Good Government

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THIS ISSUE:

- A N.S.W. JUDGE ON PROPERTY RIGHTS
- PEACE AND THE VIETNAM ELECTIONS
- WHAT IS THE 'ECONOMY'?

DECEMBER, 1967

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PRINCIPLES OF GOOD GOVERNMENT

GOOD GOVERNMENT RESTS ON THESE FOUNDATIONS:

1. An enlightened electorate,
2. A democratic system of representation,
3. Recognition that its primary function is the maintenance of peace and justice,
4. Non-interference in trade or commerce, either national or international, or in the private transactions of its electors save only as these threaten peace and justice, and
5. A democratically controlled and just revenue.

In order to achieve the ideal of Good Government, it is essential that these basic requirements be met:

An enlightened electorate by sound education in the economic facts of life;

A democratic system of representation by the adoption of proportional representation in multi-seat electorates and simplified provisions for the referendum, initiative and recall;

Recognition of the true functions of government—the maintenance of peace and justice—by the withdrawal of government agencies from all other activities, especially in the spheres of trade, industry and monetary control;

A democratically controlled and just revenue by the collection of all site rents by governments as their sole and proper revenue and the abolition of all taxes, tariffs and unjust privileges of every description.

GOOD GOVERNMENT

(Incorporating "The Standard", published since 1905)

THE PROPER REVENUE OF A NATION IS THE SITE RENT OF ITS LAND

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EDITORIAL

LESSONS OF AN ELECTION

Complications introduced, for political reasons and through ignorance of electoral science, into the mechanism for achieving representation of the people in the Australian Senate cause unnecessary delay in the production of results and the usual percentage of informal, or wasted, votes. The overall result, however, is already sufficiently clear to indicate that the perverted view of the Government Coalition, that the Senate ought to be a rubber stamp for their majority in the House of Representatives, has been frustrated.

As the two letters to the Press, republished in this issue, demonstrate, there are members of the thinking public aware of the Senate's true purpose and intent on reminding the politicians of it; much remains, however, to be done to inform the electorate as a whole of this purpose—that it is essentially a House of State Representatives to preserve State rights within the federal system and a House of Review, and not an extension of the Government's power. How necessary this education is was illustrated clearly enough by the effrontery with which both the Prime Minister and the Leader of the Opposition—neither of whom was a candidate in the elections—campaigned with the demand that they should respectively be given 'control' of the Senate, and by the general enthusiastic support they each obtained for this distorted idea of 'representation' among their followers.

A word must also be said to refute the canard, trotted out by journalists and party hacks alike at every Senate election, that the 'complicated' system of voting under proportional representation is responsible for the 'donkey vote' and the high rate of informals. The truth is, of course, that if the system was cleansed of the stupidities grafted on to it by compulsory voting and, in particular, by compulsory numbering of the whole ballot paper, the proportional representation (single transferable vote) method would be as simple as any other, as far as the voter is concerned. It is bad enough that the unwilling, the ignorant and the apathetic should be forced to distort the voting pattern by adding preferences that express no true interest or intent; it is an outrage on every voter that he, or she, should be compelled to express a preference for candidates in whom they have no interest or, worse, whom they actively reject, and in doing so make the task of the vote-counters unnecessarily difficult and protracted.

How much longer do we have to tolerate these imbecile excrescences on an otherwise ideal method of securing true representation? Isn't it time the 'donkey vote' ceased to provide opportunity for cartoonists and ill-informed political scribes to perpetuate the 'image' of Australian Senate elections as little more than a species of comic opera?

THE MONTH

The Devaluation Broohaha

Groping through the fog of Press comment and politically oriented statements by government officials and businessmen on the devaluation of sterling, the humble layman may well feel that he is the victim of some horrible spell under which his blood is to be drained to make a feast for ghouls. And, that wouldn't be a bad description of actuality. For, whoever is going to pay for this crime—this act of partial bankruptcy without having to answer to a court of law—it won't be the guilty politicians, or their economic advisers, or the chairmen of large organisations, but the hapless taxpayer-consumer who has nobody to whom he can pass the buck. To him the only comfort we can offer—and it's little enough except that it may hasten his education—is to re-read a couple of articles, published in this journal in April last, under the general title 'The Evils of Currency Control', in which John Zube described devaluation as 'aggression' and Henry Meulen said that "the root cause of imbalance in Britain's trade lies in the fixed price of foreign exchange adopted at Bretton Woods in 1944." (Copies are available at the office of *Good Government*, price 15c.)

The Research Racket

Our Hobart correspondent sends us an illuminating comment on the operation of the Government's latest scheme for featherbedding Australian manufacturers—those lusty, all-Australian offspring of the founders of the great pioneering tradition of which this nation proudly boasts (drowning out the whining in Canberra for more protection against the chill winds of competition). Legislation now exists whereby industries may be assisted by (a) relief from taxation, or (b) 'research' handouts depending on their 'profitability', or both. This is the way it works: up to $50,000 spent by a company on research is subsidised 50%; but every dollar spent by a company making more than $10,000 a year merits a taxcut of 42½ cents. So it can be said that a company with a net profit in excess of $10,000 spending one dollar on research does so at a cost of 7½ cents to itself. It's all done, of course, in the name of the 'national interest', if you know what that is.

Protection for our High-minded Industrialists

For the highest marks in a contest for the most blatant piece of hypocrisy, the award would surely go to the spokesman for the Federation of Automotive Products Manufacturers, who was reported as saying, on November 14, that "his organisation took a highly critical view of those groups of people who, for self-interest, constantly attacked Government tariff policies". The interest that impels the Automotive Products Manufacturers to demand protection is, of course, the purest, lily-white altruism. The self-interested people complained of are those selfish beasts, the primary producers, fighting in a world market like a boxer with one hand tied behind his back. As Allan Fraser said in the Sydney *Sun*, on November 22, "The primary producer must wonder whether he and the manufacturer really live in the same Australia." Automotive Products Manufacturers evidently are content to live in a different world from the one occupied by the Vice-President of General Motors, who is reported as saying, at a world trade conference at Louisville, Kentucky, recently: "The world can benefit greatly from a climate of increasing freedom of trade and investment." Pity they can't be forced to follow through their suicidally isolationist theories to the bitter end, somewhere where it couldn't harm the rest of the economy.

Seventeen Years to Serfdom

Those who don't know what a data bank is are advised to find out as soon as possible. To assist them in their search for knowledge on this vital subject an article in the *Australian Financial Review* of November 7 is strongly recommended. It is calculated to leave the reader in a very thoughtful frame of mind indeed. For the uninitiated, a data bank is a computerised technique for storing information about people. It provides an ideal method by which a national dictator could blackmail a whole people into submission to his will. And, if that seems a trifle far-fetched, listen to Mr. Cowled, speaking on the subject at a conference at Terrigal recently. He said: "Data banks constituted for computer people a proposition as important and potentially dangerous to their moral standing and peace of mind as the atomic bomb did for its inventors." It looks as if Britain will be the site of the new Hiroshima; logical enough in the face of recent trends there. Not that it couldn't happen here just as well. Mr. Cowled spent four years with the Commonwealth Bureau of Census and Statistics, "the Department most likely to be given the task of creating a national data bank", according to the *Review's* reporter. He said that the arrival of data banks in partially implemented form is 'imminent', that there were enough computers already in NS.W. to set up a data bank "as big as you like". After listing the advantages of this new "potential hazard to the human race greater than the atomic bomb", Mr Cowled added that "the ethics of programmers and other computer technicians would need to be more stringent than the ethics of the police force."

The Crazy Arithmetic of Australian Oil

Most intelligent people would accept the proposition that the product of invention and discovery should be to the general advantage of the community. Otherwise, why bother—to spend public money, for instance, to encourage people to bore for oil? We can get oil easily enough from a dozen sources overseas. Why, then, encourage its discovery and processing in Australia, if not for the benefit of cheaper petrol of equal quality with the imported variety? The answer is, of course, that intelligence is not a prerequisite in a discussion of this kind. The situation concerning Australian oil has been fantastic from the start, and it will continue that way. As the *Sun-Herald's* columnist, Onlooker, said on November 19: "The more oil that is found and refined in Australia, the higher the price of petrol will rise." Mr. W. Mason, General Secretary of the N.R.M.A., criticising the latest proposed increase, said: "The oil companies' claim that the greater the content of Australian crude oil in petrol, the greater the retail price . . . is absurd. Motorists will expect some action to be taken." Such as what? Does Mr. Mason antici-

pate that the oil companies will be induced, without a *quid pro quo*, to take pity on the motorist and forego profit? Or that the Government will suddenly perform a volte-face on their policy of forcing the oil refineries to take local crude at a dollar a barrel more than they can import it for without passing on the cost? All motorists, buoyed up by Mr. Mason's brave words, will be standing by for the action—unavailingly, we fear.

Human Rights—South African Style

"Five years of loneliness and isolation of house arrest ended at midnight on Tuesday for a grey-haired 62-year-old woman—and five more started all over again." Thus the *Sydney Morning Herald*, on November 3, described the latest piece of sadistic savagery meted out by a 'Christian' government of a so-called civilised nation to a heroic woman, Mrs. Helen Joseph, whose only crime is to have courageously stood up for her belief that human beings have no 'colour' in the eyes of God. An English-born sociologist, Mrs. Joseph, in her 37 years in the Republic of South Africa, has unflinchingly served this belief, speaking and writing in defence of human rights in the face of a brutal fanaticism of which she herself in the end became the victim. This, says the *Herald*, is what her banning and house arrest involves: she lives under a tightly ordered curfew, meaning she must hurry home from the bookshop where she works to be indoors by 6.30 p.m. She may not leave her house again until 6.30 a.m. At weekends she must stay at home from 2 p.m. on Saturday until 6.30 a.m. on Monday. She cannot go to church on Sunday. Instead, she goes to 7 a.m. services at her church on two or three weekdays She may not leave home on public holidays—which means Christmas and Easter. Except for a doctor, no one may visit her, not even a priest. She must report to the police each weekday and remain within the magisterial area of Johannesburg. She cannot publish anything, cannot communicate with any other banned person, cannot enter the premises of a newspaper, factory, or educational institution and cannot be quoted in any publication. As at least one South African newspaper, the Johannesburg *Star*, has the courage to say of what passes for justice in South Africa today: "Punishment without end is now joining punishment without trial as a feature of life in Nationalist South Africa." It will be interesting to see how the local apologists for this tyranny justify its latest manifestation. So far there has been only a loud silence.

Keeping the Government on its Toes

A correspondent, Mr. R. Kemps, of North Sydney, sends us the outline of an ingenious method of making life difficult for Mr Holt. He calls it a 'gradual election', the idea being a monthly quota of seats for election. "A government then," he says, "would not be a beseiged fortress for three or five years, defending itself by action, silence or delay. Elections would become a constant contact between voter and representative." Mr. Kemps is also in favour of freeing the Senate "from domination by any one group". He offers his ideas to "the discriminating, not-so-emotional voter", who may contact him at 28 Walker Street, North Sydney, 2060.

This is What They Said:

Prime Minister Holt, *Nov.* 10: "Senate candidates who believe the Senate's role was to take business out of the hands of a government, carried vanity to the point of arrogance and absurdity."

Mr. A. Smallman, Managing Director, P.A. Export Marketing Pty. Ltd., *Nov.* 28: "By the year 2000, half the world's business would be controlled by about 300 giant international companies."

Mr. H. G. S Todd, Chairman, N.S.W. Egg Marketing Board, *Nov.* **27,** urging early action to discourage over-production of eggs: "Until some scheme is reached by the industry and a submission made to the Government, no action can be expected. A scheme for licensing farms as a measure of controlling production has been rejected by the Australian Agricultural Council."

Mr. R. C. Packer, Liberal Member of the N.S.W. Legislative Council, *Nov.* 7, comparing the condition of Sydney Hospital with that of the new multi-million dollar Reserve Bank: "There is a touch of lunacy in a system which allows our sick and injured to be treated in conditions of penurious squalor, while the people who count our money do so in conditions of disgusting opulence."

Mr. George Chapman, Chairman, Chase Manhattan Bank, New York, *Nov.* 28, speaking in Canberra on international aid: "We can't afford to let these countries do other than make great progress. They must see that our way of life is the best"

OBSERVER

TWO WRONGS DON'T MAKE A RIGHT

Henry George never tired of emphasising that society has its OWN public revenue, generated naturally by the mere existence of society. As society forms and grows, so the rent of land forms and grows. It keeps pace with the growth of society, and more than keeps pace with it, so that no matter how great the community and its needs become, the land rent is always sufficient to meet them. It is the duty of every government to take the necessary steps to collect this rent for public revenue, BECAUSE IT IS THE PUBLIC REVENUE.

During the course of some centuries of our history a great wrong has grown up—the great rent fund has been misappropriated, stolen, by a privileged class who betrayed their trust as rulers and diverted the rent into their own coffers. They misused the machinery of government for this purpose, and so perverted the fountain of justice and good government. They now regard the rent as their private property. But it is neither private nor property. It is, and always will be, PUBLIC, because it is produced by the efforts and enterprise of the public, and is in fact the PUBLIC WAGES. This perversion of public revenue into private revenue is the first great wrong. Henry George called it "a bare, bold and continuing robbery".

Flowing from this great robbery is the second great robbery—the perversion of private income into public revenue—by TAXATION. It is a basic duty of

government not to permit theft, and yet governments themselves perform this theft. No amount of mass-thinking or custom can change the nature of taxation, which is essentially anti-social. Taxation is the expression of totalitarian or communist philosophy, and it creates the poverty which breeds communism. Yet those governments which profess to be anti-communist persist in their unthinking creation of poverty and promotion of communism by this terrifying self-destroying process of taxation. It grows on what it feeds on till at last it kills the body social. It is already out of hand, and its fantastic extensions into thousands of millions of dollars, even in our small community, increase every year in arithmetical progression. Large classes live on it, and its grip ever becomes tighter till it strangles all production. A depression, with all its suffering, loosens the grip temporarily, and then it repeats its march of death. Only our great productive explosion has enabled us to cope with taxation for so long, but even this great wealth explosion is converted into poverty by the simple process of extracting under relentless pressure every possible penny.

These two great wrongs, so closely interwoven, do not make a right, but form twin evils of frightful magnitude. A social structure which is built on injustice cannot stand, and the agonising throes of world-wide social disintegration bear witness to this.

THE REMEDY

Sound economic knowledge, combined with keen moral sense, will provide the remedy, which is nothing less than the abolition of the wrong. The injustice of the private misappropriation of rent can be abolished by what may be called a fiscal reform, i.e. by taking rent for public revenue. This public revenue will form the government's revenue, and so taxation can be discontinued.

The rent of land is more correctly called economic rent, or SITE-RENT. It is not merely the rent of agricultural land, but of SITES which are so prominent a feature of our towns and great cities. It is often objected that the site-rent could never provide enough revenue to meet the needs of modern governments. The answer to this is that an enormous part of modern governmental expenditure arises from the evils of taxation and injustice, e.g. relief of poverty, war, the detection and punishment of artificial crimes, and other instances of misgovernment too numerous to mention. But the main point about rent is that it belongs to the public, and that justice demands that it be taken for the public *and that taxation be eliminated as far as the rent will extend.*

W. A. DOWE.

CHRISTMAS GREETINGS

With this enlarged special issue come seasonal greetings to all our readers from the editor and all connected with the production and distribution of GOOD GOVERNMENT and the earnest hope that this term will become increasingly applied to our own and world affairs throughout the coming year.

LETTER OF THE MONTH

(This month we publish two letters, with almost identical views on the same subject—the Senate Elections of November 25.)

INDEPENDENTS FOR SENATE

(To the Editor, the *Sydney Morning Herald*, 15/11/67)

Why do the politicians try to put it over that the Government for the time being must have a majority in the Senate, thereby reducing it to the status of a 'rubber stamp' which is has been for so long? The Constitution never intended the Senate to be a mere 'rubber stamp'. It was wisely designed to be a House of Review, but the cancer of party politics has eaten away its independence.

In recent times it has shown signs of becoming once more a useful body and not a mere tool of the Government.

Let us start now to restore the power of the Senate by electing independents, instead of 'party stooges', so that the electors will have some say in the Government. By 'electors' I mean all the electors, not merely those who support this or that party which happens to be in power.

J. HARDING

Paddington.

BATTLE OF THE IMAGES

(To the Editor, *The Australian*, 22/11/67)

Political commentators, generally, consider that in this age of television the current Senate elections campaign is a battle of the 'images'—Mr. Holt versus Mr. Whitlam.

If this view is correct, it is a grave reflection on the intelligence of the Australian electors.

The Senate was never intended to operate on party lines and thus be either a rubber stamp for the Government or a means for the Opposition to frustrate Government policy-making.

The Senate was established by our forefathers as a House of Review, with each State having equal representation.

It was intended that the senators representing each State would look after the interests of that State.

Having regard to the true role of the Senate, the electors are entitled to have a searching look at the candidates seeking to represent their State so that they can judge for themselves who are best suited to do so.

Without being critical of the photogenic qualities of Mr. Holt and Mr. Whitlam, neither of whom is in the Senate, let the parties put their Senate candidates on television so they can be judged on their merits and not on someone else's image.

M. RUSH

Green Street, Ivanhoe
Victoria.

"UNTO JOHN DOE HIS HEIRS AND ASSIGNS FOREVER"

A Study of Property Rights and Compensation

by THE HONOURABLE MR. JUSTICE ELSE-MITCHELL, LL.B., F.R.A.H.S.,
a Judge of the Supreme Court of New South Wales and the Land and Valuation Court of that State.

His Honour delivered this, the Sidney Luker Memorial Lecture for 1966, in Sydney on November 18, 1966, on the occasion of the presentation of the Sidney Luker Memorial Medal to Professor Gordon Stephenson, Dean of the Faculty of Architecture in the University of Western Australia. (Reprinted by kind permission of the author from the Australian Planning Review, January, 1967.)

The late Sidney Land Luker, the author of the County of Cumberland Planning Scheme, was well aware from his study of English planning experiences that the implementation of the County Plan would entail the payment of substantial compensation to owners of land which was required for public purposes or which would be injuriously affected by the zoning provisions of the Scheme. He knew that the Barlow Committee in England had reported in 1940 that "the difficulties that are encountered by planning authorities under the existing system of compensation and betterment are so great as seriously to hamper the progress of planning throughout the country. He also knew what massive problems were faced by the Scott Committee in 1918 and the Uthwatt Committee during the Second World War in attempting to ease the financial burden of planning for reconstruction upon the public purse. Sidney Luker died a little more than twelve months after the County of Cumberland Planning Scheme became law in June 1951, and had he lived a little longer it is certain that he would been both dismayed by the astronomical claims totalling £375,000,000 which were made for injurious affection resulting from that Scheme, and astounded at the ingenuity which lawyers and others had devoted to the formulation of those claims.

In the light of these facts, it seems certain that the late Sidney Luker, conscious of the political considerations involved, would have regarded as sheer idealism the statement of a leading English planner, Lewis Keeble, that "the interest of the Planner is to be able to operate in conditions which enable land to be put to its most suitable use in the public interest without having constantly to consider whether any particular proposals are likely to involve a burden of compensation so crippling that they are unlikely to be implemented for that reason."

The inquiring mind of a realist such as Luker must often have asked the question whether there was not some solution to the perennial threat of compensation claims frustrating planning schemes devised for the public good. He may have regarded this sense of frustration as inevitable in a society based on private property but, had he been a lawyer, he may have perceived that it is not the existence of private property rights but the peculiar incidents of inheritable estates in land—freehold interests you may call them—as they have evolved in our society which present such obstacles to the implementation on the score of cost of so many planning proposals.

Hence it is that I have taken as the title or text of my address " . . . unto John Doe his heirs and assigns forever" which are the technical words of limitation so well known to lawyers by which freehold estates in land in this country have been created by grants from the Crown. At the risk of embarking upon some of the intricacies of the law of real property, but consistently, I hope, with the terms of the Sidney Luker Memorial Lecture, I shall attempt an exposition of the process by which freehold estates have assumed such importance and raise for investigation and research a means by which the Gordian Knot of compensation claims may be severed so as to serve the public interest and the ends of town and country planning.

* * *

For many centuries, from the Middle Ages until the twentieth century, the collocation of words forming the title to this address provided the legal basis for the creation, either by grant from the Crown or conveyance between subjects, of the greatest estate in land known to English law, that estate being an estate of freehold designated by the lawyers "a fee simple". It is of such an estate in land that everyone save a lawyer speaks when he refers to the ownership of land although in strictness the owner of land in this country is simply a tenant in fee simple of that land from the Crown.

This concept of tenancy is but a result of the fundamental principle of English land law, applying in this State, that no one except the Crown can have absolute ownership of land; the Crown's ownership is an attribute of sovereignty which may stem from conquest or, as in Australia, from discovery and occupation. All those who acquire rights to any lands over which the Crown has sovereignty are deemed to be its tenants whether they derive their right by grant from the Crown directly, or by transfer, conveyance or some other disposition made by a person who directly or indirectly derived his title from the Crown by a similar grant. In the time of the English feudal system and perhaps until the *Enclosure Acts*, there was some resemblance between "a tenant in fee simple" and a tenant as we understand that word today, for the tenant in fee simple was originally obliged to render services to the king or to the lord of the manor of or through whom he had derived title to the land; the services which he was required to render included military service which in later times was commuted for a money payment called escuage or scutage; he was also obliged to do homage and to swear fealty. By the time New South Wales was colonised, these medieval services and duties

had been replaced by an obligation to make a money payment in the form of a quit rent and when grants of land were made by the early Governors of this Colony, it was the practice to reserve such a quit rent, that is, to make the grant of a freehold estate in fee simple dependent upon the annual payment of a sum of money, but it is most unlikely that there exist in New South Wales today any lands in private ownership on which any money quit rent reserved by the Crown grant has not been redeemed, so that virtually all land in the State of New South Wales which has been granted by the Crown is held by the owner for an estate in fee simple free from any obligation to make any payment or contribution to the Crown or the Crown revenues except such as may have been imposed by legislation levying taxes and rates to meet the costs of governmental or municipal services.

The most significant feature of the development of the land laws in this country has been an extension or enlargement of the rights of tenants in fee simple and a correlative attenuation of the rights of the Crown. And, although the title to all land in New South Wales derives from the Crown because upon its discovery and settlement all those lands came under the sovereignty of the Crown, the history of the colonial era and of land settlement in the nineteenth century shows how the rights of the land-owner were reinforced to a point where the public origin of the owner's title was forgotten and the public interest disregarded.

In the early years of the Colony, grants of land were made to officials of Government, military officers stationed in the Colony, free settlers and ex-convicts. These grants were often in the nature of inducements for the grantee to remain in or to migrate to the Colony but many grants were procured by friendship or were the result of patronage; not the least important of these were the considerable grants made to John Macarthur of large areas of land in the Cowpastures near Camden. It should be added that this patronage was not unknown as between Governors and there were in fact reciprocal grants made by Governor King to Bligh, that being one of King's last formal acts, and shortly after by Governor Bligh to Mrs. King, the title to the latter grant being appropriately designated "Thanks".

These grants for the most part were of the fee simple of land and until the 1820's they were issued, as the Instructions to the early Governors required, subject to the reservation of a money quit rent varying according to the situation of the land and the status of the grantee. This rent was as high as 9d. per rod per annum in the case of some town lands and as low as 2/- per annum for 100 acres of rural land, but in general, in order to encourage improvement it was not payable during an initial period of five, ten or fifteen years and was coupled with a condition against transfer or alienation during that period. From the time of the earliest grants by Governor Phillip, a condition requiring the grantee to improve or cultivate the land was included and at a later date it became customary to exclude or reserve natural timber which was fit for naval purposes or bridge building and, in some instances, deposits of stone and gravel suitable for road making. Except in the case of some grants which excluded such parts of the land granted as might be required for public highways, they were not subject to any condition which would enable the land to be resumed, that is, taken back by the Crown without compensation, if any part of it was needed for public purposes. In the course of time after 1825, however, it became the practice to include a provision for resuming the land granted upon the Crown paying for any buildings which might have been erected on the land and for the fee simple of the land according to a valuation made by two independent persons as arbitrators. At about the same time the quit rent provisions previously included in Crown grants were modified by a proviso that the obligation to pay such rent might be redeemed by 20 years' purchase. Subsequently, in the year 1846, regulations of general application provided for the automatic redemption of quit rents which had been paid for twenty years.

Up to the year 1810, when Governor Macquarie arrived in New South Wales, 177,500 acres of land in the County of Cumberland had been granted by the early Governors. During Macquarie's term of office an additional 400,000 acres was granted, again mostly within the Cumberland Plain. These are the lands in which the most intensive development in the State of New South Wales has taken place in the intervening years and in which the most serious problems of modern planning exist.

The 1820's witnessed a tremendous expansion of settlement to the north, south and west of the County of Cumberland and in less than a decade, between 1820 and 1829, over 2,000,000 acres of land were alienated by grant outside the County of Cumberland; this was the commencement of the era of vast pastoral expansion during which there were strong pressures for a change in land policy. In the early years the land resources of the Colony had been regarded as something of an asset to be traded or bartered for services or favours or to encourage agriculture, but in the years of pastoral expansion after the 1820's the land became a source of revenue: the squatting interests objected to annual licence fees as the price of permits to occupy broad acres and whilst they were prepared to pay to acquire land they also objected to sales by tender or auction as those means of disposal would inflate the price. Above all else, however, they sought security of tenure. During Gipps' term as Governor, proposals for the disposal of pastoral lands by long lease received serious consideration, but in the long run the combined influence of weathy landowners, political reformers and the landless working class succeeded, by the 1860's, in procuring the adoption of a policy for the disposal of Crown land by sale with the security of tenure provided by the grant of estates in fee simple.

This outline is sufficient to show that the disposal of Crown lands by grants of freehold estates in fee simple had by the end of the nineteenth century become a recognised feature of our social and economic order: the estate in fee simple had come to represent the normal title of an owner of land, whether in towns and other centres of population, or in rural areas of the Colony. This, along with other factors which I now propose to mention, has had a substantial impact on the cost of implementing schemes which entail the acquisition of land for public purposes.

In all civilised communities a sovereign government has a right to take land in private ownership or occupation for public purposes; this power of compulsory acquisition, as it is known in England, is called a right of eminent domain in the United States of America, but in New South Wales is described as a power of resumption, that is, the taking back by the Crown of that which it granted. But however designated, it originated as a right to do such things as were for the benefit of all subjects. In 1606 all the Judges of England declared that: "When enemies come against the realm to the sea coast, it is lawful to come upon my land adjoining to the same coast, to make trenches or bulwarks for the defence of the realm, for every subject hath benefit by it. And therefore by the common law, every man may come upon my land, for the defence of the realm . . . And in such case on such extremity they may dig for gravel, for the making of bulwarks; for this is for the public, and everyone hath benefit by it; but after the danger is over, the trenches and bulwarks ought to be removed, so that the owner shall not have prejudice in his inheritance; and for the commonwealth, a man shall suffer damage; as, for saving of a city or town, a house shall be plucked down if the next be on fire; and the suburbs of a city in time of war for the common safety shall be plucked down; and a thing for the commonwealth every man may do without being liable to an action."

But by degrees the law was moulded to protect the rights of the landowner and before the end of the eighteenth century one of England's leading Commentators, Sir William Blackstone, declared that: "So great moreover is the regard of the law for private property, that it will not authorise the least violation of it; no, not even for the general good of the whole community. If a new road, for instance, were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without consent of the owner of the land. In vain may it be urged that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no . . . In this and similar cases the legislature alone can, and indeed frequently does, interpose, and compel the individual to acquiesce. But how does it interpose and compel? Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification and equivalent for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price; and even this is an exertion of power, which the legislature indulges with caution, and which nothing but the legislature can perform."

The concession in this statement of principle that the legislature can divest a man of his property rights on the basis of a compulsory sale has given rise to the notion which still persists in English law that the acquisition of land possesses the elements of a compulsory contract of sale under which the landowner is entitled to payment of a price representing the value of the land to him. This is the origin of the concept in compensation law of a "value to the owner" which exerted a considerable influence on the basis adopted for the assessment of compensation for the compulsory acquisition of land in England and New South Wales in the ensuing two centuries.

Save for the rare occasions on which land was requisitioned for purposes of national defence, there was little need for resort to the process of compulsory acquisition in England until the Industrial Revolution when the building of the English railway systems commenced. And whilst the acquisition of large areas of land for railway buildings, yards and tracks was often authorised by legislation, the acquiring authority was not some Government instrumentality obliged to act for the public good but a group of private entrepreneurs who had procured the passing of a special act of Parliament for that purpose. In each case the Act required the payment of compensation but "public opinion in regard to compensation was undoubtedly much influenced by the fact that railway enterprise undertaken for profit rather than the direct interest of the State was the moving force. The sense of grievance which an owner at that time felt when his property was acquired by railway promoters, then regarded as speculative adventurers, led to sympathetic treatment by the tribunal which assessed the compensation payable to the owner, and this point of view became general and continued for many years to influence all awards of compensation for land expropriation for public purposes". In making this observation in 1918, the Scott Committee said: "It ought to be recognised, and we believe is today recognised, that the exclusive right to the enjoyment of land which is involved in private ownership necessarily carries with it the duty of surrendering such land to the community when the needs of the community require it. In our opinion, no landowner can, having regard to the fact that he holds his property subject to the right of the State to expropriate his interest for public purposes, be entitled to a higher price when in the public interest such expropriation takes place, than the fair market value apart from compensation for injurious affection, etc."

This may have been the community sentiment in England in 1918 when the country was still at war and reconstruction and replanning after the war seemed a social necessity, but it certainly has not represented the prevailing attitude of landowners in New South Wales at any time in the last hundred years. The reasons for the widely accepted attitude in this State are not hard to find. First of all, there was an emotional element in land ownership which had made land-holding a symbol of family security. This in time stimulated the campaign to "unlock the lands" which converted many of the previously landless working class into petit-bourgeois landowners; secondly, the legislation in New South Wales which authorised the resumption of land was modelled on the *English Lands and Railway Clauses Consolidation Acts* of 1845, and carried with it the same opprobrium as had attached to those Acts in England; thirdly, the Courts of New South Wales adopted without question the interpretations of English legislation given by the Courts of that country and even went further in a desire to relieve any sense of griev-

ance of an expropriated owner.

In the course of time, the Australian Courts extended the rights which an owner of land might assert against a governmental authority in respect of the compulsory acquisition of land to limits far beyond those which had been laid down in England. Not only did this mean that the aquisition of land for public purposes became more difficult but the measure of compensation moneys which an owner could exact when his land was resumed became inflated; this was ensured by the fact that compensation was customarily assessed, not by arbitrators as was usual in England, but, until quite recent times, by juries who readily responded to the emotional appeals of eloquent counsel to be generous to an owner whose land had been taken.

Sufficient has been said to indicate the means whereby the wholesale grant of freehold estates in fee simple has, because of the burden of compensation claims, become an obstacle to the acquisition or resumption of lands for public purposes. With the tremendous increase in land values for a century or so, this has more often been the case with city or urban lands but questions of cost have also impeded if not frustrated schemes for the acquisition of rural lands for closer settlement and similar purposes.

It is easy to be wise after the event and whilst it may not contribute much to the discussion to damn past decisions taken at political level or for purely political ends, it is worth pointing out that from time to time during the eighteenth century perceptive minds were conscious of the folly of the land policies then being pursued and the voices of leading figures in public life were raised in protest against those policies.

All the early Governors and some of the Colonial officials in Whitehall saw the evils of speculation in land and of the granting of land to persons who might sell it at a profit without having done anything towards its improvement or cultivation; they attempted to control this by conditions of residence, conditions requiring improvements to be made by restrictions on alienation for limited periods, but these were far from effective and by the year 1828 less than ten per cent of a total of nearly 3,000,000 acres granted were cleared and the cultivated lands were less than two and a half per cent of the total. In 1828 Sir Francis Forbes, the dynamic and farsighted Chief Justice of New South Wales, criticised the abandonment of quit rents in Crown Grants and the failure to collect such rents, for he regarded them as a means of controlling land use as well as a continuing source of revenue. Sir George Murray, the Secretary for the Colonies, in a despatch to Governor Darling in 1831, condemned the practice of "individuals accumulating large tracts of country in their possession" and said that such a practice had led to very serious evils and was one which weighed heavily upon the Colony because so many proprietors had "allowed large portions of their grants to remain in the same uncultivated state as when they received them."

Governor Gipps, whose term of office witnessed the first major crisis in land policy in the Colony, was opposed to the grant of unlimited rights of permanent ownership; he acknowledged the difficulty of confining the spread of settlement by prohibitions such as had existed in Macquarie's day but favoured the occupation of land under lease or licence coupled with a limited option for the lessee or licensee to acquire the freehold.

By the time free selection of rural lands was introduced in 1861, there were elements of a land fever in the community which continued for many years thereafter: all sorts of frauds and devices, dummying and peacocking, were adopted to procure additional lands until at length by the 1890's the aggregation of large areas in few hands, the inadequacy of the development and improvement of lands and the influence of Henry George's single tax theories, combined to reveal the folly of earlier policies of land disposal and to demonstrate the need for conserving the remaining unalienated Crown lands and introducing some measure of control over its disposal and use in the public interest. Amongst the steps that were taken after 1890 were the creation of new forms of tenure, particularly grants of limited freehold interests such as the homestead grant which was in reality similar to the grants made by the early Governors, namely, the grant of a fee simple subject to the payment of a perpetual rent to be reassessed every ten years as a proportion of the value of the land, and to certain other conditions including personal residence of the holder. Land tax was imposed in 1894 to make the aggregation of large estates unprofitable and in the early years of this century plans were devised for the repurchase or resumption of privately owned lands for closer settlement on terms which would give the new settlers estates less than freehold, including leases in perpetuity or for long terms. There was even in some quarters a strong movement for the nationalisation of the land and, indeed, the adoption of leasehold tenures as the main or sole method of disposal of Crown lands for settlement might be characterised as a form of nationalisation and was in fact introduced in Queensland in the early years of the century.

Despite the oft-repeated claim of grazing and farming interests that only the security of tenure provided by freehold estates will ensure adequate development of rural lands, the experience of the disposal of leasehold interests in such land has, in some rural areas at least, proved the contrary. Fiscal laws have perhaps done much to put the ownership of land in true perspective: the burden of land tax and municipal and shire rates on land ownership has come to be regarded as inevitable and as one of the costs of production, whilst the future incidence of death and estate duties is a serious and continuing anxiety to large landowners.[1] Whilst some of these obligations exist to a similar extent on leasehold estates, the income tax laws are far more generous in the deductions allowed for tax purposes to the holders of such interests, indeed, from this viewpoint and if the land is regarded as an asset for its immediate productive capacity as distinct from being a durable asset which may result in some capital gain, the ownership of a leasehold interest in land may be more advantageous than ownership of freehold estate.

Rural planning, closer settlement, and the development and population of new regions like irrigation areas, present rather different problems from those which are encountered in the replanning of cities and towns, more particularly because of the astronomical

increases in the values of land in and about cities and metropolitan areas which on any basis are quite unmatched by the increases in the values of rural lands except those where metropolitan development is in prospect. To illustrate this, it is only necessary to mention that the unimproved value of land in the City of Sydney, the most densely built-up area in the State, increased from £70,556,374 in 1951 to £283,143,893 in 1966 whilst in the Municipality of Blacktown, a developing area in which there were large tracts of vacant land ripe for development, the increase was from £1,735,966 in 1951 to £46,177,123 in 1966, these increases far outstrip the diminution in the value of money as measured by changes in the standard price indices.

Many have been the solutions suggested for the problems of planning cost to which I have adverted and which are emphasised by such spiralling values as these. Supporters of Henry George's theories see the imposition of a land tax as a panacea for this and other economic problems of modern society but it is clear that if any substantial impact on land values is to be made by land taxation the rate of any such tax would have to be so high that most people would regard it as excessive and confiscatory. Various schemes for the expropriation of any increase in the value of land which is ripe for development or of the unearned increment which land gains as a result of community activities and expenditures have been investigated and devised in the days since the First World War. In particular, the principles of betterment, as it has come to be called, have received considerable support from planners and even been given legislative recognition in the town and country planning provisions of the *Local Government Act* of this State, but the inadequacy of these provisions has provoked other suggestions for the acquisition of some part of the unearned increment in land values by a development charge varying with the increase in value of lands on which development is proposed. The Uthwatt Committee in England recommended the acquisition of the development rights in all lands outside built-up areas on payment of compensation, together with complementary restrictions upon development and a power of compulsory acquisition for public purposes. These recommendations were incorporated in the English *Town and Country Planning Act* of 1947 which also required payment of a levy for private development, but subsequent legislation in the years 1953, 1954 and 1959 abolished the scheme. As recently as May of this year a bill to establish a Land Commission with power to acquire land by compulsory process and to impose betterment levies was introduced into the British House of Commons to give effect to the recommendations made in a White Paper published in September, 1965. This bill proposes that land acquired by the Land Commission may be disposed of by a new form of title called "crownhold" subject to covenants which will preserve the development rights in the Commission, restrict alienation by the holder and give the Commission a right of pre-emption or resumption at a price or on terms which would exclude any actual or potential increase in value. This legislation is similar in some respects to schemes for the closer settlement of rural and irrigation lands which have been in force in this State for many years and, in particular, like those schemes, it adopts the principle of the disposal on a limited title of land acquired by compulsory process.

One feature which is seen to emerge as a common element of many of the legislative and other plans designed to acquire or preserve development rights is the retention in the Crown or some public authority of the ultimate reversion of any land which may be the subject of development or redevelopment. Why then, one may ask, is it not more appropriate to acquire by compulsory process of universal application without compensation the ultimate reversion in all lands held in fee simple so that the titles of the holders in fee simple of all lands would be reduced to those of lessees from the Crown for a long term of years? This would at one stroke convert the present system of land titles from one of freehold inheritable estates to estates of limited duration.

Whether this be characterised as a reform of the law, an inroad on property rights or a measure of expropriation without compensation, it is a change which would be regarded as highly conducive to the orderly redevelopment of urban areas by some planners and large-scale developers who have become acquainted with the system of leasehold tenure which applies in Canberra and who consider that such a system would provide, at minimum cost to the community, a simple, flexible and effective basis for planning development and controlling land use. The legal efficacy of such a system of titles needs no emphasis for there is no easier way to control land use than by the covenants of a lease and, moreover, as the term of a lease expires the development rights would necessarily revert to the Crown and the value of the owner's interest in the land would diminish year by year instead of increasing as it does when an owner has an estate in fee simple. Even if full compensation rights for improvements on the land at the end of the lease were reserved to the lessee, the cost to the community of redevelopment schemes and public projects such as road widening would be infinitely smaller because there would be far less room for speculation in land dealing and no prospect of a person acquiring and retaining the ownership of land simply for the purpose of securing a capital gain.

In one sense it might be said that such a system would restore the landholder to a position vis-à-vis the Crown or the community similar to that which he occupied in feudal society vis-à-vis his overlord, and in terms of rendering a service to the Crown or to the community this is a proper obligation to be expected of a landholder, for the land is a community asset which no single person has created and which no person can own except in the sense that he may use it during his time on earth. In this respect it is paradoxical that the common law confers rights in perpetuity upon owners of land whilst only limited rights are conferred by statute upon inventors, authors and composers: despite the human ingenuity and effort which is basic to an invention and the inspiration and labour which result in the creation of literary and musical masterpieces, the rights of ownership granted to inventors, authors and composers under legislation

relating to patents and copyrights are limited to specific terms of years. Is it not anomalous that society continues to extend rights in perpetuity to the ownership of land which is a community asset whilst refusing to extend similar rights to the product of a creative mind?

It is to be expected that measures directed to the ends that I have suggested would meet with a wealth of opposition. Like a suggestion on cognate lines made to the Uthwatt Committee in 1942, it would be objected to as involving land nationalisation. This is hardly an apt characterisation of the proposal because it would preserve the rights of user of the current owner for his life or for some long term which would probably be of the order of fifty years and, in any case, as I have endeavoured to show, our law of real property has its origin in the dominion of the Crown over all lands and, in this country at any rate, the title of every owner to the land he occupies is at root that of a tenant only. That such a scheme would entail the expropriation of the reversion without compensation is undoubted, but one may ask whether there is any real difference between the imposition of death and estate duties at very high rates on the value of land passing by inheritance on the one hand, and the termination of the interest of an owner on his death or the limitation of such interest to a long period of years on the other; and for that matter, one may also be tempted to ask whether it differs in principle from the imposition of land taxes, municipal and shire rates on the values of land or the levying of a capital gains tax on any increase in the value of land held? This does not mean, however, that as an acquisition without compensation the suggested scheme is necessarily unjust. For one thing, the concept of "just compensation" or "just terms" for the acquisition of property which is part of the Australian constitutional system is recognised as "involving a consideration of the interests of the community as well as of the persons whose property is acquired." A second element is that the whole notion of justice is bound up with the question of equal treatment and a fair application of the same rule to every citizen and landowner and to every possessor of land is no more unjust than any law which restricts in equal manner the freedom of action of all citizens or landowners in the interests of the general welfare of the community. The issue of justice is, in reality, a social one of preserving fair and adequate rights of landowners and this in turn poses the question whether a title limited to the life of the owner or to a term of, say, fifty years, or some reasonable unexpired residue of such a term, would afford sufficient security for the exploitation or development of the land. Upon this matter there can be little doubt, for it is becoming a not infrequent practice for new trading enterprises of some large companies to be developed on land held under lease for terms of fifty years or less and, of course, there are substantial income tax advantages accruing to a developer or trader who undertakes the construction of buildings on land held under leasehold title which are not similarly available where the land is held in fee simple. And even in the domestic or family sphere it is rare that an ordinary homeowner would expect security for more than fifty years and certainly not for a period extending beyond the life of himself and his spouse; the new measure of security attaching to mere weekly tenancies of homes which are protected by the *Landlord and Tenant (Amendment) Act* in this State shows at once the extent to which family social needs can be met by the creation of leasehold interests and the manner in which rights or property can be affected by legislation without the expenditure of public funds being necessary to compensate for the affection.

Apart from the objections already mentioned, any scheme to convert existing titles in fee simple into leasehold interests or to acquire the development rights by the means discussed would be criticised as impracticable. It may be that it has some qualities of idealism, but so in large measure have many of the major planning proposals which have been formulated in recent years; indeed, there is probably in these days more invective directed against planners for being visionaries or idealists than almost any other professional class in the community. Like so many sound planning proposals which in spite of their idealistic qualities have been frustrated by lack of money, its practicability is a matter for foresight and courage. Given a determination to revitalise our cities and urban areas, to ensure proper standards and improve the amenities of future cities and towns, as well as an acknowledgment of the need to control development in rural areas, the only question remaining to be answered is whether we can devise a means by which all necessary steps to these ends can be taken without the financial burden assuming crippling proportions. No one doubts that the cost of planning and replanning must be met by the community, that is, by its present and future citizens who will share the benefits which are certain to ensue from the implementation of sound planning proposals. Is it not more equitable, therefore, to cast the financial burden upon the landowner whose efforts did not create and seldom have added much to the value of the asset in his hands rather than to expect the productive processes of the community and the income and wage earners to bear another impost which will have to be passed on and added to all other community costs? By such a wholesale change in land titles, the landowner will lose the prospect of any capital appreciation in the value of the land but this is something he has not earned, and "his heirs and assigns" will lose the prospect of inheriting an asset having a value which they did nothing to create.

And so at length I pose for consideration, enquiry and research the question whether in these more enlightened years the time has not arrived to reform our property laws so as to restore the land to its original and proper place in the social and economic order. Is there a sound basis for saying that a fundamental reform of our land laws would facilitate, at far less cost to the community, the rebuilding of decayed and obsolete localities in our cities and towns to give them new vitality, the creation of new urban areas with facilities and amenities to provide a full life to town dwellers, and the control of rural land use to ensure the best development of our productive resources and, by the integration of all these objectives, the improvement of community life in our modern complex society? Are we satisfied that it is impossible to achieve these

objectives at a cost the community can bear otherwise than by some basic change in our land laws, and, if so, is it not apposite that we should be prepared to introduce a system of leasehold titles and, by reducing estates in fee simple in land to terms of years, to diminish some of those property rights which for centuries have ensued from a grant of land "to John Doe his heirs and assigns forever"?

THE BODY ECONOMIC

(Or 'THE ECONOMY')

E. B. Donohue, *President of the Association for Good Government, and for many years a tutor in the Australian School of Social Science, offers, with due acknowledgments to Dr. H. G. Pearce, a scientific analysis of the principles on which human society is based and which, he claims, must be freed from contravention by governments before society can be restored to health and sanity.*

ECONOMICS may be defined as the study of how civilised (social) man gets a living, and the Body Economic as that natural order among human products in the market which co-ordinates the competitive activities of diverse producers, seeking through social co-production, the satisfaction of their material desires with the least effort.

Human beings are rational animals with a natural inclination to live together as friends and to co-operate in lessening the domination of matter through exchange and the division of labour. Their sole intention is to further their own gain, but in pursuit of this end they, quite unwittingly, construct a marvellous price system and a world-wide Body Economic which was no part of their intention but simply a product of their nature. In the words of Adam Smith: "There arises an invisible hand which leads man to direct his industry in such a manner for his own gain that he promotes an end which was no part of his intention."

Economic Science, then, must not be seen as a study of satisfactions (the field of the psychologist), nor as the study of the means whereby we obtain such satisfactions (the concern of the technologist), but as a study of that economic good which all men pursue, namely, *the economy of effort through exchange*. This great principle of economising exertion is the unifying force which is to be seen among a multiplicity of producers whose activities are regulated by competition and whose products in exchange are co-ordnated by price.

Products, the economic goods which all pursue, are the material, or subject matter, of the economist's vision, but not of his intellect. The proper subject matter of his study is *priced products*, that is, products which have been transformed by combination of the artistic form implanted by man in natural substances and that *social* form which is added to them by society in the market, i.e., price. Hence, price is to be seen as the one social form within the many goods, a form which is not the product of man's art, but something which results from his social nature.

As the common pursuit of this saving of effort is not fixed by our nature, but is left to our free choice, there can be no other reason for the existence of society other than the benefit of its members; and that benefit is the common good, or *profit of association*. Thus, we may see arising naturally within every society:

(1) The common good, or profit of association;

(2) The economic good, or saving of effort;

(3) The public good, or care and preservation of the common good, the paramount function of government (the Body Politic) and the true end of law.

Every society is dependent for its nourishment on the Body Economic which not only feeds and provisions very member of society, but promotes the release of an ever-growing number from the lowly pursuit of their material needs to the production of all its higher and more noble services. Thus, all those engaged in serving the Body Social, in government and in the many professional and cultural activities which, in the economic sense, are non-productive, are 'outside' the Body Economic while being completely dependent on it for all their material needs. While they earn what they get, they do not, in fact, produce it.

Society is a natural organism, and the way in which it is economically ordered—profoundly influencing the physical, mental and moral state of every community—is also subject to the operation of natural economic laws. This was seen clearly, more than a century ago, by Adam Smith. Economics, however, has since then become relegated to the rank of a pseudo-science, having no consistent conclusions but, instead, a chaos of opinions which only bewilder the layman, lend support to the special privileges of vested interests and provide material for endless dispute among the economists themselves upon such irrelevancies as wage fixing, price control, tariff protection, money monopoly, and the like. In the absence of commonly acknowledged principles, modern economics is nothing more than a technique of thinking which rejects the concept of any natural order or plan inherent in the economy in favour of a political art of planning by supermen. The activities of all such economic planners are based on the false notion that the common good is synonymous with 'social welfare', or State doles, provided by an arbitrary assault on private incomes. This, of course, is not government, but mis-government; not the preservation of the common good, but rather its destruction; not the promotion of our private good, but its negation.

OLD FRIENDS DEPART

On going to press we learn with sadness of the death of two good Geogists, Sam Herriott, of Mascot, and Bob Varlow, of Wellington, N.Z. For Bob, who died in October, it was a happy release for he had suffered bravely for years from a malignant cancer. The news of Sam's passing was a shock; he seemed full of health and vigour at his last appearance at a Club Evening.

PEACE AND THE VIETNAM ELECTIONS

By ALFRED HASSLER, New York

(Executive Secretary, The International Fellowship of Reconciliation)

The September 3 elections, though characterized by extensive manipulation and fraud, revealed the overwhelming desire for peace on the part of the South Vietnamese population.

On September 3 the voters of South Vietnam elected a President, a Vice-President and a Senate under their new constitution. Both the Constitution and the elections were a response to the insistent agitation of the "militant" Buddhists of South Vietnam, who have long made plain their dissatisfaction with the governing military junta and their longing for an end to the war. *General Nguyen Van Thieu*, the present chairman of the military junta, was elected President, and *General Nguyen Cao Ky*, the present premier, *Vice-President*. Spokesmen for the Johnson administration have hailed the elections as a significant step towards democratic self-government. The elections *were* highly significant, but not in the terms that the administration would like us to believe. What they demonstrated, against enormous obstacles, was the overwhelming desire on the part of the Vietnamese people for an end to the war. Any Americans who still believe that the United States is fighting on behalf of the South Vietnamese people should find in the results of the elections reasons for sober rethinking.

THE RESULTS

There were eleven sets of candidates for the Presidential and Vice-Presidential offices: one military and ten civilian. The results were as follows:

Ticket	Total Vote	Percentage
Nguyen Van Thieu-Nguyen Cao Ky	1,638,902	35
Truong Dinh Dzu-Tran Van Chieu	800,285	17
Phan Khac Suu-Phan Quang Dan	502,732	11
Tran Van Huong-Mai Tho Truyen	464,638	10
Ha Thuc Ky-Nguyen Van Dinh	346,573	7
Nguyen Dinh Quat-Tran Cuu Chan	315,329	7
Nguyen Van Hiep-Nguyen The Truyen	158,498	3
Vu Hong Khanh-Duong Trung Dong	148,652	3
Hoang Co Binh-Lieu Quang Khinh	129,429	3
Pham Huy Co-Ly Quoc Sinh	106,388	2
Tran Van Ly-Huynh-Cong Duong	91,887	2
Totals	4,703,313	100

WERE THE ELECTIONS FAIR?

The South Vietnamese Government invited numerous "observers" to witness the elections and attest to their honesty. Some were individuals, some were representatives of governments. Of some 63 observers, 22 constituted a team sent by President Johnson, headed by former ambassador Henry Cabot Lodge (Lodge had already, during his incumbency in Vietnam, demonstrated his objectivity by calling for the election of the generals).

The American observers reported to the President that the elections had been "reasonably fair". They pointed to the fact that 83% of the registered voters had actually voted, as compared with 63% in the last Presidential election in this country. One observer said that the absence of fraud had been demonstrated by General Thieu's failure to get more than 34.8% of the vote; fraud, he said, would have produced a much larger total. (Mr. Dzu, who came in second, said that without fraud Thieu would have got only 10%.)

The report of the observers is virtually meaningless. Few, if any, of them, spoke Vietnamese, so that they were dependent on government-provided interpreters. Visits anywhere outside the city of Saigon are dependent on the army and government officials, which allows for any necessary advance "arrangements" to be made easily.

Vietnamese opposed to the Ky-Thieu government warned before the elections that observers would not see the frauds, and that the only purpose they would serve would be to validate an invalid election. An election official declared to a reporter from the *National Catholic Reporter* that he expected to cheat, and that "you could send 10,000 observers—they never know. In the villages soldiers will fire guns in the air one kilometre away. They will say VC attack. People will not come to vote. The official, he will correct their vote, anyway. He will count 1-2-3-4-41-42-43-56". He went on to explain that the report of the balloting is written up in the evening by the senior election official (a Ky appointee) and the ballots then destroyed. But even if the balloting had been scrupulously honest, the fact would be largely irrelevant. So much had been done before the balloting to assure victory for the Thieu-Ky ticket that fraud on election day may not have been needed.

WHO VOTED?

The 38% who reportedly voted were 83% of the *registered voters*, not of the population. Excluded were (1) all those living in 'insecure' areas, which means areas controlled by the National Liberation Front (Vietcong), and (2) all voters who were considered "unreliable", *which, in South Vietnam, means people believed to be supporters of the NLF, or to stand for peace or neutralism, which are considered to be synonymous with communism.* Novak reported that in a random sampling of Saigon students he found that three out of eight families had been disqualified and not allowed to vote. Thus the enormous "peace vote" becomes even more significant, since the government had already tried to exclude those most likely to

vote in this manner. By the American government's own figures (W. P. Bundy, *New York Times*, 9/8/67), 70% of South Vietnam's potential electorate were registered, so that approximately 56% voted. But this really means that the number of ballots reported amounted to 56% of the number of citizens of voting age. (This must be considered against the pre-election charge—and admission—that many soldiers had been given two voting cards each, that some civilian candidates charged that registration had leaped upward in certain regions just before elections, and that Mr. Dzu, who came in second, reported that only 10% of the voters in one district had come to the polls, but a 90% vote had been recorded.) Thus, even if balloting itself was strictly honest, Generals Thieu and Ky were elected by the votes of 34% of 56% of the electorate, or a total of 19% of South Vietnam's citizens of voting age.

ELECTED BY PLURALITY

Rules for the elections were set up by the Constituent Assembly, which in turn was elected in September, 1966. That election was so characterised by manipulation and fraud that the Buddhist leadership, whose actions had forced the elections to be held, publicly called for an election boycott. Here, too, public figures known to stand for peace or neutralism, as well as NLF supporters, were barred from becoming candidates, and American reporters noted that campaign speeches made no references to the war and government corruption, the two principal issues in the public mind.

Shortly after that election, a member of the Assembly widely considered to be a possible leader of peace sentiment, Tran Van Van, was assassinated. The government arrested and immediately executed a young man charged with being the assassin, and reported that he had been a Vietcong terrorist. Shortly after, the government suspended publication of the *Vietnam Guardian*, an influential English-language Saigon newspaper, for reporting the widespread belief that the assassin actually had been a government agent.

The Assembly, therefore, despite occasional flashes of independence, has been subservient to the government. Its first major demonstration of that subservience was the agreement that the Presidential election would be decided by plurality (more votes than any other candidate's) rather than by majority (more than half the votes cast) and that therefore no run-off election need be held. This decision was followed by a proliferation of civilian candidates, reportedly encouraged by the government, and pressure by the military junta on General Ky (then a Presidential candidate) to take the Vice-President nomination under Thieu so that there would be only one military ticket to contest the election with a number of civilian tickets.

CANDIDATES OF THE BALLOT

The second demonstration of subservience came with the Assembly's ruling off the ballot, in late July, the two candidates most likely to give the generals real trouble. These were General Duong Van Minh and Mr. Au Truong Thanh. General Minh, though living in exile in Thailand, is one of South Vietnam's most popular figures. He announced his candidacy and in its first vote the Assembly approved it. But General Ky refused to permit Minh to return to Vietnam to campaign, and in its second meeting the Assembly obediently removed him from the ballot. Au Truong Thanh, a highly respected economist, had served in three South Vietnam cabinets, including General Ky's, from which he had resigned in protest this past spring. He announced his candidacy on a straight peace platform, with a crossed-out bomb as his symbol and 'cease-fire' as his slogan. He, too, was first approved and then removed from the ballot by the Assembly, after the Ky police had announced that Thanh was a 'Communist'.

At the same time, the Assembly meekly revoked a ruling of its own committee, denying Thieu and Ky a place on the ballot, because they had refused to resign their government positions as required of all candidates by the constitution, and had even refused to appear before the committee to defend themselves. The Assembly, acutely conscious of the loud and heavily armed presence of national police head, General Nguyen Ngoc Loan, voted to put Thieu and Ky on the ballot.

CENSORSHIP

It is a truism that free elections are not possible in the absence of freedom of speech and of the press. In South Vietnam, censorship of the press has been so blatant as to have embarrassed even the U.S. Embassy, which reportedly brought heavy pressure on the Ky government to eliminate at least its most obvious manifestations, large white spaces appearing regularly on the pages of Vietnamese newspapers where the censor had bodily removed whole articles found offensive to the government. Other newspapers were suspended, and General Ky warned that any criticism of his government would be regarded as support for the enemy.

Shortly before the elections, the Thieu-Ky government announced the end of censorship; then, on the day before the election, General Thieu announced the suspension "for an indefinite period" of *Than Chung*, one of Saigon's most widely circulated newspapers and very much pro-peace, and a smaller paper, *Sang*. General Thieu explained that "even in a democracy one has a right to suspend newspapers that support totalitarians"—a charge that the publisher emphatically denied.

Even without the overt censorship, however, the press has literally taken its life in its hands with even the mildest criticism of the government or support of opposition to it. Allocation of newsprint is determined by the government, and newspaper publishers tempted to get "out of line" know how easily their businesses can be closed. Thus, very little appeared in the press about the positions, or even identity, of opposition candidates, while the papers were constantly filled with the statements and activities of the existing government.

CAMPAIGNING

The 'rules' provided that candidates could not begin campaigning before August 1. General Ky, insisting that other candidates adhere rigidly to this rule, himself began campaigning openly and vigorously in June. Civilian candidates complained even after August 1 of continued harassment; most of them were not able even to visit many areas where the generals had organisations operating; Thieu-Ky posters blanketed the

villages. Many Vietnamese did not even know who was running, much less what they stood for.

THE PEACE ISSUE

I have reported before (*Congressional Record* of May 4, 1967, page 4) that my visits last winter to South Vietnam had convinced me of the truth of the assertions by Thich Nhat Hanh in his book* and elsewhere: (1) that the overwhelming desire of the South Vietnamese people is for peace, and (2) that there is a significant and vital peace movement coalesced around the Buddhist LaBoi and Catholic Song Dao movements. Their position is that it is *only* American military and economic pressure that keeps the Ky-Thieu government in power and the war continuing. Left to themselves, they say, they would form a genuinely representative government that would proceed at once to end the bombing, call for a cease-fire, and proceed to negotiations for peace with the NLF and the North Vietnamese, and for military withdrawal with the United States.

* "Vietnam: Lotus in a Sea of Fire." (Hill & Wang, 1967. $1.50.)

The elections testify to the reality of this sentiment:

(1) The Thieu-Ky ticket was expected to get at least 40-50% of the vote, and probably more than half. General Thieu himself had said it would be difficult to govern with a vote of less than 40%. He actually received, in spite of all the advantages he had, 34.8%. *Even to get this, Thieu was compelled by the peace statements of other candidates to say, as campaigning was drawing to an end, that if elected he would initiate a bombing pause and negotiations with representatives of the NLF.*

(2) The three candidates next in order (Dzu, Suu and Huong) all had announced for peace. Together they polled 38% of the vote.

(3) Only one of the civilian tickets (Co-Sinh) supported the war and called for invasion of the north. It came in next to last, with a total of only 106,000 out of 4,700,000 votes cast. Thus the total anti-Thieu vote on the peace issue was approximately 2 to 1.

(4) With General Minh and Au Truong Thanh out, the experts had expected Tran Van Huong to run second to the generals, with Phan Khac Suu a possible close third. Both Huong and Suu are fairly well known, both having served as premier since the days of President Diem. Both men came out for peace in their platforms, but without much in the way of specifics.

But actually in second place, with 800,000 votes, was a Saigon lawyer, Truong Dinh Dzu, whose candidacy had been regarded as a joke by the experts. He had no national reputation except for having been jailed during the Diem regime for allegedly passing a bad cheque. But Dzu took a flat-footed peace stand not unlike that formerly taken by Au Truong Thanh and criticised the Thieu-Ky government caustically for its prosecution of the war and for the corruption it had tolerated.

CONCLUSIONS

1. The people of South Vietnam, against immense obstacles, have shown unmistakably that they favour the end of the war through a cease-fire and negotiations with the National Liberation Front and North Vietnam. Even U.S. Ambassador Ellsworth Bunker declared: "It represents the desire of the country, of everyone, for peace."

2. If there were provisions for a run-off election among the top winners, it is beyond doubt that they would elect a government that would end the war.

3. It is the United States that has maintained and presumably will maintain the Thieu-Ky government in power and will continue the war.

4. The peace issue has been brought out in the open to such an extent that the Thieu-Ky government, with American support, may be expected to make some 'peace moves', possibly including a new bombing 'pause'. But a 'pause' is not the same thing as a 'halt'. Stop the bombing unconditionally have said UN Secretary-General U Thant and the heads of the Soviet Union, and peace talks will begin shortly. But a pause, with resumption of the bombing an explicit or implicit threat, becomes an ultimatum, and warring powers do not accept ultimata. In this and other ways, the 'peace moves' of the new government are almost certain to be put in terms that will be unacceptable to the other side. This will then make it possible for the Thieu-Ky-Johnson axis to announce piously that it has made every effort to end the war, but that the other side is unwilling to co-operate. This, in turn, will become the rationalisation for continuation and escalation of the war.

WHAT CAN BE DONE

There is no easy way out of the impasse the United States is in, but more of the same promises only further tragedy. Responsibility of Americans is first to recognise the facts, and, second, to insist that our government act according to those facts. Both supporters of American policy and its opponents insist on their desire that the Vietnamese be allowed to determine their own destiny. The elections reveal what that determination would be: peace. Those who are the spokesmen of the peace movement insist that only the total, unqualified support by the United States of the Thieu-Ky government prevents its replacement.

Therefore, the United States must say that it stands for the right of self-determination for the South Vietnamese, including their right to replace the Thieu-Ky government; that the elections reveal that an overwhelming majority want a different government; and that American military and economic support will be discontinued unless an opportunity is given for the honest and full expression of that will.

Then let the Vietnamese take it from there.

AUSTRALIAN SCHOOL OF SOCIAL SCIENCE

The Summer School, usually held in January, will this year be held on the weekend of March 8-9, 1968. Single or half-day seminars are being arranged during January; these will be notified by circular and Press advertisement.

DIARY

Dec. 11: Australian School of Social Science, Executive Meeting, 7 p.m.

Dec. 14: Social Science Club, Christmas Party, from 7 p.m.

School classes have been suspended during December. The Association for Good Government study group has resumed, meeting on Tuesdays at 6 p.m.

Organisational Notes and Reports

AUSTRALIAN SCHOOL OF SOCIAL SCIENCE

Seminar on Taxaton

On Sunday, November 5, the School of Social Science held a seminar on the subject of Taxation at Social Science House, Terrey Hills. This was well attended by both members and the public who contributed to a lively examination of the subject through a series of numbered, prepared questions accepted by various members of the audience.

On the subject of the 'Rights of Property', Dr. H. G. Pearce separated 'property' into 'private' and 'public', and pointed out that, in respect of the former, man had a moral right to his own products and that this was defined and demonstrated by the science of the Body Economic which was concerned with the distribution of wealth. This distribution took place through the market in the form of priced products and was channelled into the three avenues of distribution—economic rent, wages and interest. Answering the question: Is there property in the earth? Dr. Pearce said that there was, but only 'in common', and that this was the basis of the natural and sole revenue of governments, the economic rent. Mr. W. A. Dowe, quoting the Oxford Dictionary definition of 'Taxation', "A compulsory contribution to government revenue," said that, in the light of the previous speaker's claim that man had a moral right to his own products, taxation was robbery. This, he contended, was true. Governments needed money in order to govern; this was, however, no justification for their robbing the people. "There is," he said, "no defence in law of stealing." Mr. J. J. Brandon, answering the question: "Has a government the moral right to take private property or income by taxation?" said that no government could claim to be exempt from the moral law. If it was immoral for individuals to forcibly take the property of others, it was equally so for a government to do so. Not even the needs of government overrode the moral law; so long as there was an alternative revenue available to it, no government had a right to levy on the private wealth of its citizens, not even with their consent. And, of course, there was a perfectly good revenue available to governments in the economic, or site, rent. Furthermore, it was a just revenue. Mr. E. P. Middleton dealt with the question, "Do taxes increase prices?", and demonstrated how inevitably this was so by quoting from a list of company returns of gross profits and taxation paid, showing that, on average, companies paid approximately half their gross profits in taxes; this naturally had the effect of fixing prices at a level far above what they would be without the necessity to pay the taxation. Mr. L. B. Boorman, on "The Effect of Taxes on Wages", showed that it was only necessary to examine the process of the distribution of wealth to see how the portion going to labour (its wages) is inevitably reduced by taxation, especially in the form of income taxes. Mr. Gilchrist, referring to Mr. Dowe's dictionary definition of taxation, considered that, so long as taxation was used as a levy on privileges it was good. Mr. Ebbage, on the question of whether posterity should have to pay taxes to meet our debts, quoted from the Commonwealth Year Book, on the steady rise in the public debt of Australia, and the statement that a family of four now worked for six months to meet its tax obligations. There were, he said, fifty separate taxes in a loaf of bread. Mr. Otton, answering the question, whether taxes made goods scarcer or more plentiful, showed that, since taxes took a part of wages and interest this inevitably curtailed the demand for products which, in turn, restricted production.

After afternoon tea and a short interval of animated conversation, the discussion resumed contributed to by the following speakers: Mr. B. W. Carver, who quoted Tom Paine ("Governments are the badge of our lost innocence"), and referred to the Canberra leasehold system as an example of the proper way of collecting government revenue; Mr. Tom Perry, who said that, if the full site rent was taken as government revenue, the 'price' of land would disappear, though the rent would continue to increase with the increase of population; Mr. E. B. Donohue: "The whole idea of the 'rent of land' is wrong. Rent is not a payment for the use of land. What we are concerned with is the 'rent of association', for it is only in the market that rent arises, through the exchange of products. It attaches to sites in relation to their superior advantages over sites at the margin of production."

Mr. Dowe, Director of the Australian School of Social Science, in closing the seminar, referred to the necessity to consider the subject of their discussions as a part of the science of political economy, in which it was essential to have clear definitions of terms and know exactly where and how one proceeded, step by step. This, of course, was what the School of Social Science existed for. Scientic sutdy was the only possible method of acquiring knowledge of economic science. It demanded an intellectual approach, not an emotional one. Mr. L. B. Boorman, President of the School, presided.

SOCIAL SCIENCE CLUB

Club Evening

In opening the discussion on the subject of 'Restricted Practices', at the Club Evening on November 17, Mr. John Webber gave an outline of the provisions of the Australian Trade Practices Act (1967) and referred to the fact that the nature of the problems confronting the administrators of the Act was already becoming sharply clear, indicated by such statements as "already, 500,000 agreements had been registered in respect of the electronics industry alone" and "one agreement concerned 750 separate dealers and thus necessitated 750 registrations". Mr. Webber posed the question: "Should we be pleased we now have this Act, or thankful we escaped it for so long?" He remarked that statistics on similar Acts in the U.K. and the U.S.A. showed what a bonanza this legislation was to the lawyers.

The Australian Act was brought into being with the idea, as expressed by its original sponsor, Sir Garfield Barwick, that the Government considered there were trade practices "which denied the public the benefits of free enterprise". The speaker pointed out that New Zealand had already found that the system of registration of agreements, which the Australian Act requires,

is too cumbersome and have abandoned it in favour of action in response to actual complaints laid. Mr. Webber concluded by recommending to students of the subject the book 'The Control of Restricted Practices' by C. Brock, of Trinity College, Dublin.

Mr. Jim Randall's contribution to the subject was a resumé of the history of restricted practices legislation in the U.S. and the U.K., but began by pointing out that trade restrictions were even practised by the Phoenicians. And, as an example of what he considered to be the futility of this type of legislation, he described his own experience during the post-war preoccupation with price fixing when an attempt to find the cost of a toothbrush manufactured by his employers was abandoned as hopeless. This legislation, he said, could create a monster which could end by controlling its creators instead of serving them.

The main interest in the U.S. legislation, based on the Sherman Anti-Trust Act (1890), was the stress it laid on the need to maintain free trade, and that it involved the proposition that "too much competition could restrict competition". Amended in 1914, by the Clayton Anti-Trust Act, the legislation was clarified and widened in scope, on the one hand, while, on the other, being curtailed in the direction of its application to agricultural co-operatives and trade union activities. This amendment actually contained the enlightened declaration that "the labour of a human being is not a comodity or article of commerce".

The British legislation, originating as early as 1624, incorporated elements of Swedish and United States law, modified in accordance with local advice. It applied only in the area of industry organised as private enterprise. The current definition of a restricted trade practice was "an agreement between two or more persons carrying on business to accept restrictions with respect to such matters as the conditions of sale, prices to be charged, or quantites supplied of the goods they sell". Adam Smith, it should be noted, expressed the opnion that restrictive agreements between businessmen were inevitable in any economy.

The discussion following, involving members of the audience, revolved around the issue of whether this type of legislation was an interference with the free market. It was agreed that the subject had proved highly interesting and provocative and that a further opportunity should be provided for dealing with it in greater depth.

Mr. Jack Brandon, President of the Club, in thanking the two openers of the debate, Messrs. Randall and Webber, for their excellent presentation of the results of their research of the subject, invited them to consider contributing further, for the benefit of the members, at a later date which the Committee would be happy to arrange.

Future Activities

Future dates for members' diaries were announced as follows:

Thursday, December 14, at 7 p.m.: Club Christmas Party.
January, 1968: No Club activities.
February: Rev. Alan Walker on his recent visit to South America.
March: Mr. Allan Ashbolt on 'Human Rights'.

ELECTORAL REFORM

N.S.W. BODY ADVOCATING PROPORTIONAL REPRESENTATION AND OTHER DEMOCRATIC ELECTORAL PRACTICES FORMED IN SYDNEY

At a public meeting held in Sydney on Tuesday, November 11, 1967, a body to be known as the Proportional Representation Society of New South Wales, was formed. Convener of the meeting was Mr. James Randall, representing a Provisional Committee which had been meeting frequently since last July to organise and publicise the event. Apologies for absence were received from a number of prominent people sympathetic with the Society's aims but unable to attend due to prior engagements or official duties; among these were Major-General J. R. Stevenson, Clerk of the Parliament; Mr. Chester A. Porter, barrister; Mr. L. E. Whalan, Town Clerk, Manly Municipality; and Mr. E. B. Donohue, President of the Association for Good Government.

After opening the meeting, Mr. Randall handed the chair to Mr. W. A. Dowe, B.A., LL.B., Director of the Australian School of Social Science, who outlined the purpose of the meeting and gave a brief resume of the meaning of the term 'Democratic Electoral Procedures' which it was the aim of the organisers of the meeting to secure. "Democracy," said Mr. Dowe, "means simply the 'rule of the people,' that is,

that people should be rulers in their own country—a condition that operates scarcely anywhere in the world today." Not even in Australia, Mr. Dowe continued, where our electoral system had features that could be described as democratic and was, to that extent, in advance of, for instance, Gt. Britain, for all its proud boast of possessing the 'Mother of Parliaments'. It was, of course, not sufficient to hold election; the elections themselves must be democratic. He referred to the elections for the N.S.W. Legislative Council (the State's second chamber) which, while conducted within the framework of Proportional Representation, were certainly not democratic since the elections were held only within the Parliamnt itself. The truly democratic election would involve the exercising of the single transferable vote, giving one man one vote and one vote one value, in multi-seat constituencies so that the disfranchising of large minorities is no longer possible. Abraham Lincoln's famous dictum was eternally valid "Government of the people, for the people, *by* the people——". It was the principle that was important, not the technique by which it was achieved.

Mr. Dowe then called on Mr. Randall to read, and formally move, the resolution which, upon being put to the meeting and carried unanimously, brought the Proportional Representation Society of N.S.W. into being. Mr. Randall then moved a second resolution setting out the aims and objects of the Society, as follows:

(i) To secure the adoption of the principle of Proportional Representation by the method of the Single Transferable Vote in all elections in the Commonwealth of Australia, both Parliamentary and Local Government, other public and semi-public bodies and for officers of any other associations or bodies corporate or incorporate; and

(ii) to achieve all such other measures necessary to secure the most democratically effective representation.

Officers of the Society, elected at the meeting, are: President, Mr. James Randall; vice-presidents, Mrs. Duncan and Mr. F. J. Branagan; hon. secretary, Mr. Len Moran; hon. treasurer, Mr. John Webber; committee members, Messrs. David Duffy, Bruce Harkness and G. C. Mason.

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