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DEAD MEN WALKING AND TALKING

Although I recognize that our members are graciously tolerant of whatever topic and paper a member may bring, and that no explanation of one's choice is necessary, I begin with a short explanation of mine.

In 1994, the Schewel Lecturer at Lynchburg College was Dr. Cornell West, observer, thinker and writer on race relations in the U.S. During his visit here we had some conversation together about some of his remarks concerning community attitudes and values, especially about how they may affect members of a community. Our conversation turned around two ideas. The first was "habits of the heart," a phrase borrowed by Robert Bellah from Tocqueville's 1830's analysis of the U.S. These 'habits' or mores have to do with "ideas, opinions and habitual practices with respect to such things as religion, political participation, and economic life". The second was a theory of social justice advanced by John Rawls in the 1960's. In part, it Rawls pressed the case that if our social policies were developed with our being blindfolded and unable to know who would be affected by them, they would be more evenly just, because self interest - the possibility that we would be in the affected group - would then make us seek policies which would be fair to all.

West suggested a book to me: Millhands and Preachers by Liston Pope. I read this book, wanted to learn more about the situations it described and analyzed, and since then have

followed up by obtaining and reading a number of other sources.

It may be that truth in advertising would have required a title like 'A Report on a Community Under Stress,' but I feared you might stay home tonight if I used that. There are reasons for the title used - ones which lie in incidents to be described later.

For this paper I rely on all the sources I have read, but quote most heavily from Pope's book and from another description and analysis published in 1996: Gastonia 1929 by John A. Salmond. For ease of my presentation and your listening I am going to present the paper without orally inserting quotation marks and bibliographic references, though both appear extensively in the written version.

In this paper I will tell about an incident from the year 1929. The incident - a labor dispute and its attendant events - makes an interesting story and has provided me with much food for thought. If there are implications to be drawn from this for application in today's world, they may be found in parallels between certain conditions in the South in the 1920's and 1930's and conditions which might be found in various places today.

A strike, which was at the center of the story, and a trial which resulted from related events, achieved much notoriety. They received regular coverage in the national press, inspired at least six novels, prompted demonstrations in New York and in London, and even resulted in defections of U.S. citizens to

Russia. One of the novels, none of which were great literature, closely paralleled news reports filed at the time, two others attempted analysis, and three were outright advocacy pieces. Major newspapers provided coverage, as did opinion periodicals such as The Nation and The New Republic.

There are several perspectives from which to begin telling this story.

The Industry

The textile industry in the South developed after the Civil War. "'Beginning in the 1880's ... business and professional men tied their hopes for prosperity to the whirring of spindles and the beating of looms.' The post civil war destruction of the region's independent farmers was a key to this growth. Merchants made money out of the tenant and share-cropping systems that replaced one owner farms, and with the capital they built mills - hundreds of them. The dispossessed white farmers provided the labor, and soon the southern textile industry was 'underselling northern competitors' so successfully that 'by the end of the Great Depression, the Southeast replaced New England as the world's leading producer of cotton cloth, and the industrializing Piedmont replaced the rural Coastal Plain as the pacesetter for the region." "By the turn of the century, southern mill owners were able to pay their workers at rates between 30 and 50 percent

below those of their New England counterparts, a decisive competitive advantage." (Salmond, 1995, p.2)

To facilitate the conversion of workers from an agricultural to an industrial way of life and to answer the "'practical problem of assembling a workforce in small towns and rural places'", "'the key institution was the mill village.'" "The family labor system, too, 'helped smooth the path from field to factory. [mill owners] promoted factory work as a refuge for impoverished women and children ..., hired family units rather than individuals, and required the labor of at least one worker per room as a condition for residence in mill house.'" "

(Salmond, 1995, p.3)

"Times were certainly good during the First World War. The wartime demand for cotton cloth sparked another boom, so there was another round of mill construction, ...further stimulating the demand for labor.... The inevitable result was that wages throughout the Piedmont rose The boom continued till 1920, when it broke with dramatic suddenness. Wartime overexpansion, Harding administration tariff policies and the development of industry in other parts of the world, such as India, contributed to the break. As if those factors weren't enough "Young women in the 1920's hiked their skirts six inches above the ankle, then all the way to the knee, causing consternation among their elders and panic in the textile industry.' The Great Depression, which

for the rest of the country did not begin until much later in the decade, for textiles started with the armistice and did not let up." (Salmond, 1995, p.7).

The Workers

For the first fifty years most workers for the mills in Gastonia came from neighboring land. They quietly accepted "... long work hours, low pay and the necessary employment of all the women and children. They were slow, patient, and longsuffering, in contrast to the more readily violent hill folk who later were recruited ... from their remote and desperate poverty. In the city, they were isolated in their mill villages, stigmatized by the rest of the community as factory trash, and given for their leisure and consolation churches and preachers generally aided by their employers." (Cook, 1976, p.87)

With the enormous profits of the First World War, average wages rose to \$18-\$20 per week before the post-boom decline set in and before the institution of the stretch-out system. With the stretch out wages of many were reduced to \$10 or \$15 for the typical 60 hour work week. Even in the best of times at least two wage earners per family were necessary to make a living, and youngsters joined the work force at age 14.

What eventually happened was that ..."managers were attempting to recoup their losses by wage cuts and greatly increased productivity for each worker. The system by which this

was achieved was the notorious 'stretch out,' a name whose racklike implications were not inappropriate; workers were required to tend two or three times the number of looms that they had formerly looked after." (Cook, 1976, p.88).

By 1928 in Gastonia resentment about the stretch out and about reduced wages was both widespread and bitter, and a year later talk among workers about a strike was not unusual.

Organized Labor

By 1923 ownership of the Loray mill in Gaston County had passed from locals to the outside Manville-Jenckes Company, with subsequent loss of advantages which previously had been derived from local relationships. By 1927 the mill was large, with over 3500 employees. This in a county already known for having more mills than any other in the entire country. This concentration of mills attracted union organizing efforts by the United Textile Workers Union (UTWU), an American Federation of Labor (AFL) affiliate, as early as 1919. And in 1927 worker anger resulted in locally organized walkouts and demonstrations. One of these demonstrations showed the ingenuity of the dissidents in making their point. A group of Loray workers paraded down the main street of Gastonia "'bearing a coffin in which lay an effigy of the Loray superintendent.' Every fifty yards or so 'the effigy would sit up and shout: How many men are carrying this thing? Eight, the marchers would shout back, and the effigy would retort, lay off two; six can do the work.'" (Salmond, 1996, p.

).

The Communist Party, USA

On yet another track was the evolution of the Communist Party USA during the 1920's. By 1928 CPUSA had abandoned a policy of "boring within" existing labor organizations and created the Trade Union League as a rival to the American Federation of labor. "The new league's program called for militant prosecution of class war, for mass strikes rather than labor-management cooperation, and [for] the ultimate overthrow of capitalism. Its first affiliate union was the National Textile Workers Union (NTWU). Organized on an industrial basis ... it was democratic in its governance and unremittingly revolutionary in its 'class against class' rhetoric.... Its negotiating demands included higher wages, shorter hours, equal pay for equal work, and the complete abolition of child labor in the industry. Bitterly antagonistic to its AFL rival, the United Textile Workers, the NTWU planned to stage its first organizational drive in the American South, for no other reason than that the UTW was about to move in there...." (Salmond, 1996, pp.17,18).

As its first southern organizer, NTWU chose Fred E. Beal, a thirty-three-year native of Massachusetts, and a textile worker since age 14. although of unassuming demeanor, Beal had gained some prominence from his organizing work in a strike in New Bedford. He probably joined CPUSA shortly before going to North Carolina on New Year's Day 1929. "Politics was never of much

importance to him, however; he was first and foremost an organizer, with little patience for theoretical or ideological concerns." (Salmond,1996,p.18).

Beal arrived in Charlotte, where his only contact resided, but soon found his way to Gastonia, where he found a "disaffected workforce that was itching for action." (Salmond, 1996,p.20). Working door to door, he slowly was able to launch a secret union.

To reinforce Beal the NTWU in March sent Ellen "Nellie" Dawson, a native of Scotland, "a tough, experienced organizer and a superb stump speaker." (Salmond, 1996, p.20). I don't know that her addition contributed to the prominent role of women in following events, but it certainly might have.

The Strike

The confluence of circumstances outlined above eventually led to a strike and to events subsequent to it, including a trial which was closely watched by the local, state, national and even international press.

"On April 1, 1929, Fred Beal took that final, fateful step. Standing on a bank ... just outside the Loray Mill, he spoke to the assembled workers for nearly an hour. Then ... he called for a strike vote. The vote was unanimous, and Beal therefore declared that a strike existed ... in the name of the [NTWU], local of Gastonia." (Salmond,1996,p.23).

"The limelight did not come immediately. ... [T]he mill management did not seem unduly concerned. [The manager] ...

expected that it would blow over soon, that by tomorrow things would be back to normal. Even the Gastonia Daily Gazette, ... which would soon become unbridled in the violence of its anti-strike invective, greeted the events calmly enough, pointing out that the pickets had gone about their business entirely peacefully." (Salmond, 1996, p.23).

"The [initial] relatively low-key climate was soon replaced by a much more confrontational atmosphere. On April 2, the union's demands were presented, all of them specifically directed at the conditions of labor in the mill and of the workers' lives in the village beyond. The list included the elimination of all piecework, hank, or clock systems; the substitution of a standard wage scale; a forty-hour, five-day week, with a minimum wage of \$20; equal pay for equal work for women and youth; the abolition of stretch-out; decent and sanitary housing; the reduction of rent and light charges in the village; and, crucially, recognition of the union. [The manager] dismissed these demands out of hand." (Salmond, 1996, p.230. He said the company would "'pay no attention to the strike.' striking workers would be replaced and evicted from the village." (Salmond, 1996, p.24).

Following "this uncompromising refusal even to listen to the strike committee," the action quickly escalated. The company stretched rope cables to keep the pickets back; the crowd that gathered tore them down. When the company replaced the ropes with steel cables, "the mood of the strikers changed. The 'carnival spirit' which had so far animated them vanished and was

replaced by anger and determination. The area in front of the mill had become a place of disorder." (Salmond,1996,p.24).

"The defiance of the strikers and the inability of the city police and sheriff's deputies to control them" led to further escalation. The sheriff and mayor "asked Governor O. Max Gardner for assistance. He responded quickly. By the afternoon of April 3, five units of the North Carolina National Guard ... had arrived in Gastonia and quickly surrounded the mill. The strikers now had 'grim-faced troopers' to contend with, and they were not happy about it. They taunted the troops ... [and one woman] who attempted 'to wrestle a rifle from a guardsman' [was the first] of a long line of strikers arrested in 1929."

(Salmond,1996,p.25)

"During these two days ... the Gastonia Daily Gazette developed the violent, strident voice it was to use throughout the year. This voice would ignore the issues of the strike and concentrate on attacking its leadership by presenting Beal and those who came to work with him as agents of revolution, insidious destroyers of the American way of life. On April 3, the newspaper printed the first of a series of full-page advertisements supposedly paid for by the citizens of Gaston County Beal was a Red, it stated ... who stood 'against all American traditions and American government.' He was also 'against religion of any kind....The very existence, the happiness and the very way of life even, of every citizen of Gaston County is threatened....The question in the minds of

many people who belong to the Christian church, who belong to the various patriotic and fraternal organizations is: Shall men and women of the type of Beal and associates...be permitted to remain in Gaston County." (Salmond,1996,p.26).

Outside observers, e.g. reporters from the New York Times and from the Nation, thought this emphasis initially had little effect on the strikers and believed "that even basic distinctions between [communist and non-communist sponsored] labor organizations were lost on them. 'The Communist speeches of Beal make no impression on them...The workers in the strike only know that they are fighting for a better way of life...." Communism and the stop-watch,' thought [the Times reporter] had brought to the southern mills 'the first serious rebellion in eight years' [and] the atmosphere had already become 'so charged with fear and bitterness' as to resemble 'a civil war.'" (Salmond,1996,p.26).

If the local newspaper's rhetoric had little effect on the strikers, there is no doubt that it contributed "to the growing climate of violence in Gaston County and gave sanction to the violent incidents that did occur." (Salmond,1996,p.27).

As was typical in strike situations in the South in 1929, and would be true again in 1934, the 800-man National Guard contingent did not operate simply to keep order between the two sides, but rather to suppress the strikers. "Under protection of the troops, the Loray mill was able gradually to resume operations. It had not closed at any time during the strike.... The mill was in danger of losing valuable contracts and ...offered a bonus equal to a 100 per cent increase in the old wage scale to good spinners and weavers. Even so [it]...got workers only slowly.... Becoming more desperate, the mill management began importation of strike breakers from outside and adopted a more vigorous policy toward the strikers. A citizen's committee, the Committee of One Hundred, was formed, almost certainly under the aegis of employers, and became a focal point for acts of violence against the strikers. (Pope, 1942,p.255).

"Employers fought trade unionism and collective bargaining wherever they appeared, but in no other situation did they fight so effectively, and with such complete victory, as at Gastonia." Because of the Communist involvement "it was easy for employers there to convince the community that the strike represented not simply an effort at modification of the employers' power but a threat to the entire community...." (Pope,1942,p.257).

"Whether or not employers at Gastonia regarded the communist challenge as serious - and there is considerable evidence that they did - they succeeded in provoking community reaction more

violent in character than that found in any of the other Southern strikes.

On April 18 the Union headquarters, a wooden structure they had constructed, and supplies were destroyed by a band of masked men. The remnant of strikers, by then numbering about 200, erected a tent colony which "served both to isolate the strikers further and focalize community resentment against them." (Pope, 1942,p.271). Events festered for several weeks.

On June 7, a mass meeting was held, with violence in the air. Strikers, more women and children than men, attempted to march to the gates of the mill, which was operating without them. Their interest was in enticing those working to rejoin the strike. They were met and set upon by deputies, some of whom had been drinking heavily and a few of whom issued calls to pursue by going to their colony to kill them. The strikers scattered, with most making it back to their tent colony.

Sheriff Orville F. Aderholt and numerous regular and special deputies, including some "specials" involved in earlier violence, arrived at the union headquarters, where they were met by four armed guards. The guards asked the sheriff if he had a search warrant. One of the deputies seized the gun of one of the guards and attempted to enter the union hall. "Who shot first will never be known. But when the shooting stopped, four officers - [including Aderholt] ... and [a guard] lay wounded. Aderholt died the next day.... He had treated the strikers reasonably well and, indeed, may have gone to the union hall mainly to keep

an eye on [two of his violent deputies]." (Salmond, 1996, p.72).

"Once the events had become known, Major A. L. Bulwinkle, a member of the prosecution team, and later a member of the U.S. Congress, had taken command. Prominent Gastonians were deputized 'to assist in arresting the officer's assailants.' The deputies scoured the county for strikers. They rampaged through the tent colony, ripping up the floorboards, tearing down the tents, terrorizing the women and children ... in their desire to break the last vestiges of NTWU resistance..... By the end of the night more than 60 men and women were in jail.... Many of them showed obvious signs of beatings on their faces and bodies." (Salmond, 1996, p.74). Beal fled the county, was arrested nearby in South Carolina, and survived a lynching attempt while being returned to be jailed.

In the days following the shooting, the Daily Gazette was unrestrained: "a deep laid plot," "the electric chair should claim every one who participated," "the blood of these men cries out to the high heaven for vengeance," "The community has been too lenient with these despicable curs and snakes from the dives of Passaic, Hoboken and New York." (Salmond, 1996, p.76). The Charlotte Observer agreed with many of these statements, while the Raleigh News and Observer took issue. The Raleigh paper editor attacked the Gazette directly, reminding of the right to a fair trial and the presumption of innocence until proved guilty, and saying "'at any other time, such editorial utterance would fall flat by weight of its own hysteria,' but in Gastonia, given

the town's current atmosphere, 'it may serve to inflame the public mind further....'" (Salmond, 1996, p.77). Following that lead, Nell Battle Lewis, a columnist for the News and Observer, pursued a theme for the coming months. "Deplored the killing, she pointed out how the laws of North Carolina had consistently failed the strikers. The Gastonia authorities, she claimed, had sanctioned the current violence by refusing to punish those who had previously committed violent acts against the striking workers. 'What is there in the record,' she asked, 'to have made the strikers think they could secure justice under North Carolina law[?].... It operates blatantly and shamelessly in favor of the economic group which opposes them.'" (Salmond, 1996, p.77).

The CPUSA issued highly inflammatory material of its own, but its effect was far away, in northern cities and even abroad, where it may have served to encourage the demonstrations of support which occurred there. Frequent reference was made to an internationally famous New England case - Sacco and Vanzetti - with calls that the perceived injustices, i.e., in effect trying defendants on their nationality and personal beliefs rather than on facts related to the crime of which they were accused, should not be tolerated in the Gastonia case.

After a inquest 14 were charged with murder and 8 others with assault with a deadly weapon. Those charged with murder were back to jail to await trial at a special session of the Gastonia Superior Court to begin on July 29.

Because of the climate created by the local paper, leaflets

distributed by the mill management, and threats against the defendants by the Committee of One Hundred, a change of venue was requested by the defence and granted by Judge M.V. Barnhill. The trial was moved to Charlotte and convened there on August 26 but "[not] until September 4 was a jury finally chosen, after examination of 600 potential jurors." (Salmond, 1996, p.117).

"The hearing on the prosecution's evidence had hardly started when there was a sensational development. Medical evidence as to the extent of the injuries to Aderholt [and to others] was being heard when, on signal ..., the courtroom doors were opened and a life-sized wax dummy of the slain police chief, dressed in a ten-gallon hat, [as typically worn by the sheriff] and the blood stained clothes he had been wearing the night [he was shot], was wheeled into the courtroom. The effigy's entrance caused pandemonium - 'a half-stifled wail' from Aderholt's widow, consternation in the jury box, laughter from the reporters present, and angry objections from the defense. The Prosecutor, John G. Carpenter, claimed that he needed the figure to explain the nature of Aderholt's wounds, but [Judge] Barnhill would not listen. He ordered the effigy removed forthwith..., though the clothes were admitted as evidence. Normal proceedings were then resumed, but already, ... '[the effigy's] gruesomeness had had a telling effect on the jury.'" (Salmond, 1996, p.117) One of the jurors, who had seemed questionable during selection but who was chosen anyway had become a raving maniac, in part, it was thought, due to the wax effigy incident. Judge Barnhill had to

declare a mistrial.

Concerning both the selection of the jury and the effectiveness of the evidence and arguments that did get presented before the mistrial was declared, many observers and several of the jurors agreed that the defense had fared reasonably well.

In reaction to termination of the trial, vigilante groups formed, observers believed at the instigation of the Committee of One Hundred, terrorizing strike leaders still about, ransacking their living quarters, and kidnapping and beating several. They even went to Charlotte to protest at the office and at the apartment of defense attorney Tom P. Jimison, including threats to lynch him if he showed his face. Several newspapers, both in state and others, decried the mob actions and the apparent police acceptance of it.

In spite of reaction of vigilantes, leaders and supporters of the strikers periodically held rallies and "speakings," and CPUSA continued to roil the waters with fiery pronouncements and efforts to promote class division. For its part, the Gastonia paper editorialized that "'though these people have been run away two or three times without suffering physical violence,' ... the 'good people' of the community had been 'law-abiding' for long enough.... [I]n many other southern cities, 'these organizers would have been hanging at the business end of a rope before now.' "

True to this sentiment, on September 14, men who had been

armed by the mill's intelligence officer and instructed 'to do everything necessary to break up the union meeting' scheduled for that afternoon, did just that. A mass of people prevented the meeting scheduled for Gastonia but a contingent of 23 persons traveling from nearby Bessemer City by truck did not know that and so set out to attend the rally. One on board was Ella May Wiggins, the popular balladeer of the strike movement. That truck was intercepted and ordered to turn around, which it did. It was followed by a string of cars which caught up to it as it re-entered Bessemer City and the occupants faced a mob firing shotguns and pistols. Wiggins was shot standing on the truck and died instantly. Even the national reaction to this killing did not stop the violence - on the very night of her burial three days later, there was another abduction and flogging of a union man. In spite of the many witnesses - the murder was committed in daylight with 50 witnesses- no one was ever convicted of the crime against Ella May Wiggins. This caused one observer to comment that it appears that murder is only sometimes a crime in North Carolina, while a union meeting always is!

Ella May's "Mill Mother's Lament" is typical of her ballads and gives insight into why women were so involved, so committed and so courageous in this strike and in others of this era:

"We leave our home in the morning
We kiss our children goodbye
While we slave for the bosses
Our children scream and cry.

And when we draw our money
Our grocers' bills to pay
Not a cent for clothing
Not a cent to put away.

And on that very evening
Our little one will say
I need some clothes dear mother
And so does sister May

Now it grieves the heart of a mother
You everyone must know
But we cannot buy for our children
Our wages are too low

Now listen to the workers
Both women and you men
Let's win for them the victory
I'm sure t'will be no sin."

The Final Trial

At the final Aderholt murder trial, which opened on September 30, the solicitor, having revised strategy based on what he had learned from the abortive first attempt at the trial, announced that the State would ask for a guilty verdict of not more than second-degree murder against 7 of the defendants, including Beal, and would nol-pros charges against the remaining

7, among them the 3 women under indictment. "With the women out of the way, and the reduction of the number of preemptory challenges available to the defense from 168 to 28...and the indictment reduced from first- to second-degree murder, ...the prosecution pressed for a sure conviction." (Pope, 1942, p. 295).

In this trial "the prosecution aimed to prove ... that Aderholt had been shot in the back; that the police had been enticed to the tent colony as part of a prearranged plan; that the strikers had fired the first shots; that they had been exhorted to do so; and that the police had simply been returning fire." (Salmond, 1996. p. 139). Further, the prosecution, allowed by the judge, over most strenuous defense objections, questioned witnesses about their personal beliefs and convictions, thereby being able to portray them as alien to the native population and casting doubt on their credibility.

The local defense attorney favored a simple self-defense defense, but those sent by CPUSA preferred airing their class struggle rhetoric. In any case the defense "...plan was to show that the strikers had good reason to fear the police, given the escalating level of violence in the community - violence directed exclusively at them. The lawyers wanted to prove that... [two of the deputies] were particularly antagonistic toward [the strikers] and that on ... [the night Aderholt was killed] the two were so drunk as to be out of control. There had been no plot to lure the police officers to their deaths; rather, the police had

arrived unannounced, had trespassed on the colony's grounds, and had begun the shooting. In returning their fire, the guards were simply defending their property - an action that, ironically, Aderholt had earlier conceded they had a right to undertake." (Salmond, 1996, p. 141).

Over objections from the defense, the summation by the prosecution included: "Do you believe in the flag of your country...? [The union organizers] came into a peaceful, contented Gastonia, with its flowers, birds, and churches.... to sink damnable fangs into the heart and lifeblood of my community.... [The people of Gastonia] stood it until the great God looked down from the very battlements of heaven ... and caused them to call the officers to the lot and stop the infernal scenes that came sweeping down from the wild plains of Soviet Russia ... bringing bloodshed and death, creeping like the hellish serpent into the Garden of Eden" (Pope, 1942, p. 304).

The jury returned in less than one hour with a verdict of guilty. The judge imposed sentences ranging in length from five to twenty years on various ones of these remaining seven defendants.

In January, 1930, after the trial and before the appeal ruling, The New Republic (January 29, 1930) opined "[The outbreaks in the South] are produced it is said by Northern agitators, who have inflamed hitherto contented workers. Many Southerners honestly believe that if such agitators could be

permanently expelled from the mill regions - by intimidation, by prison sentences or by any other means - life for workers would return to 'normalcy,' and that means being glad to work 60 hours a week for \$10. As a matter of fact, the role of the labor agitator in the present struggle is incidental. The strikes ... are symptoms that reveal a deepseated and almost universal discontent This discontent, moreover, is not of recent appearance."

"Counsel for the defendants had taken a total of 159 exceptions ... and these were the basis for appeal to the Supreme Court of North Carolina. This body handed down its decision in August, 1930, finding no error: 'The State made a prima facie case of conspiracy against the defendants.... We are convinced that substantial justice has been done.'" (Pope, 1942, p.304).

The commentary of the Harvard Law Review on this appeal ruling is of interest (See Appendix A).

The defendants forfeited the relatively low bail which had been posted for them and fled to Russia, with four known later to have returned to the U. S. Beal spent several years in the Soviet Union, was disillusioned, and returned to the United States. During several years as a fugitive he moved about in the northern states and Canada, denouncing Communism and the Soviet Union, which he called 'the biggest fraud of history.' Finally, arrangements were made for him to give himself up and he was taken to prison in North Carolina in 1938. (Pope and Salmond). "... [The next governor] paroled Beal in January,

1942, after he had served about four years of his sentence."
(Pope, 1942, p. 306).

This story has intrigued me since my introduction to it, but learning the story has raised more questions than it has answered. What happened there certainly reminds us, as if we needed any reminder, of how thin our veneer of civilization is, and of how quickly it can be stripped off in communities under duress. And it raises questions about the roles of press, police, management, labor, the court system, etc.

I invite your thoughts about this story and these issues.

Thomas C. Tiller

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January 22, 1998

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The fear that the entrance of corporations into the field of law will cause a lowering of the standards of the bar is derived largely from the impersonal nature of such organizations. But it would not be impracticable to impose the same requirements on corporations that are now imposed on private attorneys.²⁷ The prohibition of advertising and soliciting by attorneys can be extended to the legal activities of corporations.²⁸ Although the advertising of other features of their business would give the corporations some advantage, such advertising does not result in the degradation of the profession. Nor would there appear to be any inherent difficulty in compelling the corporation to comply with professional standards. Both the attorney-agent²⁹ and the corporation itself³⁰ are subject to judicial discipline.

A glance at the factual situation reveals a striking disparity between theory and practice. The infrequency of prosecutions indicates the unwillingness of the state or the bar to support a blanket prohibition.³¹ The attempts of the bar to enforce the existing law have been directed toward the trust companies alone.³² A recognition of the *fait accompli* would permit a concentration of effort³³ against those corporate activities which are inimical to the public welfare.³⁴

THE GASTONIA STRIKERS' CASE. — The decision of the supreme court of North Carolina affirming the conviction of seven defendants for the murder of Chief of Police Aderholt of Gastonia¹ writes the

²⁷ Mr. Boston suggests that the bar associations can enforce the same code of ethics against the lawyer-employee. Boston, *supra* note 6, at 561.

²⁸ For proposed statute and discussion, see *Advertising by Banks and Trust Companies for Legal Business* (1924) 9 MASS. L. Q. No. 4, p. 35; (1925) 10 *id.* 11 *et seq.* In *Barton v. State Bar of California*, 289 Pac. 818 (Cal. 1930), the defendant argued to no avail that modern conditions rendered this prohibition unfair.

²⁹ *In re Otterness*, 232 N. W. 318 (Minn. 1930); *In re Gill*, *supra* note 26; *Matter of Pace*, 170 App. Div. 818, 156 N. Y. Supp. 641 (1915).

³⁰ Fines have been used to punish corporations for other acts. See BALLANTINE, *PRIVATE CORPORATIONS* (1927) 308. There is also the power to dissolve the corporation, or to exclude it from the state. See the *Protective Corporation cases*, *supra* note 25; Jackson, *supra* note 20. It would not be difficult to extend the procedural device of summary process to a corporation practicing law. *Cf.* Note (1930) 43 HARV. L. REV. 1126.

³¹ In New York alone have the efforts of the bar association been diligent. See *Annual Reports of the Committee on Unlawful Practice of the Law, N. Y. COUNTY LAWYERS' ASS'N YEAR BOOKS*. Mr. Beardsley has found that California district attorneys will not prosecute because of their disbelief that any lay jury would convict. See Beardsley, *supra* note 19.

³² *Supra* note 20.

³³ Some writers contend that the only remedy is to improve the quality of the service the lawyer gives the public, by simplifying judicial procedure and by raising the standards for admission to the bar, in order to restore public confidence in the legal profession. See Shinn, and Beardsley, both *supra* note 19; (1929) R. I. BAR ASS'N REP. 56.

³⁴ See Ashley, *supra* note 6; (1929) R. I. BAR ASS'N REP. 56.

¹ *State v. Beal*, 199 N. C. 278, 154 S. E. 604 (1930). The defendants were also indicted and convicted upon separate counts of felonious secret assault upon officers Gilbert, Roach and Ferguson; these charges were tried in the same proceedings.

closing words to a bitter chapter in the industrial struggle in that state. Following a disturbance at the Loray mill in Gastonia, where a strike broke out early in April, 1929, Governor Gardner despatched five companies of militia to the town.² On the 18th of April, while the mill was publishing vituperative denunciations of the strike leaders as communists and atheists who were determined to establish racial equality,³ a masked mob stormed and wrecked the union headquarters, and destroyed the strikers' supplies.⁴

New headquarters were built by the strikers, and an armed patrol was established. On the evening of June 7th, Aderholt was shot and killed, and three other officers and a striker were wounded in an exchange of shots which took place at the union lot.⁵

The trial of sixteen defendants indicted for murder was begun in Mecklenburg county, after Judge Barnhill⁶ had granted a change of

² See N. Y. Times, April 4, 1929, at 2. By April 21st, the troops had been entirely withdrawn. *Id.*, April 22, at 3.

³ See the advertisements which appeared in the *Gastonia Daily Gazette*, reprinted in Blanshard, *Communism in Southern Cotton Mills* (1929) 128 NATION 500; *cf.* TIPPETT, *WHEN SOUTHERN LABOR STIRS* (1931) 76-108.

⁴ See N. Y. Times, April 19, 1929, at 2; Lloyd, *Gastonia* (Prog. Lab. Library, No. 4, 1930) 15; TIPPETT, *loc. cit. supra* note 3.

⁵ On the evening of June 7th, a meeting of the strikers was held on the union lot. The defendant Beal was one of the speakers; he told the workers to form a picket line and march to the Loray Mill, and, according to the state's witnesses, urged them to "go into the mill and drag out those at work" and, if anybody bothers, "to shoot and shoot to kill." The defense's witnesses denied that Beal had counselled violence.

The picket line formed and began its march, but was turned back by the police. Chief Aderholt and three of his deputies got into a car and drove to the union lot in answer to a call by one of the neighbors of the union that "If we ever needed protection, we need it now." The officers found the lot dark and quiet. Four of the defendants, Carter, Harrison, McGinnis and McLaughlin, were among those outside the building, guarding it, armed with shotguns. The state's witnesses testified that as the officers approached, one of the guards came toward them with his gun levelled at Gilbert. The latter grabbed the gun and took it away from the guard. Aderholt asked what the trouble was. The guard replied, "None of your . . . business." On the chief's order, Gilbert arrested the guard for resisting an officer. The testimony of the defense was that Carter, who was the guard, accosted the officers with his gun under his arm, pointed toward the ground, and asked them for their search warrant; Gilbert replied, "Here is all the warrant I need," as he drew his pistol and flashed it in Carter's face.

Aderholt and Deputy Roach proceeded toward the building; Roach testified that he looked in and saw four men with shotguns raised, one of whom was Beal; then the officers turned back. Meanwhile, as Gilbert held the guard, there were shouts of "Turn him loose, Gilbert," or according to the prosecution, "Shoot them" and "Do your duty, guards." Then three shots rang out, and a volley of firing followed. Whether the guards, or strikers in the building, or the officers fired the first shot is in dispute. When the smoke cleared away, three officers and one of the strikers had been wounded; Aderholt had been shot in the back and, shortly thereafter, he died. See Record of the case *passim*.

⁶ The conduct of the case by Judge Barnhill, who presided at both trials, was widely commended by observers, who attested to his determination to give the defendants an impartial hearing. See Bailey, *Gastonia Goes to Trial* (1929) 59 NEW REP. 332; Porter, *Justice and Chivalry in Carolina* (1929) 129 NATION 160; *cf.* Nelson, *North Carolina Justice* (1929) 60 NEW REP. 314; Editorial, N. Y. Times, Aug. 3, 1929, at 14. However Judge Barnhill's rulings may have affected the fairness of the proceedings, the Record in the case, and the charge to the jury

venue because of prejudice in Gaston county.⁷ A mistrial was declared August 16th, when one of the jurors became insane.⁸ That night an anti-red mob raided the strikers' headquarters and destroyed their supplies; three of the strike leaders were kidnapped, and one was flogged.⁹ Five days later the violence reached a tragic climax when Ella May Wiggins, twenty-nine-year-old "poet laureate" of the strikers, was shot and killed by the anti-communist mob.¹⁰ For the raid, the flogging and the mob murder, there has been no conviction.¹¹

From the moment the second trial¹² began the prosecution made persistent efforts to inject into the case testimony relating to communism. These questions to the earlier witnesses were uniformly excluded by the court, but when the defendant Beal, whom the prosecution regarded as the leader of the strikers, was cross-examined the trial judge admitted the testimony to impeach his credibility.¹³ After examining Beal concerning his distribution of copies of the communist newspaper, the Daily Worker, the solicitor was permitted to ask Beal whether he advocated the overthrow of the government of the United States and of North Carolina, and had brought his organization to North Carolina to teach the principles of communism to workers' children.¹⁴ Beal's evasions and denials gave little affirmative to these questions.

reflect a sincere insistence that the defendants be tried for the crime charged, and not for radical beliefs or activities.

⁷ See N. Y. Times, July 31, 1929, at 8.

⁸ *Id.*, Sept. 10, 1929, at 1.

⁹ *Id.*; see *Fighting Communism with Anarchy* (Sept. 28, 1929) 102 LIT. DIG. 12; TIPPETT, *op. cit. supra* note 3, at 104 *et seq.*

¹⁰ Mrs. Wiggins was killed when the mob fired upon a truckload of union mill workers on their way to a meeting. See N. Y. Times, Sept. 15, 1929, at 1; note 9, *supra*.

¹¹ The grand jury of Gaston county found the evidence insufficient to indict any of those charged with the killing of Mrs. Wiggins. See N. Y. Times, Oct. 25, 1929, at 24. Governor Gardner thereafter appointed Judge McElroy to investigate the matter. *Id.*, Nov. 4, 1927, at 27. After a hearing, he held sixteen defendants for the next term of the grand jury, and five were indicted by that body. *Id.*, Jan. 16, 1930, at 47. When the case was tried, the jury, after thirty minutes' deliberation, freed all of the defendants on every count in the indictment. The bail for the defendants had been furnished by the Loray mill. *Id.*, March 7, 1930, at 25.

Four persons were indicted for the kidnapping and flogging of the communist organizers on Sept. 9, but all were acquitted at the trial in Concord, N. C. The attorney for the defense was Major A. J. Bulwinkle, counsel for the Loray mill, and a special prosecutor in the Aderholt case. *Id.*, Oct. 20, 1929, at 12. Bail had been furnished for the defendants by the mill. *Id.*, Sept. 18, 1929, at 22.

¹² The state took a *nolle prosequi* in respect to all but seven of the defendants, and reduced the charges against the remaining seven to second-degree murder and felonious assault. See Record, 3. The prosecution sought to establish a conspiracy on the part of the defendants to resist the police authorities which resulted in Aderholt's death. The court ruled that evidence of the conspiracy would be limited to the events occurring June 7th, the night of the shooting.

¹³ See argument of counsel and court on the point. Record, 1461-71. But *cf. id.*, 1056. This Note makes no attempt to treat the numerous exceptions of the defendants and the errors assigned, such as the insufficiency of the indictment, the plea of double jeopardy, the numerous rulings on the admissibility of evidence, the motion to nonsuit, the exceptions to the court's charge. It is limited to the cross-examination into religious and political beliefs and the argument to the jury.

¹⁴ See Record 1506-27, 1586-87.

Then followed the cross-examination of Mrs. Miller, one of the key witnesses for the defense, who had organized the strikers' children into branches of "Pioneer Youth." The state elicited the information that Mrs. Miller had been teaching Gastonia's children that the government and the bosses stand together for the slavery and starvation of the workers; that force is necessary to produce social change, and that in Soviet Russia, as a result of a revolution, there are no bosses, no private property, and the workers and farmers control the government.¹⁵

Having disposed of her political beliefs, the state was permitted to examine the witness as to her religious views.¹⁶ The Mecklenburg county jury learned that the witness did not believe in a Supreme Being who controls man's destiny, nor in divine punishment; and that an oath taken on an almanac would be as binding upon her as an oath on the Bible.¹⁷

The trial court allowed the questions concerning the political beliefs of Beal and Mrs. Miller as evidence affecting their credibility.¹⁸ The upper court apparently regarded the testimony as admissible to prove the charge that the defendants were engaged in an unlawful conspiracy to resist the police.¹⁹ These beliefs may be relevant to prove such a conspiracy on the night of June 7th, although the connection between Mrs. Miller's convictions and the charge against the defendants seems highly attenuated. But the establishment of the testimony's relevancy does not establish its admissibility. The doctrine runs through the whole law of evidence that testimony, though it is relevant, is to be excluded from the jury when it is too prejudicial in character.²⁰ The probative value of this testimony, whether as direct or as impeaching evidence, seems wholly out of proportion to the dangers with which its

¹⁵ Mrs. Miller testified that she had told the workers' children that the National Guard had been ordered to Gastonia to shoot down workers on the picket line. She had distributed literature showing a child firing at soldiers, and a leaflet urging the support of a children's delegation to the Soviet Union to bring the "message of solidarity of the children of America to the workers' children in Russia." See Record, 1614-31.

¹⁶ When Mrs. Miller came to the stand, no objection was made to her testimony on the ground of incompetency. North Carolina has never by statute abrogated the common-law rule of incompetency because of religious disbelief. A law regulating oaths, passed in 1777, is still on the statute books. N. C. CODE ANN. (Michie, 1927) §§ 3189-91. But decisions have gone far to affirm the admission of testimony when the trial court has found the witness to have a sense of "moral obligation" of the oath. *Cf. Shaw v. Moore*, 49 N. C. 25 (1856); *State v. Pitt*, 166 N. C. 268, 80 S. E. 1060 (1914); *Lanier v. Bryan*, 184 N. C. 235, 114 S. E. 6 (1922); see Biggs, *Religious Belief as a Qualification of a Witness* (1929) 8 N. C. L. REV. 31; Hartogensis, *Denial of Equal Rights to Religious Minorities and Non-Believers in the United States* (1930) 39 YALE L. J. 659; *cf. also* N. C. CONST. § 26.

¹⁷ See Record, 1644-56.

¹⁸ Mrs. Miller's sympathies had already been shown by her testimony that she was the wife of one of the defendants, and had been sent to Gastonia by the president of the union to organize the children's section. *Id.*, 1608-14.

¹⁹ In support of its ruling the court relied on *Spies v. People*, 122 Ill. 1, 12 N. E. 865 (1887), and *Commonwealth v. Sacco and Vanzetti*, 255 Mass. 369, 151 N. E. 830 (1926). For a criticism of the view taken in the latter case, see Note (1927) 36 YALE L. J. 384.

²⁰ See 4 WIGMORE, EVIDENCE (2d ed. 1923) § 1864; Chafee, *The Progress of the Law* (1922) 35 HARV. L. REV. 428, 433 *et seq.*; *cf. note* 21, *infra*.

admission is fraught. To secure a fair trial of strikers in a community which flogged union leaders, wrecked union headquarters, and refused to indict for crimes against strikers, was at best hardly an easy task. But to link the strikers with "revolution" and "Russia" and "the abolition of private property" was to arouse passions and prejudices likely to result in the conviction of the defendants irrespective of their guilt.²¹

The upper court's answer to the defendants' objections is that the question of the admissibility of the evidence is within the discretion of the trial judge. This proposition is supported by a long line of North Carolina decisions.²² The tendency to vest wide discretion in the trial court is a highly salutary departure from the restrictive and confusing rules laid down by some tribunals for the regulation of a trial. But this does not mean that the trial court's discretion is uncontrolled, nor that the appellate court thereby abdicates all duty to prevent an unfair trial resulting from the abuse of discretion.²³ In a recent prosecution growing out of a strike, the New York Court of Appeals, which recognizes wide discretion in allowing impeaching evidence, granted a new trial when the trial court permitted cross-examination into the defendant's communistic beliefs.²⁴

The opinion of the court neither approves nor disapproves the examination into Mrs. Miller's religious beliefs. It declares that if there was any error involved, it was not prejudicial.²⁵ Mrs. Miller, however, was one of the chief witnesses for the defense. And the defendants were convicted by a jury, nine of whom were farmers, living in a community which has been characterized as the most "fundamental Bible-loving people in the world."²⁶

The conduct of the prosecution in its argument to the jury was urged as a ground for a new trial. The trial judge struck out the defendants' exceptions to the argument on the ground that when the defendants objected, he stopped the solicitor and warned him to confine his remarks to comment on the evidence, and also because the jury was told to disregard the plea.²⁷ The upper court refused to order the certification of

²¹ The state sought to cross-examine Beal concerning his belief in Negro equality. In spite of the prosecution's vigorous assertion that no "high class respectable white man advocates social equality," and that therefore the testimony should be admitted to impeach the witness, the court ruled against it. See Record 1465-66.

²² State v. Lawhorn, 88 N. C. 634 (1883); State v. Cloninger, 149 N. C. 567, 63 S. E. 154 (1908); State v. Winder, 183 N. C. 776, 111 S. E. 530 (1922); State v. Dickerson, 189 N. C. 327, 127 S. E. 256 (1925); State v. Colson, 194 N. C. 206, 139 S. E. 230 (1927).

²³ State v. Scott, 194 Iowa 777, 190 N. W. 370 (1922); Clark v. Variety, Inc., 189 App. Div. 462, 178 N. Y. Supp. 698 (1919); Dungan v. State, 135 Wis. 151, 115 N. W. 350 (1908); see Note (1927) 36 YALE L. J. 384.

²⁴ People v. Malkin, 250 N. Y. 185, 164 N. E. 900 (1928); cf. State v. Schleifer, 102 Conn. 708, 130 Atl. 184 (1925); note 23, *supra*.

²⁵ State v. Beal, *supra* note 1, 154 S. E. at 616-18.

²⁶ See Wharton, *Poor White Capitalists* (1929) 153 OUTLOOK AND IND. 252; "I have never been in a cotton-mill house whose walls were not littered with cheap, loud-colored prints of Biblical scenes." *Ibid.* See also (1929) 129 NATION 477: "To a Southern fundamentalist farmer, a communist or an atheist is a criminal per se."

²⁷ See Brief for the Defendants.

the record of the argument, taking the position that any prejudice was removed by the court's action,²⁸ and that thereafter the defendant's failure to continue to object prevented review of the remainder of the argument. If the court means that in fact any prejudice due to a prosecutor's plea is, in the nature of things, removed by a charge and an admonition, its position is untenable; that any jury would, upon the court's instructions, abstract itself from the influence of Solicitor Carpenter's dramatic performance in this case is inconceivable.²⁹ In numerous instances a new trial has been granted, even though the trial court admonished or stopped the attorney and instructed the jury to disregard the remarks.³⁰

Nor should the failure to continue to object prevent reversal. In one case in which the solicitor, after a warning from the court on the defendant's objection, made an improper statement to the jury the North Carolina court itself granted a new trial even though no exception was taken to the final statement.³¹ A federal court granted a new trial be-

²⁸ There is much authority in the North Carolina cases for this view. In the following cases, which are among the more extreme holdings, the solicitor's argument was held to be cured by the court's admonition, or its charge, or both. *Jenkins v. North Carolina Ore Dressing Co.*, 65 N. C. 563 (1871) (plaintiff is a "poor widow" and the defendant "a wealthy corporation is attempting to cheat her out of her rights"); *State v. Davenport*, 156 N. C. 596, 72 S. E. 7 (1911) (statement that defendants' fines would be paid by a wealthy foreign corporation); *State v. Saleeby*, 183 N. C. 740, 110 S. E. 844 (1922) (the jury could not "afford not to convict the defendant for . . . he had sold so much liquor in town that an indignation meeting had been held"). None of these cases approach in inflammatory character the appeal in the instant case. In *State v. Tyson*, 133 N. C. 692, 45 S. E. 838 (1903), where there was a gross appeal to local prejudices, the decision was rested in part upon the ground that the defendant had invited the attack. Cf. *Goodfellow v. People*, 75 Colo. 243, 224 Pac. 1051 (1924); *State v. Cleaver*, 196 Iowa 1278, 196 N. W. 19 (1923).

²⁹ The solicitor knelt and prayed before the jury. Then grasping the hand of the widow of the dead officer, he handed her the shot-torn coat of her husband, and pledged the vengeance of the state. He characterized the defendants as "devils with hoofs and horns who threw away their pitchforks for shotguns, foreign Communists, fiends incarnate, who came sweeping like a cyclone, like a tornado to sink their fangs into the heart and life blood of my community."

"Do you believe in the flag, do you believe in North Carolina, do you believe in good roads? . . . Men, do your duty; do your duty, men, and in the name of God and justice render a verdict that will be emblazoned across the sky of America as an eternal sign that justice has been done." See N. Y. Times, Oct. 19, 1929, at 2; *id.*, Editorial, Oct. 21, 1929, at 26; *The Gastonia Strike-Murder Verdict* (Nov. 2, 1929) 103 LIT. DIG. 14; (1929) 153 OUTLOOK AND IND. 336.

³⁰ *Miller v. People*, 70 Colo. 313, 201 Pac. 41 (1921) (reference to fact that defendant was a German); *State v. Peirce*, 178 Iowa 417, 159 N. W. 1050 (1916) (reference to prevalence of crime; and translation of defendant's nickname as "bad actor"); *State v. Brown*, 148 La. 357, 86 So. 912 (1921) ("it is high time to put a stop to these murders by negro women by hanging some of them"); *People v. Fielding*, 158 N. Y. 542, 53 N. E. 497 (1899) (vivid description of defendant, a public officer, stealing poor widow's taxes); *People v. Manganaro*, 218 N. Y. 9, 112 N. E. 436 (1916) (defendant brought doctors to prove his insanity; prosecuting attorney said the "medical profession prostitutes itself" to testify to insanity; also that "we can't let men stab their wives"); *People v. Brigham*, 226 App. Div. 104, 234 N. Y. Supp. 567 (1929) (statement that this prosecution of a Negro had caused loss of Negro votes to district attorney).

³¹ *State v. Evans*, 183 N. C. 758, 111 S. E. 345 (1922). But cf. *State v. Ray*, 166 N. C. 420, 81 S. E. 1087 (1914).

of a grossly improper argument of the prosecutor, even though no objection was ever made.³² The solicitor is duty bound to secure the defendants an impartial hearing.³³ To refuse to consider the fervid appeal of the prosecuting attorney, in reaching a decision that the defendants have been convicted of murder after a fair trial, is hardly justified on the ground that the defense counsel failed to continue to interrupt the state's legal representative.

These errors can not be dismissed as non-prejudicial. Far from revealing the undisputable guilt of the defendants, the record discloses a sharp conflict of testimony upon every important issue in the case.³⁴ In this state of the facts, the admission of the evidence of nonconformist beliefs and the character of the solicitor's plea make it exceedingly difficult to determine whether the defendants were convicted because of their guilt or because of their radicalism.³⁵

LEGISLATION

TAXATION OF TAX-EXEMPT SECURITIES IN THE HANDS OF CORPORATIONS.¹ — With the shifting trend in corporate taxation, the frequently criticised² constitutional immunities which afford legal sanctuary to governmental securities have again placed spiked barriers in the path of tax progress. The recent cases of *Macallen Co. v. Massachusetts*³ and *Educational Films Corp. v. Ward*⁴ have raised the problem whether the efficacy of taxation according to income is to be exonerated by its failure to reach exempt securities.

It was early determined that the Constitution shielded such securities

³² August v. United States, 257 Fed. 388 (C. C. A. 8th, 1919) (lengthy speech concerning the war with Germany in prosecution for interfering with the mails). This case relies in part upon a statute requiring the appellate court to give judgment "without regard to technical errors . . . which do not affect . . . substantial rights." See JUDICIAL CODE § 269, as amended by 40 STAT. 1181 (1919), 28 U. S. C. § 391 (1926).

³³ See *People v. Fielding*, *supra* note 30, at 547, 53 N. E. at 498.

³⁴ See note 5, *supra*; Record *passim*.

³⁵ Beal, Miller, and Carter, northerners, and Harrison, a Gastonia resident, were sentenced to prison terms of seventeen to twenty years; McGinnis and McLaughlin of Gastonia received sentences of twelve to fifteen years, and Hendricks, also a local resident, received a five- to seven-year sentence. *State v. Beal*, *supra* note 1, 154 S. E. at 612. None of the defendants is in jail, however, all having jumped bail. See N. Y. Times, Sept. 30, 1930, at 1.

¹ The statutes dealt with in this Note, except where otherwise indicated, are confined to those relating to domestic business corporations. The statutes dealing with foreign corporations are similar, and the problem the same.

² See Mills, *Tax-Exempt Securities* (1923) PROC. NAT. TAX CONF. 334; Powell, *The Macallen Case — and Beyond* (1930) 8 NAT. INC. TAX. MAG. 91, 95. But see Hardy, *Taxation and Tax-Exempt Securities* (1925) PROC. NAT. TAX CONF. 222; Plehn, *Taxation of National Banks* (1929) 17 CALIF. L. REV. 357.

³ 279 U. S. 620 (1929); see Powell, *The Macallen Case — and Before* (1930) 8 NAT. INC. TAX. MAG. 47; Powell, *supra* note 2; Traynor, *National Bank Taxation in California* (1929) 17 CALIF. L. REV. 456; Note (1929) 43 HARV. L. REV. 280.

⁴ 282 U. S. 379 (1931); see Powell, *An Imaginary Judicial Opinion* (1931) 44 HARV. L. REV. 889; Note (1931) 44 HARV. L. REV. 829.

from direct property taxes.⁵ But ingenious legislatures, unsympathetic toward such tax-free wealth, adopted various indirect methods for imposing the economic burden of taxation upon corporate owned exempt bonds while still respecting their legal sanctity. These are still employed by those states which adhere to the property theory of corporate taxation. One of these devices is the share tax. While a tax upon the shares of a corporation, levied upon the corporation, is invalid to the extent that the value of the shares reflects tax-exempt securities,⁶ a share tax levied upon the shareholder is constitutional.⁷ Eight states apply this method to the shares of business corporations.⁸ Moreover, since it was until recently the only means authorized by Congress for the taxation of national banks,⁹ the share tax is by far the most common type of bank taxation.¹⁰ While such a tax must be levied upon the shareholder,

⁵ Tax-exemption of governmental securities has four aspects. A state may not directly tax federal bonds. *Weston v. Charleston*, 2 Pet. 449 (U. S. 1829). Nor may the Federal Government so tax state and municipal securities. *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429 (1895). It is violative of the "contract clause" for a state to tax its own bonds where their issue is accompanied by an agreement not to tax. *Macallen Co. v. Massachusetts*, 279 U. S. 620 (1929). And seemingly the due process clause of the Fifth Amendment prevents the Federal Government from taxing its own securities when issued under similar conditions. See Powell, *supra* note 2, at 95.

Corporate excess and capital stock taxes, where assessed directly to the corporation, may be classified within the direct property tax category. *Bank of Commerce v. New York*, 2 Black 620 (U. S. 1862); *Bank Tax Case*, 2 Wall. 200 (U. S. 1865).

⁶ *Home Sav. Bank v. Des Moines*, 205 U. S. 503 (1907).

⁷ *Van Allen v. Assessors*, 3 Wall. 573 (U. S. 1866); *Des Moines Nat. Bank v. Fairweather*, 263 U. S. 103 (1923).

⁸ Ala. Gen. Acts 1927, no. 163, § 25; IOWA CODE (1927) §§ 7008-13; ME. REV. STAT. (1930) c. 13, § 5; MD. LAWS 1929, c. 226, § 6; NEB. LAWS 1929, c. 168, § 1; TENN. ANN. CODE (Shannon, 1917) § 790, as amended by Tenn. Pub. Acts 1927, c. 39; UTAH COMP. LAWS (1917) § 5890; VT. LAWS 1925, no. 21, §§ 1, 2, as amended by VT. LAWS 1927, no. 15.

⁹ The share tax method of national bank taxation originated by the Act of June 3, 1864. 13 STAT. 99, III-III. It continued the only method until an amendment in 1923. See Lutz, *The Evolution of Section 5219, United States Revised Statutes* (1928) 13 NAT. TAX ASS'N BULL. 205; note 35, *infra*.

¹⁰ ARIZ. CODE (Struckmeyer, 1928) § 3069; ARK. DIG. STAT. (Crawford & Moses, 1921) § 9949; COLO. COMP. LAWS (1921) § 7450; CONN. GEN. STAT. (1930) § 1252; FLA. COMP. LAWS (1927) § 907; GA. CIV. CODE ANN. (Michie, 1926) § 993 (138); IDAHO COMP. STAT. (1919) § 3297; ILL. REV. STAT. (Cahill, 1929) c. 120, § 40; IND. ANN. STAT. (Burns, 1926) § 14113; IOWA CODE (1927) § 6998; KAN. REV. STAT. ANN. (1923) § 79-310; KY. STAT. (Carroll, 1930) § 4092; LA. REV. STAT. ANN. (Marr. Supp. 1926) p. 93; ME. REV. STAT. (1930) c. 12, § 77; MD. LAWS 1929, c. 226, § 15; MICH. COMP. LAWS (1929) § 3396; MINN. STAT. (Mason, 1927) § 2027; MISS. CODE ANN. (1930) § 3138; MO. REV. STAT. (1929) § 9765; MONT. REV. CODE (Choate, 1921) § 2064; NEB. COMP. STAT. (1929) § 77-701; NEV. COMP. LAWS (Hillyer, 1929) § 6572; N. H. PUB. LAWS (1926) c. 70, § 1; N. J. COMP. STAT. (1910) p. 5098; N. M. STAT. ANN. (Courtright, 1929) § 141-504; N. C. CODE ANN. (Michie, 1927) § 7971(11); N. D. COMP. LAWS ANN. (1913) § 2115; OHIO GEN. CODE (Page, 1931) § 5408; OKLA. COMP. STAT. ANN. (Bunn, 1921) § 9607; ORE. CODE ANN. (1930) § 69-212; PA. STAT. ANN. (Purdon, 1930) tit. 72, § 1913; S. C. CIV. CODE (1922) § 400; S. D. COMP. LAWS (1929) § 6696; TENN. ANN. CODE (Shannon, 1917) § 790; TEX. REV. CIV. CODE (Vernon, 1928) § 7165; UTAH COMP. LAWS (1917) § 5867; VT. LAWS 1925, c. 21, §§ 1, 2; VA. TAX CODE (Michie, 1930) § 90; WYO. COMP. STAT. ANN. (1920) § 2767.

A majority of these statutes provide for deduction of the assessed value of the