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Questions and Answers

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Questions and Answers

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In this issue of *Questions and Answers* a number of subjects of current interest will be discussed. Answers will describe the means employed by the federal government in controlling vice conditions in army camps; the significance of the treason provision in the federal constitution in combatting subversive activities; the functions of the federal military police; an evaluation of what constitutes citizenship in the United States; and some of the ways and means of measuring the effectiveness of a police department.

Question: A reader of the JOURNAL was in my office the other day. In the course of our conversation he said: "The piratical bands abroad do not regard peace as a normal condition of life and war merely as an exception to it. They treat war as the rule and peace only as its exception. Because of that I wonder if the time has not come when we must challenge our constitutional conception of treason in order to deal more effectively with such enemies?"

Answer:

In a challenging article entitled: "A Suggestion Toward a New Definition of Treason," appearing in this JOURNAL, XXX No. 4, 470 (November-December, 1939) the author, Horace J. Bridges, writes that "History is likely to describe the period through which we have lived as one of steady moral deterioration in the relations between what are considered the most civilized nations in the world." The ruthlessness of present propaganda and espionage techniques used by totalitarian dictators is a striking example of this moral deterioration. There are many who believe that we must revitalize our methods of defense and, in particular, so change our constitutional definition of treason that it can be made a more powerful weapon of attack on subversive elements.

Without question the constitutional definition of treason (Article III, Sec. III, the constitution) is an exalted example of the will to secure for all the greatest possible safeguard of life and liberty. The section prescribes that treason shall consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort. There is the further limitation that no person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. And there is the final limitation that no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted. In view of these provisions it is interesting to observe the possible utility of the constitutional provision in dealing with subversive elements.

The number of treason cases in our history is negligible. There were some prosecutions as a result of the War of 1812, some during the Civil War period and its aftermath, and none during the First World War, although there were numerous prosecutions of seditious utterances and conduct initiated under the *Espionage* and *Trading with the Enemy* Acts. Absence of a considerable number of prosecutions for treason is due possibly to the fact that the death penalty is invoked, to the problems of marshaling evidence for such prosecution, and to the judicial interpretation of the phrase "treason shall consist only in levying war." In the heated trial of Aaron Burr for treason in 1807 Judge Marshall laid down a principle of interpretation which still remains the hallmark of American law on the subject. In brief, he held that levying war must comprise more than a conspiracy to make war or an

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intention to go to war. An actual going to war must be proved by open deed, and a secret assembly without appearance of force, however treasonable in purpose, could not constitute treason.² The restrictive nature of this interpretation is obvious—particularly with respect to subversive activities in peace times.

The second element in the constitutional definition of treason, namely that treason shall consist in adhering to enemies of the United States and giving them aid and comfort has occasioned far less difficulty. Sheltering an enemy is one ground; furnishing supplies, ammunition and means of transportation are others. Already this second element in the treason definition has been used to advantage in the Second World War. Nor need the acts constituting treason be done by citizens of the United States. The Supreme Court has already affirmed the principle that since an alien temporarily resident within the United States secures its protection, he owes it a duty of allegiance so long as he remains within its borders.³ Such an interpretation represents a powerful implement in combating subversive activities since breach of allegiance is regarded as a treasonable act.

But though the Congress has no power to enlarge the constitutional definition of treason, it may make other offenses which are treasonable in character felonies and punishable as such. Trading with the enemy, seditious utterances, insults to the flag, obstructing recruiting, and failure to disclose knowledge of the commission of acts of treason are included among the felonious offenses. But there appears little doubt that constitutional and congressional action has considered treasonable activities primarily in terms of war, not peace. Therein lies the peril, for the machinations of totalitarian dictators have no relation to matters of peace or war. Though Europe was at peace, the penetration of subversive activities during peace times in conquered countries lead to their downfall as much as the marching of men in military caravan. Out of the experiences of this war, we may well turn greater attention to the task of obstructing subversive activities in times of peace as well as war.

Question: What are some of the means employed by the federal government in combatting the problem of prostitution in and around army camps?

Answer:

Opposition to vice conditions in and around army camps has been the policy of the United States military for more than three decades. In combatting the age-old problem of vice, the federal authorities have pursued a number of courses of action. Among these are military policing of prostitution areas in co-operation with civil authorities, treatment of the infected, instruction of army and navy personnel as to the hazards of the problem and means of combatting it, and co-operation with local health authorities in reducing venereal diseases. Already World War. No. 2 has attracted the vigilant observance of federal authorities. Two procedures in particular are being emphasized.

Among the later congressional methods of attacking the problem was passage of the May Act in July, 1941. The act sets forth a course of procedure through which the military police of the federal government are empowered to clear out infected areas. Primary responsibility for control continues with local authorities. But if these authorities fail to handle the situation, then the military are empowered to do so. Before the act can be invoked, the commanding officer of the particular camp or military area must make a special investigation of the vice situation. If he finds that the situation is inimical to the good of the armed service he so reports to the Adjutant General and advises what territory he thinks should be declared an anti-vice area. The Secretary of War may then zone such area for purposes of military enforcement and the commander may place guards around any establishment in the zoned area

² *United States v. Burr*, 4 Cranch 470 (1808).

³ *Carlisle v. United States*, 16 Wall. 147 (1872).

to prevent the soldiery from entering. The act does not permit the arrest of civilians. Apprehension lies within the jurisdiction of the Department of Justice.

Exceptional attention now being turned to the treatment of prostitutes for venereal diseases indicates that the federal government may take an important lead in this phase of the problem. Indications are that the government will utilize many of the CCC camps as treatment centers. Infected persons will be sent to camps for the dual purpose of cure and rehabilitation. Hospitals in the CCC camps will be operated by health departments of the various states under standards of medical care recommended by the United States Public Health Service, according to recent advices. It is anticipated that CCC camps will provide facilities for about 20 states with critical venereal disease areas. For an excellent account of the vice problem in military areas see the pamphlet, "*Prostitution and the War*" by Philip S. Broughton, published by the Public Affairs Committee.

Question: In view of the present crisis in world affairs and the real value of citizenship in the United States, I should like a brief answer to the question: "Who are citizens of the United States?"

Answer:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," reads the fourteenth amendment to the federal constitution. While it was generally understood from the beginning of our national history that all persons (except Negroes and Indians) born in the United States were citizens, the fourteenth amendment gave citizenship a definite constitutional basis.

The provision in clear and unequivocal language sustains the doctrine of *jus soli* (law of the soil) as the fundamental test of citizenship, not the ancient doctrine of *jus sanguinis* (law of the blood) by virtue of which citizenship of a child follows that of the country to which the father owes allegiance. As a result of the amendment, neither race nor color is of any effect in determining citizenship. Thus, children born of Chinese or of Japanese parents are citizens of the United States if born in this country and subject to its jurisdiction. Since passage of the fourteenth amendment the same rule applies to Negroes. Certificates of citizenship can now be granted to Indians by virtue of an Act of Congress passed in 1924.

But birth within the territory of the United States is not the only test of citizenship. By long established international law, several classes of persons are not subject to the jurisdiction of the country in which they are born. Among these are children of diplomatic officials and of executive officers of foreign governments, and children born aboard the ship of a foreign power although the vessel was within the territorial waters of the United States at the time of birth. Similarly, children born of the soldiery of an invading army are not citizens by virtue of birth in this country.

With respect to children born abroad of American citizens interesting problems arise. If the child is brought back to the United States before the age of six, no question of citizenship arises. If the child remains abroad and desires to retain American citizenship he must record with an American consul an intention to remain a citizen and this must be done before the age of 18 is reached. If only one parent of the child is an American citizen and the child remains abroad, citizenship may be transmitted to the child if he resides in the United States for five years immediately prior to his eighteenth birthday.

Formerly alien women who might lawfully be naturalized, automatically became citizens when they married Americans. This is no longer the case. In keeping with the trend toward the independence of women, the Congress in 1922 provided by law that alien women shall not by virtue of marriage become citizens. Prior to 1931 an

American woman who married an alien ineligible to citizenship lost her American citizenship. By an act of that year, she is permitted to retain it.

Two processes of naturalization are provided by law: collective and individual. It has been the policy to bestow citizenship upon all the subjects of a territory newly acquired by the United States. But in recent years the government has been exceptionally cautious in granting collective citizenship to persons not familiar with our political institutions. Under collective naturalization, the nationals of Hawaii were made citizens in 1900, those of Porto Rico in 1917, those of the Virgin Islands in 1927. Although Philipinos are classified as nationals of the United States, they are still not citizens of this country.

Individual naturalization refers to the process by which an alien may obtain citizenship individually. On the list of eligibles are white persons and also persons of African nativity or descent. Ineligible are the Chinese, Japanese, Hindus of pure race and caste, and Orientals in general. Also ineligible are those who have half their blood of such races and peoples. For a discussion of the citizenship problem consult L. Gettys, *The Law of Citizenship in the United States* (1934).

Question: Are there any reliable means of measuring the effectiveness or ineffectiveness of a police department?

Answer:

A number of methods have been utilized. Most of them as yet, however, are of little value in making any reliable estimate of a department's effectiveness.

Use of public opinion as a yardstick is one example. Many persons assume that the way a department is regarded by its community is a reliable index of that department's efficiency or lack of it. Actually, this is of little scientific value. For example, the public may look with kindly interest upon a police department because its exceptional activities in making arrests for traffic violations have helped to fill the municipal coffer, thereby reducing the tax rate. Viewed from the standpoint of sound police administration and the public good, such practices by no means indicate a high level of policing but the reverse.

Often the prevalence of a crime wave or the continued absence of one is regarded as a reliable index. But again, such a yardstick is of doubtful value for the fundamental reason that many factors beyond the control of the police contribute to crime conditions—the economic situation, times of war and peril, social factors and so on. Moreover, other government agencies in addition to the police participate in crime reduction and their activities have an important bearing on the crime situation. If cases are poorly prosecuted, if the judiciary is laggard in its duties, if undue leniency is shown by parole and other agencies, the crime situation is thereby affected. For these reasons the amount of crime in a community should not be regarded as a reliable measure of police performance.

Frankly, police development is in that period of evolution in which few measures of scientific value have yet been devised. But police executives and students of police administration are turning constant attention to the development of such devices. Rapid strides are being made in the field of personnel standards and in the performance costs of policing. Recording in the fields of crime, traffic, and administration is progressing rapidly as a science of measurement. In particular, methods are being devised to measure police performance. In the field of traffic, the enforcement index was one of the first measures developed. The index is simply the sum of the number of convictions with penalty for moving hazardous violations, divided by the sum of the number of personal injury and fatal accidents occurring within a given jurisdiction. In the field of crime, the percentile relation between the number of offenses reported to the police and the number of arrests made in consequence is merely one of a number of mathematical devices developed. These evidence progress

in the field of measuring police performance in terms of mathematical scores. Without question the future holds much promise in the field of measuring police effectiveness. For a discussion of the problem of measurement consult: Donald C. Stone, "Can Police Effectiveness Be Measured?" in 12 *Public Management*, 465-71 (September, 1930).

Question: What are functions of the federal military police?

Answer:

During World War No. 1, the federal military police were a negligible factor in military affairs and ceased to exist as a military unit after the war. But their reestablishment during the present crisis presages one of the significant and far-reaching trends in military government. Present development dates from September 26, 1941 when the Provost Marshal General was charged with the formation of the military police.

Functions of the military police are numerous and include a variety of important fields. In the first place, the military police represent law enforcement in military camps. They regulate the ingress and egress of persons in camp, control camp traffic, and preserve the peace therein. By virtue of the May Act of 1941, important authorities are conferred on them in the control of vice conditions in and around army camps. Within zones set up for the control of vice conditions, the military police represent the primary supervisory authority. Further authorities were conferred as a result of the Presidential order of December 12, 1941. In recognition of the dangers of sabotage of materials and utilities in war industries, authority was issued to the Secretaries of War and of the Navy to establish guards and patrols in and around national defense premises and utilities. Such responsibilities resolve upon the military police.

In military combat areas, the military police must play an important role. The police have the responsibility of collecting stragglers and of guarding prisoners captured in war. More particularly, they have the responsibility of holding the civil populace of a captured territory in subjection and must search and apprehend guerillists. When this war ends and the problem of adjudication and adjustment in times of peace ensue, the federal military police will, in all probability, occupy a prominent role. What their responsibilities may be is of course conjectural and will hinge upon the outcome of the war and the provisions of peace which follow. But it is within the realm of probability that they will have an important part in the preservation of peace in conquered countries and in aiding impoverished peoples in the rebirth and uplifting of their physical and mental well-being. See the address by Colonel Joseph V. Dillon "*Military Police Functions*," given at the Annual Meeting of the American Bar Association, Detroit, 1942.