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[A MONTHLY REVIEW]

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A CITIZEN'S RIGHT TO FREEDOM OF MOVEMENT FOREIGN TRAVEL IS NOT A PRIVILEGE, BUT A "NATURAL RIGHT"

In the United States the right of citizens to travel from one state to another is fully recognized. The late Justice Jackson in *Edwards v. California* (1941), 314 U. S. 160, put the matter thus : "It is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof." But the right to travel abroad is not so recognized. An American citizen cannot leave or re-enter the country without a passport, and the State Department denies a passport to one whose visit to a foreign country is likely in its opinion to be prejudicial to national security.

Federal law provides that the "authority to grant, issue and verify passports" be vested in the Secretary of State. The law also authorizes the Secretary "in his discretion to refuse to issue a passport," if he believes it is in the "national interest" to do so. The authority thus conferred by statute is widely interpreted by the State Department. In recent years it has denied passports to hundreds of persons on grounds that they belonged to subversive organizations and their travel abroad would be inimical to the United States. And it claims exclusive power in deciding who shall and who shall not be allowed to go abroad. It argues that the exercise of the political function of the conduct of foreign affairs necessarily invests it with the power to decide finally whether the passport application of any person should be rejected because of its view that the applicant if allowed, to visit foreign countries, is likely to impair national security.

What is more, the State Department argues that the judiciary cannot interfere with its discretionary judgment. If the factual basis of its decision is wrong, the judiciary can of course intervene; but no judicial review of its decision is possible, it has all along claimed, on the ground of the adequacy or otherwise of the facts on which the decision is based: that is the sole concern of the Executive Branch of the Government. The courts have not so far challenged this discretionary authority of the

Executive, supported as it is by an Act of Congress. No doubt in *Perkins v. Elg* (1938), 307 U. S. 325, Chief Justice Hughes, speaking for the Supreme Court, overturned the decision of the lower court in dismissing Miss Elg's complaint against the Secretary of State about his refusal to issue a passport to her. But the Supreme Court's ruling in that case turned solely on whether Miss Elg had or had not lost her "native born American citizenship." The finding of the Court being that she had not lost her citizenship, it decreed that the Secretary of State's refusal was not warranted. But the Chief Justice took care to add :

The decree in that sense would in no way interfere with the exercise of the Secretary's discretion with respect to the issue of a passport but would simply preclude the denial of a passport on the sole ground that Miss Elg had lost her American citizenship. The Executive's claim that the courts have no right to question denial of passports by it had not so far been successfully challenged.

Case of Dr. Nathan

However, in June last, the Federal Court of Appeals in Washington gave rulings in two cases which for the first time rejected this claim, at least in its extreme form. Dr. Otto Nathan, a Garman-born economist, first applied for a passport two and a half years ago. He pressed the application after he had been named executor of the estate of the late Dr. Albert Einstein, the world-famous scientist. He became a United States citizen in 1936 and is now a professor at New York University. His application was rejected because of his association with communists: he was a member of the Communist Party in Germany before 1933; he attended a communist-organized peace conference in Poland in 1948 and was a sponsor a conference for world peace in New York (which conference was sponsored by the world communist movement). In the lower federal court, Judge Schweinhant on 1st June directed the Secretary of State to issue a passport to Dr. Nathan forthwith. The State Department appealed, putting forward its well-worn claim that the courts cannot impose

any restraints on its discretion in the matter of passports. In its affidavit it said:

Under the law there are no judicially reviewable limitations on the Secretary's power to refuse to grant passports.

The Appeals Court on 2nd June ordered the State Department to give a hearing to Dr. Nathan, also laying down in its order the ground rules for the proceedings, and granted a stay of execution of the lower court's order, pending the completion of the hearing. The court said that the hearing should be of a "quasi-judicial" nature; that the hearing officer should report what action would be proper; that the State Department should then decide whether it would grant or deny a passport; and that if the passport was denied it should "inform this court and the appellant with particularity of the reasons for such denial." The order stated that after the State Department had completed the procedure within 23 days, "this court will consider what further action on its part, if any, is necessary." After the order, the State Department issued Dr. Nathan his passport without going through the process of hearing. The Appeals Court in this case postponed a ruling on the basic issue before it, viz., whether the federal judiciary can instruct the Secretary of State to issue a passport which, under discretion bestowed on him by statute, he has denied. But it did something which had not been done before: it asserted its power to require "an appropriate hearing" and also to pass on the Secretary's decision as to whether such a hearing had been accorded.

Case of Mr. Shachtman

The Court of Appeals went farther in its ruling in Mr. Max Shachtman's case on 23rd June: it ruled that issuance of passports was not a matter within the "exclusive control" of the State Department and that the Department could not refuse to give a citizen his passport without "due process" as laid down in the Fifth Amendment.

Mr. Shachtman of New York was long regarded as the leader of the American Trotskyists, but he broke away from Trotsky in 1940 over the issue of the Soviet invasion of Finland. Although Trotsky too thought that the invasion was wrong, he decided to remain "on the side of the Russian workers," while Mr. Shachtman held out for unqualified condemnation of the invasion. He thereafter founded the Independent Socialist League, which was a socialist organization but irreconcilably anti-Stalinist. Still the League was listed by the Attorney General as a subversive organization, and since 1948 he has been trying to remove the League from the subversive list but had failed to obtain a hearing.

He applied for a passport three years and a half ago, but his application was turned down by the State Department on the ground that the Socialist League, of which he was chairman, appeared as both a subversive and

"communistic" organization on the Attorney General's list. At departmental hearings Mr. Shachtman insisted that his League was "anti-Stalinist, anti-totalitarian and striving for the establishment of a socialist economic system by democratic means." The State Department, while acknowledging that the League had no connection with Soviet communism, nevertheless persisted in refusing a passport to the head of the organization.

Mr. Shachtman took his case to the Federal District Court in Washington. There the State Department argued that its control over passports was "exclusive," that it had exercised proper discretion, and that the court had no jurisdiction. The court agreed and dismissed the case. Then Mr. Shachtman appealed against this decision, and the Appeals Court unanimously reversed it. In regard to the reason assigned by the Passport Control Office for its refusal of a passport, viz., that the applicant was the chairman of an organization listed as subversive and communistic, the court held that membership in an organization on the Attorney General's list was not sufficient ground for denial of a passport. The list was established for the purpose of providing a basis of judgment for the employment and dismissal of persons by the Federal Government, and the list could not be used as sufficient justification for the refusal of a passport, particularly when the applicant wanted it for non-political purposes, as Mr. Shachtman had stated, without his statement being contradicted by the State Department. Judge Edgerton in his concurring judgment said: "The premise that a man is not fit to work for the Government does not support the conclusion that he is not fit to go to Europe." Even in screening Government employees, the Judge wrote, membership in a listed organization is "only an inconclusive item of evidence."

But the judgment is of far greater importance inasmuch as it asserted judicial power to review a passport denial. The court ruled that issuance of a passport was not "a purely political matter" involving foreign affairs. It held that a passport was not merely "a desirable incident to travel," but a document essential to the departure of all citizens from the United States; hence denial of a passport could "cause a deprivation of liberty that a citizen otherwise would have." Judge Fahy, who delivered the court's opinion, said:

The right to travel, to go from place to place as the means of transportation permit, is a natural right subject to the rights of others and to reasonable regulation under the law. A restraint imposed by the Government of the United States upon this liberty, therefore, must conform with the provision of the Fifth Amendment that "no person shall be deprived of liberty ... without due process of law."

The court did not order the State Department to issue a passport to Mr. Shachtman, though, in his separate concurrence, Judge Edgerton apparently held that it should. Judge Fahy, who wrote the controlling opinion, declared:

In this case at least, it is not for us to determine that a passport should not be granted, but only whether the reason given . . . for its denial is sufficient.

The ruling of the court was that the State Department had denied Mr. Shachtman his passport on insufficient ground. Returning the case to the lower court, the Appeals court directed the State Department to set forth more compelling reasons for denying the passport.

The net result of these decisions is that although the Secretary of State's discretion in the matter of passports on the basis of foreign policy is recognized, the claim that the discretion is absolute is rejected. The Executive must set forth "reasonable" (i. e., constitutional) grounds for denying the "natural right" to travel abroad. Its decision must be in accordance with the ordinary principles of

"due process," namely, that action shall not be arbitrary and shall bear some reasonable relation to the control exercised over foreign travel for the purposes of foreign policy. And the courts have the power to determine whether or not in any particular instance the Executive has adduced "reasonable" grounds for denying a passport to an American citizen. The courts are thus competent to reverse a judgment by the Secretary of state that to grant a passport would not be in the best international interests of the United States. If, in the absence of a challenge to the Supreme Court or in the event of the Supreme Court upholding the two recent decisions of the Appeals Court, the power of the Executive to determine who may travel abroad is thus limited, one may legitimately expect a great easing in current passport restrictions.

ENDING OF RACIAL DISCRIMINATION IN SCHOOLS A FLEXIBLE FORMULA OF MIXED EDUCATION DEVISED

The Supreme Court of the United States announced its historic decision on 7th May last year to the effect that separation of pupils in public schools because of colour was unconstitutional. But because of the many complexities in the process of establishing mixed schools throughout the country and the wide varieties of local conditions that must be dealt with in effectuating school transition programmes, it had desisted then from issuing an over-all order ending all segregation immediately or devising the actual mechanics of desegregation. After hearing the views of all concerned as to the best means of giving effect to the constitutional principle, laid down by it, of public education freed of racial discrimination, the high court on 31st May last has in a decree developed a flexible formula for bringing about transition in schools from bi-racial to inter-racial status.

In doing so, it has not set a deadline for compliance with the principle it enunciated a year ago; it contented itself, as in the circumstances was inevitable, with calling for gradual but "prompt" compliance with the principle, as prompt as local conditions might permit. While allowing any reasonable delay in eliminating racial segregation from public schools because of the administrative adjustments required, the Court's decree specifically rules out, as a reason for delay, disagreement with the constitutional principle itself, and it has taken all the care it is humanly possible to take to see that the states, while adapting themselves in a bona-fide manner to the local conditions peculiar to them, would not be in a position to frustrate its judgment by unreasonable or unnecessary delays.

At the outset the Chief Justice, who delivered the opinion of a unanimous court, made it clear that any Federal, state or local law either requiring or permitting

racial discrimination in public education was invalid. The re-affirmation of this constitutional ruling has the effect of broadening the decision beyond the five cases that were before the Court and making it applicable to areas not involved in the litigation under review. The ban on racial discrimination in public schools is now universal. Then the decree proceeded to make local school authorities responsible for evolving desegregation programmes and empowered regional Federal district courts to review the programmes against the background of local conditions and in consideration of evidences of good faith, "good faith compliance" being the yard-stick for judicial review. It set forth as a guide for the district courts the principles of equity, using the phrase "practical flexibility" as a characteristic of equity. The Court's judgment may be thus summarised:

"They (the lower courts) will consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate a transition to a racially non-discriminatory school system."

The primary responsibility for the solution of the complex problems involved rests upon the school authorities. The cases are remanded to the lower courts, because these courts are familiar with local conditions and best qualified to appraise the merits or demerits of suggested procedures.

Courts would be guided by equitable principles.

"Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a faculty for adjusting and reconciling public and private needs."

Once a start has been made, the courts may determine how much time is required to bring about elimination of segregation in their areas. But the

"burden rests on the defendants" to establish how much time is necessary in the public interest and "consistent with good-faith compliance."

Upon the whole the judgment is pronounced by all progressives as the best in the circumstances, combining, in the implementation of the ultimate aim of mixed schooling, a necessary sense of realism with the idealism on which the decision on the constitutional issue is based. Even the National Association for the Advancement of Coloured People, on whose initiative the five cases before the Supreme Court were started and which had pleaded for a master blue-print in which a date was named for the completion of the plan of mixed education, is gratified, though the judgment has rejected its plea for a deadline being set for the full realisation of the process. The Association feels confident that the affected school districts in the 17 southern states in which segregation is mandatory and in the four states in which it is permissive would proceed without delay on programmes of desegregation. A survey, undertaken by it, of the progress made by the states towards integrated education since the principle of integration was enunciated by the Supreme Court last year, shows that about 56,000 Negro children are now attending classes peacefully together with white children in schools which had, until a year ago, had been for the exclusive use of the whites. This is of course not a very large number when it is remembered that altogether 23,97,000 Negro children are being educated in segregated schools. But the machinery now evolved by the Supreme Court will certainly accelerate the pace of progress to a considerable degree. And the Association is planning to go to regional Federal courts in several "test" areas to force a start towards integration.

Yet the states in the Deep South appear to be still defiant; they do not seem to have modified the rigidly intransigent attitude adopted by them after the Supreme Court's decision of last year was announced outlawing separation of Negro and white children in public schools. They appear to be still bent on using legal devices to circumvent the ruling. These states have prepared programmes to abolish public education, indirectly subsidising "private schools" for white children, to make segregated schools a matter of public welfare under the police powers, or to cut off tax funds where desegregation is attempted. In Georgia, for instance, a new law provides that state funds may not be spent for inter-racial schools. Any official who spends state money for such purposes is subject to felony charges carrying a two-year prison term. In such states the school authorities would face the alternative of a Federal court order to comply with the Supreme Court's decree in favour of integration or arrest by the police under state laws. If the district court issues the order and it is flouted by the local authorities, the court can cite the authorities for contempt, and such citations would doubtless be upheld by the Supreme Court.

It may be asked how the Supreme Court can ultimately enforce its decision and compel the whites in the Deep South to send their children to mixed schools if they are determined to defy the decision. The decision will have to be implemented by the police of the southern states, for the Federal government has no police force in the states. In the last analysis the Federal court decisions can only be enforced by resort to Federal troops, and this in the ordinary course of things is unthinkable. But one need not lay too much stress on these constitutional difficulties. As a writer has said :

For more than a decade the rigid pattern of race relationships has been breaking down under the weight of the new industrialization of the South, armed forces integration, and a whole series of political and legal developments. The Negro's dream of a desegregated new world may still be many decades away. But the pressure on the white South to adjust to that world has been vastly increased by the Supreme Court's decision on bi-racial education.

Horror Comics

Balancing Public Policy against Censorship

On the recent order of the Government of India banning import of "horror comics," the "Statesman" comments as follows :

The question is complicated, arousing competing considerations of public policy and censorship.

It is universally conceded that some of the publications now offered to juveniles by unscrupulous publishers are very nasty indeed. They exploit, on what nowadays seems a deliberately commercial basis, such themes as violence, sadism and racial prejudice. There is American evidence that juvenile readers have subsequently tried out the tortures they have seen depicted on their playmates, and that deaths have resulted. Where horror films are nowadays very generally controlled, it is argued that the same thing should apply to horror literature. On the other hand, some argue that a child not already pathologically inclined takes horrors (which, indeed, do not mean very much to him) in his stride ; his grandfathers were brought up on books like "Coral Island" but did not try cannibalism ; his father survived the Belsen era without being tempted to emulate Herr Kramer ; if the new generation wants to read about cosh boys and sexual maniacs, there are enough of both in the police news without bothering about the "funnies." Hence derives a school of opinion, of which the most distinguished exponent has been the novelist Mr. Joyce Cary, which suspects the case for control as concealing the cloven hoof of censorship.

Unlike essential machinery, books and magazines—however essentially worthless—can be imported

under Open General Licence. Every urban street where the passer-by can be induced to linger is littered with magazines, a good proportion constituting what the American cynically describes as "cheese-cake," if nothing less admirable. It may be thought curious that a man may not import a car but may import a car-load of semi-pornography. On the cultural plane it is a great deal more curious that, if he wants to import gramophone records, he may be subjected to egregious harassment whereas addicts of "nature" magazines can get what they want apparently for the mere asking. In other words, should the country's foreign exchange, otherwise almost over-carefully guarded, be dissipated on garbage—and, in this instance, mostly hard currency garbage?

This question, again, is complicated. While financial resources continue to be short (and they will probably so continue for a long time), the answer is, in the case of horror comics, "No." There might even be something to be said for extending control over certain other types of imported publications. But only on well defined grounds. Left to themselves, officials bear a poor reputation as judges of either literary or moral worth; in Calcutta, for instance, when the police are impelled to act (which does not often happen) they seem to seize with lack of discrimination. Where matters of opinion are concerned, official practice has hitherto been fairly liberal, but provisions inserted into the Constitution already give powers potentially dangerous unless they are watched. The ideal undoubtedly is that there

should be no question of official discretion in such matters, but that publications should only be amenable to a universal and known law, whether of sedition, obscenity, or other public mischief.

Literary Censorship

Apropos of this subject of controlling obscene publications, we may state that the News Bulletin of the American Civil Liberties Union recently reported that a bill had been introduced in the Colorado State Legislature to amend the obscenity code of that state so as to include a ban on "crime comics." It is possible, the Bulletin states, that, agreeing with the Union's position that "censorship laws might in the end turn out to be a greater danger than the evil they seek to create," the Legislature may drop the bill.

The "Denver Post," writing on this matter, says that the issue here is "whether morality can be enforced by law, if it is not enforced without law by the community," and suggests the following method by which profiteering in pornography can be most effectively checked:

The solution, in our opinion, lies far more in the hands of those who sell and those who buy than in the hands of policemen, judges or legislative bodies. Let the menace be recognized for what it is—a threat to good order, and let it be dealt with accordingly by storekeepers refusing to stock the books, and by parents refusing to buy or allow their children to buy them. If the profit can be taken out of these publications, they will swiftly disappear and not be missed.

THE RIGHT TO CONFRONTATION WITH ACCUSERS

THE CASE OF DR. PETERS

The case of Professor John P. Peters (vide p. iii: 320) was decided in his favour by the U. S. Supreme Court on 6th June. The case had attracted widespread interest because it raised the important issue whether a person could be constitutionally condemned for disloyalty on the basis of secret information and dismissed from Government service in a quasi-judicial procedure which denied him the right to confront and cross-examine his accusers. But this constitutional issue was left unsettled by the Supreme Court in this case on the ground that the Court "reaches constitutional issues last, not first," i. e., only when it becomes necessary to consider such issues, and the Court found for him on procedural grounds, viz., that the Loyalty Review Board had exceeded its jurisdiction in making the adverse recommendation it did about Dr. Peters.

The facts of the case may be briefly given. Dr. Peters is a senior Professor of Medicine at Yale University. He was employed on a part-time basis as a consultant to the

Public Health Service on grants-in-aid given to medical research projects. His loyalty was first questioned in 1949. The loyalty board of the Federal Security Agency, of which the Public Health Service is a unit, twice cleared him after inquiries; it arrived at the conclusion on both occasions that the accusations against Dr. Peters were unfounded. No appeal had been taken against these rulings, and yet in April 1953 the Loyalty Review Board, set up under the Loyalty Order of President Truman of 1947, reopened the case on its own initiative and gave the ruling there was "reasonable doubt" as to Dr. Peters' loyalty, and as a result of this decision he was dismissed from his consultant post and was barred from Government service for three years.

The Loyalty Order gave authority to the board to review cases and give advisory opinions only on request of the head of the employing department or agency. But in this case the board conducted a "post-audit" on its own, under regulations that the board itself promulgated, which

provided that it might review decisions of departmental heads or regional loyalty boards on its own motion, regardless of whether or not an appeal had been taken. The Supreme Court found that the Loyalty Review Board had no such authority. The Chief Justice, speaking for the Court, pointed out in his opinion that the authority of the board under the Loyalty Order was limited to cases recommended for dismissal by the loyalty board of a department or agency; and that even in those cases it had no power to "undertake a review on its own motion." In the Peters case, the Chief Justice observed, the board failed to respect either of these limitations. He held that this exceeded the function of advice and coordination authorized by the Truman order. "The board thus sought to do by regulation (i. e., by the regulations promulgated by it) precisely what it was not permitted to do by the order," he asserted. Thus the board's action was "patently in violation" of the Loyalty Order and was "plainly beyond its jurisdiction." The Court therefore ruled (by a majority of 7 to 2) that the Government had wrongfully dismissed Dr. Peters and ordered that the board's finding of a reasonable doubt as to his loyalty, along with his disqualification for Government service for three years, be expunged from the records of the Civil Service Commission.

Dr. Peters was thus purged of the charge under which he had lost his advisory job. But he had brought suit on the basis of constitutional grounds, the grounds, namely, that his dismissal and debarment constituted deprivation of "liberty and property without due process of law" in violation of the Fifth Amendment inasmuch he as was not afforded, in the hearing of his case by the Loyalty Review Board, an opportunity to face and cross-examine his accusers. Dr. Peters' lawyers had asked the Court to decide the case solely on the constitutional issue, viz., whether the Government may rely and act on confidential information in deciding whether to dismiss an employee for disloyalty. However, the Court righted the wrong done to Dr. Peters by a different route. The wrong was righted inasmuch as he obtained relief in the matter of the damage to his reputation that was caused by his dismissal; and he did not suffer much from the pecuniary point of view because he used to work as a consultant only for some four to ten days in a year.

Nevertheless, the Supreme Court's judgment caused great disappointment because, in ordering him cleared, it by-passed the constitutional issue which had invested his case with such importance. In choosing other grounds for vindicating Dr. Peters, the Court followed its traditional procedure of not adjudicating constitutional issues if there is any other way out. This principle of not pronouncing on such issues except in circumstances of "strict necessity" was enunciated by the Court as early as 1837, when it said :

The Court deem it proper to avoid volunteering an opinion on any question involving the construction of

the Constitution, where the case [does not] make it their duty to decide upon it.

In *Ashwander v. Tennessee Valley Authority* (1936) 297 U. S. 288 Mr. Justice Brandeis expressed the same view in these words :

The Court will not pass on a constitutional question, although formally presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.

The Court acted on this rule in the Peters case: it chose to redress his wrong on the ground that the Loyalty Review Board had arrogated to itself powers which were specifically withheld from it. The "New York Times" has no doubt that "the Court would have invoked the Fifth Amendment if there had been no other way of reversing the action taken against Dr. Peters," and says : "We may all entertain the hope that in the near future the Court will find it right and expedient to face up squarely to the constitutional issues involved in the purges and inquisitions with which officials vainly and often unjustly attempt to preserve the public security."

Of the seven concurring members of the Court, only one, Justice Douglas, discussed the constitutional issue. He wrote :

Confrontation and cross-examination under oath are essential if the American idea of due process is to remain a vital force in our public life. We deal here with the reputation of men and their right to work—things more precious than property itself. . . . The practice of using faceless informers . . . is used not only to get rid of employees in the Government but also employees in private firms having contracts with the Government. . . . It is an un-American practice which we should condemn.

It is a matter of disappointment that the Court as a whole has not ruled on this important issue.

Use of Secret Information

In Determining Conscientious Objectors' Claims

FOR EXEMPTION FROM MILITARY SERVICE

In the Peters case, dealt with above, the constitutional issue was not decided, viz., whether an employee of the Government can be condemned on grounds of disloyalty in a quasi-judicial procedure which denied him the right to confront and cross-examine his accusers.

But it may be remarked that in several other proceedings the defendants get almost the same kind of hearing as Professor Peters did : they do not have an opportunity of confronting those who have informed against them. For example, conscientious objectors who claim to be excused from military service have no opportunity of meeting

informants of the Federal Bureau of Investigation face to face, on the strength of whose allegations their claim is rejected. The procedure followed in such cases is: a local selective service board first determines whether a claim for exemption from service is justified; an appeal, if made against this decision, goes to the appeal board; the appeal board then refers the claim to the Justice Department, and the Selective Service Act requires that the Department, "after appropriate inquiry, shall hold a hearing with respect to the character and good faith" of the claimed conscientious objections; a hearing officer gives the claimant a hearing; the claimant does not see the F.B.I. informants' report nor does he know their identity; on the basis of the hearing officer's report about the honesty and sincerity of the exemption claim, the Department makes a recommendation to the appeal board; and the appeal board finally decides.

At the recently ended term of the Supreme Court itself, three cases of Jehova's Witnesses, whose claims to be excused from service were rejected by the appeal board but who, refusing to be inducted into service, were prosecuted and convicted of a violation of the Selective Service Act, came up on appeal to the Supreme Court, which, although it quashed the convictions of the defendants on other grounds, did not concede the right of the claimants to confront and cross-examine the informants.

In *Gonzales v. United States*, decided on 14th March last, it appeared that Gonzales, who claimed the status of a conscientious objector, was not furnished by the appeal board with a copy of the recommendation made by the Justice Department to the board (in which recommendation the Department came to the conclusion that the claim should not be accepted). The Court held that, although the Selective Service Act did not state so in terms, it required by implication that the draft registrant receive a copy of the Justice Department's recommendation. It said:

(It is) implicit in the Act and Regulations, viewed against our underlying concepts of procedural regularity and basic fair play, that a copy of the recommendation of the Department be furnished the registrant at the time it is forwarded to the appeal board (which in this case renders the final determination in regard to compulsory service) and that he be afforded an opportunity to reply. . . . The petitioner was entitled to know the thrust of the Department's recommendation so he could muster his facts and arguments to meet its contentions.

In *Simmons v. United States*, decided on the same day, the hearing officer at the hearing before the Justice Department made some remarks which only amounted to vague hints as to adverse information contained in the F. B. I. report about Simmons, but the Justice Department failed to furnish him with a fair resume of such information. Simmons contended that this failure

invalidated his classification as one required to render service under the Selective Service Act and invalidated his conviction. The Supreme Court sustained this defence. In its opinion it pointed to the decision in *United States v. Nugent* (1953), 346 U. S. 1, that though the "hearing" contemplated in the Act did not entail disclosure of the secret F. B. I. report, it requires the Justice Department to furnish the registrant "with a fair resume of any adverse evidence in the investigator's report." And then the Court continued:

We do not view this provision for a fair summary as a matter of grace within the Department's discretion, but rather as an essential element in the processing of conscientious objector claims. *United State v. Nugent* represented a balancing between the demands of an effective system of mobilizing the nation's manpower in times of crisis and the demands of fairness toward the individual registrant. We permitted the F. B. I. report to remain secret because we were of the view that other safeguards in the proceeding, particularly the furnishing of a fair resume, maintained the basic elements of fair play. If the balance struck in *Nugent* is to be preserved, the registrant must receive the fair summary to which he is entitled.

The Government had pleaded that a summary of the F. B. I. report was not supplied, because the registrant did not ask for it. The Court rejected this plea, saying:

A fair resume is one which will permit the registrant to defend against the adverse evidence—to explain it, rebut it, or otherwise detract from its damaging force. . . . The Congress, in providing for a hearing, did not intend for it to be conducted on the level of a game of blindman's buff. The summary (made by the hearing officer) was inadequate and the hearing in the Department was therefore lacking in basic fairness.

(Because of the Department's failure to supply a fair resume of the F. B. I. report,) petitioner has been deprived of an opportunity to answer the charges against him. This is not an incidental infringement of technical rights. Petitioner has been deprived of the fair hearing required by the Act, a fundamental safeguard.

In *Sicurella v. United States*, again decided on 14th March last, the claim for exemption from military service was denied by the appeal board on the ground that he was not opposed to "participation in war in any form" as required by the statute, since he was ready to engage in a "theocratic war." The Supreme Court ruled that he was entitled to the conscientious objector status. It said:

Although the Jehova's Witnesses may fight in the Armageddon, we are not able to stretch our imagination to the point of believing that the yardstick of the Congress includes within its measure such spiritual wars between the powers of good and evil where the

Jehova's Witnesses, if they participate, will do so without carnal weapons. (Sicurella had said in his statement: "The war weapons of the soldier of Jesus Christ are not carnal.") We believe the reasoning of the Government in denying petitioner's claim is so far removed from any possible Congressional intent that it is erroneous as a matter of law.

It will be noticed that in inquiries concerning conscientious objectors all that the Supreme Court insists upon is that a fair summary of the F. B. I. reports be supplied to the claimant. It said in the Nugent case (Justices Black and Douglas dissenting):

We think the Department of Justice satisfies its duties under sec. 6(j) [of the Selective Service Act providing for a hearing] when it accords a fair opportunity to the registrant to speak his piece before an impartial hearing officer; when it permits him to produce all relevant evidence in his own behalf and at the same time supplies him with a fair resume of any adverse evidence in the investigator's report.

But the Court in that case "permitted the F. B. I. report to remain secret," not to say that it did not require the production of the secret informants for questioning by the accused.

The South African Union Government's Packing of the Court and the Senate

The Strydom Government in South Africa has now devised means whereby it can achieve its cherished aims of removing Coloured voters of mixed blood from the common electoral roll and of eliminating the right of the Appeal Court to test the validity of Parliamentary Acts by passing legislation which will be beyond challenge in the courts. The Nationalist Party has been engaged for the last four years in cutting down the voting rights of the Coloured people of the Cape, but it was balked every time by the Appellate Division of the Supreme Court, which declared ultra vires the legislation that was adopted for the purpose on the ground that it was not passed in accordance with the provisions of the Constitution. This difficulty was first sought to be got over (see p. iii:225 of the BULLETIN) by enlarging the highest tribunal of the land from five to eleven members, the additional six members being its own men. And it being provided that the whole Court thus enlarged was to sit for deciding on constitutional issues, the Government thought it would now be safe for it to deprive the Coloureds of their voting rights without having to meet the challenge of the Appeal Court. If the matter was taken to the Court, there would be no danger that the legislation would be held void because it was not passed by a two-thirds majority in a joint session of both Houses. Later, however, the Government came to the conclusion that even this was not enough. What if even the packed Court, if only to avoid scandal, decided against it? That was not

probable, but there was at least a faint possibility of the unexpected thing happening. The Government has now taken measures to plug this loophole: it has so changed the composition of Parliament that it can be sure of having a two-thirds majority therein, which it now does not have, when it passes legislation for disfranchising the Coloured population.

The Nationalist Party commands a handsome majority in the House of Assembly, but in the Senate it has but a slender majority—12 in 48. It has now passed legislation which makes a radical alteration both in the mode in which the Senate is constituted and in the number of its members. At the formation of the Union, the Senate consisted of 40 members—8 elected by each of the four "original" provinces, thus making the number of elected senators 32, and 8 nominated by the Governor-General, half of these 8 "being selected mainly on the ground of their thorough acquaintance with the reasonable wants and wishes of the coloured (i. e. non-white) races in South Africa." Later, according to the provisions of the Representation of Natives Act of 1936, four senators were added, these four being elected by the Natives. After South West Africa was added to the Union, the Senate was increased in 1950 by 2 elected and 2 nominated members, one of these nominated members being required to be chosen for his acquaintance with the wishes of the non-European population of South West Africa. Thus the Senate is at present composed of 48 members—38 elected and 10 nominated.

The Act passed in June last enlarges the Senate from 48 to 89 members, all the additional 41 senators being nominated by the Governor-General, i. e., by the Government. Moreover, the mode of electing the elective portion of the Senate is changed. The senators were till now elected according to the system of proportional representation, with the single transferable vote, by the members of the House of Assembly and of the provincial council for each province sitting together, but the system of proportional representation is now abolished by the new Act. The net result of the Act will be that the Nationalist Party is expected to have a majority of 77 in the Senate, whereas at present it has a majority of only 12, and this majority will enable the Government to secure the passage, by a two-thirds majority of both Houses, of any legislation doing away with either one or both of the entrenched clauses in the Constitution or taking away the right of the courts to test the validity of all laws affecting constitutional points, thus making Parliament a sovereign body immune from the control of the Appeal Court.

The law virtually subverts the Constitution, the letter of the South Africa Act being respected but its spirit being violated. Not only does it pave the way for the removal of the above-mentioned safeguards which the framers of the Constitution thought were essential and on reliance of which the formation of the Union was at all possible, but it also removes, now and here, the provisions in the Constitution for the protection of local

and minority interests. Equal representation in the Senate of the constituent provinces was the basic theory of the Constitution. This is now given the go-bye by a vast increase in the nominated element. Moreover, not only was the nominated element proportionately very small in the Constitution, it was further provided that at least half of these nominated members shall be such as would represent non-white interests. But the additional nominated members will not be subject to this condition, with the result that the non-European races will be left almost without any protection. The abolition of proportional representation in the choice of senators will also leave the minorities among Europeans without any protection. The very basis of the Constitution Act is thus radically altered.

The General Election will be held in 1958, but by that time it would be possible for the Government to have adopted laws for removing the Coloured voters from the common roll and ousting the judiciary from the power it now has of passing on all disputed constitutional legislation. Besides, after the General Election, the Nationalists would still dominate the provincial councils in the large key provinces of the Transvaal and the Cape. For provincial councils, which form the electoral college with members of the lower House of Parliament for the election of senators, are held one year after the General Election. Thus until the provincial elections change the balance in favour of the Opposition, the Nationalists, even if they lose the General Election, will have a strong hold on the new Government and this Government will be nominally in office but without effective power. Mr. Strauss, the United Party Leader, was thus right in saying that the Act was not only an attempt shamelessly to brush aside honour and good faith surrounding non-white franchise but also a step towards a subservient Parliament in the hands of political bosses.

The guarantees in the Constitution in regard to the voting rights of the non-whites and other matters make no appeal to the Nationalists. Prime Minister Strydom, in defending "pack the Senate" Bill, said that, at the convention of the then existing four South African colonies which met to plan the Union in 1909, Britain used pressure to have the guarantees accepted. The Constitution Act was thus a *dictat*, which it was the religious duty of the Nationalist Party to set aside by all means in its power, and Mr. Strydom justified the Bill as a means of removing the imposed guarantees in the name of "white domination." He claimed that such action was demanded by the "will of the people" as demonstrated by the result of the election, and that any means to carry out the electorate's mandate would be justifiable. The Minister of the Interior conceded that the Bill was exceedingly drastic, but he said it was not more drastic than the circumstances required. And he declared bluntly that if the Bill was not passed, even more drastic measures would be proposed, for instance, to nominate the whole of the Senate. The Bill which is now passed into law is a scandalous measure altogether.

In Memoriam

The passing away of Mr. N. M. Joshi, who was a Vice-President of the All-India Civil Liberties Council ever since its establishment, has deprived the civil liberties movement, for which the Council is sponsor, of one of its keenest supporters. His interest in civil liberties was most catholic, in that he just did not consider, while defending any person against unjust deprivation of his liberties, to his political affiliations and how his own action would affect the balance in the fortunes of political parties. It is easy enough these days to come across people who will take a stand against any particular infraction of civil liberty because such a stand would help them politically. It was otherwise with Joshi: that anyone is being oppressed, be he a conservative or a communist, or wealthy and influential or poor and of no social standing, was enough for him; he would rush forth and give him what assistance he could in seeking relief. How rare it is for one to stand up for civil liberty in itself, regardless of political considerations, is best illustrated by the fact that among the adherents of the Congress Party, which was so loud in protesting against repression before it climbed into power, few are to be found who will now raise their voice against such repression. Joshi formed a branch of Mr. Nehru's Civil Liberties Union in Bombay in pre-independence days and carried on its work most enthusiastically, but what was his surprise when he discovered soon after, when the founder of the Union and his associates were in control, that, next to the general apathy of the masses, the force he had to contend against was the antagonism of these very people! Let the infant Indian Republic first grow strong, say these men, even if we have to use a little coercion for the purpose; we will think of individual liberty afterwards. To Joshi's thinking such reasoning made no appeal. He would say, as a member of the U. S. Supreme Court did a long time ago in a famous case, even independence, a great blessing as it is, is not worth preserving if it could be preserved only at the cost of invading the civil liberties of citizens. He set a supreme value on the unimpaired maintenance of the civil liberties of all, whether political supporters or opponents. And the present civil liberties movement would probably have never come into being but for his initiative and drive; and as far as this BULLETIN is concerned, its establishment was solely due to his inspiration. He meant it at first as a bare record of news affecting civil liberties; this idea was later expanded and the BULLETIN became an exponent of civil liberties problems as well. He knew that it would have but a small circulation and receive little support. He knew that its future was extremely precarious. Even so he was foremost in urging that a start be made. While it lived, it would do good work. That was enough for him; and

that is the spirit in which we are conducting it. He did not bother overmuch as to how long it would keep alive ; nor do we. But the best memorial to Joshi would be, to our thinking, a perpetuation of the journal which he intended to be a watch-dog of civil liberties, a cause to which he had dedicated himself in the latter years of his manifold and brilliant career.

COMMENTS

Crusade for International Peace

The easing of tension which is now discernible in the field of international relations has without a doubt been greatly helped by Mr. Nehru's visits to Soviet Russia, Poland, Yugoslavia and some other countries, in which he followed up the work of the Bandung Conference, preaching the gospel of co-existence of nations having different and sometimes contrary ideologies. He carried the message of his Panch Shila to these countries, and as the Panch Shila embodies merely the principles underlying the Charter of the United Nations, the success that attended his efforts is in fact a victory for the world organization.

In the Bandung Conference some of the participating nations placed more emphasis on two principles of the Charter than Mr. Nehru thought was advisable in the present circumstances, viz., collective security and anti-colonialism in the form of desisting by internal subversion from threatening the independence of countries. At Bandung he felt that the questions were raised merely to queer the pitch of the Conference, but such questions must be considered and settled if the resulting peace is to be durable, and they were raised in the European countries he visited—as they were bound to be—even by those who had full sympathy with the Bandung objectives.

A question was asked at the Bandung Conference whether Eastern European countries, subjugated by another country in all but the name, could be said to be independent. The same question was asked by Marshal Tito, Prime Minister of Yugoslavia. A "Times of India" correspondent wrote: "Marshal Tito felt that an acid test of the Soviet desire for peaceful co-existence with both friends and foes alike would be to what extent Moscow would be willing to relax its iron grip on the Eastern European Communist States—Yugoslavia's next-door neighbours. He argued that the five principles should be applicable to all the Eastern European States as well, to the extent that should any of them desire to pursue a foreign policy independent of the Soviet Union, it must have the freedom from political and military pressure to do so. In other words, Marshal Tito would like to know whether Moscow would be willing to permit 'Tito-ism' behind the iron curtain."

We are sure that Mr. Nehru must have said that such independence must be allowed to the East European

countries, and anticipating such a question, we are told, he made an attempt in Moscow to include in his joint statement with Prime Minister Bulganin a declaration that the Cominform, which as an instrument of international interference has caused so much fear and uneasiness among the smaller powers, would be disbanded. Mr. Nehru did not succeed in this attempt as it would have involved an acceptance on the part of Moscow of responsibility for the Cominform's activities. The utmost he could get from Russia was an avowal of faith in non-interference in the affairs of other countries "for any reasons of an economic political or ideological character." The simple expression "non-interference" was thus expanded.

Marshal Tito also brought up the question of collective security pacts, which Mr. Nehru at Bandung and subsequently has tried to keep in the background without directly opposing them. For instance, the joint statement of the Anglo-Egyptian Prime Ministers declares that involvement in military pacts or alignments "does not serve the cause of peace, and indeed often has the opposite effect" in that it "causes apprehension" to other countries. But this philosophy cannot have the support of Marshal Tito inasmuch as he is party to the Balkan pact which links Yugoslavia to the easternmost NATO allies, Greece and Turkey, as a means of resisting aggression. In fact it should be remembered that he had sought to make the pact stronger than it is, incorporating in it an automatic mutual assistance clause, which was prevented by the Western powers. It is no wonder therefore that in the joint declaration issued on 27th June by the Governments of Yugoslavia and the three Western powers the principle of collective security is given much prominence. The declaration states:

The four Governments were agreed that solutions of outstanding problems should be sought by peaceful means and by negotiations based upon full respect for and recognition of the right of all nations to independence, equality, self-defence and collective security in conformity with the Charter of the United Nations.

This declaration on the part of Marshal Tito, who is also a strong supporter of Mr. Nehru's five principles of international morality shows that regional security pacts are not in themselves opposed to these principles, though Mr. Nehru would like for the moment to discourage them. It is only because this discussion serves to clarify the U.N. Charter that we have dealt with these foreign policy matters in these columns.

Mr. Nehru—At Home and Abroad

Commenting on the recent manifesto issued by Mr. Ajoy Ghosh, the Communist Party's "latest high priest," outlining the Party's policy, the "Times of India" writes:

Mr. Nehru consorts with Communists abroad but will have no truck with the Reds at home. (Mr. Ajoy Ghosh in his manifesto) returns the compliment. He applauds Mr. Nehru for his deeds of derring-do

abroad, but decries him for his attitudes and actions at home. Abroad presumably the Prime Minister is a progressive tipping his cap to the rulers of the Kremlin, while at home he changes his visage overnight for the mark of a reactionary and bludgeons the swadeshi counterparts of the Kremlin into political pulp.

Governmental Pressure on the Press

It would appear that India has been named in the Commonwealth Press Union's annual report on press conditions as one of the countries where "disturbing events" have occurred. Commenting on this statement, the "Times of India" says:

There have been instances of governmental pressure, particularly in the States, sought to be exercised on the press, with a view to making it toe the official line. Who can deny that many a State Government in this country has betrayed impatience with unpalatable press criticism and a tendency to penalise it? There is, further, the irresistible temptation among the rulers to shape the world, including the press, after their own heart. Many of our Ministers in the States, if truth be told, have only a hazy notion of democratic freedom and the role of the press, and with so many weapons available to them to coerce the press, they are impatient to use them.

The Commonwealth Press Union's report mentions some of the devices used for exerting governmental pressure. "For instance," says the report, "there have been, and no doubt will be again, attempts to impose a measure of censorship on the ground that 'national security' is involved. Often in such cases it is quite clear that the only security involved is that of government." Supporting this statement, the "Times of India" writes:

Misuse of the provisions of the Official Secrets Act to conceal or hush up a ministerial scandal is a temptation to which many a State Government succumbs. To confuse or identify party interests with national interest is a common failing with Governments. Equally common is officialdom's habit of arrogating to itself a monopoly of patriotism and a self-imposed role of "advising" the press on its duties, for which officialdom is obviously least competent or qualified.

European Highlands of Kenya

The Royal Commission appointed by the British Government to suggest ways of improving the living standards of the 18 million Africans in the East African territories under the chairmanship of Sir Hugh Dow, a former Governor in India, has boldly recommended the removal of all discrimination, restriction and privilege, thus forcing upon Europeans, Africans and Asians a policy of mutual co-operation, upon which the Commission believes depends the prosperity of this under-developed and poverty-stricken region.

It recommends abandonment of all sectional land reservations and its main attack is on the reservation of 16,000 square miles of fertile farm land for use by European settlers. Speaking of the retention of this land for the exclusive use of the whites, the Commission says:

It makes the Europeans appear as a tribe hanging on to their tribal territory instead of pooling it for the common territorial need, in contradistinction to that interpenetration of lands which we advocate as essential to economic production.

And it depicts the Europeans as a political bloc, a picture which causes a phobia against any further alienation, however much this may, in a particular instance of mine, or estate or factory, be needed for the common weal. This in turn affects the confidence between European and African throughout the region, upon which success in rehabilitation and resettlement depends. The phobia is exaggerated but it needs killing.

The breaking down of racial barriers in land-holding and the consequent "interpenetration of lands" by all races necessarily requires as a corollary the break-up of Native Reserves too. The Commission's recommendations in this respect are thus summarized by the "Statesman":

To effect this change (conversion of what is virtually a subsistence economy into a modern market economy), the Commission thinks, the territories must make better use of their land. This can best be done by throwing open Native Reserves not only to other African tribes but also to other races, by substituting private ownership for customary African clan or tribal ownership and by making land available for unrestricted sale; thus not only would the land's agricultural use be intensified but it would become a basis of credit. This would raise the rural standard of living and also restore African mobility with relation to the soil; African labourers could afford to demand minimum wages (to be made statutory) in towns, which would be well-ordered places with segregation based not on racial but on building standards.

But one cannot be sure that the Commission's recommendations in regard to removal of barriers in the holding of land can be implemented. The Commission lays considerable stress on the necessity for winning the approval of all races for its recommendations, but it would be too optimistic to imagine that the Europeans' approval could be obtained for reversal of the Highlands policy. Although it is true, as the Commission says, that "a purely racial approach to the question is incompatible with the development of a modern economy," it is very doubtful if the whites could be persuaded to change their outlook. Similarly, it is almost certain that the Africans will object to throwing open their reserves to other tribes and other races. And if they do so, they will not lack justification. White reserves in the Highlands and Native Reserves

elsewhere stand on wholly different footings. Native Reserves are based on something corresponding to the laws for non-alienation of land which have been enacted in this country in behalf of the tribal people. Native Reserves require to be enlarged, but the Natives will hardly consent to their abolition in view of the great disparity of the different races in the economic scale.

Equal Opportunity in Public Employment

It is reported that in the ensuing session of Parliament a bill will be introduced to enable persons living in one State to apply for public employment in any other State in India, thus giving full effect to the principle (of equality of opportunity in matters of public employment) embodied in Art. 16 of the Constitution. This Article, in its first two clauses, provides:

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,

(2) No citizen shall, on grounds only of religion, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

These two clauses are followed by a third, which authorizes Parliament by legislation to prescribe, in regard to classes of employment or appointment in a State, "any requirement as to residence within that State prior to such employment or appointment."

By virtue of such legislation, when passed, it would be possible for a State to restrict public employment to residents of that State in certain specified classes of posts. No such legislation has been passed, and in the meanwhile the States have themselves enacted "resident rules," and when inviting applications for employment, they state that candidates should ordinarily be residents, or have been residents for a specified period, of the particular States. The law officers of the Government of India are reported to have come to the conclusion that the "resident rules" of the different State Governments, laying down residential qualifications for appointments to the public services, militate against the constitutional provision guaranteeing equality of opportunity for all citizens in Government service. The proposed bill will lay down, it is expected, that nothing in the "resident rules" of States shall prevent a candidate belonging to one State from applying for public employment in another State, and that the fact of his not residing in the State will not disqualify him for the post.

Human and Property Rights

Mr. William Henry Chamberlain pointed out recently in an American journal how fallacious it is to think that property rights are somehow irreconcilably opposed to human rights. He says:

Far from being opposed to "human rights," to progress and liberty, the right to own and lawfully

acquire property is one of the greatest and most precious of human rights. This was well understood by the men who led the American Revolution, signed the Declaration of Independence and framed the Constitution. . . . The ownership and acquisition of property are among the natural rights which, according to the theory prevalent at the time of the Revolution, no Government may legitimately deny or abridge.

John Adams states as a self-evident axiom:

Property must be secured, or liberty cannot exist.

And it was a famous saying of Daniel Webster:

Liberty and property, one and inseparable, now and forever.

This reference to the American Revolution puts us in mind about what Mr. Nehru said in Parliament on this subject. When it was pointed out to him in course of the debate on the Fourth Amendment Bill that in the United States the Constitution allows the Government to take private property for public use only on condition that the Government pays to the expropriated owner just compensation for the property taken, he ridiculed the idea of making applicable this condition in the society of to-day. He implied that this rigid condition embodied in the Fifth Amendment to the U. S. Constitution might have been a desirable and necessary condition at the time when the Constitution was framed, but it had become outmoded by now when social conditions were radically altered after the lapse of about one and three quarters of a century.

What Mr. Nehru had in mind was something like what Mr. N. V. Gadgil has written in the "Indian Affairs Record," scouting the very notion of fundamental rights. Mr. Gadgil says:

What is fundamental to-day may not be fundamental to-morrow; because society is dynamic in these modern days, ideals may change, the outlook may expand, and surely it would be wrong to swear by fundamental rights conceived in a different social and economic context.

Mr. Nehru too means to say that while the right to property perhaps deserved to be guaranteed in the way in which the framers of the United States Constitution have done when social ideas were what they were at that time, the guarantee then given cannot now be strictly enforced in the altered conditions of society.

Two things could well be said in answer. First, the rights enshrined in the Bill of Rights are so fundamental that they do not admit of any expansion or curtailment on account of changes in environment. It is just because they do not depend upon conditions prevailing at any particular time in any particular society and because they are something like eternal verities that they form part of a charter of inalienable liberties in any country, and are embodied in the U. N. Covenant of Human Rights intended to be applicable to all States irrespective of their

social conditions (and property rights are included along with human rights in the Covenant).

Second, coming to the Federal Constitution of the United States, it is true that the Constitution was framed a long time ago. But it should be remembered that it is not merely this age-old Federal Constitution that asserts that the power of eminent domain can be exercised only on condition of payment of just compensation, but this guarantee of private property finds place in the constitutions of all the states of the American Republic too. And though these constitutions also were drawn up at the time of the Federal Constitution, the constitutions of several states have since been revised, and of some of them quite recently. But none of these states have thought fit to drop the provision respecting compensation from their revised constitutions. It is not therefore as if in the American Constitution the guarantee of private property survives to this day only because the statesmen there are too lethargic to amend the Constitution. But it is just because property right is regarded in that country, as in all other democratic countries, as a civil right deserving protection. — S. G. V.

Compensation in the Event of Nationalization

Mr. S. S. Kothari writes as follows in the "Statesman" on this subject :

It is the Government's privilege (under the Fourth Amendment to the Constitution) to give any compensation it likes; a substantial majority ensures parliamentary confirmation, while constitutional amendments have removed barriers that existed in the nature of judicial review. But can the Government, wedded as it is to democratic principles, exercise this privilege so as to give compensation which in effect would amount to partial expropriation? Even the Labour Government in Britain, unequivocally wedded to Socialism, refrained from violating the rights of property, and upon the nationalization of the coal, transport and other industries gave compensation that could normally be regarded as equitable. Democracy would lose its significance if the Government infringed the people's fundamental rights for small benefits to the State.

NOTES

Segregated Schools Bill Vetoed

The legislature of Tennessee passed a bill giving authority to the school boards in certain counties to assign pupils to any school the boards might designate. The bill in effect provided for segregated schools. There-

fore, the Governor of the state vetoed the measure, and the legislature was unable to muster a two-thirds majority required to override the veto. The state had contended that its "police power" would entitle it to enforce segregation in public schools in spite of the Supreme Court's ruling that such segregation was unconstitutional.

In his veto message the Governor pointed out that the bill was merely an attempt to circumvent the Court's anti-segregation decision of last year and that the police power of the states must yield to what had been declared to be constitutional law. He said: "The only possible effect (of enacting such a bill) can be to foment racial hatred and disorder where none exists, and to precipitate issues to the detriment of all concerned."

R. O. T. C. Loyalty Oath Rescinded

The sweeping loyalty oath required of all college students enrolled in basic training courses of the Reserve Officers Training Corps (vide p. iii : 183 of the BULLETIN) has now been abandoned. Under the regulations prescribing the test, the enrollee was asked to name any organization listed by the Attorney General as "subversive," of which he is or has been a member, or with which he may have been "identified or associated" in any manner. A student who honestly acknowledged such associations could only participate in the training on an informal basis, without being permitted to march in uniform, thus being publicly branded as a subversive in the eyes of his fellow-students. A student who would not submit to such humiliation was forced out of college.

Fortunately, in response to the protests from a number of universities and the American Civil Liberties Union, the special loyalty oath has now been rescinded by the Defence Department. Henceforth, students in their first two years of R. O. T. C., which are compulsory in colleges which receive federal land grants, will take a simple oath of allegiance. The new oath for basic R. O. T. C. students reads as follows :

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

In subsequent years of training, which are voluntary and which lead to reserve commissions, the students will be subject to the same security tests that all officer personnel undergoes.

In its protest against the old programme, the A. C. L. U. had said :

It gives the Government control over education and ideas and associations of students without that control having any reasonable relationship to national

security. Such control, we believe, is wholly contradictory to the democratic principles which the Army exists to defend.

Wire-Tapping Provisions Not Extended

A bill was recently introduced in the legislature of New Jersey for the legalization of wire taps in certain areas of crime, thus extending the scope of the state's basic law on the subject. But, luckily, on account of the public opposition aroused by the bill and the adverse opinion expressed by the Governor, it has now been dropped. The American Civil Liberties Union had opposed it vehemently. Mr. Emil Oxfeld, the Union's representative, said about it :

Wire-tapping is a general dragnet embracing all the fish in the water without distinction as to size, nature or colour, season of the year and status. Wire-tapping is a dirty business, and it is impossible for anyone to involve himself in it without in some way contributing to the lowering of standards of justice....

If wire-tapping is to be permitted, why should not the entire Anglo-American system of guaranteeing the fairest conceivable procedure in protecting an individual's rights be abolished, including the law relating to evidence, the privilege against double jeopardy, the use of the third degree, the abolition of attorney-client privilege, and, in fact, trial by jury? At what point can we reasonably stop if our sole purpose is a last-ditch attempt to preserve national security?

Separation of Church and State

This is an established principle of the American Constitution and it requires, in the view of several civil liberties bodies and among them the American Civil Liberties Union, that no federal funds should be expended on religious denominational schools. Like the Federal Constitution, the constitutions of several states also bar appropriations to any denominational or sectarian institutions. But in some of these states the legislatures have modified this basic tenet, permitting payments of money to institutions that are not altogether non-sectarian. However, the supreme courts of these states have often declared such proceedings invalid.

A similar case arose before the Pittsburgh Court of Common Pleas. The Pennsylvania constitution provides for separation of church and state, but in 1933 the state legislature adopted a law directing county authorities to place delinquent and neglected children, "as far as possible, under the care, guidance and control of persons having the same religious beliefs as the parents of the children, or with some association, institution or society which is controlled by persons of such religious belief." The law also authorized either the city or county to pay the expenses for such care.

Suits were brought against nine religious orphanages which had received some \$250,000 from Alleghany County

in 1953. The Court of Common Pleas held the law void and ruled that public funds could not be used for the maintenance of dependent children in sectarian institutions, but because it was brought out at the trial that there were no public institutions in Alleghany County for the care of dependent children, nor any private institutions not affiliated with church groups, the court, recognizing the difficulty in making an immediate switch to publicly-operated facilities, held in this case that "a period of time in which to make the (necessary) adjustment should be provided before a final decree becomes effective."

LABOUR APPELLATE TRIBUNAL

Contribution to the Provident Fund

INDUSTRIAL COURT'S AWARD SET ASIDE

The Brihan Maharashtra Sugar Syndicate and seven other sugar factories appealed to the Labour Appellate Tribunal, Bombay, against the decision of the Industrial Court on several matters in dispute between them and the workers' unions.

The Labour Appellate Tribunal in Bombay on 2nd May set aside the award of the Industrial Court which had fixed the contribution of Deccan sugar factory owners to the provident fund at 8-13 per cent. of the employees' basic pay and dearness allowance.

The Tribunal fixed the employers' contribution at 8-1/3 per cent. of only the basic salary. The Tribunal, however, has stated that the direction would not affect the contribution of employees who had expressed their desire to contribute 8-13 per cent. of their total emoluments.

The Tribunal said that it appeared to them that in fixing the rate of contribution, the adjudicator acted under a "misapprehension" and his award could not be supported. The rate laid down was "extremely high."

GRATUITY

Employees of the eight sugar mills in Maharashtra had demanded in different appeals gratuity at the rate of one month's wage for every year of service. The Tribunal held that only two sugar mills, the Belapur Company Ltd. and the Phaltan Sugar Works Ltd., were in a position to bear the burden of gratuity fund.

It laid down the following basis for the payment of gratuity: (1) on the death of an employee or his becoming physically or mentally incapable of working, 15 days' basic wage for each year of service, (2) on voluntary retirement or resignation after 15 years of service, half month's basic wage for every year of service, and (3) on termination of service by the company after five years of service, 15 days' basic wages for each year of completed service.

The Tribunal held that mills should provide residential accommodation to temporary workers coming from a distance of more than three miles.

The Tribunal upheld the award of the adjudicator regarding retention allowance which had been fixed at 25 per cent. for skilled workers and 10 per cent. for unskilled workers.

The companies' appeals opposing the lower court direction that no agricultural workers should be required to work in excess of 54 hours a week were dismissed by the tribunal as no question of law was involved.