobs in order to eliminate poverty since many are held by individuals with no dependents and others are held by members of families with more than one worker. But for these people, the problem is not lack of jobs but lack of the higher skills and productivity needed to yield a decent income. Of the 9 million poor families, 7 million have no member for whom a job could at present be found that would provide the family with a minimum standard of

living. One can only conclude that the basic approach to eliminating the major cause of poverty must be a program which will help these people acquire marketable skills.

Even though there may be disagreement as to its magnitude, the existence of poverty as a stubborn problem in this country cannot be denied. Well-informed people, however, disagree as to the best way to deal with it. For generations, the elimination of poverty has served as a rallying cry for politicians. Although we already had some 42 federal programs designed to combat poverty at an annual cost of over $30 billion, Walter Heller, Chairman of the Council of Economic Advisers, directed a memorandum to his staff on June 3, 1963 requesting their views on the question, "Specifically, what lines of action might make up a practical Kennedy anti-poverty program in 1964?" Kennedy had long been sensitive to economic problems in Massachusetts resulting largely from industrial migration to the South and during his campaign for the presidency had been exposed in West Virginia to poverty perhaps on a scale and severity that he had never seen before. During the final months of his life, he was showing increasing concern over the problem and on the evening before he left on the fateful trip that terminated in Dallas, Kennedy gave tentative approval to Heller's request to proceed with a poverty program. The day after President Johnson took over, he gave his blessing to Heller's project.

Since the poverty project was docketed as the major area of government expansion in 1964, it is not surprising that a struggle developed over its control. Several departments, notably Labor, and Health, Education and Welfare, had programs either in operation or as proposals before Congress, which they felt were ideally suited to the proposed "War on Poverty." The in-fighting was to a certain extent secret and consequently the details are not known. President Johnson apparently concluded that the program would fare better if disassociated from the established departments and placed under a new agency. On March 16, 1964, he sent to Congress a message on Poverty accompanied by the draft of a bill labeled the "Economic Opportunity Act of 1964." Except for the new name and the new Office of Economic Opportunity, with Sargent Shriver as Director, the poverty program of 1964 consists almost entirely of an extension and amplification of policies

established under previous Administrations. Hearings began on March 17 before a subcommittee of the House Committee on Education and Labor. Division among members of the Committee was strictly along party lines. The program is a natural for Democrats eager to revive some of the zeal of the New Deal days. The Republicans disliked many features of the bill but had some qualms about attacking it for fear of getting hurt on election day. They protested that they were excluded from closed-door Democratic drafting sessions. When the bill was favorably reported by the Committee late in May, all 19 Democrats voted for and all 12 Republicans against it. The ranking Republican member of the Committee, Congressman Frelinghuysen, characterized by columnists Robert S. Allen and Paul Scott as a respected leader of the moderate Republicans, described it as "unnecessary, hastily-conceived, sloppily-drafted and dangerous." He further expressed the opinion that had there not been intense political pressure and urgent commands from the highest level of the Executive Branch, the bill would have been laughed out of Congress. In a letter to the writer dated June 25, 1964, he summarized his position as follows: "I oppose the Administration's program primarily because it creates an unnecessary federal bureau managed by a czar with very vaguely defined and broad powers, and because it duplicates existing federal programs as well as entirely bypassing state and local governments." In contrast, President Johnson, admitting that the program will not, in a few years, eliminate poverty, stated that it will give us the opportunity to test our weapons, try our energy, ideas and imagination and that as conditions change and experience illuminates our difficulties, we will be prepared to modify our strategy. The bill moved from the Committee on Education and Labor to the House Rules Committee where it was lodged until July 28. Consideration of the bill by the Senate was originally delayed by the civil rights filibuster. However, on July 7, the Senate Labor Committee approved it, 13-2, with Senators Goldwater and Tower as the dissenters. The Senate, after recessing for the Republican Convention, gave its approval July 23 by a vote of 62 to 33. Ten Republicans, mostly Easterners, parted company with their party's Presidential candidate and supported the measure.

The vote on the floor of the House was expected to be close. In fact, a week before the vote one of the bill's chief

architects was widely reported to have conceded its defeat. But with a careful mixture of carrot-and-stick techniques, the Administration won a 226 to 184 victory for the bill. Phone calls from the President emphasized its importance to him personally and calls enlisted by the White House from such people as industry lobbyists and defense contractors accented the ramifications of his intense interest in it. One Georgia holdout complained, "I believe I've heard from every guy in my district who's got a Federal contract or owes the Government anything, all telling me to vote for this bill." Voting for the bill were 204 Democrats and 22 Republicans. Voting against it were 144 Republicans and 40 Democrats, most of them Southerners. Tennessee Representatives divided strictly along party lines, the four Democrats from Arkansas divided equally and the Mississippians were solid in their opposition. By a vote of 295 to 117, the House defeated Congressman Frelinghuysen's proposal to shelve the Administration bill in favor of one which he introduced which would have set up a $1.5 billion three-year program, utilizing existing agencies such as the Labor Department and the Department of Health, Education and Welfare which were already engaged in efforts to combat poverty and unemployment.

So far as its financial provisions are concerned, the bill emerged with surprisingly little change. The original request for $962.5 million for the first year was cut by just $15 million in the Senate and no further cut was made in the House. The House did make other changes in the bill, all of which were accepted by the Senate. To allay the fears of Southerners, the Administration agreed to sponsor a House amendment giving governors veto power over all antipoverty projects in their states. The bill was signed by President Johnson on August 20.

On September 22, the House, acting on the recommendation of its Appropriations Committee, voted to reduce the anti-poverty funds from $947.5 million to $750 million for this fiscal year because it doubted that the larger amount could be efficiently spent in such a short period. On October 1, the Senate voted $862 million for the program and the next day a House-Senate Conference set the figure at $800 million. Shriver is authorized to decide which parts of the operation to trim. The amounts allocated to the various parts of the

program in the remainder of this paper are based on the original $947.5 million.

Title I of the Economic Opportunity Act provides for three types of youth programs: Job Corps, Work-Training and Work-Study. In addition, the Act encompasses Community Action Programs, Special Programs to Combat Poverty in Rural Areas, Employment and Investment Incentives, and Work Experience Programs. The Administration decided that public works and measures designed for relief alone should be minimized and effort concentrated on education and programs that increase the ability of the poor to improve their condition. Recognition is accorded the fact that our greatest efforts to break the cycle of poverty and dependence should be centered on the youth.

The Job Corps, an expansion of the Youth Employment Opportunities bill which Senator Humphrey pushed through the Senate but which stalled in the House Rules Committee, is one of the highly controversial features of the Act. It is designed to give employment and work training initially to 40,000 and later to 100,000 young men and women at two types of centers. There will be small conservation camps, largely in national parks, in each of which from 100 to 200 of the most poverty-scarred youths will work and receive remedial education. Larger training centers, accommodating 1,000 or more typically in unused military training camps, will provide vocational training and education to the more adaptable. The Job Corps will be under the direct supervision of the Office of Economic Opportunity at a total cost the first year of $190 million. Mayor Wagner of New York City warns that the young people most in need of the experience offered by the Job Corps will be very hard to reach and even harder to convince that they should enroll. The Department of the Interior states that, by conservative estimate, it has a $15 to $20 billion backlog of conservation work that needs to be done and that such work along with camp operation will provide such skills as automotive repairing, carpentry, construction, equipment operation, cooking, landscaping and tree planting, masonry, truck driving, clerical, typing, woodworking, etc.

Critics of the program express grave doubt that you can take the school dropouts, who are to a certain extent misfits in our economy, and rehabilitate them in the country. They

think it would be much better to give these young people something to do in the city where they are expected to live and to whose environment they must learn to adjust. There is no doubt but that money turned over to the forest rangers and park superintendents would be much more effective in the development of parks, forests, and recreational facilities than money spent on the Job Corps. Local acceptance of youth camps presents something of a problem. A rejection by Yorktown, Virginia is illustrative of the fact that many communities fear an influx of trouble-makers.

Since one can make a strong case for the view that the high rate of unemployment among the unskilled and inexperienced youth, the minorities and the generally less competent, is largely accounted for by the fact that their services have been priced out of the market by minimum wage legislation, there seems to be considerable merit in the proposal that the employment of such labor be either excluded from minimum wage legislation or subsidized, on a restricted basis, either through tax incentives or outright cash subsidies equal to the difference between the true economic value of the labor and the minimum legal rate.

The second or work-training program offers the opportunity for part-time earnings to up to 200,000 young people in locally sponsored and federally financed projects as an inducement for finishing their high school education or to high school dropouts who are not prepared for jobs and who desperately need work experience in order to get a decent start. The close relationship between school dropouts and unemployed youth is all too clear; the unemployment rate among dropouts is consistently twice that of high school graduates. The basic purpose of this program is to provide needy young people with an opportunity to earn money for such basic essentials as clothing, food and school supplies as well as some of the other things normally available to children in more fortunate circumstances. The work-training program, which will be under the direct supervision of the Department of Labor, will provide jobs in public and private nonprofit organizations which would not otherwise be performed. The federal government will pay 90 per cent of the cost the first year budgeted at $150 million and the remainder will be borne by the state or local sponsor.

Many of these young people are reported to be under real pressure to quit school and bring home wages. They must choose, often at age 16, between conflicting duties to family and to their own preparation. For many, it is hoped, a part-time job will solve the problem.

The 1,900 State Employment Offices around the country will have primary responsibility in the process of selection, counselling and referral of young people to the Job Corps and Work-Training programs.

The third youth program, to be administered by the Department of Health, Education and Welfare, at a cost of $72.5 million the first year, provides for the establishment of work-study programs for up to 140,000 college students. It is designed to provide financial assistance through part-time employment for needy students and to provide trained college students for part-time service in education, health, welfare, recreational and similar activities which bear directly on other programs established under the Economic Opportunity Act. On-campus work under this program will include both the service-type job which requires no specialized training and also jobs in areas which do require some degree of training or skill development such as library work and tutoring small groups of students having difficulty in a specific subject area.

The funds are being allocated to the states according to a three-factor formula: one-third on the basis of the relative numbers of students enrolled in colleges and universities on a full-time basis; one-third on the basis of the relative numbers of high school graduates and one-third on the basis of the relative numbers of children under 18 years of age from families with annual incomes of less than $3,000. It is rather interesting to note that under this formula Tennessee and Massachusetts are entitled to almost identical total allotments but whereas over 85 per cent of the Massachusetts allotment is based on the number of high school graduates and college students and less than 15 per cent on the number of children from low income families, over half of the Tennessee allotment is based on the large number of children from low-income families.

The three youth programs combined are designed to provide over 400,000 underprivileged young people an opportunity to develop their skills, continue their education and employ their energies constructively in an attempt to break the cycle of poverty, poor education and unemployment and to prevent today's children of poor families from becoming tomorrow's hard core unemployed or permanent welfare clients. The total cost for the first year is estimated at $412.5 million.

Title II, which deals with urban and rural community action programs apparently developed out of the community action programs sponsored around the country by the Ford Foundation and the President's Committee on Juvenile Delinquency which was run by the Attorney-General and some of his aides. It is designed to enable urban and rural communities to mobilize their resources to combat poverty with the federal government normally paying up to 90 per cent of the cost the first two years and 75 per cent thereafter. The range of programs and projects that may be undertaken by a community is limited only by the needs of the area and the ingenuity of its leaders in developing acceptable ideas and may include such activities as day-care for children between 2 and 6 years of age, intensive instruction in basic educational skills for adults, school health projects, and the use of school buildings as study centers and for academic classes and tutoring during the summer, on weekends, and after school hours. The cost of this part of the program for the first year is estimated at $340 million.

Title III provides $35 million to finance an effort to raise the income and living standards of low-income rural families and migrant agricultural employees and their families. Loans of up to $2,500 for not more than 15 years, administered by the Department of Agriculture, are designed to enable farmers, unable to borrow elsewhere on reasonable terms, to obtain funds to acquire or improve land, help take care of debts, purchase feed, seed or equipment or finance nonagricultural enterprises operated to supplement family income. A program is to be developed to assist states and others to provide housing, sanitation, education and child day-care for migrant farm workers.

Title IV, which is being administered by the Small Business Administration, provides that loans of up to $25,000 may be made or guaranteed for up to 15 years to small business on more liberal terms than is possible under the regular loan

provisions of the Small Business Act. According to the Report of the Senate Labor Committee, "No applicant who is otherwise qualified will be turned away merely because he has no suitable assets on hand to pledge as collateral."

Title V provides $150 million to cover the cost of experimental projects administered by the Department of Health, Education and Welfare, to give work training or experience to unemployed fathers and other needy persons designed to enable them to attain capability for self-support or personal independence. Many of these people do not have the aptitudes and confidence necessary to qualify for programs under the Manpower Development and Training Act. Rather interestingly, representatives of the United States Chamber of Commerce, while in general opposed to the Economic Opportunity Act, supported the objectives of this section.

Finally, Title VI provides $10 million for the administration and coordination of the antipoverty programs. In addition to the Director of the Office of Economic Opportunity, there is a Deputy Director, three Assistant Directors and the usual staff of civil service employees. As a substitute for the Domestic Peace Corps proposed during the Kennedy Administration, provision is made for Volunteers in Service to America who will help establish and run the Job Corps, work in various state and community programs when requested and on existing federal projects. The Vista Volunteers will receive $50 a month plus subsistence allowances.

It is clear that the new law provides an assortment of programs which will enable the federal government to induce large scale local participation in a sweeping attack upon some of the major aspects of poverty. Perhaps most of us have mixed emotions with respect to it. Those who look upon poverty as a strictly personal matter, largely the result of individual negligence, thriftlessness, and general failure to take advantage of existing opportunities, are inclined to think that no action on the part of the government can inculcate the missing and essential qualities and that the poor who want to escape from poverty should expect to do so only through hard work. Others, who stress the idea that poverty is a social problem cutting its victims off from the benefits of our economic life largely because of handicaps such as race, location, or lack of education and em-

ployment opportunities, consider the Economic Opportunity Act as a step in the right direction even though they may have serious questions about the practicability of certain parts of it or of the way in which it is administered. At its best, in harmony with our traditional beliefs that each individual should have the opportunity to develop his talents to the fullest and that our lives find their loftiest meaning in what we can add to the lives of others, this legislation indicates that individually and collectively we do care about a very significant portion of our population which is not only deprived of most of the material comforts of life but is also often stunted in emotional, intellectual and social development and consequently kept from realizing its human potentialities.

THE MEANING OF THE TAX CUT

By McDonald K. Horne, Jr.

Read before *"The Egyptians,"* November 19, 1964

In histories yet to be written of the Great Depression, perhaps the two men most remembered will be a politician, Franklin D. Roosevelt, and an English economist, John Maynard Keynes. The interests of the two converged in the first notable attempt to use deficit spending as a tool for the management of a nation's economy by its government. The experiment failed, but it laid the base for further experiments, which have brought us to the subject of this evening's paper.

With a fair amount of oversimplification, the central idea associated with the name of Keynes is as follows:

(1) If we add together the economic values of all things produced in a country — including all services rendered and all values added by distribution, as well as the contributions of all farms, mines and factories toward production of both capital goods and consumer goods — we have a measure of the country's total output, which is now commonly referred to as the *gross national product* or *GNP*. For every such value produced, there is a corresponding amount of income to the labor, capital or management from which it comes. The key question is: Will the total amount of spending be as great as the income yielded by this total production? If expenditure falls short of production, the result is recession and unemployment.

(2) The income which flows from production must all channel in one of three directions: consumer spending, saving, and taxes. The very term *consumer spending* tells us that this part is spent. But what of the income which is saved? It may be spent or *under*spent or *over*spent, because this is the source from which funds become available for *investment* in such things as factories, stores, inventories, and offices. And what of the income which is channeled into taxes? These funds may also be spent or *under*spent or *over*spent as they are used by governments for all the goods and services which they purchase.

(3) When savings are *under*spent on investment, and recession comes as a result, the Keynesian remedy is to com-

pensate by having the government *over*spend what it receives in taxes. Thus the government moves into the position of consciously controlling the over-all rate of spending in the country and the general level of economic activity.

In this Olympian strategy, there are always two evils to be avoided, standing at opposite poles. One is unemployment. The other is inflation. If the total pull of spending upon production is too weak, we get unemployment. If too strong, inflation.

(We shall use the word *inflation* in the meaning which has been conferred upon it by useage in recent years; namely, *generally rising prices.*)

There are other great factors, besides the governmental budget, which affect the equilibrium between production and spending. In the area of public policy, two in particular should be kept in mind.

One is bank credit, which is subject to a large measure of control by the quasi-governmental Federal Reserve System. The availability and the cost of credit governs many decisions to spend or not to spend.

The other is monopoly, which occurs in many forms and in infinite degrees. Keynes, like the classical economists whom he deprecated, was prone to assume that the economy is an internally fluid organism, whose parts are free to respond in price and output to the force of changing supply and demand. Thus they all thought too much of its grand totality and too little of its sticky parts. Our economy is shot through with bargaining structures and trade practices which hold prices rigid or even raise them in the face of weakening demand. Wages, the biggest cost element of all, have actually shown some tendency to rise in the very face of all our recent recessions. This *un*responsiveness of factor costs, such as wages, to changing demand conditions contributes to both unemployment and inflation.

Thus the two great sources of inflation today are said to be (1) the "demand pull," which means the tendency of spending to out-run production, and (2) the "cost push," which means the tendency of rising costs to be reflected in selling prices.

Traditionally the views of "conservatives" and of "liberals"

about all these matters have fallen into fairly clear patterns. A "conservative" we shall regard as person favoring policies which emphasize individual freedom and initiative and which minimize government interference in the economy, and a "liberal" as one who tends to favor increased government intervention with programs which express the desires and aims of the majority.

People of "conservative" leanings tend to give more serious attention to the importance of stable prices. They recognize unemployment as a serious problem; but they see its main solution in economic growth, spurred by free enterprise, and in the break-up of monopolies which kept the prices of labor and of products too high. "Conservatives" have always tended to oppose deficit spending by governments, especially in periods of high economic activity such as the present. When any broad restraints on spending become necessary, they greatly prefer the monetary to the fiscal route – that is, they prefer the use of credit tightening through the Federal Reserve System.

People of "liberal" leanings, in contrast, tend to take unemployment more seriously, and price stability less seriously, than "conservatives." The "liberals" display a chronic preference for cheap and abundant credit and for strong, tight labor unions, but play down the whole idea that these things are inflationary. They tend to cherish Keynesian thinking because it provides the rationale for direct government intervention. In a time of significant unemployment, the concept of deficit financing shows how to pay for new government programs without new taxes, and helps create jobs in the bargain.

In practice the effort to solve unemployment by "beefing up" the economy never seems to work as well as the "liberals" hope. This, again, is because the economy is not internally fluid. Much employment, especially today, is "structural" in nature; that is, the people involved are too old, too untrained, or too lacking in the particular training and aptitudes required for them to move into the jobs that do become available when the general economy picks up. Still the "liberals" reap other dividends from the effort. They do give the appearance, at least, of trying. They do achieve a deeper penetration of government into fields where they think it should go. And by

"heating up" the economy they do create some prosperity, and to a greater extent they do make people feel prosperous.

When John F. Kennedy, the "liberal," came to power in January 1961, unemployment had grown to 6.8 per cent of the labor force, and there was apprehension that his policies would accelerate the upward trend of prices. The feeling, however, was subject to qualifications.

The new president possessed a keen and highly cultivated mind, and he did not fit neatly into the Rooseveltian pattern of a "liberal." He understood some things that a "liberal" is not supposed to understand. For example he saw the great importance of the deficit in international payments, and brought to this subject an understanding and a deep concern which his successor will do well to emulate.

More basically, the threat of inflation was qualified by the general state of supply and demand. The greatest obstacle to inflation is productive capacity. If a plethora of goods is pouring into the market place, and if the economy is capable and desirous of producing and selling a great deal more, it is not easy for any man or any government to contrive a policy that will cause inflation. By 1961 the world had had 15 years without a general war. As in all such periods of the past, all nations had used this time to rebuild and advance their productive capacities. By 1961 the world prices of most raw commodities had long since begun to sag because of abundant production. By then the fabulous build-up of manufacturing capacity in many countries was bringing new competitive pressure upon industrial markets. The noted economist, Per Jacobsson, viewing the scene from his vantage point as Managing Director of the International Monetary Fund, was saying that the high tide of the postwar inflation had been reached and perhaps passed, and that in the foreseeable future there was even a possibility that deflation would become a problem.

In this country, the message of abundant supplies was impressive. Imports of such things as steel, automobiles, and textiles, were coming onto our market in a rising trend. Our manufacturing plants were operating at only 77 per cent of capacity. Labor unions were showing more inclination to settle for non-inflationary contracts, as the meaning of unemployment and of competition for jobs impressed itself on their members.

To those of us who had lived as adults through the era of Roosevelt, there seemed to be some things worth remembering. Roosevelt had felt no qualms about inflation in the 1930's. He would have welcomed more of it. He had had great concern for unemployment. He embraced Keynes and plunged into deficit spending. Even in the 1930's, he doubled the federal budget and added 30 billions to the federal debt.

The record insists, however, that in the years before World War II, Roosevelt's use of the Keynesian thesis was not a success. It did not stimulate the economy as expected. As for the unemployed, there were still 9½ million of them as late as 1939 – only 3 million less than when Hoover had handed over the reins. Roosevelt did not even succeed very well in the dubious objective of raising prices. At no time throughout the 1930's did consumer prices rise nearly as high as they had been in the lowest year of the previous decade. Roosevelt never ended the Great Depression. He undoubtedly prolonged it. War, and only war, ended it.

What was wrong? The effect of deficit spending by the federal government cannot be measured simply in the figures on the government's income and outgo. It is also essential to note the effect of the government's actions upon decision-makers in the rest of the economy. The fact is that Roosevelt, in spending money directly out of the federal treasury on new and controversial programs, carried on a running war with private business. He frightened away investment by the private sector of the economy. In the decade ending with 1939, the annual rate of federal government spending increased nearly 5 billion dollars, but that of business investment declined nearly 7 billion.

So at the first of 1961, it seemed apparent to some at least, that the force of rising production capacity in the world was strong enough to check inflation and that the Keynesian idea of offsetting this development with a great recourse to deficit spending by the government would fail if it should be tried.

President Kennedy, *in fields which interested him,* brought to his service men who, if nothing else, had intellectual grasp and imagination. Such a man was Walter Heller, whom he

chose for chairman of his Council of Economic Advisers. It is not at all remarkable that Heller, given the strong leftward bent of his own philosophy, quickly saw the new and timely possibilities of a substantial reduction in federal income tax rates.

The idea was not new. It had been used with some success in Western Europe and Japan. It had been often proposed in recent years as the better way to achieve the ends of deficit spending. The old approach had been to increase the total expenditures of the economy by having the government spend more without taxing more. Why not try to get the same effect by having the government tax less while spending just as much? The reduced taxes would mean greater disposable income, or spending power, in the hands of private individuals and businesses. While part of this new spending power would be saved, the greater part of it would be spent on consumer goods and services, and on new investment.

By early 1962 this idea was beginning to be pushed by the Administration, but the first reactions were scarcely favorable. It flew in the face of some deeply imbedded principles and feelings. The rank and file of Americans, mainly because of experience in the 1940's and early '50's, had become inflation-conscious. In many minds, inflation was associated with the federal debt and the federal budget – and why shouldn't it be? The great inflation of the war period had assuredly been caused by the deficit spending of the government. The cost of waging war had made this virtually inevitable. As for the proposal of an increased federal deficit in the 1960's, this might be arguable in the event of serious recession; but in a time of high economic activity it seemed indefensible. Not even Keynes had favored such a thing; in fact, he seemed to have been diametrically opposed to it.

To some people, including this writer, it seemed inconceivable that the country's business leaders, and especially its financial leaders, would abandon conservative tradition and throw their weight behind deficit spending in a time of record prosperity. Yet they did, in large numbers. What was remarkable about the achievement of Heller and his associates was their success in selling the idea to business people. Even the American Bankers Association and the U. S. Chamber of Commerce came out in favor of the tax cut. They attached pious

conditions that government spending must also be reduced, but nobody heard them. What the country heard was what every realist knew it would hear: Business favored the tax cut. After this it was clear that the balance of political power had shifted on this issue. When Lyndon Johnson took over the White House and gave this measure top priority, its passage was assured.

The Revenue Act of 1964 was signed by the President on February 26. It carries a broad revision of income tax law. Advertised in its earlier stages as a bill that would simplify the tax provisions, the final product is at least as bewildering to the average John Doe as its predecessors. The common taxpayer, who had struggled for years to learn the rules of the game and to live and plan by them, now finds the rules greatly changed. Many exemptions and deductions which had come to be important to him, have been reduced or removed. All these features, however, are subordinate to the main point of the Act.

According to the Treasury Department's estimate, the net effect of the Act with no change in incomes would be to cut income taxes about 11-1/2 billion dollars. The net reduction for individuals would be 9.2 billions, coming in two steps, in 1964 and 1965. The tax withholding provisions were adjusted in March of this year by the full amount. The estimated net reduction for corporations would be 2.3 billions, coming likewise by steps in 1964 and 1965.

The meaning of the tax cut springs from several considerations which in their total effect make it quite different from anything that we have experienced before.

First there is a simple matter of numbers. The year before Roosevelt took office, the budget receipts of the federal government were less than 2 billion dollars. The year before Kennedy took office, they were nearly 78 billions. In Roosevelt's day, the only important way to run a deficit was by increased spending. Through subsequent years, the government had grown so explosively that now there was a tremendous alternative way to run a deficit – by reduced taxing.

Second: Business had feared and hated Roosevelt's increased spending; but the more it pondered and observed, the more it liked Kennedy's and Johnson's reduced taxing. There-

fore business, far from reducing investment and thus cancelling out the effect of this action upon the total volume of spending, stepped up its own investment programs in response to it. Partially responsible was the investment tax credit, which came as a fore-runner to the general cut. But perhaps most of the credit is due to the broad surge of prosperity and optimism generated by the income tax reduction, before and after its passage.

A net increase in spending is supposed to have a "multiplier" effect: Spending begets further spending. Government spending failed to work this way in the 1930's because it was offset by discouragement of business spending; but there is strong evidence that the "multiplier" is at work today, and the whole economy is being stimulated.

Third: Thus far the tax cut is very popular. Few critics are heard today. The reasons are not far to seek. There is something in it for nearly everybody.

It is conceivable that revisions in the law will cause a net increase in the taxes of a few isolated individuals, but any such cases will be rare. In the two-year reduction of individual taxes, the lowest bracket rate drops from 20 to 14 per cent, the highest from 90 to 71 per cent. Much of the benefit is naturally concentrated in the lower income groups. Those of us in the middle brackets get the slimmest concessions; but even we, as we labor to figure out what all the changes will mean to us in our individual cases, are generally relieved and pleased to learn that we, too, have cut a nice little melon. As for the gentlemen in the big income class, many thousands of them apparently find that their own personal after-tax incomes have been more than doubled – (and it seems unlikely that this point has been lost on them in their meditations about the merits of the whole business.)

The American people are enjoying the longest period of strong and rising prosperity in their peace-time history. Real per capita income is the highest ever. Retail sales are 8 per cent above a year ago. Dividends are up nearly 12 per cent for the same period—corporate profits perhaps more. Business investment in 1964 is expected to total 14 per cent more than the previous year, and plans have been indicated for another large increase in 1965. All these recent gains have occurred

after the rising phase of the business cycle had already continued beyond the average time for a down-turn. As for the chief cause, there appears to be no plausible answer except the pervasive effects of the tax cut.

The salesmen for the tax cut were too clever to call it a deliberate program of increased deficit spending. Instead they contended that the increased income resulting from this new stimulant would yield as much tax revenue and eventually more, even at the lower rates, than the government had received before. The remarkable thing is that events down to now have come close to bearing them out. And if the economy should continue expanding, it is even quite possible that within a few years there will indeed be a surplus, even at the present tax rates, as they predicted. (Of course the joker here is that by then the tax rates are expected to have been cut further.)

Some of the best economists, even among those of a conservative stripe, look with favor on the tax cut, and speak of the "drag" on the economy which threatened to become increasingly severe if the former rates had not been reduced.

Few if any politicians, even in the Republican camp, have found much fault with the idea. Mr. Eisenhower declared himself in general approval fairly early in the debate. Even Senator Goldwater failed to give us much of a "choice" on this issue, since he announced himself in favor of additional cuts of 5 per cent per year for the next five years.

Of all the arguments in favor of the tax cut, the thinnest by far seems to be that it will somehow force a reduction in the size and scope of federal government activities. Countless advocates of the cut (including Goldwater) have attached the proviso that government spending must at the same time be reduced, but how many of them were naive enough to think that the proviso would have much practical effect? The very point of the tax reduction is to create a federal deficit, for the effect that it will have upon the economy. President Johnson symbolized the attitude of the Administration when he ceremoniously turned off some lights in the White House and then demanded salary increases of some $750 million for government employees, along with the poverty bill, Medicare, Appalachia, a vast new spending program on city transportation, and so on and on.

Yet there is even some substance to the notion that the tax cut will retard government expansion. It does offer a way to steam up the economy by increasing the federal deficit without new government spending. It is indeed likely that to some degree the expansion of federal programs will be slowed down by this development, though it is most unlikely to be stopped.

So to repeat, the tax cut has many appeals, and they include something for everybody. It is tremendously popular.

The fourth point flows inevitably from the other three: There is more where this came from. For the next session of Congress, a major reduction in federal excise taxes has already been endorsed by the Administration. Whenever the next down-turn of general business arrives, if it is serious at all, the executive and legislative branches apparently will move with much greater haste than last time to institute another general income tax cut. Meantime one of the government's "task forces" is studying how best to expedite this process by making the Congressional response as automatic as possible.

The tax cut has been on the books less than nine months, and no one could safely assess its full meaning within so short a time. It already seems apparent however, that some of the broad implications for the future are important.

We must now reckon with the fact that the Keynesian theory, dressed in some new trappings, has been working successfully for the first time in our national experience. It failed in the 1930's. The war-time policy was not Keynesian at all. In the postwar years down to 1961, deficit spending was practiced in a slip-shod way, but never accepted as a conscious and desirable means of managing the economy. Only recently has this been done again, and the results are impressive. A victory has been scored for the heady exponents of government planning. None of us, however conservative, would be wise to ignore this fact. Rather we should study its meaning for the future.

The meaning is not all bad. The struggle for human freedom is not lost. Keynes himself was not a socialist or a demon. He was an economic analyst — one of the many who have built and refined the theory associated with his name. He and most of his followers have conceived of it as a means

to fight depressions, to prime the pump of free investment, and to keep private enterprise going.

The recent experience carries added proof, for all to see, that we cannot make jobs for all the unemployed simply by steaming up the economy as a whole. Despite the general business strength of recent months, unemployment in September was only three-tenths of a percentage point below the level of one year earlier (5.2 per cent of the labor force against 5.5 per cent). In this field, fiscal policy is no match for the rising trend of automation. The main answers here can only come from sensible adjustments within the internal structure of our economy.

In fairness it must be remembered that the thinking of Keynesians about unemployment goes beyond the number of people who are out of jobs. There is also the question of employment for our productive capital. If we reduce the average percentage of idle capacity by maintaining production at a higher level, we improve the real incomes of the people and also the incentive of free enterprise to invest more heavily in expanded capacity. In recent years there has been a rising concern about our country's rate of economic growth. If the tax cut encourages private domestic investment, it will contribute to this growth in the future.

It surely will not end the business cycle. Although the salesmen for the tax cut pictured it as a means of staving off the next recession, their performance in this respect has afforded some comic relief. The measure enacted last February had been first advocated as a means of preventing a recession that was predicted to occur back in the year 1963. Yet 1963 came and went without either the tax cut or the recession. Business forecasting is not good enough, and Congress is not efficient enough, for future tax reductions to be timed in such a way as to come when they are most needed to avert recessions.

It is more likely that the seriousness of recessions will tend to be moderated by the knowledge that Congress may start moving toward a further tax cut whenever a downturn occurs. Business declines may be minimized and recovery phases prolonged by the general attitude of bullishness or optimism thus engendered.

While the threat of deep recession is smaller, the threat of inflation is decidedly greater than before.

Thus far in the Kennedy-Johnson Administration it can be boasted that the average rate of increase in consumer prices has been slightly less than in the eight preceding Eisenhower years, which in turn had had the stablest prices for a generation. But just now we may be at the threshold of the most serious pick-up in prices since the Korean War. The build-up of demand and of profits has inspired the labor unions with a new zeal to get wage increases far exceeding the rise in labor productivity. The automobile increase, costing some 5 per cent annually, is expected to bring cumulative additions to other wages all over the face of the economy. The "demand pull" is feeding the "cost push."

Four years ago it seemed unlikely that the men who run our government would have the power much longer to make total spending outpush total production at this stage of our economic history. Today the betting odds have been substantially changed by the success of the tax cut experiment. Inflation, possibly at an accelerated rate, is a real possibility for at least a few years ahead.

It would take a rash man, even now, to attempt an opinion for more than the next few years. For there is still a mighty counter-force to inflation which is building up steam in many parts of the world. The miracles of production which can be achieved through modern technology and capital may even yet, in the course of the years, become too strong for all the inflationary forces that have yet become apparent. The tax cut itself is fueling this force with the stepped-up rate of capital investment. If the world is spared long enough from a general war, we may yet return to the situation which Jacobsson foresaw in 1961.

In the meantime, serious inflation can be avoided *if* deficit spending is held in reasonable restraint, *if* competition in all fields is encouraged as the basic answer to the "cost push," and *if* private lending is held in judicious bounds by the Federal Reserve System. These things can be done, but will they?

Not unless the "liberals" change their spots.

A NEW LOOK AT EAST-WEST TRADE

Rudi E. Scheidt

Read Before "The Egyptians," December 17, 1964

Approximately one year ago today I returned from an extensive four week trip, mostly by train, through Hungary, Rumania, Bulgaria, Czechoslovakia and Poland. This trip, of all those I have taken, was without a doubt the most surprising, interesting, unexpected, and stimulating. It is some of the experiences gathered from this trip and the many subsequent personal contacts with people from Eastern Europe that I want to share with you tonight.

The trip was most surprising since despite extensive preparatory reading, almost everything was quite contrary to expectations. It was shocking to me then, as it is now, how little is known or reported to the American people of the actual conditions, life, and thought of Eastern Europe. If you will forgive me, I will begin with a few personal experiences and reactions which will perhaps begin to illustrate what I am talking about.

My entry behind the so-called Iron Curtain was by train from Vienna to Budapest and I can only describe myself as one who boarded the train with shaky knees and somewhat concerned foreboding. Perhaps my first surprise was to find the train full of Hungarians returning home from short visits to Vienna. About two hours out of Vienna we came to the Hungarian border and my heart sank somewhat when the Hungarian border guards and Customs officials requested my passport. This they took for checking and did not return it to me until an hour later. Believe me, this was one of the longest hours I have ever spent on any trip anywhere, since I could already visualize my passport being seized by the authorities with worse difficulties to follow.

I arrived in Budapest and was taken to my hotel and there my surprises really started. As I checked into my hotel I found on the counter the Paris edition of the New York Herald Tribune, the latest London newspapers, as well as those from most major Western European cities. I was taken

to my hotel room and found there a radio equipped with short-wave which I immediately tried out and found that I could receive all bands including the Voice of America without jamming. I also found in my hotel room a little card that indicated telex service was available in the hotel. To those of you unfamiliar with what telex is, it is a two-way typewritten conversation similar to a telephone conversation. Most businesses conduct their inter-city and inter-country business transactions via the telex. I immediately went downstairs into the telex room, contacted Memphis, and carried on a conversation informing my home office that I had arrived safely in Budapest. We freely conversed back and forth. Every hotel and business office in all of the countries I visited in Eastern Europe was equipped with telex service. From each of these countries I freely telexed my office and engaged in conversation, including cotton code, without any interference whatsoever. Contact between these cities and Memphis was usually established in but a very few minutes.

After contacting home, and still with some fear and trepidation, I ventured forth into the hotel lobby. Much to my surprise again, I found there large numbers of West German, British, French, Scandinavian, Israeli, and even Indian businessmen. As it was nearing evening, I somewhat hesitantly proceeded out onto the street. It was crowded with shoppers and people engaged in social conversation. The first shop next to the hotel happened to be a radio and television store very similar to many with which we are familiar. The store was well stocked with radios (all of which were equipped with short-wave), and television sets, costing about $200 when converted into American currency; this is, however, two to three times as expensive as American television sets when the price is related to the prevailing wage levels. Even more surprising to me, however, was the fact that people were purchasing these "luxuries."

Next door to the radio/television shop was a delicatessen, similar to many you would find here, except I must confess that the Hungarian delicatessens exhibited larger varieties and better quality food than even those in New York City. After this short look-see around I returned to my hotel for a truly sumptious meal after which I went to a Hungarian night club with two West German businessmen. There we watched

the local populace do the twist and enjoyed an elaborate floor show (including of all things a few strip tease acts). The opera and theater performances which I attended on subsequent evenings were frankly much more enjoyable, however. Nonetheless, it suffices to say that there are numerous bars with orchestras in Budapest where people do the modern dances, including the twist. There is even a rather famous late evening spot that is known all over Budapest and whose chief attraction was reported to be an exceptional selection of "B" girls.

What I am trying to describe to you is life in Budapest, so that you can see that it is much the same as it is in any other large city of the world. The awesome restrictions of tyranny and fear were not evident among the people I saw and with whom I talked. After the first few days, I began to feel that what was once the Iron Curtain was now only a corroded vestige of its former self. There remains perhaps a curtain, but no iron to make it forcefully effective. This I found to be generally true of all the countries I visited. It was quite obvious that the tyrannical days are gone; that the personal freedoms for which the 1956 Hungarian Freedom fighters gave their lives have largely been attained.

While there is still little or no political freedom, certainly life behind the Iron Curtain has become much more tolerable, living standards have been rising, and slowly their way of life is approaching that of the Western European. Perhaps most indicative of this situation are the statements of the people: the Hungarian who said, "But, look how much more freedom we have now," the Rumanians who take such pride in their recent break with the Soviet Union and freely express their desire to have economic independence and develop their own manufacturing industry. Russian is no longer compulsory in the Rumanian school system. This new spirit is further attested to by the many people in Poland who went to great length to point out to me how much better things are now; and by the Rumanian television and radio factories being built by the Japanese, the plumbing and house supply plants being engineered and operated by the British, the tremendous petrochemical plants being engineered by the French. I must also mention the West German buyer of Rumanian tractors, the Indian in Warsaw buying and selling machine tools, the Is-

raeli delegation on a bi-lateral trade mission and yes, the British computer technician servicing British computers which were doing the State planning in Czechoslovakia. Further affirming this trend are the 75,000 West European and Scandinavian tourists who visited the Rumanian Black Sea resort of Mamaia; then there are the old cities – Budapest and Prague – resplendent in that unique beauty of past history; contrasted with Bucharest and Warsaw – the new cities resplendent with modern architecture in addition to their rebuilt sections which are exact replicas of their past architectural magnificence.

All of this is summed up in the feeling of national pride the people have: Pride in their history, in their own national development: Pride in their heritage rather than in any allegiance to an outside nation. Everywhere you find a keen interest in the material things – particularly from the Western world – such as the college student on the train from Budapest to Bucharest whose first question to me upon learning that I was an American was, "Is it true that you really have color television?" Speaking of television, words cannot fully describe the emotions I felt while watching the John Kennedy funeral procession on Rumanian television. I saw it direct via Telstar on a set placed in the hotel lobby so that hotel visitors as well as employees could watch. These are the changes in attitude which exemplify the rapid corrosion of the Iron Curtain and which have made possible the new era – referred to by many as polycentrism.

Polycentrism

Polycentrism is the emergence of a plurality of independent or partially independent centers of political authority within the Communist Bloc replacing the extreme concentration of power in Moscow and the Soviet Union. It is the force which allows considerable variation and evolution in the relations between various Communist countries and the non-Communist world. It permits the various Communist countries to shape their own internal economic and social institutions along more liberal lines, or at least along individualistic lines. They can, and have, eased the restraints on all forms of contacts and dealings between their citizens and people in the non-Communist countries. It is this force which allows

them to resist, as the Rumanians have done, the efforts to pull them into a tight, rigidly exclusive trading association with other Communist countries and which has further enabled them to insist on the right to expand their trade with the non-Communist world to the extent that it can become an important element in their economic development. Polycentrism is that within the Communist world today that gives the satellite countries "a choice not an echo."

There are, of course, at this time some severe limitations to polycentrism, particularly as it applies to the satellite regimes of Eastern Europe. The first is that government leaders cannot renounce the Socialist/Marxist philosophy since indeed this would be political suicide. The second limitation is that imposed by military alliances. Polycentrism could, however, if properly encouraged by the Western world, help de-emphasize the military factor so that it would not stand in the way of a political rapproachment between Eastern Europe and her Western neighbors.

George Kennan has written several papers on the subject of polycentrism. I should like to recommend to you particularly his book "On Dealing with the Communist World." Mr. Kennan's writings have served as background material in the preparation of this paper. He explicitly points out the choices that face the West with regard to polycentrism, as follows:

> "Whether to promote a trend toward further polycentrism, in the hope that there might prove to be a portion of the Communist world with which one could, in the long run, contrive to live, and that living with it and encouraging it to see advantages in a situation of coexistence might tend at least to narrow the area and power of that other portion with which one could not live, or could not *yet* live; or whether to discourage that trend, on the theory that a differentiation of outlook and authority among Communist powers does not materially affect their status as a threat to the security of the Western peoples, and that the impression of such a differentiation serves merely to disorient and demoralize Western resistance to the phenomenon of world Communism as a whole."

It is very likely that Western policy with regard to polycentrism can be the major deciding factor between war or peace, survival or defeat for our political system in our time. Certainly that part of the Communist Bloc that I visited has shown its ready acceptance of polycentrism. Nationalistic interests and historical ties are achieving ever more importance and each of these countries is making a sincere effort to develop their nation along their own individualistic lines. If by following a policy of encouraging polycentrism we can dilute the influence of Soviet Communism, and negate the desire for Communistic/Socialistic expansion of their philosophies, and if, by promoting polycentrism we can renew the faith and hope of the millions of people in the Communist Bloc; then indeed it appears that we must exploit this opportunity presented to us. One of the easiest, most obvious, and perhaps best starting points is a renewed interest in East/West trade. Let us then take a factual look at the status of Soviet Bloc trade with the West today.

East/West Trade

Soviet Bloc foreign trade, both with each other and with the free world, is remarkably small. Today the Soviet Union's exports total only around $7 billion annually, more than 70% of which goes to other Communist countries. The Soviet Union's total exports represent 2.5% of her gross national product as against an average of 20% for Western Europe, 10% for Japan, and 4% for the United States. Furthermore, the major part of the Soviet Bloc's East/West trade is with Western Europe and Japan, and *not* with the United States. In 1962, for example, the total free world exports to the Soviet Bloc amounted to $4.1 billion; of which West Germany supplied about $535 million, followed by the United Kingdom with $393 million, Japan – $303 million, and Italy – $261 million. The United States on the other hand sold a mere $168 million to the entire Soviet Bloc in 1962.

It is of further interest to note that United States exports to the Soviet Union and the Soviet Bloc as a whole are much below historic levels.

In 1930 for example, U. S. exports to the Soviet Union were 114 million – 2.9% of the total U. S. exports – while

in 1962, they amounted to only 15 million, which is less than .07% of the total U. S. exports. Appended hereto are three tables indicating the history of trade between the United States and Russia, and also tables detailing exports to and imports from the Soviet Bloc in terms of destination/origin, including the type of goods traded. These tables were prepared by the Economic Research Division of the Chase Manhattan Bank. The President of this bank, Mr. David Rockefeller, has been in the forefront of this subject of East/West trade and his approach to its solution has had a profound influence on the thoughts expressed in this paper.

There are many reasons for the small volume of East/West trade, but probably the most basic is the lack of hard currency available to the Soviet Bloc for trade. The volume of Soviet Bloc exports into the United States has been very small indeed, largely due to our ample supply of raw materials which are generally less expensive than imports from the Soviet Bloc.

Another major reason for the small volume of United States/Soviet Bloc trade is that imports into the United States must scale the very high tariffs established by the Smoot-Hawley Act of 1930 because Congress directed the President to withhold from Soviet countries all tariff reductions negotiated under the Reciprocal Trade Agreements Act of 1934. Apart from trade, gold exports and trade credits are the other possible Soviet sources of exchange, and both of these sources are limited. Soviet gold production has been estimated to run at no more than $250 million, hardly enough to reduce the Soviet's dependence on Western export markets.

Another factor contributing to the small volume of East/-West trade is, obviously, the restrictions imposed due to our political hostilities. Out of security considerations and as a punitive measure, various United States laws both restrict exports to the Soviet Bloc and discriminate against Soviet imports. With regard to export controls, the most important are those imposed by the Export Control Act of 1949. Under it, the President is authorized to control the export of commodities in order to "further the foreign policy of the United States and to aid in fulfilling its international responsibilities." The major limitation of the control system established by this Act is the "positive list." In the sometimes strange terminology of

government, this is actually a negative list. It enumerates approximately 1000 items which are considered strategic and which Americans may not send even to other Western nations without guarantees against trans-shipment to the East. This list is continually adjusted by the Department of Commerce to include all goods which may strengthen the Communist Bloc's military and industrial mobilization base.

With regard to sales by our Western allies to the Soviet Bloc, in the atmosphere of the 1948 Berlin Blockade the United States was able to reach agreement with them to establish COCOM (Coordinating Committee) to restrict exports to the East. Two years later, during the Korean War, the NATO countries agreed on tightening COCOM's strategic list, bringing it close to a general embargo of industrial and raw materials to the Soviet world.

Since 1954, however, COCOM's strategic list has been watered down continually with the result that today it differs materially from the U. S. "positive list." The current COCOM list is limited to items which are likely to be used even in peace time for military and industrial production. Besides armaments, the COCOM list, as well as the "positive list," includes sophisticated electronics, special metals, atomic materials, and the like. Many "positive list" items, however, are *not* on the COCOM list; for example – such basic industrial products as steel pipe and machine tools, complete factories for steel and chemical production, and such heavy items as cranes and earth-moving equipment. Without a doubt, this divergence between the international COCOM list and the U. S. "positive list" has put American exporters at a relative disadvantage to their Western allies. The dilemma imposed by the double standard is heightened by the fact that the U. S. State Department has not been able to get the COCOM members to agree to the United States' concept of strategic goods as embodied in the "positive list."

A recent instance which led to somewhat unpleasant diplomatic tussles among Western nations will illustrate this problem. The United States insisted that West Germany stop shipments of steel pipe to the Soviet Union on the ground that a Soviet petroleum pipe line system would greatly enhance the Soviet Bloc military potential. Although Germany

went along with this U. S. request and stopped deliveries, the United Kingdom did not agree and continued the sale of steel pipe. This, together with shipments from Sweden, who is not a member of COCOM, provided sufficient supply for the Soviet orders.

It is obviously apparent that among the Western allies, the subject of East/West trade is currently accompanied by no small degree of friction due to our divergence of policies with regard to trade restrictions. This divergence is not likely to lessen; particularly with regard to the Soviet Bloc's recent desire for extended fiscal credits.

This then is the current factual status with regard to East/West trade. One major conclusion is rather obvious, however, namely that with regard to East/West trade, it must be recognized that the overriding consideration is political and *not* economic. This is especially true for the United States where the economic dimensions are entirely of a secondary order, and where they would still be of a secondary order if trade were increased tenfold. Even for Western Europe where the economic impact is larger than it is for the United States, the most important aspect is really the effect trade will have on the future orientation of the policies of the Eastern European countries and on their relation with one another, and particularly, with the Soviet Union. The problem of East/West trade is a political problem and must be approached as such.

I might add here as a sidelight, that not only is East/West trade not a predominately economic problem, but judging from personal experience, I question whether or not the profit motive of the Western businessman is really a basic factor. In dealing with the Soviet Bloc countries, the purchasing agent is generally one large government monopoly. You can well imagine the advantage such a large government monopoly has in trading with five, six, seven, or more Western business firms and playing one off against another. Whereas Soviet Bloc orders usually are sizeable, it is very questionable because of the tremendous bargaining power and the bureaucratic red tape of the buyers, whether profits for the Western businessman are significantly large. In one recent cotton transaction, five Western businessmen, representing five different American firms visited one of these government purchasing organiza-

tions during one week, were put up in different hotels, and business dates were so arranged that none of them knew that the other was in the city at the same time figuring on the same business. What's more – if they had gotten together and compared notes, they probably would have been in violation of some United States law.

Let us then look at some suggestions with regard to East/West trade in general and a U. S. trade policy. It is quite apparent that a revised, aggressive policy of East/West trade, particularly trade with the so-called Eastern European satellites would encourage polycentrism. Increased East/West trade would undoubtedly mean more East/West contact–more knowledge of one another – which would in turn serve to lessen many mutual fears. Trade may well be the starting point in achieving an understanding which could result in a peaceful relationship between East and West which ultimately could lead to a dilution of the expansionary ideologies of Soviet Communism.

Trade is the obvious place to begin active encouragement of polycentrism since the rules of trade are generally well defined and therefore are not subject to broad areas of misinterpretation and disagreement, as is so typical of other suggested approaches to East/West understanding. In view of the conclusion that the approach to East/West trade involves political rather than economic factors, it might be well to recognize that while trade and political concessions are not likely to be achieved simultaneously, historically there is a pattern of trade discussions leading to political dealings.

The first step in a more liberal approach to East/West trade is to come to a basic agreement with our Western allies so that we can develop a common policy. A more liberal approach on our part would heal some of the wounds resulting from our present policy differences. Such an agreement, and East/West trade must, however, be on a realistic trade basis as opposed to governmental aid . . . on a basis of value for value received – not a one-sided arrangement of specialized favors such as long term credits, grants, aids, etc. Any trade liberalization must take into account the fact that we are dealing with politically hostile regimes and must include appropriate restrictions so that trade will not improve the Soviet Bloc's military potential. It should also be noted that the Soviet

Bloc today is dealing from a limited availability of hard currency. It can only be concluded therefore that any hard currency spent on peaceful trade is hard currency not spent on subversive activities outside the Soviet Bloc.

To be truly effective any policy for increased East/West trade should be preceded by presenting to the American people a more complete and factual picture of life and conditions within the Soviet Bloc. A policy of increased East/West trade must have the support of American public opinion to be of real significance and only a knowledge of the facts will remove the emotional overtones that are currently prevalent, not only in many sections of the country, but also in the halls of Congress.

Any Congressional action effecting East/West trade should be such as to leave the Executive Branch of the Government with enough flexibility of approach to discriminate intelligently. A partial such policy in recent years has resulted in Poland settling all of her old financial debts, in Hungarian feelers to do likewise in the near future, and in the Rumanian/United States trade agreement of last June. It is not too optimistic to assume that perhaps even the Soviet Union might be induced to settle her post World War II lend-lease debts if mutually beneficial trade arrangements could be negotiated.

Now is the time to explore fully the opportunities for increased East/West trade through sincere efforts by both sides to work out the difficulties involved and find a mutuality of interests. If the results are improved prospects for peace and an enhanced position for the various countries in the Soviet Bloc, then indeed the efforts will have been well rewarded.

A little over a year ago I went to Eastern Europe at the invitation of the Hungarian government cotton purchasing agency and with the encouragement of the U. S. Department of State and several members of Congress. I left Memphis with a great deal of doubt, hesitancy, and concern regarding the desirability of East/West trade. What I saw on my trip and subsequent contact and study have convinced me that liberalized East/West trade is in our best interest. I hope that in this paper perhaps I have interested you in this subject and you will conclude likewise.

TRADE BETWEEN THE UNITED STATES & RUSSIA

	U. S. Imports from Russia (Millions)	U. S. Exports to Russia (Millions)	U. S. Exports to Russia as a Percent of Total Exports
1895	$ 3.6	$ 6.0	0.74
1900	7.3	7.4	0.50
1904	11.8	19.1	1.32
1930	24.4	114.4	2.98
1935	17.7	24.7	1.08
1940	20.8	86.9	2.16
1945	58.7	1,836.4*	11.28
1950	38.3	0.8	0.008
1955	17.1	0.3	0.002
1960	22.6	38.4	0.187
1962	16.2	15.3	0.071

*Lend-Lease

Source: Economic Research Division, Chase Manhattan Bank, N. Y.

EXPORTS TO SINO-SOVIET BLOC

(Million U. S. Dollars)

January 1 — June 30, 1963 at Annual Rate

	Soviet Union	China	Poland	Czecho-slovakia	Rumania	Bulgaria	Hungary	East Germany	Total
Great Britain	168.2	24.8	90.0	26.2	37.2	6.0	21.6	17.2	391.2
West Germany	155.0	17.2	60.2	45.2	76.2	18.8	59.6	175.0	607.2
France	81.6	81.4	32.8	25.4	17.4	9.2	38.4	15.6	311.8
Italy	123.6	29.2	33.2	19.2	45.8	18.6	27.0	11.4	308.0
Belgium	12.6	9.2	8.6	14.2	6.6	5.2	8.0	12.6	77.0
Netherlands	25.2	14.4	10.4	8.4	4.8	1.4	12.8	12.4	89.8
Norway	9.6	3.8	8.8	9.2	0.4	1.0	3.0	8.8	44.6
Sweden	58.0	1.8	26.4	11.8	6.2	2.0	7.0	29.6	142.8
Denmark	37.2	0.4	28.6	7.4	1.4	1.4	3.6	19.4	99.4
Austria	54.0	—	19.4	24.2	15.0	14.4	39.4	18.8	185.2
Switzerland	6.6	2.6	9.6	10.6	12.4	2.8	8.2	5.4	58.2
Total Europe	731.6	184.8	318.0	201.8	223.4	80.8	228.6	326.2	2,315.2
United States	15.2	—	136.5	7.2	.8	.1	4.8	3.8	168.4
TOTAL	746.8	184.8	464.5	209.0	224.2	80.9	233.4	330.0	2,483.6

Source: Economic Research Division, Chase Manhattan Bank, N. Y.

FREE WORLD TRADE WITH THE SOVIET UNION AND ITS EUROPEAN SATELLITES IN 1962

(Million U. S. Dollars)

	USSR	Satellites	Total	%
Total Exports	1,770	2,321	4,089	100
of which				
Food, Bev., & Tobacco	175	407	582	14.2
Raw Materials	429	531	960	23.4
Mineral Fuels	1	17	18	.4
Fats & Oils	17	37	54	1.3
Chemicals	61	183	244	6.0
Manufactured Goods	475	607	1,082	26.5
Machinery	427	410	837	20.5
Transport Equipment	160	73	233	5.7
Other	23	56	79	1.9
Total Imports	1,753	2,320	4,075	100
of which				
Food, Bev., & Tobacco	219	574	793	19.5
Raw Materials	437	254	691	16.9
Mineral Fuels	500	343	843	20.7
Fats & Oils	9	17	26	.6
Chemicals	52	163	215	5.2
Manufactured Goods	316	533	849	20.8
Machinery	131	224	355	8.7
Transport Equipment	31	59	90	2.2
Other	60	153	213	5.2

Source: Economic Research Division, Chase Manhattan Bank, N. Y.

IMPORTS FROM SINO-SIVIET BLOC

(Million U. S. Dollars)

January 1 — June 30, 1963 at Annual Rate

	Soviet Union	China	Poland	Czecho-slovakia	Rumania	Bulgaria	Hungary	East Germany	Total
Great Britain	193.2	53.4	100.2	26.4	21.4	10.0	12.8	21.6	439.0
West Germany	202.8	39.4	66.2	62.0	52.8	28.4	47.6	235.6	734.8
France	119.4	21.4	20.8	15.6	38.4	15.2	10.0	9.2	250.0
Italy	174.2	17.2	50.2	33.4	54.8	30.2	49.6	12.8	422.4
Belgium-Lux.	39.2	8.2	9.6	13.2	9.8	3.6	5.6	18.0	107.2
Netherlands	45.2	15.8	12.4	21.4	2.0	1.4	7.4	21.6	127.2
Norway	18.4	1.8	8.2	11.4	1.0	0.2	3.0	6.0	50.0
Sweden	76.8	7.6	24.0	13.4	1.8	1.0	8.8	15.0	148.4
Denmark	23.6	3.2	26.6	8.2	0.4	0.4	4.0	14.2	80.6
Austria	54.0	3.0	37.2	25.0	18.6	7.6	28.0	19.2	192.6
Switzerland	5.6	11.0	11.2	15.2	5.4	1.2	12.4	4.4	66.4
Total Europe	952.4	182.0	366.6	245.2	206.4	98.2	189.2	377.6	2,618.6
United States	16.2	.2	42.8	9.2	.6	1.1	1.5	3.7	75.3
TOTAL	968.6	182.2	409.4	254.4	207.0	99.3	190.7	381.3	2,693.9

Source: Economic Research Division, Chase Manhattan Bank, N. Y.

THE UNIVERSE AROUND US

C. B. Weiss

Read Before "The Egyptians," January 21, 1965

The word "Universe" is a rather far reaching term and therefore should be defined for the subject of this paper. The "Universe," or rather that part of it that will be dealt with is merely the globe we live on. This is the "Universe" we see and feel and taste and hear and smell – the one that affects our daily lives, that has affected past generations and will affect future generations that inhabit our globe.

The ancient Greeks first described our earth as being composed of four elements – earth, air, fire, & water. They thought everything around them was composed of some form of these four elements. It wasn't until the sixteenth and seventeenth centuries that scientists began to separate the elements and today we have ninety-two basic ones. Of course gold and silver and copper had been found and were known from antiquity but the bulk of our known chemicals, nitrogen, and sodium and potassium and chlorine were isolated and their properties described in this period. These elements ranged from the practically inert gases – helium and argon and xenon to that lively and active one, fluorine, that refuses to exist uncombined.

Practically all these elements have contributed to the enhancement of our modern life and new uses are continually being uncovered. Silicon has made the solar battery possible and selenium, the photoelectric cell. The specific uses of the various elements are too numerous to mention for our paper.

The present day physicist can speak of our world, our Universe in fact, as being composed of electrons, protons, neutrons, etc. We will deal here with a few of the most important chemical elements and compounds – the atoms and molecules we all know. These are the nitrogen and oxygen of the air around us, the oils and gas in the ground under our feet, and water that is so vital to life.

This Earth of ours is about 8000 miles in diameter and

about 25,000 miles in circumference, with a thin hard surface on the outside, resting on a rather plastic mass and then a center of molten iron, or iron and nickel. We live on the surface of this mass and conjecture about what is inside. So again we narrow the field and write about that small part – the part that is on or near or just above the surface.

The most important of all the chemical compounds is water. And as important as it is we don't even know its exact formula. Of course we say it's H_2O, but that fits only when it is a gas, called steam. As a liquid it is $(H_2O)_X$. We write it this way to explain why the liquid contracts until it reaches 4°C and then begins to expand, reaching its maximum expansion when it becomes a solid. That is why ice floats. Stop to think about this phenomenon – no other chemical compound has this property. If water didn't have it, it is doubtful that man could live on this planet. The All-wise Creator built into this compound a small but important property that makes it possible for us to be here.

As a gas we use it for power in steam engines and turbines, it is the medium through which we convert the chemical energy in coal into electrical energy.

We use the two elements of which it is composed into two useful and valuable gases – oxygen and hydrogen, both of which have a multiplicity of uses.

As a liquid it causes the seed to give birth to the plant and serves the growing plant dutifully in carrying to all parts of its system the nutrients it needs and then bows to the powers of photosynthesis to enter into chemical reactions that end up as cellulose, or starch or sugar, or the oil in seeds, latex for rubber, turpentine for paints and health drugs like quinine and rauwolfia.

Not enough water and nations perish or move – too much and they are swept away.

Water covers about seventy per cent of our globe. In fact we are known as the water planet. The oceans are estimated to be 100,000,000 years old and have amassed and dissolved untold amounts of mineral wealth. We took salt from it for years, and still do but we are beginning to mine the oceans for

pure water and throw away the salts. We use ocean water to get magnesium for light weight metallic alloys and we also use it to secure bromine used in making tetraethyl lead for a gasoline additive. The waters of the oceans hold a great wealth of minerals and chemicals.

For those that are interested, the water in the oceans contain about 0.000004 ppm gold. This means that in one cubic mile of ocean water there are about three pounds of gold. It's there for the taking but to date it costs more than the gold is worth to take it out.

It is thought that marine life in the water of the oceans is the original source of our oil and gas deposits.

It is estimated that there are seventeen trillion tons of iron, nickel and manganese ores in the ocean floor and these are increasing by ten million tons per year. Here the waters of the ocean act as our safety deposit box of future metal requirements.

Today there is a large amount of research being done on the reclamation of pure water from brackish or salt water. These methods of separating the water from the salts that make it unfit for use are then adapted to the newest engineering techniques. There is the old and well known method of boiling off the water in multiple effect evaporators and the possible use of atomic fuel for the heat required. There are many others such as freezing and separating the ice, semipermeable membranes which permit water to pass through but not the salt.

The work shows promise, costs as low as 50c/1000 gallons have been achieved. Our government is pouring research money into the project because they too realize the importance of this chemical. In fact the methods that have been developed gave us the opportunity to thumb our nose at Castro when he cut off our water supply at Guantanamo – we knew how to purify our own and we are now providing an adequate water supply for that base. We should mention that the cost of the water has doubled.

Yes, water is our most important compound – sustainer of life – if uncontrolled, a destroyer of life – a common cleaning agent for all and yet a carrier of disease – essential to

industry as a materials carrier, a chemical component, an energy converter, and a transporter of its wastes — it provides free of charge, avenues of transportation and trade, but it costs much to control it.

Now may we consider another important chemical, the element "nitrogen," which constitutes about 80% of the air around us. It is a fairly inert gas and seems to be satisfied to act as a diluent for oxygen. This in itself is an important role because a fire in pure oxygen would be very difficult if not impossible to extinguish.

It is when nitrogen is in combination with other elements that it becomes both the savior and destroyer of people. Nitrates are essential to plants, aiding in the production of the foods on which we live—nitrates also provide the tools with which man wages war.

Nature when left alone can work out a balance in which enough nitrogen is combined for the plant requirements. It has been estimated that electrical discharges (lightning) in the air throughout the world result in the formation of 100,000,000 tons of nitrate per year. Legumes with their nitrogen fixing bacteria add untold amounts. Plants, where there are no harvests, grow in profusion — there is e n o u g h combined nitrogen and other necessary chemicals for everything that grows. But man has interfered by cultivating and harvesting, and when he does, then he must devise ways to relieve the shortage he creates. We do this by taking nitrogen from the air and returning it to the soil to be used by the plants as nitrates. In the U. S. we sometime overdo this and create food surpluses but most of the rest of the world is sadly behind. In our country we use about twenty pounds of combined nitrogen per person per year to fertilize our crops; in Asia, Africa, and Latin America about one pound per person per year. Already there are food shortages in many areas. Without any change in their antiquated farming methods, food production can be doubled by the use of fertilizers. But even that isn't enough. All factors, population explosion, inefficient farming, seem to be pointing toward unprecedented famines. Malthus and his theory about more people than food is about to be proven correct.

The world production of fertilizers is about 30,000,000 tons today — it is estimated, based on the population growth that 100,000,000 tons will be necessary in 1980. This must come from our country, Europe, and Japan. The countries that need it most don't have the money to pay for it. We may well wonder if we should be trying to put a man on the moon or diverting that energy toward averting famines that appear to be as near as the late nineteen seventies.

That is one side of nitrogen's dual personality — plant growing-life sustaining. The other side is destructive — life taking. Without the explosives made from nitrogen it would be quite difficult to wage war, but there is no doubt that we would devise some way to do it.

When the first man mixed charcoal and sodium nitrate he made black powder. He used flints to provide the spark to fire his gun. Nitrogen was ever ready to help that cumbersome and slow ignition job along. It provided the unstable compound of fulminate of mercury that explodes when sharply hit and thereby made possible a cap for his shell. Then came refinements, smokeless powder, nitroglycerin, TNT, ammonium nitrate. Nitrogen as a nitrate, is an essential element in each, and all are chiefly devised for destruction of man and his possessions.

At first the makers of war were dependent on the deposits of sodium nitrate in Chili. When Napoleon was blockaded by the English navy he had the privies of France dug up to secure the nitrates he needed for war. It became increasingly difficult to wage war if a blockade could stop the imports of nitrates. So the Kaiser wasn't ready to start World War 1 until his chemists and engineers had perfected a way of taking sufficient nitrogen from the air and using it to make enough nitrates for his munitions.

Our first dam on the Tennessee River, Muscle Shoals, was built to provide the electrical power required in the outmoded calcium carbide process for nitrogen fixation from the air. We now use the most efficient and economical methods to take free nitrogen of the air and convert it to usable compounds.

We have in Memphis a nitrogen fixation plant. The Grace Chemical plant uses natural gas and air to make ammonia

– natural gas for the hydrogen required and air for the necessary nitrogen.

The dreaded explosive that receives much more attention and publicity is the atomic bomb, but the foot soldier still relies on nitrogen and its compounds for his destructive power. Perhaps this life-taking side of nitrogen will help reduce the work the life-giving side has to do in the future, but this is a poor and unwanted solution.

Another series of chemicals of great importance and wide use are the fossil fuels – these are our buried chemicals or rather mixtures of chemicals, the carbon and hydrocarbons in gas, oil and coal. Oil and gas as mentioned before are thought to have originated from marine life and coal from plant life.

These are the chemicals that are plentiful enough and cheap enough to be converted into our supply of energy. We use them to provide comfort in winter, prepare our foods, produce our metals, and provide light and transportation. We have lifted the burden of work from our own muscles and substituted for it the energy we derive from coal, oil and gas. We continue to do this at the astounding rate of more than 3% per year.

One hundred years ago the energy actually applied to all useful purposes of heat and work amounted to about one horse power per person continuously for ten hours per day, every day of the year. Fifty years later this had doubled to 2 H.P. and today it is more than 10 H.P. per person. The use of energy from these chemicals, oil, gas and coal has grown ten times faster than our population.

If we break this into smaller segments a good example is a comparison of todays farmer with one around 1900. Todays farmer with his tractors and harvesters can grow enough food for seven people. In 1900 it took six men on the same farm to do the same job.

The pace in industry has been even more rapid. In our own plant thirty years ago, at the height of the linter season, it took a crew of 60 men to unload linters from box cars and

store them in warehouses. Today six men riding six fork lift trucks do the same job with much less strain.

An interesting question arises. If we are using these chemicals for the energy they can supply at a rate that is much faster than our population growth how much longer will the supply last? Certainly some day they will be exhausted but when that will be is open to speculation. In 1930 I heard a leading petroleum engineer prophecy that our supply of gas and oil would be exhausted in 25 years and coal would last about 50 years. Today almost no one will hazard a guess. It is so difficult to establish a base because the usage of energy from these chemicals is increasing so rapidly. If, however, we select as a base the present population of the world and its normal growth, and assume that the per capita energy requirements for all these people are equal to our per capita requirements, then our now known supply of these chemicals, gas, oil and coal should last another fifty or sixty years.

This is a safe prediction because today in India, for example, the per capita usage of energy from these chemicals is about one per cent of that in the U. S. Our foreign aid program is supposed to be improving that situation very rapidly by bringing that nation and many other nations toward our own standard of living.

There is, however, no need for anxiety about our sources of energy to replace that of the fossil fuels. Our next source of supply will be from nuclear fission. In fact that conversion has already started – nuclear power plants are being built today and several are in operation. The fission of one ton of uranium liberates a quantity of energy equivalent to 3,000,000 tons of coal. So we can postpone our worrying for 100 to 200 years unless we use too much uranium for bombs, and then we won't have any worries at all.

We have only considered these chemicals in the role of energy suppliers. There is also a growing petrochemical industry that relies on them as a raw material. About five billion gallons of light weight fractions are consumed annually. From this comes products such as methyl and ethyl alcohol, acetic acid, glycerine, poly-ethylene, and a whole host of similar and related products. But this usage of these products

is small when compared to our total usage. One gets into astronomical figures when one calculates the amount of gasoline needed per year for the 66,000,000 cars in our country alone. This doesn't include trucks, tractors or airplanes. The very volume we use makes our buried chemicals important to us.

Valid arguments could be given as to why other chemicals should be included in this list such as oxygen, iron, and the medicinal chemicals. These three were chosen because they are the necessary ingredients to feed and clothe the people that will be born in the tomorrows. These are the chief tools with which we can answer the question, "Am I my brother's keeper?"

The time is short. Before 1980, only fifteen years from now we will have to provide the knowledge through a Peace Corps or a similar organization on how to use these chemicals to provide the food necessary to feed the population of the world. This means we will have to divert or supply water for irrigation, take nitrogen from the air in sufficient quantity for fertilizers, and then the energy through fossil fuels to do the work. This is quite a job and we better get started before it is too late.

SEARCH FOR GOOD LABOR RELATIONS

ARTHUR W. MCCAIN

Read Before "THE EGYPTIANS" February 18, 1965

As industrial companies have increased in size, as labor unions have grown in numbers and scope, as state and federal laws have been applied to labor questions, failure of labor and management to agree peaceably on contract terms has often affected the whole country economically and politically. As a result there is much thought being given to possible methods of obtaining labor settlements without subjecting the general public to heavy damages.

So it is the purpose of this paper to review briefly the development of the labor movement leading up to the present situation, to point out some of the arrangements that have been tried by labor and management, to suggest a few other proposals that might serve to protect the general interest, and, finally, to draw from you Egyptians new ideas that would help to solve this difficult problem while at the same time protecting the legitimate interests of both labor and management.

While the labor movement in America may have some connection with the trade guilds of Europe it is tenuous. Those who came to the colonies undoubtedly were familiar with the guilds but these were principally organizations not of laborers but of owners. The newcomers to America found so much to be done and such a demand for all kinds of labor that there was no need for organization. Furthermore, if a man was unhappy about his lot there was always the frontier and free land for his use. It was over a hundred and fifty years after the arrival of the colonists, when they had begun to congregate in cities such as Boston, New York and Philadelphia, that conditions arose which gave birth to unions. There were a few short-lived craft organizations in the 1780's. Permanent unions began with the Philadelphia shoemakers in 1792 and the foundation of the Typographical Society of New York by the printers in 1794.

These early unions were craft unions, were localized in large towns and developed slowly. However even at that early

stage the aims and methods were strikingly similar to those of today. Collective bargaining was used by the Philadelphia shoemakers in a wage dispute in 1799. A strike was recorded in 1786 when the Philadelphia printers quit work against a reduction in wages. The closed shop goes back to 1794 when the Philadelphia shoemakers required each employer to hire only union members. Walking delegates or business agents were early appointed and paid to check on compliance with agreements. Control of apprenticeship was sought by unions to safeguard their own wages and to maintain quality of workmanship. The New York Typographical Society was complaining about this problem in 1809. Minimum wages per hour or piece was also an early aim.

By the middle 1830's at least two definite developments had appeared. The increase in the number of craft unions reached a point where the need of a "Trades Union" was felt. Efforts along this line were made within certain cities and between 1834-1836 several conventions were held to form national organizations. These nationals and most local unions collapsed during the panic of 1837. Panics plus waves of immigrants caused serious set-backs to the union movement for most of the nineteenth century.

As labor moved toward more wide spread organization, capital and management became alarmed and adopted an aggressive, belligerent attitude toward the unions. For about fifty years there existed practically a state of war with some spectacular and bloody battles.

In 1836 a New York newspaper reported "a gang of Irish harbor workers rioted for higher wages and for their impudent conduct the police distributed among them some severe and probably dangerous wounds."

The Irish were again the principals in violent action but this time for a most unusual union purpose. In 1848 at Allegheny City a new law was passed fixing a ten hour day and prohibiting the employment of children under twelve years of age. The manufacturing plants of the city then laid off two thousand workers. These finally, on the verge of starvation, mobbed the mills demanding to go back to work on a twelve

hour day. Settlement was ultimately reached for a ten hour day with a 16% reduction in wages.

Molly Maguire, who had been fighting landlords in Ireland, came to the United States in 1850. Under her influence "The Ancient Order of Hibernians" was organized. For almost twenty-five years she conducted a reign of terror in the Pennsylvania coalfields. Murder was common practice. Coal bosses were killed regularly and the Molly Maguires invaded the field of politics, setting up mayors and judges. In 1875 after a number of especially gruesome murders, several leaders and members of the order were arrested and tried. Pinkerton detectives, notably James McParland, were almost the only witnesses against them. In the next few years ten Mollies were executed and fourteen imprisoned for long terms. This ended the terrorist organization but the "Ancient Order of Hibernians" still exists as can be seen when on St. Patrick's Day in New York its members march on Fifth Avenue where the traffic line has been painted green.

In 1866 the National Labor Union, a loose federation of national trade unions was formed. Two years later it succeeded in getting an eight hour bill passed for government laborers and mechanics. Their slogan was "whether you work by the piece or work by the day, decreasing the hours increases the pay."

In 1872 after a great strike that lasted several months with about a hundred thousand participating, the building and mechanical trades in New York City also won an eight hour day. Unfortunately the panic of 1873 soon wiped out the agreement.

In 1877 there were numerous railroad strikes against wage reductions, irregularity of employment, and – probably one of the first signs of automation – the displacement of engineers by the introduction of double-header freight trains, pulling what was in those days an extraordinarily long train of thirty-four cars. In July of that year workers striking against the B & O, Pennsylvania Central, and Michigan Central led to riots in Baltimore, Pittsburgh and Chicago. Militia and regular Federal troops were called out, twenty thousand men

were under arms, and hundreds were killed before the strikes were broken.

The reaction to these riots which led to the building of armories and the tightening of capitalist lines, spurred increased labor organization. In Philadelphia a secret order called Noble Order of the Knights of Labor came out into the open in 1878. It won a strike against Jay Gould's Wabash Railroad in 1885. Not only did it win but, most significantly, it forced Gould to treat with the labor leaders as equals.

In 1883 Johann Most, a German anarchist, came to the United States. He published a book entitled "Science of Revolutionary Warfare. A Manual of Instruction in the Use and Preparation of Nitroglycerine, Dynamite, Gun-Cotton, Fulminating Mercury, Bombs, Fuses, Poisons, Etc." It certainly sounds like a complete course in trouble making. In Chicago the radical element was in full control and the labor movement was run by declared anarchists; Albert Parsons, August Spies, Michael Schwab of Die Arbeiter Zeitung, Oscar Neebe, organizer of the Beer Wagon Drivers, Adolph Fischer, George Engel a toymaker, and Louis Linge, organizer of the Carpenters Union. To Linge especially the use of dynamite was the real way to conduct union warfare.

Their chief objective was an eight hour day. The Eight Hour League was formed and May 1, 1886 was set as Der Tag. Meantime the employers were holding meetings about how to fight the eight hour day and crush the union. In February 1886 the McCormick Reaper Works locked out hundreds of its union employees, hired scabs and three hundred Pinkerton detectives to protect them. Linge, whose Carpenters Union was among those locked out, sent a circular to his men saying, May first was coming and they must kill the bloodsuckers.

Actually May first passed without incident but on the night of May 3rd there was a union rally in Haymarket Square. A bomb exploded and in the ensuing riot sixty seven policemen were wounded and seven killed. The workers' casualties were probably two or three times as large. The public response was violent. Parsons, Spies, Linge, Fielden, Schwab, Fischer, and Engel were found guilty of murder and sentenced to

death. The Haymarket affair gave the labor movement a great set-back but the confused conditions brought opportunity to one man. At this time Samuel Gompers organized the American Federation of Labor and became its first president.

Farther east the steel industry had trouble. The Iron and Steel Workers Union with a membership of about twenty-five thousand had been recognized by Carnegie Steel Company. It had signed a three year contract. In 1892 at the expiration of the contract the company wanted the men to take a reduction in wages. Before they could strike, on July first they were locked out. Andrew Carnegie, perhaps anticipating events, had gone to Europe, turning over command of the Company to Henry C. Frick, a frank union hater. He showed at once that he meant war. He erected a wire fence three miles long and fifteen feet high around the works and called upon the Pinkerton Detective Agency to send him three hundred gunmen.

The locked out men heard about the Pinkertons, knew they would be armed, and prepared to meet them on their own terms. On the night of July 5th a boatload of Pinkertons attempted to land in Homestead. A battle followed in which ten men were killed and three times that number wounded. In the end the workers got the better of the gunmen, captured the entire three hundred minus those who were killed, held them as "prisoners of war" for twenty-four hours, and finally ran them, disarmed, out of town.

Frick then called upon the governor of Pennsylvania for help. The governor sent in twelve thousand militiamen who stayed until November. Finally with winter coming on, the union treasury empty, their families cold and hungry, in desperation the men returned to work as non-unionists.

But Frick also paid a price, Alexander Berkman, a young anarchist, when he heard about the fight went to Homestead. Frick was talking to two men in his private office. Berkman forced his way in, confronted Frick and pulling out a revolver shot him. Frick was badly wounded in the neck but was not killed.

About this same time the Western Federation of Miners became a powerful organization in the western mining states. William D. Haywood (Big Bill), one of the outstanding lead-

ers, firmly believed in violence. The members carried guns and on a number of occasions shot it out with their enemies. Every local union in Idaho and Colorado was urged to organize a rifle corps.

In 1932 I visited Cripple Creek, Colorado, with Mr. Carlton, president of the Golden Cycle Mining Company. The old two story frame building that had formerly been the company's office was still standing. Mr. Carlton pointed out to me numerous bullet holes in the frame of one of the upper windows. He said he had lain on the floor under that window and exchanged rifle shots with a striking miner in the street.

War in the mining country reached a climax when the $250,000 mill of the Bunker Hill Company was dynamited by the miners. The governor of Idaho called on President McKinley for Federal troops. Although there were other troops much nearer Negro soldiers were sent from Brownsville, Texas. Striking miners were rounded up by the hundreds. They were put in especially erected bull pens under Negro guards, thus adding a race prejudice to an already terrible situation.

As can be seen from the above examples, while labor had won some of its aims, management was making a determined effort to destroy the unions. At this stage the power of government was surely on management's side in this effort. The Pullman Company and Railway Managers Association had virtually wiped out the American Railway Union. United States Steel, formed in 1901, adopted a vigorous anti-union policy. About 1902 the National Association of Manufacturers began to combat unions but instead of Pinkerton detectives they used political and legislative means. In 1908 in the famous Danbury Hatters case the union was held guilty under the Sherman Anti-Trust law. Individual members were liable for triple damages to the full extent of their property.

But a little later there was a turn in the tide as the government began taking new interest in labor and employer-employee relations. The Department of Labor was established in 1913. Increased government responsibility was indicated when Federal intervention in the rail dispute resulted in the Adamson Act of 1916.

During the First World War a bargain was struck. The American Federation of Labor formally adopted a non-strike policy and in return organized labor was given representation on agencies determining and administering policies of national defense. The National War Labor Board declared as policy that "the right of workers to organize in trade unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employer in any manner whatsoever." With this declaration was the statement that "the workers in the exercise of their right to organize shall not use coercive measures of any kind to induce persons to join their organization nor to induce employers to bargain or to deal therewith."

The Railroad Act of 1926 gave railroad workers legal protection against interference in their self-organization. It forbade "interference, influence or coercion exercised by either employers or employees over the self-organization or designation of representatives by either."

The first general and substantial protection and encouragement from Federal legislation came in 1932 with the Norris-LaGuardia Act. It stated as a matter of public policy the workers' right to organize. It restricted the use of injunctions against labor, out-lawed yellow dog contracts and relieved officers and unions from liability for unlawful acts during labor disputes unless such acts were authorized.

The next notable legal step in labor-management relations was the National Labor Relations Act (Wagner Act) of 1935. It declared that the inequality of bargaining power of unorganized labor was detrimental to the general economic well-being, and provided specific protection and encouragement to collective bargaining. Five unfair labor practices were forbidden to employers and the National Labor Relations Board was established.

Twelve years later because the general public indicated it felt that the scales had been tipped too much in favor of labor, the Labor Management Relations Act (Taft-Hartley Act) was

passed over President Truman's veto in 1947. It liberalized the provisions of some of the unfair labor practices of employers and also included a list of unfair labor practices of unions. It placed an outright ban on closed shop agreements, and, in Section 14B, permitted states to outlaw union shop agreements which are legal under Federal law. This Section 14B is the so-called "right to work" law which President Johnson in his State of the Union speech said he was going to change.

In 1959 the Labor Management Reporting and Disclosure Act (Landrum-Griffin Act) was intended to eliminate dishonest and undemocratic practices within the labor movement.

So after more than a hundred and fifty years of real warfare and legal battles, of a complete about-face by government to favor labor, and substantial economic gains by the workers, the general public is still frequently the sufferer as management and labor struggle to write a satisfactory contract. I am listing some of the various devices that have been used to avoid this and to suggest others that might be tried.

One I mention first because it is, I believe, the method of only one major company, General Electric. A number of years ago Lemuel Boulware, a vice president of General Electric in charge of promotional and industrial relations, began a program of informing both the employees and the public of company policies, practices and problems. The program of information is a continuous one but naturally at the time of a contract renewal devotes special attention to the matters on which bargaining is to be done. Before the termination of a labor contract, lengthy negotiations are conducted between the management and the union leaders. But contrary to the usual negotiating practice there are no demands and counter offers. When the discussions have brought out from both sides what seem to be all the pertinent facts regarding the points on which bargaining is taking place, General Electric management then sets the terms to go into the new contract, and that is it. The management will do no further bargaining unless previously unmentioned basic facts are produced. Either the terms are accepted or the union can strike. "Boulwarism" is the name that has been given General Electric's method. It is said that other corporations have envied this practice but have not dared to adopt it. General Electric claims it has at least

two advantages. First, to make the method work the company must really satisfy itself that the terms it sets for the contract are truly the best it can afford since it knows the only alternative is a strike. Second, since the terms set by the management are never raised by later negotiations, it gives the union leaders no opportunity to boast about the gains they have been able to get for their members. Naturally Boulwarism is anathema to the union leaders if not to the union members themselves. The leaders have fought it with all their resources and have just obtained a National Labor Relations Board ruling that General Electric's negotiations with the International Union of Electrical Workers (I.U.E.) in 1960 was a refusal to bargain in good faith. The company has appealed to the courts.

Another approach has been taken by the independent unions not affiliated in any way with A.F.L.-C.I.O. They represent about four hundred thousand workers, spread throughout some fourteen hundred single firm unions. Because they deal with a single employer and in many cases with a single plant, they have great flexibility in setting their terms. Furthermore, each man, even in the lower ranks, feels he has an important personal part to play. Three of the most important of these independents are at National Cash Register Co., Armco Steel Co., and Weirton Steel Co. These unions all have pay scales and benefits equal to or better than the national unions and since their expenses are moderate their dues are fifty cents a month instead of five dollars a month as in the national unions. The A.F.L.-C.I.O. and the Teamsters for twenty-five years have been making persistent, expensive campaigns against these independents but without any success. The last strike the Weirton Union had was in 1930, while Armco and National Cash Register have never had a strike. This record seems to indicate one method of negotiating union contracts that might protect the public. It is in notable contrast with James Hoffa's insistence upon one nationwide contract for the trucking industry with the almost avowed purpose of being able to tie up the whole country by a strike.

The experience of the independents suggests a possible arrangement with the national unions. Those industries important to the national economy could be divided into four parts, either by companies or by territory as circumstances indicated. Then union contracts could be drawn so that the ma-

turity date of a contract in one district varied by ninety days from the maturity date in the other three districts. This would mean that a strike would shut down the industry only 25% at three month intervals and require a full year for complete stoppage. Presumably some agreement would be reached before that occurred.

A brand-new collective-bargaining technique has been agreed upon in Berne, Ind., by the Dunbar Furniture Company and its employees, members of the Upholsterers International Union. When the union calls a strike against the company, the "striking" workers will report for their jobs as usual, continuing production without any slowdown. They receive, however, only 50% of their wages. The rest, with a matching amount from management, will be deposited in a neutral bank. If the negotiators reach an agreement within six weeks, all the money is returned. After nine weeks, 75% is returned. After eleven weeks, 50% comes back. Until the end of the twelfth week, 25%. If no agreement is reached after twelve weeks, charities get the whole kitty.

The above arrangement and General Electric's system of making its first offer the best suggest another possible way of encouraging a quick agreement. If there is an impasse in negotiations and a strike is called, the men, as in the Dunbar Furniture case, would continue working. When a settlement is finally reached its terms would serve as a base for calculating the differences between it and the demand of the union and the offer of the company. The net of these differences would be levied as a penalty against the company or the union, as the case might be, on the grounds that the original offer or demand was less or more than they were really willing to settle for. Such an arrangement would tend to make both parties to the contract seek realistic goals from the first.

A relatively new development in the labor field is the establishment in each industry of a continuing committee of labor and management to work on problems all during the life of the contract instead of allowing them to accumulate for solution in the heat of new contract negotiations. Steel's Human Relations Committee, the Newspapers Joint Industry Board, the International Ladies Garment Workers Labor Relations Committee, and a similar group of the West Coast Longshoremen Union have all proved their value, and have settled or disposed of many complaints which might have led to strikes. Whether or not they can accomplish such a result at the time of framing a new contract will probably be tested at the negotiations now under way between the steel companies and the United Steel Workers Union.

One of the most difficult conditions to be covered by contract is that of job security. In 1961 there were two hundred and fifty strikes in which job security was a central issue. With the unions of the aerospace, dock, flight engineers and railroad workers the issue is crucial. At the root of this conflict is the union's fear of automation, even while they realize they must accept this technological advance. One A.F.L.-C.I.O. official was quoted as saying, "For every $5,000 worth of investment you can get rid of one worker. The machine has no vacations, no pensions, no fringe benefits." Professor Peter F. Drucker, professor of economics at New York University, in an article in the New York Times Magazine says the workers' fears are real but in blaming automation they blame a phantom. The tendency to undermine the status and self-respect of the manual worker is due to social changes under way which deeply affect traditional American values regarding manual work.

Joseph Beirne, president of the Communication Workers of America, has accepted and encouraged automation in the telephone industry, probably the country's most completely automated. James A. Suffridge, president of the Retail Clerks International Association, is another friend of automation and he has seen his white-collar union grow from 60,000 in 1944 to 400,000 at the present time.

But workers want assurance of jobs. The National Sugar Refining Co. in August of 1964 signed a contract guaranteeing work for 51 weeks to all workers hired before September 1, 1959. In a bargain which gave management flexibility in methods, assignment of work, and use of labor-saving machinery, the dock workers on the West Coast hired not later than 1958 are guaranteed that pay will not drop below 35 hours wages a week because of more efficient operation. The guarantee does not apply to reduced hours due to economic conditions. In addition the management has agreed to pay $29,000,000

into a fund to provide for voluntary retirement at age 62. Four breweries in New York have a new contract which, to encourage prompt retirement, steps up the regular pension payments by a graduated scale for retirement as early as 60 years. The maximum amount of extra pension is $3,600.

These plans seem to be aimed at protecting the old-timers. Apparently the theory is that the newcomer is able to make his own adjustment to current conditions. On the other hand the Chase Manhattan Bank, going all out for computers and data processing equipment, came out with a flat promise that no employee would lose his job because of automation. The bank accepted full responsibility to train him for another job in the bank.

What seems a very enlightened approach to the problem has been worked out by U. S. Industries Inc., manufacturer of automated machinery. The company and the International Association of Machinists have established a foundation to further automation even while easing the impact on workers. U. S. Industries contributes $1,000 to the foundation for each piece of automated machinery it sells.

One subject on which the unions have been talking for a long time without getting very far is profit sharing. But in 1961 the United Auto Workers got a profit sharing plan in their contract with American Motors. The first year saw production workers get $9,700,000. None of this was paid in cash immediately but was invested in stock and future benefits. This year in signing the new contract, payments in cash will be called for. In a normal year it is estimated a worker will receive a bonus of $132. In a very good year this could rise to $264 and in a poor year disappear altogether. Leaving out many details, the profit sharing fund will consist of 15% of the money left after 10% of the stockholders' investment is deducted from pre-tax earnings.

Kaiser Steel used a different idea. Its employees at the Fontana plant, instead of sharing in profit, receive 32-1/2 cents out of every cost dollar saved. This applies regardless of profit. First results were dramatic both in savings to the company and in bonuses to the workers. These at times amounted

to almost 20% of pay. However continued cutting of costs will not be so easy to maintain and, as bonuses are lower, the union's attitude toward this plan may shift.

Does it not seem that once a satisfactory labor contract has been negotiated and put into effect, that at that time the union and management could agree on a percentage basis of how future income or increased profits would be divided? Is it impossible to decide in a given industry what is a fair share for labor? This, I take it, is what the government was attempting to do by setting its guide lines. Yet the United Auto Workers demanded and got increases well above the figures the government had indicated as proper. Now the Steel Union says it has no intention of observing these limits. If the government suggestions and management bargaining cannot determine what is a fair division between labor and capital perhaps public opinion as expressed through stockholders may some day try to do it. There are many indications that the number of individuals owning stock has grown to a very large figure. Is it too fantastic to imagine that we might some day see an American Federation of Stockholders with union dues based on dividends? And if such a union set up a political wing as active as its opposite number in the labor group, the capitalist might yet have some influence in molding the Great Society.

As we well know, today bargaining about labor contracts vitally affects not only the workers' current income, working conditions and comfort but his future security as well. It affects the profitability and, in extreme cases, the existence of companies, and often the position, power and career of politicians. Under these circumstances it is not surprising that the pat answer has not been found but the problem certainly presents a great challenge to the best minds.

NATIONAL VOLUNTARY HEALTH AGENCIES

Dr. Thomas N. Stern

Read Before "The Egyptians," March 17, 1965

Alexis de Tocqueville in 1830 commented on a novel and interesting aspect of American democracy. He said in *Democracy in America,* "I have often admired the extreme skill with which inhabitants of the United States succeed in proposing a common object for the exertions of a great many men and inducing them voluntarily to pursue it . . . Thus the most democratic society on the face of the earth is that in which men have in our time carried to the highest perfection the art of pursuing in common the object of their common desires and have applied this new science to the greatest number of purposes." This American talent has given fruit in the Twentieth Century to the national voluntary health agencies, a group of democratic organizations peculiar to this country and representative of some of the finest qualities of the country. These organizations — and there are 75 of them belonging to the National Health Council — have assumed an important part in American life. They are discussed widely and represent a major point of controversy for the American charitable conscience. I hope this evening to give you some understanding of these organizations, to tell you why they arose, what they have accomplished, what problems they face, and my own estimate as to what the future holds for them.

At the outset it would be wise to define as national voluntary health agencies. In a somewhat awkward statement the National Health Council has described them as agencies with these characteristics: "They are composed of individuals both lay and professional or of associations of both lay and professional individuals voluntarily and democratically organized on a national basis, the primary or major purpose of which is health-related in that they are organized to combat a particular disease, disability or group of diseases or disabilities or to improve or protest the health of a particular group of people — they are supported primarily by voluntary contributions from the public at large rather than from governmental resources

or endowments — they engage in programs of research, education and service to individuals and communities in their particular sphere of service."

Perhaps a few words should be said at this point concerning the idea of "charity." "Charity" is defined primarily by Webster as "kindness or help for the needy or suffering"; "a charity" is "an institution engaged primarily in relief of the poor." The voluntary health agencies certainly cannot be considered as charities in this respect. A secondary meaning of the word, however, is "a gift for public benevolent purposes"; this would cover the organizations in question. At any rate it is considered to be a charitable act in the eyes of the public and of the Internal Revenue Service to make a donation to the national voluntary health agencies. The health agencies have not seen fit to question their characterization as charities as long as this helps bring them support. It is important to remember, however, that in general these organizations do not themselves perform charity.

The principle of the national voluntary health agency was established by the Red Cross. Even though this organization is quasi-governmental in character, it does represent the first instance in which the people of the country at large took part in the fight against a medical problem. In this case the nursing of the military wounded and, by extension, those sick or injured in disaster was the focus. It was soon recognized that military nursing was properly the responsibility of the armed services and they have taken over this function; disaster relief remains the most important present function of the Red Cross. This brainchild of Clara Barton's has now been chartered by the Congress and operates under rules laid down by that body. However it receives no funds from the federal government and still depends on the contributions of all Americans for its support. In justice to the Red Cross it should be noted that it has never charged for its services except in a most unfortunate circumstance during World War II. The Red Cross made a nominal charge for certain services in rear areas in Europe at that time; these charges were made under protest and only on direct order from the War Department, which was seeking to lessen the differences between the pay and privileges of our soldiers and those of our allies.

The National Tuberculosis Association was formed in 1904 to combat the "white plague." The founders of this association were following the lead of similar scientific groups previously established in Europe. The infant organization gained the support of the public some three years later with the appearance of the Christmas seal. This idea caught on like wildfire and has since been almost the sole source of support for this organization in its efforts.

The American Cancer Society developed from an early beginning as an organization of physicians. Primarily educational in purpose, its chief function was to introduce to the public the idea that cancer need not be fatal in all cases. The society had only modest success until the idea of the Women's Field Army was conceived in 1936. These women, largely members of the General Federation of Women's Clubs, raised well over a quarter of a million dollars annually in the next few years. They formed the nucleus of the modern army of volunteers serving the health agencies.

In 1943 the Cancer Society collided in mid-course with Mary Lasker. This philanthropist had very unusual ideas. She not only felt that people should give money to the Cancer Fund but that the public in general should have something to say about the fate of the money and indeed about the course of the society itself. Her arguments, backed by a tenfold increase in the amount of funds derived in the next year's drive, were overwhelming, and neither the fund-raising nor the voluntary health agencies have been the same since. It should be noted that the ideas of the laymen newly involved in the Cancer Society were remarkably sound. For the first time the Cancer Society was able to allocate a major sum for the support of research.

The American Heart Association was founded in 1924 as a purely scientific organization. It continued in this manner during the next twenty years, conducting itself mainly as a vehicle for the dissemination of knowledge among physicians. It was concluded in the late 1940's however that a much greater effort was needed. The problem was felt to be so important that a major forward stride in professional and lay education and research was indicated. The Heart Association therefore broadened its base in 1948 to take in the public as an equal partner with the medical profession.

The National Foundation for Infantile Paralysis, now simply the National Foundation, had a somewhat different history from the other organizations. It emerged fully formed from above. It was the successor to the Birthday Balls, held on Franklin Roosevelt's birthday, and through which funds had been raised for the support of the Warm Springs Foundation. It was felt, however, that the Balls were too closely associated with FDR. When the President was popular, funds flowed in; when the President was unpopular, support for the Foundation plummetted. Since Roosevelt was not infrequently unpopular with that portion of the community which had the most money, it became apparent that the fund-raising effort needed to be put on a sounder basis. The resulting organization has been the most successful of the voluntary health agencies both in terms of the amount of money raised and in terms of achievement of its primary goal.

Other smaller agencies were organized during the early part of the century. These included the National Society for Crippled Children and Adults and the National Association for Mental Health. More recently such organizations as the National Multiple Sclerosis Society, the Arthritis and Rheumatism Foundation, and the United Cerebral Palsy and Muscular Dystrophy Associations, have come into prominence. Some organizations have fallen by the wayside, others have merged, still others have newly appeared.

Why do we have these agencies? What are the needs that they were formed to satisfy? The answers are multiple and will vary to some extent from agency to agency. However, there are certain common factors. First and foremost is the recognition of a problem that involves the health of people over the entire nation. In some cases the problems have been of such extent that they involve the very national welfare. Examples of this are Heart and Cancer. In other instances the diseases are of much lower incidence but are dramatic and frightening in their manifestations. Poliomyelitis is the classic example here. Still other foundations are formed to support an effort against fairly obscure diseases; thus, multiple sclerosis affects a very small number of people throughout the country. However the families of those affected, after living with this condition through a number of years, have been moved to

found and support an organization to deal with this specific and limited problem.

It has been suggested that a second raison d'etre is to satisfy an innate need among Americans to "do good." In pioneer days this resulted in barn-raisings and other such ventures of the community to help the individual. Modern society by and large is far too complicated in its organization for similar functions; further, the needs of modern society cannot be satisfied in such a fairly simple manner. Whatever the reason, an army of Americans larger than the total of our armed forces during World War II annually gratifies the promptings of its social conscience or of its ego by laboring in the cause of the voluntary health organizations.

It should be made clear at this point that the function of laymen in these organizations is not merely one of fund-raising. It is true that this is a primary job that they perform. However the general health of the organizations themselves, not merely their pocketbooks, seems to depend on the enthusiasm and ability of the lay volunteer. From them in large part has come the urge and drive that has kept the organizations moving forward during recent years. It is interesting to note that both the American Cancer Society and the American Heart Association vastly enlarged their scope after taking laymen in partnership; indeed, in the case of the Cancer Society, it may be said that the organization was transformed under the guidance of Mary and Albert Lasker and those whom they involved in Cancer Society affairs: James Adams, president of Standard Brands; Elmer Bobst, president of Hoffman-LaRoche; Emerson Foote, president of Foote, Cone and Belding; Morgan Brainerd, president of Aetna Life; Thomas Braniff, president of Braniff Airlines; and Louis Douglas, president of Mutual Life.

Whether the agencies started as professional organizations to which lay membership was added or as essentially lay organizations enlisting the support of scientists, the outstanding investigators in the nation are involved. Indeed, the extent of their involvement is amazing when one considers that this is a group of individuals inherently averse to dilution of their time by organizational matters.

These teams of laymen and scientists then serve to support three major areas of programs — research, education, and serv-

ice. The extent to which efforts go into each of these programs will vary from agency to agency, but in general it may be said that all agencies engage at least to some extent in all three.

The American Heart Association prides itself on its research commitment: approximately 60% of its national funds go to this purpose, with somewhat smaller amounts from those funds retained by the individual chapter. In addition to this there is a strong emphasis on education. The Association supports two major scientific journals and an annual meeting which draws upward of 5000 physicians and scientists interested in heart diseases. There is further a strong effort at public education. Community service forms a smaller but still important part of the Heart Association role; this organization does not serve any individuals.

The Cancer Society similarly does not offer service to individuals. The problem of cancer is so large that all available funds could quickly be siphoned off into patient care if money were to be allocated for this purpose. Such activities as loan closets for wheel chairs, etc. are operated by some local chapters however. Like Heart, the Cancer Society emphasizes research and education. In many areas, and Memphis is one of them, major support is given to cancer clinics.

The National Foundation for Infantile Paralysis, on the other hand, put much stress on service to the individual in its early history. We all know that the medical care of the patient with polio was underwritten in large part by the National Foundation for many years. However this agency too sponsored a most important research effort, the culmination of which was the polio vaccine. Education played a somewhat smaller role in this society's activity until recently. Other organizations similarly divided their efforts among these three programs in accordance with the specific problem which they were facing.

It is reasonable at this point to examine the accomplishments to date of these organizations. Again a few examples will be taken primarily from the work of the major agencies. The National Tuberculosis Society conceived of its role as primarily an educational one. The cause of tuberculosis was known, although for many years there was no treatment. In large part as a result of their educational effort the public came to realize that tuberculosis was an infectious disease and

began to cooperate in the control of this infection. A marked decrease in the number of new cases of tuberculosis had already occurred before the era of the antibiotics. Now, fortunately, people who have already contracted the disease can be helped and in many cases cured. Further, the spread of the disease has been further reduced. Tuberculosis still exists in this country but its importance as a major public health problem has diminished to the extent that this association has now seen fit to direct its attention to respiratory diseases in general.

Similarly the National Foundation for Infantile Paralysis has been forced by success to widen its horizons. We all know of the development of the Salk vaccine followed by the widespread use of the Sabin oral vaccine; these efforts were stimulated and supported by the National foundation for Infantile Paralysis. Today polio has almost been wiped out and the organization has changed its name to the National Foundation. For a short time this agency directed itself toward a number of conditions but now concentrates primarily on the problem of birth defects.

The American Heart Association has not been quite successful as yet. This might be anticipated from the fact that the heart problem is both bigger and more diffuse. Many diseases are included; these account for over half of the deaths in this country. Heartening progress has been reported however. In recent years for the first time the death rate for middle-aged American males has dropped approximately 7%. This decrease is almost entirely due to the development of measures for control of blood pressure. The incidence of new cases of rheumatic fever has markedly diminished, and we can now prevent second attacks of rheumatic fever in most cases. Many types of congenital heart disease are now amenable to surgical repair. No single great stride such as the Salk vaccine is forseeable in the near future in the field of heart disease but we may look forward to further steady advances.

A similar prospect applies in the cancer field. Some few cancers can now be treated quite successfully by medication. Of even greater importance, however, is the fact that we have a much more thorough understanding of the cancerous process; out of this understanding will come the advances of the future. In the meantime, millions of women check their own breasts regularly according to technique taught by the American Can-

cer Society, and the "Pap Smear" for cancer of the cervix has become a routine part of the physician's examination.

All of this requires money and money in relatively large amounts. Ralph Waldo Emerson said, "I grudge the dollar, the dime, the cent that I give to such men as do not belong to me and to whom I do not belong." Emerson has many latter-day descendants but in spite of them, private philanthropy provides over 700 million dollars annually for health and medical care; better than 40 million dollars is given for medical research alone. Impressive as this may sound, however, it represents only a small portion of America's philanthropic total and is in the range of only one hundredth of one per cent of the gross national product.

Money is needed in ever growing amounts if the battle against disease is to be waged successfully. The income of the voluntary health agencies has been growing each year but has provided a gradually smaller percentage of the total expenditures in health causes. This is due to the even more rapid increase in the contribution of the federal government. In 1940 the U. S. supported 7% of the health research performed in this country. By 1957 the proportion had increased to 54%. The estimated figure for 1964 is 68% and the projected figure for 1970 is 72%.

In view of this trend it has been suggested by many that the whole job might be entrusted to the federal government. From previous discussions I assume that any such idea will not find overwhelming support among the members of the Egyptians. Interestingly, the government itself is strongly opposed to this idea. In 1958 the Bayne-Jones report to the Secretary of Health, Education, and Welfare considered the role of HEW in medical research. The report stated that, "It is in the national interest for non-federal support for medical research to be maintained at not less than the current proportion." (then about 50%). An annual contribution of 100 million dollars from private philanthropy by 1970 was suggested as being in line with national needs.

The report further recommended that "Responsible persons in public and private life continue to stress the importance of diversity of federal and non-federal sources of support." A moment's thought will reveal the reasonableness of this state-

ment. It must be realized that the major research advances involve moves in new directions. Many great scientists have been rebuffed and their theories disparaged by their less farsighted peers. The very theory that may turn out to be the most important is apt to be the one that is least in line with current thought. For this reason it is extremely important that there must be more than one possible source of funds to which scientists can turn. Further, the voluntary health agencies are not as directly accountable to the public and the press as are the governmental agencies. If the scientific review board of a voluntary agency decided that an important clue to disease may be discovered by the study of the love life of the flea, it is not as apt to be pilloried for support of this study as would the equally astute review board of the National Institutes of Health.

It should be noted by all taxpayers that the voluntary health agencies have had a strong influence on the National Institutes of Health. Much of the original impetus that led to the formation of the NIH stemmed from the agencies. Their advice has been and continues to be sought in formulation of research policies by the Public Health Service and the NIH.

One of the major problems of the national voluntary health agencies in their money-raising effort has been the question in the public mind of the relationship or lack of relationship to the United Funds. United Funds have been accepted over the country as an economical way to raise the charity dollar, economical as to fund-raising costs and particularly economical as to the contribution of time by volunteer workers and industry. The major voluntary health agencies are not presently associated with these efforts for the most part. It is important to understand why not.

Basic to this understanding is some knowledge of the background of the United Funds. These drives were generally organized and spearheaded by the leaders of large industries, who conceived of them as a means to cut down on time-consuming fund-raising drives in plants. They represent the giver, especially the industrial giver (although labor unions were also quick to see the advantages of the organization of United Funds). Goals are established in line with what it is believed the community will give, not necessarily in line with community needs. Thus, too low a goal obviously will leave

many needs unsatisfied but a goal too high to be reached with a moderately strenuous efforts is considered psychologically poor and therefore avoided even though the sum raised may be inadequate. Setting the goal at an attainable figure seems reasonable on its face. Unfortunately the figure arrived at is presented to the public as the sum "needed" for support of the included agencies. That this sum may not satisfy these needs is illustrated by the fact that the Red Cross, Salvation Army and Boy Scouts all left the United Fund in San Antonio in 1960. Boy Scout income from the fund in that city had actually decreased about 10% over five years even though the activity of the organization was increasing. In this same year seven agencies were dropped by the St. Louis Fund in the interest of a "successful" campaign. In 1958 the Miami United Fund had an unsuccessful drive. After the drive was over, three agencies were notified that they would receive no funds at all. Only fast action by a few of the major United Fund supporters prevented a major scandal. In view of experiences like these it is hardly surprising that the health agencies have been unwilling to trust their destinies to the United Funds.

Further, some chapters of the various agencies have been and, in a few cases still are, part of United Funds. It has been found in these cases that growth in terms of money has only been about one quarter that of the independent chapters; in general, chapter program in these areas has actually diminished. In those cities where health agencies have left the United Fund, not only has income increased but the effectiveness of the total effort of the chapter has improved.

Other considerations are of importance also. The fight against disease is not peculiar to any locality. It is a national and international problem. The best scientific minds of our time are not too good to determine what research funds are needed and where and how they should be spent. Local considerations have no place in these decisions; local budget committees are poorly constituted to consider these questions. Experience has shown that health funds allocated by local committees are allocated out of proportion to need and in many cases wastefully. It is hard to understand how heart research funds can be intelligently distributed in Michigan, for example; this United Fund bastion has no cardiologists involved in its budgeting but "knows Michigan."

Further it is felt that separate fund-raising drives are of great educational importance. It has been suggested that purely educational drives be staged through the year with fund-raising being done jointly. This does not seem to be as effective as education along with fund-raising, however. The American Heart Association, for example, received a tremendous number of inquiries following President Eisenhower's heart attack with the attendant publicity concerning the heart. Even so, a much larger number of inquiries are received each February during the Heart Fund campaign.

A philosophical question is also involved. Great pressure is placed upon employees to give to the United Fund drives. The amount of each acceptable "gift" is frequently predetermined and the individual giver has no actual control over the disposition of the gift. The health agencies subscribe to the statement of Eisenhower, who said, "True voluntary giving is based on the personal desire of an individual to make a private donation to a specific agency for a purpose with which he is familiar and which he wants to support." This is not to deny merit to a community-wide review of social agency needs. Unfortunately however this review too often is based on purely economic rather than other considerations. Further, the giver must in effect abide by the decisions of the committee; there is no way for the individual to make effective disposition of his funds should he disagree with the committee.

Finally there is some question as to whether the costs of united fund-raising are quite as low as publicized. Since the United Funds are purely for the purpose of raising charitable monies, all their expenses should be considered as incurred in fund-raising. Bookkeeping procedures vary from area to area, and there is considerable confusion on the point. Further, substantial contributions such as luncheons for workers are "donated as promotional expenses" by civic-minded companies and are not counted as fund-raising costs although they obviously cost money.

In spite of these considerations, the large number of drives do present a problem to business. Further, the same housewives frequently ring doorbells for the National Foundation

in January, Heart in February, Arthritis in March, Cancer in April, Mental Health in May and so on through the year. Obviously, some relief is needed. It has been suggested that the health agencies should join in a separate national united health fund. The great drawback to this would be the same loss of educational effort and individual involvement that is suffered with United Funds. An approach to reducing the number of appeals is being experimented with however. It involves a joint solicitation by several agencies, making provision for educational effort by each and allowing the giver a true full choice as to the amount of his gift and the agencies to which he will give. The federal services campaign for health agencies was recently tried in this manner in selected cities, and this technique is also being tried in a number of large industries.

What does the future hold? There probably will be some reduction in the number of organizations as those with some degree of similarity will merge for greater effectiveness. Further, I believe that some kind of joint fund-raising effort is over the horizon, although its exact form is yet in sight. Finally, I believe that there is good reason to hope that the organizations will be increasingly successful in their goals until some day most of mankind will die of old age rather than disease. The Malthusian problem which will be the result must be the topic of another paper, but whatever the result for humanity at large, I believe that each individual looks forward to as long a healthy life as it is possible for him to have.

No specific attributions have been made in the text of this paper but much of the information comes from the following sources:

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FROM DRAGON BONES AND CHICKEN BONE HILL TO PEKING MAN

By Theron S. Hill, M. D.

(*Read before* "The Egyptians," April 22, 1965.)

In the myths, legends, and sagas of the Occident, the dragon is characterized predominantly as a creature of evil and destruction. Similar traits are ascribed to it in the Psalms, the books of Deuteronomy, Isaiah, Jeremiah, and Revelations. In contrast, the literature of the Orient has accorded the dragon a much more venerable and revered position in the esteem of those of imperial rank as well as those of peasant status. This was especially true in Chinese legend and early history. In fact two of their famous emperors, the legendary Yao of the Golden Age, said to have ruled some 2000 years B.C., and Kao Ti, founder of the Han Dynasty who ruled from 206-195 B.C., were considered the actual sons of dragons.

The dragon was depicted in various forms in different places and at different times but usually it was a composite possessing the anatomical features from various species of animals, reptiles, and birds. It was considered to be a creature of great power and influence over leaders of state and over many forces in nature. In fact, its identification with imperial functions led at times to the Emperor being spoken of as "the real dragon," his throne being called the "dragons' throne," and the dragon forming the emblem of his imperial standard.

In its power over the forces of nature, it was the control over rain that could bring benefit or disaster to the people and hence was the dragon to be venerated and propitiated at all costs. The power of this creature was said to be such that even 10,000 years after death it could bring blessings to "the sons of Han."

Perhaps then it is small wonder that substances claimed to have originated from the dragon following his death should have been highly prized for their healing powers, for this they were. For centuries Dragon's bones (Lung Ku) and Dragon's teeth (Lung Ya) have been sold as medicine in Chinese

apothecary shops. Instructions for their medicinal use have been recorded in their pharmacopoeias since the third century A. D.

Dragon bones were recommended for the treatment of dysentery, gall stones, fevers and convulsions in children's diseases, malaria and paralysis among other conditions. Dragon's teeth were considered efficacious in dispelling headaches, spasms, madness, some twelve varieties of convulsions in children as well as in calming the soul and allaying unrest of the heart. They were said to be of especial value, however, in the treatment of liver diseases.

The highly complicated procedures for preparing those medicinal agents described in earlier writings were superceded by the simplified method of merely pulverizing the substances and taking the powder in tea.

It was one scientist's action in the face of frustration that made it possible for the Western World to learn the true nature of these bones. In 1899 a German naturalist, K. A. Haberer arrived in China hoping to explore the interior of the country. In view of the "Boxer Rebellion" and the hostility then manifested toward foreigners his activities were restricted to the "Treaty Ports." Suspecting their true nature Haberer purchased from apothecary shops in Shanghai, Ningpo, Ichang and Peking during a two year period an abundant supply of so called dragon bones and teeth. These were later sent to, and examined by the learned palaeontologist, Professor Max Schlosser of Munich who published the results of his studies in 1903. He found them to be the fossil remains of animals which had lived during the Tertiary and Pleistocene ages. He identified some 90 mammalian forms. These included beasts of prey such as bears, hyaenas, and the saber toothed tiger as well as types of elephants, rhinoceri, an hippopatamus, equine forms, stags, antelope, giraffes and a new type of camel. The only finding from a primate was a single tooth which was considered to have been possibly of hominid origin. The localities from whence these fossil remains were obtained was kept a closely guarded secret by the merchants for commercial reasons.

This fact along with a preoccupation of geologists in the Chinese Geological Survey with the location and investigation of the mineral resources of China retarded for several years

further interest and activity in the search for fossil remains in that country's Cenozoic deposits.

Two men, one a Swedish mining adviser to the Chinese government, and the other a Jesuit priest from France, must receive the principal credit for re-establishing scientific exploration and study in this field. Both arrived in China in the year 1914 and both were to make major contributions in the search for fossil man. Neither made any systematic effort to scientifically investigate "dragon bone" sites before 1918. However, each in his own way had made preliminary studies which were to prove of value in the search for early human types.

Dr. J. Gunnar Andersson the geologist from Sweden was brought to China to serve as mining adviser to the Ministry of Agriculture and Commerce, hence to aid in locating coal and various minerals. In the year 1917, he and other members of the newly formed Geological Survey in Peking resolved to search for sites of dragon bones, the origin of the myths regarding which had been lost in the antiquity of Chinese history. Following this resolution a direct appeal was made through the use of circulars sent to mission stations and to other foreigners who might be interested. In these, a report of Schlosser's earlier findings was given and aid was requested in finding dragon bone sites. It was in response to some of these appeals that Andersson with his Chinese assistants and associates was able to explore and obtain specimens from several sites in North China.

The first of these was visited in March of 1918 in the district of Chou Kuo Tien some 40 kilometers from Peking at a limestone quarry site Chi Ku Shan or Chicken Bone Hill. From the floor of one of these old quarries, there rose an isolated pillar of clay over 5 meters in height which had once filled a cavity or cave in the limestone. Why the quarry workers had so carefully avoided this mass of clay was at first somewhat of a mystery. However, the reason became less of one after the following story was told them. They were informed that over one hundred years before there had existed at this point a cave inhabited by foxes which had devoured all of the chickens in the neighborhood. Later some of the foxes were transformed into evil spirits. Now belief in the power of the Fox Spirit was prevalent in North China. Therefore, when

one man attempted to kill the foxes and was said to have been "driven mad" there was sufficient reason for the laborers to avoid molesting the contents of what had once been the foxes' cave.

Because most of the bones found at this site were those of birds and small rodents and not like the bones later found elsewhere, and in as much as the strata from which they were obtained did not appear too old, interest in this site faded. Instead attention was focused upon excavations of the so called Hipparion deposits of central Honan which were far more productive.

The Jesuit priest, Father Emile Licent upon his arrival in 1914 proceeded to uphold the scholarly tradition of his Jesuit predecessors which dated back to the last of the Ming and the first of the Ching dynasty which began in 1644. Whereas the earliest priests were contributors in astronomy and cartography others who followed engaged in the study of Chinese geography, history, religion and social life. Father Licent in turn proceeded during extensive travels throughout North China to make collections of modern fauna and flora and established a museum in Tiensin to house the specimens. However, he too made important discoveries in the Cenozoic deposits of Eastern Kansu. Following the removal of the upper layer of wind blown yellow soil called loess, he discovered an abundance of Hipparion fauna and in addition small pieces of quartz which seemed to have been fashioned in part by human hands. This discovery provided the stimulus for him to become intensely interested in searching for traces of Old Stone Age Man.

In 1922 after receiving information which originally came from a native of Mongolia, he investigated a site located on the southern edge of the Ordos desert adjacent to the Yellow River. He found this place named Sjara Osso Gol to be a most promising one for further excavation.

When Dr. Andersson and Father Licent had reached these respective stages in their explorations, each recognized that the importance of their discoveries necessitated the importation of expert help from well trained palaeontologists. Therefore each proceeded to obtain such.

Dr. Andersson was successful in securing the services of a very competent young Austrian palaeontologist, Dr. Otto

Zdansky. This he achieved through the efforts of Professor Wiman of Upsala, Sweden.

Father Licent sought and obtained the collaboration of the professor of palaeontology of the Catholic Institute in Paris. This was the Jesuit priest Pierre Teilhard de Chardin, a scientist of international repute, superbly trained and enthusiastic.

Père Teilhard as he was commonly and affectionately referred to during his many years in the Orient, arrived in Tiensin on May 23, 1923. By the middle of June he and Father Licent were on their way to the Ordos desert and the immense steppes in Western Mongolia.

Their main objective was the deposits of Quartenary fossils at Sjara Osso Gol located in the great loop of the Yellow River. They found at more than one site in this area evidence of a palaeolithic cultural stratum which was located both immediately beneath and in some instances in the lower layers of loess. Also they uncovered an abundance of fossil remains of Pleistocene fauna. They came upon great quantities of hewn stone implements and the raw materials and chippings of their manufacture. Evidence of a previous existing stone age people was found in the remains of meals comprised of bits of bone of the wild ass, the antelope, hyaena, rhinoceros, and egg shell of the giant ostrich along with pieces of charcoal marking the sites of previous fires.

As was true with the specimens studied by Schlosser, there was only one fossil skeletal item that could be attributed to man. This was a tooth considered to be possibly of Pleistocene age. The paucity of human skeletal remains was true despite the fact that thousands of stone implements were unearthed.

What were the hazards of palaeolithic man's remains becoming fossilized? William Howells, Professor of Anthropology at Harvard University has indicated that there may be several. If they were not eaten and digested by hyaenas or other animals they could, while lying on the ground, decay within a few years. The acid soils of forests and other areas could leach out skeletons. Even though an abundance of his stone tools might remain his skeleton would disappear. However, were his remains to be dragged into a cave by some carnivore or

some of his canabalistic bretheren then his bones might become impregnated with minerals. Or should he have fallen into a lake bed or swamp and his skeleton held there for a long time then also might the process of mineralization produce a fossil. In addition to this with man in those ages being somewhat scarce it is not difficult to understand why specimens of fossil man are rare.

The discovery made by Fathers Licent and Teilhard was considered to be an especially brilliant scientific achievement by their fellow scientists. It had shown first, that the stone implements were palaeolithic types; second, that these were in deposits in the lower loess formation; and third, that the palaeolithic type tools were found with the remains of meals where there were masses of mammal bones and shells representing an extinct fauna of the Pleistocene age.

When Dr. Otto Zdansky came to China in the early summer of 1921, he was sent to Chou Kuo Tien to begin excavation at Chicken Bone Hill so that he might become familiar with conditions in the rural districts of China where he was to perform most of his work. Shortly after beginning his work Dr. Andersson visited the site accompanied by Dr. Walter Granger, a well known mammal palaeontologist from the American Museum of Natural History in New York. Dr. Granger was soon to take up his responsibilities as Chief Palaeontologist for the Roy Chapman Andrews expedition to Mongolia. While he was being given some ideas about the working conditions in China, he reciprocated by showing Zdansky and Andersson some of the newer and highly effective techniques for excavating which had been developed by the vertebrate palaeontologists in America.

One day while the three were sitting at work by the pillar of clay and bones, a man from the neighborhood approached to watch and finally told them there was no use staying there for at a point not too far distant there was a better and larger place to collect dragon bones. After some questioning the three followed him to another old quarry. Here in an almost perpendicular wall of limestone they were shown a fissure filled with pieces of limestone, fossilized bone fragments from larger animals all bound together by sintered limestone. Even a few minutes spent in gathering specimens revealed how much

greater was the value of this site compared to Chicken Bone Hill. The next day's harvest was rich so that Dr. Zdansky continued excavating for several weeks. Drs. Granger and Andersson returned to Peking. In this manner was discovery made of what came to be known as the Chou Kuo Tien deposit.

Dr. Zdansky in his report described carefully the various strata filling the fissure which had once been a cave. In it he made reference to the existence of angular pieces of quartz. The presence of these led Andersson to consider the possibility that they might have been used as tools by some former hominid occupant of the cave. In fact he had written that during one of his visits in the summer of 1921, he knocked on the wall of the cave deposits and said: "I have a feeling that there lie here the remains of one of our ancestors and it is only a question of your finding him. Take your time and stick to it till the cave is emptied, if need be." He did not realize that this could not be done so readily as he imagined. Actually excavations were abandoned late that summer and Zdansky went to other sites. At these new locations, with his exceptional skill and industry he obtained a vast number of specimens of mammals of the late Tertiary period. These were sent from Peking to Upsala, Sweden for examination and treatment by Professor Wiman and a number of his skilled collaborators.

In 1923 Dr. Zdansky returned to proceed with further excavations at Chou Kuo Tien. He removed bones of the mole, hedge hog, beaver, hare and dog, likewise of the bear, the saber toothed tiger, cats both small and large, rhinoceros, horse, pig, deer, buffalo and ape. These were representative of fauna that existed in the earliest part of the Pleistocene age. But the find which aroused the greatest interest was a fossilized hominid molar tooth and later a second hominid unerrupted lower permanent premolar which was discovered among the specimens which had been taken back to Upsala, Sweden for study.

It took a visit to Peking of the Crown Prince and Princess of Sweden in October of 1926 to make public the opinions regarding these finds and to set in full motion the drama that was to unfold.

There is justification for speaking of the succeeding developments as a drama with its change of scenes, its growing

cast of participating characters, with its intense action, suspense, mystery and progress toward a climax.

The Crown Prince and Princess were then on a world tour and they had asked to meet Dr. Andersson in Peking to help in arranging some of the archaeological and art studies in which the Prince had an interest. Andersson arranged a reception and scientific meeting to be held in Peking upon their arrival. It was expected to provide an opportunity for the scholars living in that area to communicate the results of their studies to one another. For his own presentation he used data from the reports on the Chinese fossil mammal material which had been sent to him by Dr. Wiman in Sweden. Among other papers presented was one by Father Teilhard de Chardin describing the discovery by him and Father Licent of the early Stone-age Man culture in the Ordos.

Andersson's paper was the last on the program and at the end of it he caused considerable excitement as he reported on and showed the lantern slide of the hominid teeth discovered by Zdansky in the Chou Kuo Tien deposit. He hastened to point out that although the discovery was incomplete, he had no plans to continue excavations. However, he did recommend that there be further examination of these deposits and that this be organized by the Geological Survey of China and in cooperation with Dr. Davidson Black. Dr. Black had since 1919 served as head of the Department of Anatomy of the Peking Union Medical College which was operated by the China Medical Board of the Rockefeller Foundation. The suggestion was favorably received and following the request of Dr. Black funds were made available by the Rockefeller Foundation.

The name of this hominid was coined immediately by Dr. A. W. Grabau, Chief Palaeontologist of the Geological Survey of China and quite promptly it became known to the world as "The Peking Man."

There were times in the next several months when Andersson was quite uncomfortable as he received jibes as to whether the tooth was from man or carnivore. Criticism and words of caution came also from Father Teilhard who had become his friend. Thus in a letter referring to the teeth he warned "It is

necessary to be very cautious, since their nature is undetermined."

But Dr. Andersson did not retreat and in the following year on October 16, 1927 he received some vindication. On that date Dr. Birger Bohlin, the new director of excavations found what he identified as a third hominid tooth. This came after he had hewed out and examined, over a period of months, some 3,000 cubic meters of deposits. He promptly took it into Peking to be examined by Dr. Black.

A letter written to Andersson by Dr. Black reflects the attitude, dedication and enthusiasm of these men:

"Bohlin is a splendid and enthusiastic fellow who refused to allow local difficulties and military crises to affect his work . . . .

On October 19th at half-past six in the evening Bohlin came to my institution in field dress, covered with dust but beaming with pleasure. He had finished the season's work despite the war, and on October 16th he had discovered the tooth. He was himself on the spot when it was taken out of the deposits. Certainly I was overjoyed! Bohlin came to me before he told his wife that he was in Peking. He is indeed a man after my own heart and I hope you will tell Dr. Wiman how much I value his assistance in procuring Bohlin for our work in China . . . . .

Bohlin is quite certain that he will find some of Homo-pekinensis when he begins to sift in the laboratory the material he takes home."

After Black had meticulously examined the tooth, he had no doubt about the hominid character of the creature that had possessed it. His confidence in this conclusion led him to propose a new hominid genus *Sinanthropus* with the species name *pekinensis*. Dr. Black also had his uncomfortable moments, for his conclusions were not universally accepted.

The following year Bohlin was joined by two Chinese scientists. There was Dr. C. C. Young trained by Schlosser in Germany who represented the Geological Survey of China and also Mr. W. C. Pei who had been a pupil of Grabau. By the end of the year's working season an additional 3,000 cubic meters of deposit had been excavated and brought forth

numerous additional isolated teeth of Sinanthropus, the greater part of a juvenile jaw, and an adult jaw fragment with three molar teeth in situ.

Dr. Black had now become the recognized directing force behind the project. Although he was an anatomist in the medical school, he had engaged in anthropological studies before and for several years had been keenly interested in the search for man's early ancestors. By the end of 1928 he realized that with the original two years grant from the Rockefeller Foundation coming to a close that additional funds had to be obtained or else the project would have to be abandoned. He therefore proposed the formation of a Cenozoic Research Laboratory to be organized as a special department of the Geological Survey of China with support from funds of the Rockefeller Foundation if these could be obtained. All laboratory examinations of fossil material were to be performed under his direction in the anatomy laboratories of the Peking Union Medical School (P.U.M.C.) and all specimens were to remain in China. Research was to be pursued not alone at Chou Kuo Tien but also in Cenozoic deposits elsewhere in China.

By April 5th of 1929 the requested funds arrived and the laboratory staff was organized at once. It consisted of:

Dr. Davidson Black and Dr. V. K. Ting,
Honorary Directors

Père Teilhard de Chardin,
Adviser and Collaborator on Animal Fossils

Dr. C. C. Young,
Assistant Director and Palaeontologist

Mr. W. C. Pei,
Palaeontologist (to be in charge of field work at Chou Kuo Tien).

Mr. M. N. Pien,
Assistant

Although not a formal member of the staff Dr. George S. Barbour frequently participated in the field work and served as a most valued consultant on aspects of geology and physiography at the various research sites. Both he and Père Teilhard

made extensive explorations on the Cenozoic deposits in Shansi province during 1929.

At Chou Kuo Tien, excavations were begun by Pei, Young and Pien with enthusiasm and a greater sense of financial security. The results of several months of their work were not startling. Actually only the discovery of several loose Sinanthropus teeth represented the extent of the harvest. Well that is until the afternoon of December 2, 1929. It was then that Mr. W. C. Pei made the first of the long hoped for finds which was a beautifully preserved adolescent Sinanthropus skull.

A few excerpts from Mr. Pei's modest report of this climactic event may be of interest. He had reached a point 22.6 meters below the Reference Point and believing that the bottom of the lower fissure was not far distant and yet planning to close the season's work because of cold weather he goes on to state: "However, in spite of the bitter cold, the desire to know what were the lower layers of the deposit made me postpone that time as long as possible, and as a result during the last few days I found two caves almost at the southern extremity of the northern lower fissure." He designated these as Cave 1 and Cave 2 and went on to say, "When the opening of Cave 2 was found I was only able to explore it with great difficulty, having to be let down its shaft by a long rope. Some hyaena vertebrae however, were recovered from this cave which yet remains to be investigated fully.

Cave 1 is not so deep as Cave 2 and since it opened horizontally I was able to reach it without difficulty on November 29. On December 1st I began to remove the upper most part of the accumulation filling the cave. At four o'clock next afternoon I encountered the almost complete skull of Sinanthropus. The specimen was embedded partly in loose sands and partly in a hard matrix so that it was possible to extricate it with relative ease." He sent letters by special messenger to officials of the Geological Survey and telegraphed Dr. Black the following day. On December 6th, after carefully wrapping and embedding the specimen for transport he placed it in the basket on his bicycle and rode some 25 miles to Dr. Black's laboratory in Peking.

A medal was presented to Dr. Black but he insisted that it carry Mr. Pei's name but instead a separate medal was then

made and presented to Mr. Pei. Dr. Black in giving recognition to Pei once wrote "It is entirely due to his skill and devotion that this bulky material with its unique and fragile contents reached the Cenozoic Laboratory without loss of a single fragment."

News of the discovery spread to other parts of the world through newspaper reports following the initial publication in the Peking Leader. The first scientific report was finished by Dr. Black before the end of December and was published in early 1930 in the Bulletin of the Geological Survey of China. It was entitled a "Preliminary Notice on the Discovery of an Adult Sinanthropus Skull at Chou Kuo Tien."

In May of the following year the Geological Survey was able to obtain title to the Chou Kuo Tien site and plans for further excavations were made. Although for several of the Cenozoic Laboratory staff the year 1930 was one of travel and exploration elsewhere in China as well as in Manchuria and Mongolia, nevertheless some additional Sinanthropus finds were made including fragments which comprized a large part of the calvarium of an adult. In that year the laboratory also was host to the distinguished anatomist Professor Grafton Elliot Smith who had been one of Dr. Black's teachers and who was an enthusiastic supporter of his work in anthropology.

The discoveries of the season in 1931 were of tremendous importance in providing knowledge of Peking Man's cultural achievements and the age in which he lived. New areas were opened up resulting at first in the finding of a few undoubtedly crudely chipped artifacts of veined quartz and a black pigment chemically determined to have a high content of free carbon thus furnishing evidence of the local action of fire. Later Pei and Pien came upon thousands of crude stone artifacts in actual association with Sinanthropus jaw, clavicle, and skull fragments in a fire blackened strata. The renowned Abbé H. Breuil from the Institute of Human Palaeontology in Paris visited Peking that year. He not only confirmed the findings and conclusions of Pei but himself published an article on the evidence of fire, about the stone industry and bones at Chou Kuo Tien.

The year 1932 was devoted to a reoriented plan of excavation wherein they proceeded layer by layer from the top. In

the process some additional jaw bones, tooth specimens and stone artifacts were obtained. A report edited by Dr. Black on all of the findings through 1932 carrying articles of Black, Teilhard, Young, and Pei was published in the Geological Memoirs under the title "Fossil Man in China."

Dr. Black died in Peking on March 15, 1934. He was a man who had achieved much, been loved by many, was widely respected as a man and a scientist and had been the recipient of many honors.

Two men were appointed to fill the posts held by him. Dr. A. B. D. Fortuyn, who had been a member of Dr. Black's staff for some time, was appointed to serve as Head of the Department of Anatomy at the P.U.M.C.. Dr. Franz Weidenreich well known for his work in Germany, France and the United States was secured to serve as director of the Cenozoic Laboratory and the excavation at Chou Kuo Tien. Until the time for his arrival in April of 1935 Father Teilhard served as acting director.

Work was continued for two years at the Sinanthropus site under Dr. Weidenreich's direction until guerilla fighting broke out in the area following Japanese occupation of China. During this period portions of seven additional skulls were found. After field work was abandoned at the site, Dr. Weidenreich devoted his efforts to the study of his material and Dr. Black's, and to the writing of his excellent monographs. He sailed for the United States in April 1941, carrying a set of casts of Sinanthropus with him.

It may be said that Peking Man died once and that figuratively speaking he died again. For all that is to be found of him today are written descriptions, drawings, photographs, casts and a sculptured head of his probable features done by Mrs. Lucile Swan under the guidance of Dr. Weidenreich. This resulted from the concern expressed by Dr. Wong Wen Kao, president of the Geological Survey and his urging the removal of the fossils from the laboratories to the United States. He strongly urged this action in a letter received April 10, 1941 by Dr. Henry Houghton, Director of the Peking Union Medical College. After considerable initial reluctance on his part and some on the part of the U. S. Embassy officials, rising international tensions led to the decision to send them. The fossil bones were therefore carefully packed in two

foot-lockers by Dr. Houghton and the college controller Mr. Trevor Bowen and delivered to Colonel Ashurst of the United States Marines in the summer of 1941. The originals had been replaced by excellently prepared casts.

The foot-lockers were not removed from the Embassy and Marine Compound until December 5, 1941, when they were sent by special train with a detachment of marines scheduled to embark on the liner President Harrison at the North China Port of Ching Wang Tao. The train reached its destination December 7th. On that day came the attack on Pearl Harbor and Japan and America were at war. The marines were returned as prisoners of war to Peking. The crew of the President Harrison grounded the ship to prevent its immediate use by the Japanese. The fossils of Sinanthropus pekinensis disappeared and despite many rumors and stories most probably were unceremoniously consigned to the bottom of the Gulf of Chihli by some Japanese soldier who was ignorant of their worth.

Dr. Houghton, Mr. Bowen, along with Dr. Leighton Stuart, then president of Yenching University, later our last ambassador to China, as well as the Head of the Department of Medicine at P.U.M.C., Dr. Isadore Snapper were all imprisoned in a residential compound. However, when the Japanese officials were unable to find the original fossils at the college they removed Mr. Trevor Bowen and placed him in a wooden cage in which he could neither stand nor lie down and gave him rice and water. There he remained for a few days until the Japanese were finally convinced that he actually did not know where the fossils were.

So ended the great adventure and drama which had proceeded from an interest in dragon bones by way of Chicken Bone Hill to the ultimate discovery of Peking Man. It was truly an international adventure carried on by dedicated men of good will from several countries who bore for one another a deep affection and respect.

It is ironical that the stone artifacts from Chou Kuo Tien were all removed to Tokyo and found carefully preserved and catalogued after the war. So also were the fossil remains of Solo Man removed by the Japanese from Java.

The explorations at Chou Kuo Tien have been considered among the best scientifically studied reported of their kind. The funds spent by the Rockefeller Foundation on their venture were by one author alleged to have amounted to more than that spent prior to 1961 on the investigation of man's early ancestors in all of Africa below the Sahara.

But what was Sinanthropus like? When did he live? Where is he now placed in relation to other examples of fossil man? What is his relationship to modern man?

The data derived from the parts of some forty different men, women, and children unearthed before excavations ceased, indicate that Sinanthropus stood erect, and had a brain size some 200 c.c. greater than that of his close relative Java man with an average of 1075 c.c. for both sexes. The average brain size for males of 1150 c.c. proved to be about 300 c.c. smaller than that of modern males which has been set at 1450 c.c. But brain size alone must be used with great caution in determining the intelligence of Peking Man as compared to that of modern man as Weidenreich stressed in a paper written in the year of his death, 1948. As he indicated the increase in body size is always accompanied by an increase in brain size but the increase of body size is not alone responsible for the size of the brain. Thus the whale has a brain weight greater than that of man nevertheless in proportion to body weight its brain is smaller. Whereas man has 1 gm of brain substance for 44 gms of body substance, the whale has 1 gm of brain for 8,500 gms of body. A study of proportionate weights, however, if used as a measure of intelligence would make the marmosets and capuchin monkey more intelligent than man for the ratio of the marmoset is 1 to 27 and the capuchin monkey 1 to 17.5 gm of brain substance to body substance.

Further such knowledge as may be gained from the impressions of brain convolutions in fossil skulls must also be used with caution as shown by the study of actual brains. In using such an index modern man would certainly lose to the whale and its relatives for they have the largest number and finest wrinkles of the entire animal kingdom.

On the basis of brain size, the eminent palaeontologist Boule was convinced that it could not have been Sinanthropus

who had built the fires and made the stone implements at Chou Kuo Tien but that it must have been members of a more advanced culture which had done so. However, as Weidenreich has stressed, "In all the years during which the cave of Chou Kuo Tien has been explored, no trace of a second human type has ever come to light; therefore, there is no reason to doubt the identity of Peking Man and the culture of Chou Kuo Tien."

The nature and arrangement of his cultural remains reveal to scientists that he probably used fire not merely for warmth or to ward off predators but also to cook his food. He is said to have been an eater of both flesh and vegetables as shown not alone by the remains of his meals but also in view of the tools which he made. From the study of his skull and the casts made therefrom, Dr. Black believed that he may have been capable of speech. The frequent finding of skulls with their bases shattered has led to the opinion that Peking Man was a canibal as was the Solo man of Java and that it was primarily the removed head of his human victims that was brought to the cave for extraction and consumption of the brain.

The efforts which have been made by using fossil remains to construct a family tree depicting the descent of man even now leaves anthropologists entangled in a morass of controversy, so that the position of Sinanthropus pekinensis in relationship to other fossil examples of man remains uncertain. A strong similarity between Peking Man and Java Man, of Dubois and von Koenigswald, is generally admitted as well as the somewhat more advanced state of development of Peking Man. Both are now thought of as being representatives of the genus Pitchecanthropus. Weidenreich, contrary to some, would not even consider them different species but rather members of different races.

A common mode of charting man's links to the past involves the concept of the human family (hominidae) having emerged from a common pool from whence also came the gibbons (sub family hylobatinae), Proconsul (sub family proconsulinae), and the great apes living and extinct (pongi-nae). Certainly the so called ape-men australopithecus and paranthropus discovered by Dart and Broom were more primi-

tive than either Peking or Java Man. So likewise is the "near man" of Dr. Leakey, Zinjanthropus, and probably also his more recent find which he has given the genus title of *homo* and the species name *habilis*.

Opinions differ as to the relationship of Peking Man as well as Java Man to modern man. Whereas Dr. Weidenreich considered Peking Man an ancient ancestor of the present mongoloids and Java Man a precursor of the native Australians perhaps the majority would designate them to be a branch among the ancestors of man which had become extinct as did Neanderthal Man, in the opinion of many.

Any attempt to determine when Peking Man lived must depend upon the knowledge derived from the strata from which he was removed, the relative dating of his stone culture, and that of the fauna found associated with his skeletal remains. Using these methods for dating he is said to have lived about 500,000 years ago. Today there are available improved methods for dating fossils. The use of the radioactive isotope Carbon fourteen (C^{14}), as developed by Willard Libby in 1946, is of considerable value for dating more recent finds but has little value in dating to any period beyond 30 to 50 thousand years. However, the development of the potassium-argon technique in 1948 and its improvement in 1958 by Dr. Everden does make possible the ability to date material from the Pleistocene age and beyond. But of course no such methods were available prior to the loss of fossil Sinanthropus.

A final question might be posed? Has the search for the ancestors of man or in fact has any palaeontological research brought forth concepts of value relative to the future of man? There are many who would credit the aforementioned Jesuit priest and scientist Pierre Teilhard de Chardin with having answered this in the affirmative. This he has done through his presentation of new and challenging ideas about the future character of the evolution of man. These ideas were not made known before his death because of the refusal of his church to allow their publication. Any attempt to discuss their nature, which closely relates religion and science, would require another full length paper. Therefore, it can only be said that they are best reflected in two of his works which have been trans-

lated into English, i.e., "The Phenomenon of Man," and "The Future of Man."

The recent course of man's history filled as it has been with conflict and violence might well remind us in closing of the warning given by Le Gros Clark in which he indicates that if man's intellectual dominance over his fellow creatures is related to the evolutionary development of his brain, then it remains to be seen whether in the future he can contrive "a method of living in orderly relations with members of his own species." For as he points out if he fails to do so he may follow the example of other animal types which "achieved a temporary ascendancy by exaggerated development of some particular structural mechanism. He may become extinct."

CONTEMPT OF COURT

THOMAS F. TURLEY, JR.

Read Before "THE EGYPTIANS," May 20, 1965

Homer reports that Agamemnon bore with Achilles when the latter challenged (unsuccessfully!) his royal authority. And even Alexander the Great permitted those about him, especially his fellow countrymen, the Greeks whose bread and salt he had eaten, and whose water and wine he had drunk, many liberties with his pretentions to infallibility. But perhaps that was because neither Agamemnon nor Alexander had attained, indeed never did attain, the age at which some men now wear judicial robes. Or perhaps the explanation of the contrast between their attitudes and actions in those respects and the actions and the attitudes of the Ottoman Caliphs, who had summarily beheaded anyone who had the temerity to show the bottom of his foot in the royal presence, or those of the English king, who summarily visited drastic punishment on anyone said to have raised a false rumor that the king intended to grant toleration to baptism, lies in the fact that neither Agamemnon nor Alexander had before them the example of The Prophet or the dubious benefits of the doctrines of papal infallibility or the divine right of kings.

Be that as it may, however, there is no denying that the actions and attitudes of at least some of those who claim and exercise the contempt power in the United States today are much closer to the tradition of the Ottoman Caliphs and King James II than they are to those of Agamemnon and Alexander, as witness an incident reported in the Commercial Appeal this morning (May 20, 1965) in which Madison County Judge H. LeRoy Pope, ordered that newspaper's Jackson, Tennessee, correspondent, George Sutton, forcibly removed from a Juvenile Court hearing on a "charge of investigation" because that correspondent had the temerity, contrary to His Honor's "wishes," to *publish the date of a court hearing*. And there is no denying that many of the results, and especially the procedures by which they are reached, once their implications are understood, are all but unbelievably incongruous to

us, brought up, as we have been, under a government which derives so much, idealogically, from the teachings of Locke, Montesquieu, Milton, et al, a government conceived as one "of laws, not of men," a government with a written constitution specifically providing, among other things, that freedom of speech, or of the press shall not be abridged, (1st Amendment); that

> "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ----------; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ----------" (5th Amendment)

and that

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." (6th Amendment)

Ronald L. Goldfarb, in his recent and excellent work on "The Contempt Power" (Columbia University Press – 1963) quotes (at page 47) a 1742 decision from Lord Hardwicke's division (St. James, Evening Post, 2 Atk.471) to this effect:

> "There are *three* different *sorts* of *contempt*. One kind is *scandalising the court itself*. There may also be a contempt of this court in *abusing parties* who are concerned in cases here. There may also be a contempt of this court in *prejudicing mankind against persons before the cause is heard.*"

The Supreme Court of Wisconsin once said of the contempt power that it is

> "---------- the nearest akin to despotic power of any existing under our form of government"
> (St. ex rel, Atty. Gen. v. Circuit Court, 97 Wis. 1, 8, 72 N.W. 193-195, 38 LRA 554, 65 Am. St. Rep. 90)

A Tennessean once said that the contempt power is

> "Founded on the obsequious and flattering principle that a king was invested with imaginary perfection which forbade question or discussion, any insult to the king or his government was punishable as contempt from the most ancient time." (2 Ten. Law Review 215)

Much of the worst of the consequences of this "obsequious and flattering principle" seems to have engrafted itself upon our institutions through *historical error,* as is explained in detail by Sir John Charles Fox, late Senior Master of Great Britain's Supreme Court – Chancery Division, in his exhaustive work on "The History of Contempt of Court – The Form of Trial and Mode of Punishment." (Oxford at Clarendon Press – 1927.)

As explained by Frankfurter and Landis in their excellent article on the "Power to Regulate Contempts," with exhaustive notes and appendices, in 37 Harvard Law Review 1010, et seq.

> *"Wholly unfounded assumptions* about *'immemorial usage'* acquired a factious authority and were made the basis of legal decisions." (Italics added)

But even one of the learned authors of that learned article, Mr. Justice Frankfurter, in his concurring opinion in Green v. U. S. (1958-356 US 165, 2 LED. 672, at 693), later agreed, in effect, with the majority of the Supreme Court that whether or not rooted in *historical error,* and granted that it is

> "---------- never too late for this Court to correct a misconception in an occasional decision, even on rare occasion to change a rule of law that may have long persisted but also have long been questioned and only flusteringly applied,"

as regards the exercise of the contempt power by the branch of government of which he is a member,

> "To say that everybody on the court has been wrong for 150 years and that what had been deemed part of the bone and sinew of the law should now be extirpated is quite another thing."

Therefore, to follow in detail the argument of Sir John Charles Fox that a statement in an unfiled opinion by Wilmot, J., in the King v. Almon, which, was not published until the early 1800's, to the effect that summary punishment for contempts committed out of court stood "immemorial usage" was based on an *erroneous interpretation* of *earlier law* would profit us a little at this point as it would an artillery captain in the 82nd Airborne to attempt to set his ranges in Santo

Domingo by studying the Book of Genisis, so let us go to the constitutions, statutes and some of the reported decisions, first of Tennessee, which are typical of most of the states, and them to the federal materials.

(I know of no pending contempts of the General Assembly, indeed, the Assembly itself, on the present state of the record, is on the verge of being cited for contempt of the United States District Court, at Nashville. (See 79 L Ed 809 and 6 L Ed 2nd 1359.) And though Congress continues to claim an *inherent* contempt power, contempts of congress since 1857 have usually been prosecuted in the courts, such prosecutions consisting principally these days, as most of you know, of prosecutions of witnesses who refuse to answer before Congressional Committees questions intended more to expose the witness than to guide the Congress in framing legislation (See 97 L Ed 782; 99 L Ed 985; 3 L Ed 2nd 1647 and 10 L Ed 2nd 1329) and such affronts to Congressional dignity as disorderly conduct being punished simply by eviction and the more egregious, such as engaging in rifle practice at its members from the gallery being punished *not as contempts,* on which the wounded members would sit in judgment, *but as crimes* – which most contempts also are – before courts and juries who did not smell the burnt powder, and such affronts as scurrilous letters from constituents – some worse by far, I am sure, than one which recently prompted a federal district judge to summarily fine and imprison a lawyer and his client – being simply disregarded.)

(And as all recent evidences suggest to me that the doctrine of contempt of the executive, is now a dead letter, as is attested by the fact that recently the President of the United States had evicted, quietly and *without beheading,* a swarm of people who not only showed the soles of their feet but loitered and protested for seven hours in the White House itself, the fact that what some say about the Governor, both in and out of "court" and in and out of print, is certainly worse than what historically laid many a man by the heels yet today goes unpunished, and the fact that a substantial part of many meetings of the City Commission is consumed in contumacious denunciation of the Mayor and Commissioners, yet goes unchallenged except for an occasional eviction or

rare prosecutions for disorderly conduct – no citations for contempt – I shall not waste your time and mine on the doctrine of contempt of the executive – the other one-third of the Trinity – executive, legislative and judicial – the combination and personification of which in one person claiming the attributes not only of royalty but of diety probably initiated all these problems.)

(However, I do wish that time would permit elaboration upon how the principal administrative agencies, by simply licensing and regulating lawyers and evicting from hearings clients and witnesses who will not behave themselves, manage to conduct the public's business, and to reach decisions about matters more weighty than, for example, public drunkenness or affray, without claim of right to exercise such power themselves and with only occasionally invoking *through the courts* the contempt power.)

"American Jurisprudence" says (Vol. 12, Page 392) that there are basically *two kinds of contempts:* "direct" and "indirect" or "constructive," the test being whether offered within or without the "presence of the court."

"Presence of the court" has been said to mean, in that context, wherever the court

> "or any of its constituent parts is engaged in the prosecution of the business of the court according to law."

Proceedings for contempt are of two kinds, namely, "criminal" and "civil," "criminal" being those

> "brought to preserve the power or vindicate the dignity of the court and to punish for disobedience of its orders."

and "civil" being

> "those instituted to preserve and enforce the rights of private parties to suits and compel obedience to orders or decrees made for the benefit of parties."

But Lewis Carroll, not American Jurisprudence or Webster's, is often a better guide to the meaning of words in this field:

> "When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean – neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."
"The question is," said Humpty Dumpty, *"which is to be master – that's all."*

And as Justice Holmes said in the Gompers case:

"provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is to be gathered not simply by taking the words and a dictionary, but considering their origin and the line of their growth."

And remember another Holmesian comment, quoted by Mr. Goldfarb in his work cited above, (pags 47) that

"the substance of the law is secreted in the interstices of procedure." (Italics added)

The Tennessee Constitution of 1870 says (Article VI, Section 1), that

"The *judicial power* of this State shall be vested in our Supreme Court and in such Circuit, Chancery and other inferior Courts as the legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be necessary. Courts to be holden by Justices of the Peace may also be established." (Italics added)

The Article corresponds to the fifth article of "The Constitution of 1796 and is similar to the comparable article in "The Constitution of 1834."

The statutes expressly provide that:

"Every court has power:
(1) To enforce order in its immediate presence, or as near thereto as is necessary to prevent interruption, disturbance, or hindrance to its proceedings.
(2) To enforce order before a person or body acting under its authority.
(3) To compel obedience to its judgments, orders, and processes, and to the order of a judge out of court, in an action or proceeding therein.
(4) To control, in furtherance of justice, the conduct of its officers, and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.
(5) To administer oaths whenever it may be necessary in the exercise of its powers and duties.

(6) To control its process and orders. (Code 1858 § 4099; Shan., § 5911; mod. Code 1932, § 10110.)" 16 TCA 102

and say that

"For the effectual exercise of its powers, every court has power to punish for contempt, *as provided for in this Code.*" (Italics added) 16 TCA 103

In 1831, (See Chapter 19, Sections 1, et seq.) Tennessee and many other states (see appendix to Frankfurter and Landis in 37 Harvard Law Review, 1010, supra) adopted statutes regulating the power of courts to punish contempts, the first three sections of which statutes followed closely the federal statutes adopted in 1821 as an aftermath of the impeachment proceedings against Judge Peck, hereinafter discussed, the substance of those statutes being this:

"The power of the several courts to issue attachments, and inflict punishments for contempts of court, shall not be construed to extend to any except the following cases:
(1) The willful misbehavior of any person in the presence of the court, or so near thereto as to obstruct the administration of justice.
(2) The willful misbehavior of any of the officers of said courts, in their official transactions.
(3) The willful disobedience or resistance of any officer of the said courts, party, juror, witness, or any other person, to any lawful writ, process, order, rule, decree, or command of said courts.
(4) Abuse of, or unlawful interference with, the process or proceedings of the court.
(5) Willfully conversing with jurors in relation to the merits of the cause in the trial of which they are engaged, or otherwise tampering with them.
(6) Any other act or omission declared a contempt by law. (Code 1858, § 4106 (deriv. Acts 1831, ch. 19, § 1); Shan., § 5918; Code 1932, § 10119.)" 23 TCA 902

"The punishment for contempt may be by fine or imprisonment, or both; but where not otherwise specially provided, the circuit, chancery, and appellate courts are limited to a fine of fifty dollars ($50.00), and imprisonment not exceeding ten (10) days, and all other courts are limited to a fine of ten dollars ($10.00). (Code 1858, § 4107; Shan., §5919; Code 1932, § 10120.)

23 TCA 903

"If the contempt consists in an omission to perform an act which it is yet in the power of the person to perform,

he may be imprisoned until he performs it. (Code 1858, § 4108; Shan., § 5920; Code 1932, § 10121.)"
23 TCA 904

"If it consists in the performance of a forbidden act, the person may be imprisoned until the act is rectified by placing matters and persons in status quo, or by the payment of damages. (Code 1858, § 4109; Shan., § Code 1932, § 10122.)" 23 TCA 905

(*Profanity in the presence of a Court* was and is punishable in Tennessee by fine and imprisonment not exceeding 24 hours under an act dating back to 1741. (See 23 TCA 907.)

The Courts of Tennessee have held, more or less consistently, that the power to punish contempts, certainly the power of inferior courts to do so, is statutory, that

"the vast and undefined scope of contempts at common law have been repealed."

But in State v. Galloway & Rhea (1968 – 45 Tenn. 326) defendants, publishers of the "Memphis Avalanche," published therein, *two days after the prisoner was discharged,* an editorial purporting to give the particulars and denouncing Criminal Court Judge William Hunter as guilty of official corruption for discharging on bail a prisoner under indictment in his court for a felony and were fined and imprisoned for contempt. (Shades of King v. Almon!)

They sought review of the contempt conviction on writ of error and also sought review on writ of error of a judgment of the Memphis City Court dismissing for want of jurisdiction an application to that Court for discharge on a writ of habeas corpus.

The Supreme Court dismissed both writs and discharged the supersedeas saying that a contempt conviction is not reviewable either by appeal or writ of error; that review can be had only on habeas corpus, on which relief can be granted only if the judgment is VOID; that legislative modification of the common law power of courts to punish for contempts is to be *"strictly construed"* and that courts have the power to control publication of their proceedings while *"in progress."*

In Scott & Light v. State (1902 – 109 Tenn. 390) defendants were tried and convicted of contempt for *decoying* a state *witness* in a criminal case *out of the state.* The convictions were reversed and remanded for technical reasons but the Supreme Court said that though the power to punish for contempt has been limited by the statutes quoted above the offense charged fell clearly under subsection 4;

"abuse of, or unlawful interference with, the process or proceedings of the court."

In Ricketts v. State (1903 – 111 Tenn. 380) the plaintiff in error was attached, tried, convicted, fined $50.00 and ordered jailed for 10 days for contempt for *procuring* a State *witness* in a tippling case to *testify falsely.* The Court, citing as authority subsection 4 of the statute quoted above, affirmed the conviction, saying:

"Anything done for the purpose of preventing a witness duly subpoenaed from attending court, or, when in attendance from testifying to the truth and the whole truth, constitutes a contempt under the statute of the most serious and hurtful character, which should always be vigilantly inquired into and severely punished.

"It is difficult to conceive of a more willful and corrupt interference with the processes and proceedings of a court of justice than is here presented. Contemnor not only interfered with and prevented the witness then under subpoena from testifying the truth, but practically in the presence of the court caused him to commit the crime of perjury, thus in the most effective way obstructing its proceedings and the administration of justice. Inducing a witness to absent himself from court, as was done in McCarthy v. State, 89 Tenn., 543, 15 S.W., 736, is a mild offense compared to that here disclosed."

In State, ex rel May v. Kirchbaum (1925 – 152 Tenn. 416) May was fined $5.00 for contempt of Kirchbaum, City Judge of Alton Park. He refused to pay and Kirchbaum committed him to jail, from which he was discharged on habeas corpus by the Criminal Court of Hamilton County after a hearing and City Judge Kirchbaum appealed the discharge.

The Supreme Court reversed and remanded May to the custody of the City Court of Alton Park saying that whether the City Court was in session or in recess at the time was immaterial, that May's conduct was certainly *"on the verge of the court"* and was properly punishable as contempt under the statute.

In Derryberry v. Derryberry (8 Tenn. Civ. Appeals (Higgins) 401) a husband intercepted his wife in a courthouse cor-

ridor and *by false statements caused her to desist from making a valid defense* in a divorce action pending between them. After adjournment of the term but before final signing of the minutes, his actions were brought to the attention of the Chancellor before whom the divorce action had then been tried who issued attachment for the husband, heard evidence and fined and sentenced him the statutory maximum – $50.00 and 10 days – and was affirmed.

In re Hickey (1924 – 149 Tenn. 344, 258 SW 417) W. N. Hickey, a Morristown lawyer, published a paid advertisement giving chapter and verse in support of the headlined thesis that "OUR CIRCUIT COURT – A JOKE." The Circuit Judge referred to, one James L. Drinnon, instituted proceedings against Hickey for *contempt* and *disbarment*, which charges were heard by Judge Von a Huffaker, sitting by interchange for Judge Drinnon. Judge Huffaker adjudged Hickey in contempt, fined him $10.00, suspended him from practice for 30 days and taxed him the costs. Hickey appealed and the Supreme Court reversed and dismissed the case saying:

That subsection 6 of the above quoted statute adds nothing to the other five subsections; that subsection 1. refers to direct contempts committed in the presence of the court or so near thereto as the amount to the same thing; that subsection 4 refers to *suits pending* and *not* to *suits that have been terminated* or to *"general criticisms of the court,"* and that the Circuit Court was in error in adjudging Hickey in contempt, as the article did not relate to any pending suit and did not question the *integrity* of the court, it being, in substance, a charge that

> "Judge Drinnon is wholly unfit and incapacitated to hold the Circuit Court and that, as a result, the court has broken down and has ceased to function,"

and that

> As to the disbarment, the Supreme Court said:
> "If the defendant were acting within his constitutional rights in criticizing the court, then it would follow that his conduct was not such as to render him unfit to practice his profession";

that

> "No class of the community ought to be allowed freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. They have the best opportunities of observing and forming a correct judgment. They are in constant attendance on the courts. Hundreds of those who are called on to vote never enter a courthouse, or if they do, it is only at intervals as jurors, witnesses or parties. To say that an attorney can only act or speak on this subject under liability to be called to account and to be deprived of his profession and livelihood by the very judge or judges whom he may consider it his duty to attact and expose, is a position too monstrous to be entertained for a moment under our present system";

that

> "There is a marked difference between the attorney and the nonprofessional citizen; the former is as much an officer of the court as the clerk or sheriff, and his oath of office should lead him at all times and in all places to encourage and strengthen the judges and courts in the discharge of their official duties; but so far as this liberty of speech in connection with judicial action is concerned, his official character in no way affects him; he may talk with his neighbors, and freely comment upon the judge's official conduct in matters no longer pending, and he may criticize the same through the public press; for such acts he will be only answerable as other citizens are";

that

> "Where the article published simply charged the court with being inefficient and incompetent, we cannot see that the court suffers injury, if the charge is untrue. Trial courts especially have little to fear from unjust criticism of this nature. The lawyers, litigants, and witnesses attend the sessions of the court daily, observe the proceedings of the court, and are permitted thereby to judge of his competency and fitness."

and that though

> "the facts did not justify the publication of the article complained of,"

we hold

> "that Mr. Hickeys' conduct was not such as to render him unfit to be a member of the bar."

But in the United States District Court for the District of Missouri in 1820 a lawyer did not fare so well with newspaper criticisms of a Judge:

Section 17 of the "Judiciary Act of 1789" provided that the federal courts shall have:

> "the power to ---------- punish by fine or imprisonment, at the descretion of said courts, all contempts of authority in any cause or hearing before the same ----------,"

but the *circumstances under,* and the *proceedures by, which the contempt power could be exercised,* as well as limitations on the punishments thereunder, were left undefined with the ominous cloud of *inherent* power overhead and a succession of grievances against the arbitrary exercise of the power culminated in impeachment proceedings against District Court Judge James H. Peck, who had imprisoned and disbarred a lawyer for criticizing in a newspaper article a decision of the District Court then *pending on appeal.* After fullest considerasion, articles of impeachment were presented by the House of Representatives charging *official oppression* and Judge Peck was put on trial before the Senate. His defense of good faith, reinforced by humane considerations, accentuated by his age and blindness, won for the Judge an acquittal by the margin of one vote.

> (See Frankfurter and Landis, supra, 37 HLR. 1010, at 1025, and "Constitution of the United States of America. Revised and Annotated 1963," Pages 567-568)

One month thereafter, James Buchanan, later President and then Chairman of the Judiciary Committee, introduced legislation, which was promptly enacted, which provided:

> "A court of the United States shall have power to punish by fine and imprisonment, at its descretion, such contempts of its authority, and *none others,* as —
> 1. Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
> 2. Misbehavior of any of its officers in their official transactions;
> 3. Disobedience or resistance to its lawful writ, process, order, rule, decree or command."

(That legislation, substantially unchanged since, is now Section 401 of Title 18 of the Federal Code.)

But in 1907, in Patterson v. Colorado (205 US 454), the Supreme Court, speaking through Justice Holmes, refused to review the conviction of an editor for contempt of court in publishing articles and cartoons criticizing the action of the

court in a *pending* case. It took the position that even if freedom of the press is protected against abridgment by the State, a publication tending to *obstruct the administration* of justice is punishable, irrespective of its truth.

But the phrase "in the presence of the court or so near thereto or is obstruct the administration of Justice" was construed in Toledo Newspaper Co. v. United States (1918 – 247 US 402) so broadly as to uphold the action of a district court Judge in punishing for contempt a newspaper for publishing spirited editorials and cartoons on questions at issue in a contest involving rates of the Public transit company serving Toledo, Ohio. The majority of the Court held that the test to be applied in determining the obstruction of the administration of justice is *not* the *actual act,* but

> "the *character* of *the act done* and its direct tendency to prevent and obstruct the discharge of Judicial duty. (Italics added)

Similarly, that the test of whether a particular act is an attempt to influence or intimidate a court is not the influence exerted on the mind of a particular judge but

> "the reasonable tendency of the acts done to influence or bring about the hateful result ---------- without reference to the consideration of how far they may have been without influence in the particular case:

In a vigorous dissent, in which he was joined by Justice Brandies, Justice Holmes said:

> "Without invoking the rule of strict construction I think that "so near as to obstruct" means so near as actually to obstruct – and not merely near enough to threaten a possible obstruction. "So near as to" refers to an accomplished fact, and the word "misbehavior" strengthens the construction I adopt. Misbehavior means something more than adverse comment or disrespect.
>
> "But suppose that an imminent possibility of obstruction is sufficient. Still I think that only immediate and necessary action is contemplated, and that no case for summary proceedings is made out if after the event publications are called to the attention of the judge that might have led to an obstruction although they did not. So far as appears that is the present case. But I will go a step farther. The order for the information recites that from time to time sundry numbers of the paper have come to

the attention of the judge as a daily reader of it, and I will assume, from that and the opinion, that he read them as they came out, and I will assume further that he was entitled to rely upon his private knowledge without a statement in open court. But a judge of the United States is expected to be a man of ordinary firmness of character, and I find it impossible to believe that such a judge could have found in anything that was printed even a tendency to prevent his performing his sworn duty. I am not considering whether there was a technical contempt at common law but whether what was done falls within the words of an act intended and admitted to limit the power of the Courts."

After commenting in some detail upon the newspaper articles and the trial judges' opinion concerning them, Justice Holmes said:

> "I confess that I cannot find in all this or in the evidence in the case anything that would have affected a mind of reasonable fortitude, and still less can I find there anything that obstructed the administration of justice in any sense that I possibly can give to those words."

Then adverting to the fact that the trial court waited nearly six months

> "_____ before moving to vindicate its independence,"

and that it evidenced by its opinion that it thought the newspapers

> "_____ consistently unfriendly attitude against the court,"

and the fact that the

> "publications tended to arouse distrust and dislike of the court,"

were sufficient to justify this information and a heavy fine, Justice Holmes came again to the summary nature of the proceeding in which the fine for contempt was levied and said:

> "They may have been, but not, I think, in this form of trial. I would go as far as any man in favor of the sharpest and most summary enforcement of order in Court and obedience to decrees, but when there is no need for immediate action contempts are like any other breach of law and should be dealt with as the law deals with other illegal acts. Action like the present in my opinion is wholly unwarranted by even color of law."

In Craig v. Hecht (1923 – 263 US 255) the creteria suggested and applied by the majority in the Toledo Newspaper Co. case were applied to sustain imprisonment of the Comptroller of New York City for writing and publishing a letter

to a public service commissioner which criticizes the actions of a United States District Judge in receivership proceedings.

Again Justice Holmes dissented, saying that the sentence for contempt should be wholly void unless a judge had power to lay hold to anything

> "that tends to make him unpopular or to belittle him _____. A man cannot be summarily laid by the heels because his words make public feeling more unfavorable *in case the Judge should be asked to act at some later date,* any more than he can for exciting feeling against a judge for what he had already done." (Italics added)

The decision in the Toledo Newspaper case did not follow earlier decisions interpreting the act of 1831 and was, as has been said, "grounded on historical error." For those reasons it was reversed in Nye v. United States (1941 – 313 US 33, 47-53) and the theory of *constructive contempt* based on the *"reasonable tendency" rule* rejected in a proceeding wherein defendants in a civil suit, by persuasion and the use of liquor, induced a plaintiff, feeble in mind and body, to ask for dismissal of the suit he had brought against them. The events in the episode occurred more than 100 miles from where the court was sitting, and were held not to put the persons responsible for them in contempt of court. Although Nye v. United States was exclusively a case of statutory construction, it was significant from a constitutional point of view in that its reasoning was contrary to that of earlier cases narrowly construing the act of 1831 and asserting broad inherent powers of courts to punish contempts independently of, and contrary to, congressional regulation of this power.

Bridges v. California, (1941 – 314 U.S. 252, 260) though dealing with the power of State courts to punish contempts in the face of the due process clause of the Fourteenth Amendment, is noteworthy in the present connection for the dictum of the majority that *the contempt power of all courts, federal as well as State, is limited by the guaranty of the First Amendment against interference with freedom of speech or of the press.*

Enlarging upon the idea that *clear and present danger* is an appropriate guide in determining whether comment on

proceedings can be punished as contempt, Justice Black said in the Bridges case:

> "We cannot start with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question and the circumstances of their publication to determine to what extent the substantive evil of unfair administration of justice was a likely consequence, and whether the degree of likelihood was sufficient to justify summary punishment."

Speaking on behalf of four dissenting members, Justice Frankfurter objected:

> "A trial is not 'a free trade in ideas,' nor is the best test of truth in a courtroom 'the power of the thought to get itself accepted in the competition of the market.' * * * We cannot read into the Fourteenth Amendment the freedom of speech of the press protected by the First Amendment and at the same time read out age-old means employed by states for securing the calm course of justice. The Fourteenth Amendment does not forbid a state to continue the historic process of prohibiting expressions calculated to subvert a specific exercise of judicial power. So to assume the impartial accomplishment of justice is not an abridgment of freedom of speech or freedom of the press, as these phases of liberty have heretofore been conceived even by the stoutest libertarians. In fact, these liberties themselves depend upon an untrammeled judiciary whose passions are not even unconsciously aroused and whose minds are not distorted by extra-judicial considerations."

In Pinnekamp v. Florida (1946 – 328 US 3312, 350) a unanimous court held that *criticism of judicial action already taken,* although the cases were still pending or other points, did not create a danger to fair judicial administration of the

> "clearness and immediacy necessary to close the doors of permissible public comment."

even though the State court held, and the Supreme Court assumed, that

> "the petitioners deliberately distorted the facts to abase and destroy the efficiency of the court."

And in Craig v. Harney (1947 – 331 US 367, 376) a divided Court held that *publication, while a motion for a new trial was pending,* of an unfair report of the facts of a civil case, accompanied by intemperate criticism of the Judge's conduct, was protected by the Constitution. Said Justice Douglas, speaking for the majority:

> "The vehemence of the language used in not alone the measure of the power to publish for contempt. The fires which it kindles must constitute an imminent, and not likely, threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil."

In Wood v. Georgia (1962 – 370 US 375) the Court, still divided, invalidated as a denial of free speech a contempt conviction, unsupported by findings or reasons, and arising from an elected sheriff's press statement criticizing a judge's charge to a grand jury to investigate bloc voting by Negroes and the use of money to obtain their votes, and admonishing citizens to be on their guard when a judge threatens intimidation of Negro voters under the guise of law enforcement. The record did not show that the grand jurors were rendered unable to complete their task or that the sheriff contributed to such inability. In matters of local, political corruption and investigations, as distinguished from indictment and trial of individuals, it is important, said the Court, that communications be kept open, for the administration of justice necessitates co-operation of an informed public and an elected official has a right to enter political controversy when his political life is at stake, and that the sheriff's attack would have had an impeding influence on the outcome of the investigation only if his charge was so manifestly unjust that it could not stand inspection.

Under what circumstances, and by what procedures, can a lawyer be summarily punished for contempt for alleged misbehavior in the course of a trial?

Among the notable cases raising questions on these scores is Ex parte Terry (1888 – 128 US 289), a case wherein a lawyer had been jailed by the District Court of California for *assaulting a United States marshal in the presence of the*

District Judge and the Supreme Court denied his petition for certiorari.

Another is Cooke v. United States (1925 – 267 US 517), wherein the Supreme Court remanded for further proceedings a judgment of the United States Circuit Court of Texas sustaining the judgment of a United States District Judge sentencing to jail an attorney and his client *for presenting a letter which impugned his impartiality* with respect to their case, *still pending* before him. Distinguishing the case from that of Terry, Chief Justice Taft, speaking for the unanimous Court, said:

> "The important distinction * * * is that this contempt was not in open court. * * * To preserve order in the court room for the proper conduct of business, the court must act instantly to suppress disturbance or violence or physical obstruction or disrespect to the court when occurring in open court. There is no need of evidence or assistance of counsel before punishment, because the court has seen the offence. Such summary vindication of the court's dignity and authority is necessary. It has always been so in the courts of the common law and the punishment imposed is due process of law."

The Chief Justice then added:

> "Another feature of this case seems to call for remark. The power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court is most important and indispensable. But its exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions. This rule of caution is more mandatory where the contempt charged has in it the element of personal criticism or attack upon the judge. The judge must banish the slightest personal impulse to reprisal, but he should not bend backward and injure the authority of the court by too great leniency. The substitution of another judge would avoid either tendency but it is not always possible. Of course where acts of contempt are palpably aggravated by a personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed. But attempts of this kind are rare. All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place. Cornish v. United States, 299 F. 283, 285; Toledo Newspaper Co. v. United States, 237 F. 986, 988. The case before us is one in which the issue between the judge and the parties had come to involve marked personal feeling that did not make for an impartial and calm judicial consideration and conclusion, as the statement of the proceedings abundantly shows."

Similar questions came before the Court in Fisher v. Pace (1948 – 336 U.S. 155, 93 L Ed. 569) wherein petitioner, in the trial of workmen's compensation case, was summarily sentenced for contempt committed in the presence of the court. Upon his application for habeas corpus, the Texas Supreme Court, one of the justices dissenting, upheld the judgment for contempt and a bare majority of the United Supreme Court, in an opinion by Justice Reed, held on certiorari that there was in the circumstances no denial of due process.

Four of the Justices dissented. Douglas, with whom Black concurred, rested his dissent on the ground that the record did not show, or, at least, might be read as not showing, that the petitioner disobeyed the limitations put on his argument to the jury by the rulings of the trial judge; and *that freedom of speech should not be so readily sacrificed, even in a courtroom.* Justice Murphy's dissent points out that the record was one of petty disagreement not approaching that serious interference with the judicial process which justifies use of the contempt weapon. The dissent of Justice Rutledge puts emphasis on the fact that the judge acted in the heat of temper, and that, whatever the provocation, *there can be no due process in trial in the absence of calm judgment and action, untinged by anger, from the bench.*

> (Also see "Contempt Proceedings and Due Process," 93 L Ed. 578.)

Then came the famous case of Sacher, et al v. United States (1951 – 343 U.S. 1, 96 L Ed 717, 72 S. Ct. 451), which was an outgrowth of the trial of the 11 Communists (Dennis

v. U. S., 341 U. S. 494) in which Sacher, et al, were counsel for the defense. On receiving the verdict of conviction, trial Judge Medina at once issued a certificate under Rule 42 (a) of the "Federal Rules of Civil Procedure," finding counsel guilty of criminal contempt and imposing various jail sentences up to six months. The immediate question raised was whether the contempt charged was one which the Judge was authorized to determine for himself, or one which, under Rule 42 (b) could only be passed upon by another judge and after notice and hearing. But behind that issue loomed the same constitutional issue dealt with by the Court in the Cooke case, supra, of the requirements of due process of law.

The Court sustained the Circuit Court of Appeals in affirming the convictions and sentences, at the same time, however, reversing some of Judge Medina's specifications of contempt, one of these being the charge that the petitioners entered into an agreement to deliberately "impair my health."

Speaking for the majority, Justice Jackson said:

> "We hold that Rule 42 allows the trial judge, upon the occurrence in his presence of a contempt, immediately and summarily to punish it, if, in his opinion, delay will prejudice that trial. We hold, on the other hand, that if he believes the exigencies of the trial require that he defer judgment until its completion he may do so without extinguishing his power. * * * We are not unaware or unconcerned that persons identified with unpopular causes may find it difficult to enlist the counsel of their choice. But we think it must be ascribed to causes quite apart from fear of being held in contempt, for we think few effective lawyers would regard the tactics condemned here as either necessary or helpful to a successful defense. That such clients seem to have thought these tactics necessary is likely to contribute to the bar's reluctance to appear for them rather more than fear of contempt. But that there may be no misunderstanding, we make clear that this Court, if its aid be needed, will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever. But it will not equate contempt with courage or insults with independence. It will also protect the processes of orderly trial, which is the supreme object of the lawyer's calling."

Justice Clark did not participate. Justices Black, Douglas

and Frankfurter dissented. Justice Frankfurter's opinion is accompanied by an elaborate review of exchanges between the trial judge and defense counsel, excerpted from the record of the case. On the constitutional issue he said:

> "Summary punishment of contempt is concededly an exception to the requirements of Due Process. Necessity dictates the departure. Necessity must bound its limits. In this case the course of events to the very end of the trial shows that summary measures were not necessary to enable the trial to go on. Departure from established judicial practice, which makes it unfitting for a judge who is personally involved to sit in his own case, was therefore unwarranted. Neither self-respect nor the good name of the law required it. Quite otherwise. Despite the many incidents of contempt that were charged, the trial went to completion, nine months after the first incident, without a single occasion making it necessary to lay any one of the lawyers by the heels in order to assure that the trial proceed. The trial judge was able to keep order and to continue the court's business by occasional brief recesses calculated to cool passions and restore decorum, by periodic warnings to defense lawyers, and by shutting off obstructive arguments whenever rulings were concisely stated and firmly held to."

Justice Douglas summarized the position of all three dissenters as follows:

> "I agree with Mr. Justice Frankfurter that one who reads this record will have difficulty in determining whether members of the bar conspired to drive a judge from the bench or whether the judge used the authority of the bench to whipsaw the lawyers, to taunt and tempt them, and to create for himself the role of the persecuted. I have reluctantly concluded that neither is blameless, that there is fault on each side, that we have here the spectacle of the bench and the bar using the courtroom for an unseemly demonstration of garrulous discussion and of ill will and hot tempers. I therefore agree with Mr. Justice Black and Mr. Justice Frankfurter that this is the classic case where the trial for contempt should be held before another judge. I also agree with Mr. Justice Black that petitioners were entitled by the Constitution to a trial by jury."

(Also see, "Exercise of federal court's summary power to punish for contempt committed in presence of the Court," 96 L Ed. 762.)

At the end of a criminal trial, throughout which the judge and defense counsel engaged in almost continuous wrangling, marked by personal attacks and increasing bitterness, the judge committed defense counsel for criminal contempt under the summary procedure provided by Rule 42 (a), In Offutt v. United States (1954 – 348 US 11, 99 L Ed II, 75 Sec. 11), that commitment was sustained by the Court of Appeals, although the punishment was reduced from 10 days to 48 hours.

In an opinion by Justice Frankfurter a majority of the Supreme Court reversed the commitment and remanded the case *for hearing before another judge*. In reaching that result, the Court relied upon the Cooke Case, supra.

Justices Black and Douglas concurred in the reversal and remand, reiterating the view, previously expressed by them in earlier decisions, that the defendant in such a case should be accorded a jury trial.

Justices Reed & Burton dissented, saying that they would affirm on the basis of the opinion of the Court of Appeals and Justice Minton dissented, saying that the certiorari was improvidently granted, the Cooke case being inapplicable.

The majority opinion says, among other things, this:

> "The pith of this rather extraordinary power to punish without the formalities required by the Bill of Rights for the prosecution of federal crimes generally, is that the necessities of the administration of justice require such summary dealing with obstructions to it. It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage. *The power thus entrusted to a judge is wholly unrelated to his personal sensibilities, be they tender or rugged.* But judges also are human, and may, in a human way, quite unwittingly identify offense to self with obstruction to law. Accordingly, this Court has deemed it important that district judges guard against this easy confusion by not sitting themselves in judgment upon misconduct of counsel where the contempt charge is entangled with the judge's personal feelings against the lawyer.
>
> "Of course personal attacks or innuendoes by a lawyer against a judge, with a view to provoking him, only aggravate what may be an obstruction to the trial. The vital point is that in sitting in judgment on such a misbehaving lawyer the judge should not himself give vent

> to personal spleen or respond to a personal grievance. These are subtle matters, for they concern the ingredients of what constitute justice. *Therefore, justice must satisfy the appearance of justice.* (Italics added)

99 L Ed page 16

Also see, "Exercise of federal court's summary power to punish for contempt committed in actual presence of the court."

99 L Ed. 19

In Cammer v. United States (1956 – 350 U. S. 399) the Court held that a lawyer is not an "officer" of the court within the meaning of a statute empowering courts to punish summarily as contempt misbehavior of officers in their official transactions. (18 USC 401 2).

And in the case of In Re McConnell (1962 – 370 U. S. 230, 8 L Ed. 434, 82 S. Ct. 1299) the judge stopped counsel from asking a certain line of questions and counsel insisted upon his right to ask the questions by stating that he proposed to do so unless the bailiff stopped him. The District Judge summarily fined and sentenced him for contempt. The Seventh Circuit reduced the sentence to a fine and the Supreme Court, in an opinion by Justice Black expressing the view of five members of the Court, reversed and dismissed the charge of contempt of court.

In Green, et al v. United States (1958 – 356 US 165, 2 L Ed. 2d 672, 78 S Ct 632) two of the defendants released on bail pending review of their convictions for conspiracy to violate the "Smith Act" failed for four and one-half years to surrender upon affirmance of their convictions and when they finally did surrender the District Judge, in a criminal contempt proceeding without a jury, found them guilty of contempt for violating the surrender order and sentenced each to three years imprisonment. On certiroari, the Supreme Court affirmed Justice Harlan, speaking for five members of the court, held

1. that the federal contempt power extends to surrender orders;

2. that the evidence supported the judgment of contempt, since it established beyond a reasonable doubt petitioners' knowledge of the existence of the surrender order;

3. that federal courts do not lack power to impose sentences in excess of one year for criminal contempt;

4. that criminal contempts are not subject to jury trial as a matter of constitutional right, nor does the Constitution require that contempts subject to prison terms of more than one year be based on grand jury indictments;

and

5. that the three-year sentences imposed on petitioners were not excessive.

Justice Frankfurter, in the majority opinion, emphasizing that the power of federal courts to impose summary punishment for contempt has a firm foundation, said, inter alia:

> "We do not write upon a clean slate. The principle that criminal contempts of court are not required to be tried by a jury under Article 3 of the Sixth Amendment is firmly rooted in our traditions. Indeed, the petitioners themselves have not contended that they were entitled to a jury trial. By the same token it is clear that criminal contempts, although subject, as we have held, to sentences of imprisonment exceeding one year, need not be prosecuted by indictment under the Fifth Amendment. In various respects, such as the absence of a statutory limitation of the amount of a fine or the length of a prison sentence which may be imposed for their commission, criminal contempts have always differed from the usual statutory crime under federal law. As to trial by jury and indictment by grand jury, they possess a unique character under the Constitution.

There were other dissents but it will suffice for now to notice that of Justice Black, in which he was joined by Chief Justice Warren and Justice Douglas:

> "The power of a judge to inflict punishment for criminal contempt by means of a summary proceeding stands as an anomaly in the law. In my judgment the time has *come for a fundamental and searching reconsideration of the validity of this power which has aptly been characterized by a State Supreme Court as, '*perhaps, nearest akin to despotic power of any power existing* under our form of *government*.' Even though this extraordinary authority first slipped into the law as a very limited and insignificant thing, it has relentlessly swollen, at the hands of not unwilling judges, until it has become a drastic and pervasive mode of administering criminal justice usurping our regular constitutional methods of trying those charged with offences against society. Therefore to me this case

> involves basic questions of the highest importance far transcending its particular facts. But the specific facts do provide a striking example of how the great procedural safeguards erected by the Bill of Rights are now easily evaded by the everready and boundless expedients of a judicial decree and a summary contempt proceeding,
> "_____"
>
> "I would reject those precedents which have held that the federal courts can punish an alleged violation outside the courtroom of their decrees by means of a summary trial, at least as long as they can punish by severe prison sentences or fines as they now can do. I *would hold that the defendants here were entitled to be tried by a jury after indictment by a grand jury and in full accordance with all the procedural safeguards required by the Consitution for "all criminal prosecutions." I am convinced that the previous cases to the contrary are wrong ---- wholly wrong for reasons which I shall set out in this opinion.
> "_____"
>
> "In my view the power of courts to punish criminal contempt by summary trial, as now exercised, is precisely the kind of arbitrary and dangerous power which our forefathers both here and abroad fought so long, so bitterly, to stamp out. And the paradox of it all is that the courts were established and are maintained to provide impartial tribunals of strictly disinterested arbiters to resolve citizen and citizen or citizen and state.
>
> "*The Constitution and Bill of Rights declare in sweeping unequivocal terms that "The Trial of all Crimes . . . shall be by Jury," that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury," and that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." As it may now be punished criminal contempt is manifestly a crime by every relevant test of reason or history. It was always a crime at common law punishable as such in the regular course of the criminal law.
> "_____"

Against this backdrop Mr. Goldfarb, supra, hopefully predicted that changes in the membership of the Court since the Green case would bring a change in the law and that the Supreme Court, in Governor Barnett's case, would hold that he was entitled to a jury trial on the criminal contempt

charges against him consequent upon the litigation arising out of Meredith's efforts to enter the University of Mississippi. Mr. Goldfarb concedes such a holding would

> "jeopardize, if not emasculate"

the federal government's civil rights programs because southern juries would become the "decision-makers" but argues that that is a fault of the jury system which is not unique:

> "If juries, for whatever reason, refuse to convict, shall we try cases without them? Who is to say when we apply the guarantees of the Constitution and when we do not"? "The key point must be that there is more at stake in the Barnett case than Barnett. A vital constitutional issue has been raised. To look the other way out of antipathy for the man who raised it is unprincipled and shortsighted. And, as a matter of pragmatics, what President Kennedy did in the Barnett case quite effectively carried out the court's order. Throwing the governor in jail need not have accomplished Meredith's entry into the university; it might have made matters worse.
>
> "The difficulty and the paradox of this case are unique. If rights guaranteed by the Bill of Rights command preferred treatment and they conflict with another interest which is not constitutionally protected, one can be guided in his decision by the policy commanding preferment. But, when two equally preferred civil rights or civil liberties collide, how should the decision-maker resolve the conflict? In this case, there are ultimate and temporal values at stake. The right of all men to a jury trial is an ultimate liberty. The ability to enforce a civil rights decree involves a temporal matter. If alternatives must be sought, in the long run it is better to seek them in the latter situation."
>
> "The Contempt Power" Page 334.

But the Supreme Court failed to hear or to heed Mr. Goldfarb and on a question certified to it under 28 USC Sec. 1254 (3) by an evenly divided Fifth Circuit a divided Supreme Court, in United States v. Barnett, et al, (1964- — ..... US ....., 12 L. Ed. 2nd 23, 84 S. Ct. .....), in an opinion by Justice Clark, expressing the views of five of the Justices, held that

> (1) The alleged contemnors were not entitled to a jury trial under 18 USC Sec. 402 or 3691, which guarantee the right to a jury trial in contempt proceedings arising out of disobedience to the orders of a Federal District Court, because the charge was disobedience to two Court of Appeals orders and one District Court order, and the Court of Appeals was not deprived of power to punish contempt of its own orders without a jury merely because a District Court order also was violated; and
>
> (2) There is no constitutional right to a jury trial in criminal contempt cases, even where the offense is serious, although the severity of the penalty may entitle the alleged contemnor to a jury trial.

Justice Goldberg, joined by Chief Justice Warren and Justice Douglas, dissented, stated that

> (1) The alleged contemnors had a statutory right to a jury trial, since the first Court of Appeals' order was "superseded" by the District Court's subsequent order "added nothing to the earlier orders," and therefore the alleged contemnors were charged with violation only of the District Court's order, on which charge they were entitled to a jury trial under 18 USC Sec. 3691; and
>
> (2) The Constitution does not permit the imposition of severe punishment for criminal contempts without a trial by jury, and the contempt charged could not be deemed a trivial contempt punishable by a minor penalty.

Justice Black, joined by Justice Douglas, also dissented, expressing agreement with that part of Mr. Justice Goldberg's opinion which deals with contemnors' *statutory right* to a jury trial and further stating that those charged with criminal contempt have *constitutional right* to a jury trial:

> "I think that in denying a jury trial here the Court flies in the face of these two constitutional commands. My reasons for this belief were stated in Green v. United States, 356 US 165, 193, 2 L Ed 2d 672, 693, 78 S Ct 632 (dissenting opinion), and in other opinions cited in the margin which I have written or to which I have agreed. No provisions of the Constitution and the Bill of Rights were more widely approved throughout the new nation than those guaranteeing a right to trial by jury in all criminal prosecutions. Subsequent experience has confirmed the wisdom of their approval. They were adopted in part, I think, because many people knew about and disapproved of the type of colonial happenings which the Court sets out in its appendix — cases in which, as reported by the Court, people had been sentenced to be fined, thrown in jail, humiliated in stocks, whipped, and even nailed by the ear to a pillory, all punishments imposed by judges without jury trials. Unfortunately, as

> the Court's opinion points out, judges in the past despite these constitutional safeguards have claimed for themselves 'inherent' power, acting without a jury and without other Bill of Rights safeguards, to punish for criminal contempt of court people whose conduct they find offensive. This means that one person has concentrated in himself the power to charge a man with a crime, prosecute him for it, conduct his trial, and then find him guilty. I do not agree that any such 'inherent' power exists. Certainly no language in the Constitution permits it; in fact, it is expressly forbidden by the two constitutional commands for trial by jury. And of course the idea that persons charged with criminal offenses such as criminal contempt are not charged with 'crimes' is a judicial fiction. As I said in Green, I think that this doctrine that a judge has 'inherent' power to make himself prosecutor, judge and jury seriously encroaches upon the constitutional right to trial by jury and should be repudiated."
>
> 12 L ed 2d 23 at pages 50 and 51.

On the remand, (which must undoubtedly have been handled with "all deliberate speed," Meredith having meanwhile graduated from Ole Miss and joined our many other emissaries to the "Emerging Continent") the Fifth Circuit held last month (in an opinion now presently unavailable to me) that the purpose of the order violated having meanwhile been fulfilled, the fines of $10,000.00 and $5,000.00 per day for each day which contemnors, Governor (now ex-governor) Barnett and Lieutenant-Governor (now Governor) Johnson persisted in resisting the Court's order to admit Meredith should be forgiven and, I assume, the contempt considered purged.

It's probably just as well: if an attempt were made to pay those fines out of State funds, an injunction would doubtless be sought to restrain such use of public funds and unless contemnors have accumulated more out of law practice and politics than anyone of I have heard of hereabouts, *with possibly one recently widely publicized exception,* they could not pay such fines out of their own resources and then the American Civil Liberties Union, or some such, would have to enter the case to prevent their imprisonment for those fines, which would not be dischargeable in bankruptcy, or we'd all end up with the incongruity of a modern counterpart of an English baron laid by the heels without judgment of his peers.

Or is the situation more nearly analagous to that of a forgiven satrap of Alexander?