

INSTITUTIONS AND HUMAN EQUILIBRIUM

A BACK issue (Spring, 1964) of the quarterly, *Landscape*, has in it some passages which help to answer questions that are natural to wonder about—such as how much the vision of architects can affect a declining civilization and what limits their efforts to rehumanize the common life. This article, "The Lesson of Pre-Columbian Architecture," is by Walter Pichler. In it he says (we quote only the general statements):

Architecture signifies needs which man creates for himself by means of his intelligence. The bodies of men and the natural environment of men create fewer needs, and needs which are easier to satisfy, than those created by man's inner nature. It is one of his most significant abilities to be able to perceive time and to take an active part in the changes which he undergoes. Intelligence breeds a new intelligence which compels the original intelligence to adapt itself and to surpass. Architecture which mirrors intelligence thus becomes a reflection of itself. . . .

Architecture is non-functional when it is not an instrument of those forces without the existence of which society would be unthinkable. . . .

Whoever complains about the inadequate quality of current sacred architecture should ask himself if this architecture actually *could* be any better. It cannot, in fact, be better because with a few exceptions it is non-functional. It offers man nothing to occupy him; it influences in no manner his great yearning and slight talent for sociability. In a false manner it seeks to take this yearning into account. Our cities are false, and our community centers are false, because no one can be introduced to communal life by the image of community. And this is what we reproach architectural functionalism with: it no longer functions.

Now what Mr. Pichler is really saying, it seems to us, is that the situation is practically hopeless; that is, an architect with vision needs people with vision to design homes and communities for. While it might be argued that the architect ought not to be a cultural snob, it can be insisted that in a sense he daren't be anything

else. That he ought to be a Thoreau-type snob, and get his commissions where he can; that by practicing such attitudes as a human being he may find some "openings" in the culture which permit him to design the kind of buildings he knows are right. What else is a man with vision to do? Mr. Pichler, of course, doesn't give up. The creative intelligence which outruns or runs counter to the culture must always *try* to square the circle, regardless of whether or not it seems possible. The architect must *try* to raise the common level through his art, even though "no one can be introduced to communal life by the image of community." Mr. Pichler sets his sights with these words:

What I call for is an architecture which fascinates. The word is commonplace, yet there is none better. Whoever finds himself inhabiting a city in which he does not and cannot live, finds himself reaching for those attainments which today are foreign to us but which tomorrow will be a part of us; he will understand what I mean.

This is an architectural Operation Bootstrap. The most instructive comparison with such endeavors, in our time, would be of political conceptions of improvement, which involve manipulative instead of self-generating ideas of progress. The political conceptions are really very limited in possibility, and they are absolutely limited by what the people themselves, as individuals and in small groups, are ready to do as bootstrap operations. When this is learned by enough people, we shall begin to make a little progress.

Meanwhile, let us be fully aware of the devastating criticism of contemporary religion implicit in what Mr. Pichler says about "sacred" architecture, and note, also, that this judgment has ample confirmation from the most thoughtful men of religion. (See *Who's Killing the Church?*,

Honest to God, and the various Death-of-God theologians.)

Have we other "non-functional" institutions?

Higher education has been under fire for so long that it hardly seems necessary to marshal the critical arguments. The best sign here is probably the fact that the best students have sense enough to rebel, or to improvise their own education. On the conditions of primary and secondary school education, we quote John Holt:

Most children in school fail. Close to forty per cent of those who begin high school, drop out before they finish. For college, the figure is one in three.

Many others fail in fact if not in name. They complete their schooling only because we have agreed to push them through the grades and out of the schools, whether they know anything or not. . . . But there is a more important sense in which almost all children fail: Except for a handful, who may or may not be good students, they fail to develop more than a tiny part of their tremendous capacity for learning, understanding, and creating with which they were born and of which they made full use for the first two or three years of their lives.

Why do they fail? They fail because they are afraid, bored and confused. They are afraid, above all else, of failing, of disappointing or displeasing the many anxious adults around them, whose limitless hopes and expectations for them hang over their heads like a cloud.

What does another man who has devoted his life to the problems of education, Rudolph Dreikurs, have to say? He writes in a paper, "The Courage To Be Imperfect":

It is my contention that our education today is very largely what I call *mistake-centered*. If you could enumerate the various actions of a teacher and could enumerate for every hour and every day what she is doing with the children, you would be surprised how many of her actions are dealing directly with mistakes which children have made. As if we were obliged to primarily correct or prevent mistakes.

I fear that in the majority of tests given to students the final mark does not depend on how many brilliant things he said and did, but how many mistakes he made. . . . It seems to me that our children are exposed to a sequence of discouraging

experiences, both at home and at school. Everybody points out what they did do wrong and what they could do wrong. We deprive children of the only experience which really can promote growth and development: experience of their own strengths. We impress them with their deficiencies, with their smallness, with their limitations, and at the same time try to drive them on to be much more than they can be.

Is it too much to say, from the foregoing testimony, that our educational institutions, like our sacred architecture (and what it houses), are non-functional—that they are not instruments "of those forces without the existence of which society would be unthinkable"?

Well, if it be regarded as too much, this can only be in frightened recoil from the prospect of continuing to live in a society in which the "leaders" don't know what they are doing. If the people who have been supplying us with norms for generations are *wrong*; and if, to put the matter with more justice, even the teachers and educators who know what they ought to be doing are largely prevented from doing it by forces beyond their control; if education is non-functional for whatever reason, and if educators are powerless to improve the situation, then *what are we to do?*

The basic trouble, in this situation, is not poor teachers, dull children, or even inadequate educational theory, but, fundamentally and all the time, wrongly delegated responsibility. It is a total cultural defect, not an offense of any group. What is the evidence for this? The evidence is ample. It is found in the expectation that the schools will teach our children everything they need to know and shape their characters and personalities to the perfect image of the hypocritical moral ambivalence and compromised objectives that constitute "success" in our time. The evidence is found in what we do when the educational system shows signs of breaking down because it is both overloaded and loaded with impossible tasks: We hold investigations of the "Americanism" of the teachers. We ask, with a

suspicious grimace, what children are taught about *American* history? Who cares about the world? We snoop in the school libraries and ban the best magazines they get. In short, we take a totally ignorant, non-functional approach to the problems of education. It is not enough that the children are frightened. We want the teachers to be frightened too. (From various reports it seems that this is easily accomplished, much of the time.) For a thirteen-year-old boy to let his hair grow until it threatens to recall, not just the Beatles but little Lord Fauntleroy, seems exactly the right level of juvenile rejoinder or protest—equal in dignity and significance. (Why doesn't somebody admit that the kids are far-better looking with curls instead of bony-skulled butches, anyway?)

Education has lost its relation to life. School has lost its meaning for growth. The lives of the children have lost their meaning for parents.

Now how true are all these depressing generalizations? Well, they are as true as the generalizations we find in Karen Horney's *The Neurotic Personality of Our Time*, in Harold Rugg's *That Men May Understand*, in David Riesman's *The Lonely Crowd*, in Paul Goodman's *Growing Up Absurd*, and in Jules Henry's *Culture Against Man*, to make a short list of authorities.

And how are they untrue? They are untrue in all the ways in which hidden, shy, and suppressed human decency, longing, and excellence fail to get into statistical profiles, and in all the ways devoted teachers outwit the system in the schools—which is happening all the time. But it isn't just the system that is at fault. Education in its supreme meaning, as growth into humanness, as endless enrichment of the non-physical side of life, is non-functional to the way we live now. We have lost confidence in ourselves as human beings, which is why, of course, we need all those Polaris submarines, all those investigating committees, all those courts and all those jails and prisons, plus the reassurances of *Time* and *Life*, to keep feeling that everything is under control. In short, we have delegated *being human*—which includes bringing

up our children—to the non-functional institutions of our society. Our problem is a state of mind which continually infects us with suspicion of our incompetence as human beings.

There is only one way to change this situation. We have to take back our delegated authority and responsibility and find out what education for being human is for ourselves. We have to do this, somehow in principle, and somehow in fact—enough, that is, to become functional ourselves and thus to get functional schools.

For this we have to find in ourselves an unfearing principle of equilibrium, a principle of confidence in ourselves as human beings. We have to do whatever it takes to stop being people in flight, to stop being people who need scapegoats, to stop being people who want their children to make up for their parents' failures and to avoid sinning their parents' sins.

This means a morality which counts as good only the undelegated humanness and humaneness in a person's life—and in which everyone secretly makes his own measurements of himself. Some people start schools. Some people start libraries in areas that haven't any. Some people write good books and a few still publish them. Some people learn to teach their own children. Some people start free schools for drop-outs. Some people give homes and hope to ex-drug addicts. Some people who are unemployed start coops for themselves and others who are unemployed. Some people go to Vietnam and write the truth in letters and articles for back home. Some people help the old to forget that they are old and to get busy being of use. Some people determine to carry on honest dialogue about world affairs, on the theory that peace-making cannot *ever* be delegated. The ways of being human are really endless, but living under the control of non-functional institutions has very nearly made us forget them all.

REVIEW

THE HEIGHT OF THE TIMES

A TRUTH often forgotten by view-with-alarm critics of contemporary life is that between the extremes of high-level idiocy and pretense, at one end, and the dull lethargy of failure at the other, some very fine things may be going on. These may be middle-of-the-road excellences, but they are excellences none the less. They are the sort of thing that *Time* delights to celebrate. (And this would be well enough, save for the fact that many less admirable things are also going on, which *Time* chooses to ignore. But that is another subject.)

Time's cover story for May 6 is about ten "great teachers" who now grace the colleges and universities of the United States. While these talented and committed men (surely there are some great women teachers, too!) do not reduce the importance of present-day criticism of higher education, their activity fully justifies Alan Seltzer's remarks in extenuation of the modern university (MANAS, Jan. 12, 1966). Here we should like to notice how the most important discoveries of the twentieth century are beginning to permeate higher education, with their significance filtering into the minds of students.

What are these discoveries? They are represented by the new and all-engrossing interest in human identity, and by recognition of the highly tentative character of what we used to rely upon as "scientific knowledge," or "objective certainty." The evidence of the play of these discoveries is mainly in *Time's* passages about a mathematics and physics teacher, Arnold Arons, at Amherst College. Mr. Arons, *Time* reports, "carefully shows how a scientific theory can affect man's own theory of himself"—a responsibility not many scientists have noticed or taken seriously. And the measure of this responsibility becomes obvious from another of Arons' intentions, which is "to help students realize that science does not have absolute answers." Science is rather, he tells

them, "a creation of human imagination and intelligence like everything else we do."

Now these, we should like to suggest, are insights which illustrate, for us, the meaning of Ortega's phrase, "the height of the times." For when we turn from the curricula and teaching of today's university or college to the investigations of those who are shaping the curricula and teaching of the universities of tomorrow, we find that the question of human identity and the problems of scientific epistemology are the two most engrossing subjects in all contemporary thought. The men engaged in this thinking are at once elevating and living at the height of the times.

One of these men is J. Bronowski, now at the Salk Institute for Biological Studies at San Diego, Calif., after a distinguished scientific career in England. Mr. Bronowski brings the lucidity of his training in mathematics and the deft clarity of his art with words to the question of human identity. His present writing throws an important retrospective light on his earlier work, *Science and Human Values*, and probably does more to "settle" certain questions about both man and science than any other recent writing, with the possible exception of Michael Polanyi's *Personal Knowledge*. To see how this may be so, we suggest a reading of Bronowski's recent book, *The Identity of Man* (published last year by the Natural History Press, Garden City, New York), and also his paper, "The Logic of the Mind," in the Spring 1966 *American Scholar*. The latter discussion refers to the book, and makes you read it; but then you may, as we did, return to the article for what seems a final and greater clarity. There may be more chance of explaining briefly what Mr. Bronowski has found out by quoting his conclusion first, and giving his justification afterward. He says at the end of his article:

Neither science nor literature ever gives a complete account of nature or life. In both of them, the progress from the present account to the next account is made by the exploration of the ambiguities in the language that we use at this moment. In

science, these ambiguities are resolved for the time being, and a system without ambiguity is built up provisionally, until it is shown to fall short. This is why the results of science at any given moment can be presented on an axiomatic and deductive machine, although nature as a whole can never be so presented because no such machine can ever be complete. Whatever kind of machine nature is, it is different from this.

But in literature, the ambiguities cannot be resolved even for the time being, and no provisional set of axioms can be set up to describe the human situation as the writer and the reader seek to see it together. Here the brain cannot act as a logical machine even for the time being: by which I mean, that it cannot take in the information, sort out its ambiguities, and turn it into unambiguous instructions. That is not what a work of art does to us, and we cannot derive such instructions from it.

Science, in short, in the interest of "action," or "results," cuts the Gordian knot by eliminating ambiguity to get a "truth for our time." Science has always done this; the important discovery of the present is that now we *know* that it works this way and that scientific knowledge is of this limited sort. Knowing this does not reduce the glory of science, but, instead, in Mr. Bronowski's view, makes science a contributor to our philosophic understanding of the nature of things and of ourselves. In this, we think, he is quite right. Whatever real knowledge we possess is constituted of balance in awareness of how the limited and the limitless intersect in all the phenomena of life and growth—or how they *seem* to intersect long enough for us to make some practical judgments about them; and how they also remain independent in a way that enables us to make some timeless judgments about them.

Another way of putting Mr. Bronowski's conclusion would be to say that mathematically constructed models of the natural world are always imperfect (incomplete) and will have to be revised, but meanwhile they are enormously useful in a variety of ways; at the same time, knowing this to be true keeps us from having mechanistic delusions of grandeur and pays appropriate honor to the human being behind the scientist, who at

last knows what he is doing and knows that he is not producing "final truth." By this means, Science joins the Humanities. Until now, we did not understand what Mr. Bronowski meant in his earlier skillful defense of the scientific undertaking and we are exceedingly grateful for having it made clear.

Literature, or the Humanities, retains the ambiguities and therefore contributes no "product" (as Valéry has pointed out), but according to its excellence exhibits them in a way that gives multiple opportunity for deepening our understanding of ourselves. Mr. Bronowski has this passage:

The force and meaning of literature is to present the lives of others to us in such a way that we recognize ourselves in them, and live them from the outside and from the inside together. We do not understand Wordsworth ["The Daffodils"] unless our heart also turns over at the golden host, and the tragedy of Oedipus differs from the gunplay of the Sunday paper only if we recognize ourselves in the characters. We have to see that Oedipus is us, capable of killing a stranger at the crossroads and blundering into a labyrinth of horror. We have to see that Jocasta is us, longing for the lost youth who is so transparently a part of herself in both senses: the son who is also the symbol of her own youth, that she longs to recapture and sense again in her leaping womb. And when we recognize that in Jocasta and in ourselves, it is more tender, more heartbreaking, more deeply human than the explanations of psychoanalysis. Of course Freud was right about the Oedipus complex; but Sophocles wakes deeper echoes than Freud, because he brings home to us the longing of Jocasta for herself—the self that she was and the self that she gave birth to—in the same hushed breath with the familiar and family jealousy of Oedipus.

What is the scientific ground of Mr. Bronowski's conclusions? It is the work in mathematics of Kurt Godel and A. M. Turing, showing that no logical system (mathematical system or machine) can have either the infallibility or the universality for which human beings long and are determined to seek, and which they try to approach by adding (quite unpredictably) to the axioms of their systematic accounts of "reality." This, for Mr. Bronowski, illustrates the total

dependence of science on the self-reference of scientists. It is a different kind of self-reference from that upon which literature depends, but the key, nonetheless, to all scientific knowing and progress. Mr. Bronowski's proof, it seems to us, hangs only on agreeing with him that scientific knowledge is at root mathematical, and we do not see how, in the twentieth century, this agreement can be denied.

Other articles contributory to "height of the times" thinking in this issue of the *American Scholar* are Marshall McLuhan's "Address at Vision 65" and Buckminster Fuller's "Vision 65 Summary Lecture."

COMMENTARY

MORE THAN A CHILDREN'S CRUSADE

KORNEI CHUKOVSKY, who is quoted in this week's Children" article, reached eighty-four last month. His book, *From Two to Five*, has been through sixteen editions in Russia since 1925. According to the *Horn Book Magazine* for February, 1964, this leading Soviet children's author and authority on children's literature was in 1962 (on his eightieth birthday) awarded an honorary degree by Oxford University for his "services to British literature in the Soviet Union." A lover of good stories and poems for children wherever found, Chukovsky is responsible for having translated and introduced to Russian children the best of the lore of England and the Continent. Some forty million of his books have been sold in the U.S.S.R., even though his ideas have not always been popular. He found it necessary, he explains, to combat the influence of "leftist educators [who] still use quasi-revolutionary slogans to hinder and distort the literary development of Soviet children."

Lovers of children seem consistently immune to the follies of ideology. Quite possibly, their gentleness and affection for the young develop a tough-minded resistance to political and mechanistic abstractions which pervert not only politics but science, religion, and education as well. Child psychologists in the West have done much to maintain recognition of the moral and creative side of human beings, and American teachers of the young (from Dr. Spock to John Holt) are often the most uncompromising of all in rejecting the myths of nationalism.

Perhaps these wonderful people who understand children, all over the world, should form a Pied Piper association and declare their common independence of the angers and the crimes of politics, pointing out that self-righteousness and partisan emotions have made children leave home in the past, and that it can happen again.

As Chukovsky says, "The present belongs to the sober, the cautious, the routine-prone, but the future belongs to those who do not rein in their imagination."

We have been reading, lately, about some young men and women who acted on the vision of a peaceful world, and their story makes it less difficult to believe that the future—if there is to be a future—does indeed belong to them. The book is *You Come with Naked Hands*, an account of the San Francisco-to-Moscow walk for peace (1960-61), by Bradford Lyttle, who participated as an organizer and coordinator throughout the ten months of this initially improbable adventure. (*You Come with Naked Hands* is published by Greenleaf Books, Raymond, New Hampshire, with single copies \$4.25, three for \$11.)

The way to read this book is as a first-hand report of an act of imagination and faith. It helps to assume—at least for the time being—that what we tell our children concerning what is good, right, just, and true, applies to everyone, not only the young, and to read the book as the story of a dozen or more people who walked across two continents to demonstrate this view. It helps to put aside all "practical" objections, as you might when reading an imaginative tale to children, and enter into the pilgrimage along with them. For then the character of its discoveries may become plain.

It isn't just that the mouths of worldly, skeptical foreign correspondents in Moscow fell open in astonishment when they saw a handful of Americans and Europeans demonstrating against military readiness in front of the Kremlin in Red Square, and distributing leaflets printed in Russian calling for unilateral disarmament. It isn't only that the walkers picketed Red Army bases and proposed in open-air village meetings that draft-age Russians consider refusing military service—just what they had said to similar audiences in the United States. These things are exciting enough, and astonishing to read about, but more impressive, in the long run, is the way in which the

walkers, as they walked and talked, found themselves gaining tiny increments of respect from unbelieving and impassioned people in every land. Then there is the striking contrast between the simple reasoning of ordinary folk—their uncomplicated moral responses based upon their own experience and the calculating thought-processes of policy-makers and the managers of modern societies. Everywhere the walkers found fear of war, and nearly everywhere they found angry anticipation of what the "enemy" intends.

But there were also many—if not everywhere—signs of wondering trust and some secret expressions of human solidarity, conveyed in a kind of code by wet eyes, by strong handclasps, and sometimes by a note passed from one student to another.

There is a quiet heroism in this book. It is the extraordinary story of what some ordinary but imaginative young people decided to do when challenged by American hecklers to go "tell the Russians" about the importance of peace and unilateral disarmament. They didn't ever feel like heroes, but they stuck to their principles as strongly as they could, all the way from San Francisco to Moscow, and the dignity, even majesty, of what they accomplished comes through.

CHILDREN

. . . and Ourselves

IN BEHALF OF FANTASY

No one who has seen children through infancy and the pre-school years can help but be amazed by the growth and development of language, thought, and imagination which take place during this period. Of his own early years, Leo Tolstoy said: "Was it not then that I acquired all that now sustains me? And I gained so much and so quickly that during the rest of my life I did not acquire a hundredth part of it."

Kornei Chukovsky, noted children's author and specialist in children's language and literature in Russia (whose love of the children's classics of all lands and rare abilities have made him known the world over), discusses these formative years in his book *From Two to Five* (English edition, University of California Press, 1963). Mr. Chukovsky is concerned with the development of language and thought in young children, their natural creativity and poetic inclinations, and the best instruction and literature for their stimulation and growth. He gives delightful examples of the processes which children go through in acquiring language and knowledge—their imitation of adults; their quite logical word-inventions ("Oh Mommie! How balloony your legs are!"); their identification of the unfamiliar in terms of the familiar (a bald man has a "barefoot head"); their amazing sensitivity to and ability to use their native language; their continual "What's that?" and "Why?"; their developing criticism of the language of others ("Mama! You said that uncle always sits on Aunt Aniuta's neck but he has been sitting on a chair all the time that we've been here!"); their acceptance of only what they're ready for in terms of explanations of life, death, birth, or whatever. Chukovsky says of the child's capacity to absorb:

It is frightening to think what an enormous number of grammatical forms are poured over the poor head of the young child. And he, as if it were nothing at all, adjusts to all this chaos, constantly

without noticing, as he does this, his gigantic effort. If an adult had to master so many grammatical rules within so short a time, his head would surely burst—a mass of rules mastered so lightly and so freely by the two-year-old "linguist." The labor he thus performs at this age is astonishing enough, but even more amazing and unparalleled is the ease with which he does it.

In truth, the young child is the hardest mental toiler on our planet. Fortunately, he does not even suspect it.

All children seem inherently poetic: "In the beginning of our childhood we are all 'versifiers'—it is only later that we begin to learn to speak in prose. The very nature of an infant's jabbering predisposes him to versifying." From the rhyming syllables and repetitive first words ("mama," "papa," etc.), children move naturally to the creation of word rhythms and rhymes. Chukovsky stresses again and again the importance of encouraging free expression in the child, and of making good literature available to him at a very early age. The natural musical and poetic impulses of children, he says, are often stifled when they begin school:

Together with the works of our classical poets, they [are] taught hackneyed lines, absurd rhythms, cheap rhymes. There are times when I could cry with disappointment. I am convinced that exposing children to such trash will cripple aesthetic tastes, disfigure their literary training, and condition them to a slovenly attitude to the written word, and that all this rubbish will block off the children's appreciation of genuine poetic words. However, my author's grief was incomprehensible to some of the educators, as these excellent people (so useful in other ways) [have] been deprived of literary culture. They [have] no criteria for evaluating works of poetry.

Chukovsky made up "thirteen commandments" for those who write or evaluate poetry for young children. They involve the necessity for children's poetry to be highly graphic, lyrical, rhythmic, full of rapid changes of images, and written with the same high standards of skill, virtuosity and technical soundness of any fine verse. Chukovsky's thirteenth "commandment" is that gradually all the criteria

(except high quality) of writing for the very young must be more or less abandoned, for as children grow and mature, different standards are necessary.

Along with poetry, Chukovsky is especially concerned with fantasy and the fairy tale for the young. He discusses how fantasy helps the child orient himself to the world, enriches his spiritual life, and helps him to regard himself as a participant in imaginary struggles for goodness, justice, and freedom. Fantasy is important in the personal world of the child and it reaches out into the relationships, studies, and attitudes he will carry throughout his life:

Without imaginative fantasy there would be complete stagnation in [fields like] physics and chemistry, because the formulation of new hypotheses, the invention of new implements, the discovery of new methods of experimental research the conjecturing of new chemical fusions—all these are products of imagination and fantasy.

The present belongs to the sober, the cautious, the routine-prone, but the future belongs to those who do not rein in their imagination.

Speaking as a well-loved creator of fanciful literature for children, Chukovsky summarizes its aims:

The goal of storytellers . . . consists of fostering in the child, at whatever cost, compassion and humaneness—this miraculous ability of man to be disturbed by another being's misfortunes, to feel joy about another being's happiness, to experience another's fate as one's own. Storytellers take trouble to teach the child in his early years to participate with concern in the lives of imaginary people and animals, and to make sure that in this way he will escape the narrow frame of his egocentric interests and feelings.

Because it is natural for a child to be on the side of the kind, the courageous, and the unjustly offended when listening to a fairy tale, whether it is Prince Ivan or Peter Rabbit or the Fearless Spider, our only goal is to awaken, nurture and strengthen in the responsive soul of the child this invaluable ability to feel compassion for another's unhappiness and to share in another's happiness—without this a man is inhuman.

Chukovsky's defense of fantasy and the fairy tale is reminiscent of the championing of this form of literature by Paul Hazard in his ever delightful discussion of the history of writing for children, *Books, Children, and Men* (The Horn Book, Inc. 1944). Chukovsky stresses the value of imaginative literature in teaching children compassion and humanity, but Hazard goes beyond this in his lyrical discussion of the fairy tale, tracing it to its roots and exploring its historical and spiritual meaning. While some readers may not be ready to agree that fantasy has such great significance, one must certainly listen to Mr. Hazard—which, usually, is to become convinced of the validity of what he says:

Fairy tales are like beautiful mirrors of water, so deep and crystal clear! In their depth we sense the mysterious experience of a thousand years. Their contents date from the primeval ages of humanity, from the fabulous times that Vico tells about when man instinctively created fables and symbols in order to express himself. If you seek to trace the path that a child's story has followed down through the years, if you go back over the course of time trying to find its source, you will often discover that though the story seems new it is very ancient indeed.

FRONTIERS

Civil Disobedience and Nuremberg Law

SINCE the principle of individual accountability for war crimes declared by the Nuremberg Trials is being invoked increasingly by various protesters against the war in Vietnam, it should be of value to look at certain considerations on which the validity and promise of this action may in part depend. For general background, we draw on an article in *Liberation* for March, in which Stewart Meacham discusses several forms of resistance to the draft, one of these being based on the contention that "the United States is committing a crime in Vietnam." Mr. Meacham summarizes this position:

If the state respects the validity of draft refusal by those who are religious pacifists, it has even more reason to respect draft refusal by "just-war" objectors since they are basing their objection on the very ground on which the state itself must stand if it is to claim moral sanction for war. To deny the "just-war" objectors exemption is to cut the ground out from under the state's own moral claims. This puts the state in an insoluble dilemma any time it undertakes "unjust" war; which is as it should be.

Interestingly enough, the moral and legal basis for the "war crimes" objectors was laid in the aftermath of World War II with the Nuremberg Trials when the principle was accepted that individuals may be held accountable for their part in war crimes though they may be following orders of their government when they engage in criminal conduct.

The United States role in the Vietnam war is considered by many to be illegal, and therefore a crime, on the following grounds:

(a) The United States has entered this war without observing the provisions of its own constitution with respect to the role of Congress in declaring war.

(b) The United States has entered this war without fulfilling its obligations under the SEATO Pact.

(c) The United States has entered this war without fulfilling its obligation under the United Nations Charter.

(d) The United States, in the pursuit of its war program in Vietnam, has implicated itself in the following widely publicized conduct, all of which is specifically listed as acts which are crimes under the Charter of the International Military Tribunal at Nuremberg:

(1) War in violation of international treaties, agreements, or assurances.

(2) Ill-treatment of prisoners.

(3) Wanton destruction of towns and villages.

If the "war-crimes" objectors are correct about the illegality of the above acts in the light of the U.S. Constitution, the SEATO Pact, the UN Charter, and the Nuremberg principles, there can be little doubt but that their objection to the draft is nothing more than a refusal to engage in possible criminal conduct for which they may be held personally responsible and eventually punished. Their only relief is to refuse to be drafted since there is no tribunal available to them which can pass authoritative judgment on the questions of legality which the above conduct of the United States has raised.

It happens that an article by Carl Cohen in the *Nation* for March 28, "The Fruits of Protest," is in one place directly concerned with the use of the Nuremberg principle for the defense of protesters who have committed civil disobedience. While the defendants in this instance are protesters who "sat-in" at the Ann Arbor (Mich.) Selective Service Office last October, and had not, therefore, been "ordered" by their government to commit what they might claim to be a "criminal act" for which they could later be prosecuted under the Nuremberg rule, Mr. Cohen's exploration of the practical "legal" status of the Nuremberg precedent helps to bring other important questions to light. It should be noted that this writer, a teacher of philosophy at the University of Michigan, is obviously in sympathy with the protesters—saying of them, "By ordinary standards, they are better persons than most of the rest of us"—and that his intent is to illuminate and frame such actions in a context of basic inquiry. He begins by pointing out that the authority of the Nuremberg Judgments in state or federal courts is very doubtful, so far as jurisprudential opinion is concerned. And even if they should be accorded

respect, he adds, "it is hard to see how they can be made consistently effective within a national legal system." Further, he says, most Americans and most American courts are unlikely to admit "that the national conduct repudiated is illegal and immoral"—a stipulation which would have to precede a testing of the right to protection under the Nuremberg principles. The third of Mr. Cohen's "temper of the times" arguments is as follows:

One grave peculiarity of the "Nuremberg argument" is that any court in a national legal system which holds that its nation is acting illegally and immorally attacks thereby the legal and moral foundation of its own authority, of the court itself. This self-reflexive character of the judgment being asked for renders it a virtual impossibility for a national or state court to hold that the Nuremberg argument applies in any given case. To do so is to announce that the court is governed by a law other than, and in conflict with, the law the court is sworn to enforce. Of course one may insist that, as a purely moral matter, the court does have such an obligation to a higher law. But one must then seek ultimate protection under that higher law (against the state law) in a higher court—an international court perhaps, or the court of heaven. And these are the courts in which the civil disobedience may find, if ever, ultimate justification under Nuremberg principles.

However:

These three considerations weigh against the technical merit of the appeal, but they do not weigh against the defendants' strategy in appealing or the moral basis of their appeal, and therefore do not dismay them at all. They believe that the Nuremberg Judgments *do* have legitimacy, and that present American conduct in Vietnam *is* immoral, and they are prepared to offer proof in defense of these claims.

Regarding any difficulty there may be in applying the Nuremberg principles in American courts, they maintain that a method *ought* to be worked out whereby these principles *can* be applied within our judicial system. For if we take these principles seriously enough to apply them to others, with ensuing capital punishment, we are morally obligated to make them applicable—at least in principle—to ourselves. One of the chief aims of their present appeal is to begin the process of legal adjustment which will make this internal application

of the Nuremberg principles feasible. Ours is a legal system they maintain, healthy enough and resilient enough to adopt and incorporate new principles governing national conduct, where the moral content is clear and accepted, and the principles themselves are badly needed to assist in the guidance of our nation's policies within the community of nations.

Well, what is the value of the foregoing analysis? How does it help? Shall we say that, while friendly to the protesters, it represents a discouraging kind of "realism"? After all, Mr. Cohen points out how difficult it is even *to imagine* a court of the United States accepting a rule which, as he says, "attacks thereby the legal and moral foundation of its own authority." The use of this principle, then, is really a kind of moral rhetoric, a particular way, in the guise of a legal claim, of appealing to a "higher law"—not "God's law," but *Nuremberg* law, which has the peculiar distinction of having been made largely by ourselves. And since it is a law we instituted at a time when the United States was playing God, its application is expected to have a peculiarly effective bite on the national conscience. (Actually, the worthiness of such an authority might bear looking into, as a separate but basic question.)

Reading Mr. Cohen, then, makes it plain that invoking the Nuremberg rule is simply a means of saying that "a method *ought* to be worked out whereby these principles *can* be applied within our judicial system." The hope of "winning" with these principles, at the present time, can hardly be greater than the "innocence" of the one who claims their protection. But this, one may say, does not matter. The prospect of "winning" is no criterion for those who take a stand on principle. They take their stand because they must, and hope of winning is an independent variable whose bearing on moral decision may be diminished to zero by William the Silent's heroic declaration: "It is not necessary to hope in order to undertake, nor to succeed in order to persevere."

But a part of the meaning of such a course lies in the expectation of influencing others.

Regarded in these terms, the moral rhetoric alone has a notable value and is in a great tradition. If we accept Werner Jaeger's analysis, the *Republic* of Plato is a monument of just such moral rhetoric, erected without any serious expectation of "winning." As Jaeger says:

Plato's demand that philosophers shall be kings, which he maintained unabated right to the end, means that the state is to be rendered ethical through and through. It shows that persons who stood highest in the intellectual scale had already abandoned the actual ship of state, for a state like Plato's could not have come alive in his own time, and perhaps at any time.

It seems fair to say that the demand that the courts be guided in their deliberations by the decisions made at Nuremberg is, in practical terms, virtually a demand that the state "be rendered ethical through and through." And so the question arises, for those whose "innocence" has been reduced by Mr. Cohen's realism: What about demanding the "impossible" of a court of law, being nonetheless ready to accept the inevitable penalty that will be imposed?

Well, by this means the protester shows the *seriousness* of his moral rhetoric. In short, it becomes more than rhetoric. It is transformed by his jeopardy into a reality he is determined to live by. He asks for something which, in the nature of present political institutions, cannot or will not be done, but asks it in a way which declares that he will admit the existence of no other arrangement—conform to no other rule.

He is like Socrates in the *Crito*. He insists upon living out the *spirit* of just laws, regardless of the corruptions of the state. He acts in behalf of his vision of the ideal social community, on the ground that if he does not, he will confirm the "realism" which says that the ideal social community is a human impossibility. This the protester refuses to do. He tries to make it exist *in* him. He will not collaborate in a cynical compromise which rejects the ideal. And by enduring punishment he makes his act broadly educational—he shows to others that for at least

one man a social ideal which seems presently impossible is nonetheless the only one with which he can co-exist.

At this point, we need another perspective—what might be called a tough-minded Aristotelian sagacity which acknowledges the "realism" of Mr. Cohen's analysis and shapes it into a basic principle. Karl Popper put such a principle clearly in an article in *Etc.* (May, 1963):

. . . it must be one of the first principles of rational politics that *we cannot make heaven on earth*. The development of communism illustrates the terrible danger of the attempt. It has often been tried, but it has always led to the establishment of something like hell.

We take this to mean that politics is not a tool for the creation of *absolute* social good. Is, then, the civil disobedient, the uncompromising social visionary, nonetheless a man who expects to render the state ethical "through and through" by political means? Is *this* Mr. Cohen's inescapable point, however charitably made? Not really; but it is a point which must be considered.

What, to begin with, is the civil disobedient before he becomes a civil disobedient? He is obviously an individual with a high vision of human potentiality and with worked-out ideas of the human relationships which are consistent with his dream of the good society. And if, in addition to possessing these qualities, he has worn away the "innocence" which would permit him to hope for success in the courts, he is, at least potentially, a nonconventional political leader of the Gandhian sort.

An Indian writer said in *Sarvodaya* for April, 1956:

Gandhiji was the greatest statesman India has ever known. Our politicians of today all learnt politics at his feet. But Gandhiji did not touch the ruling machinery even with a pair of tongs. If law could bring grist to the mill of the people he would certainly have accepted office. Law cannot be instrumental in changing socio-economic values or outlook toward life. That is impossible without a basic change—change at the root.

But it will be said that Gandhi entered into political action up to his ears, and stayed there. What must be noted is that Gandhi became directly involved in the politics of power only *negatively*—as do the civil disobedients. They do not (necessarily) defy Popper's principle, but rather protest with their vulnerable persons a particular rule of the *existing* political society, which has turned out to be "something like hell."

The value, then, of Mr. Cohen's discussion lies in its provocation to think through the contradictions and dilemmas of the role of civil disobedience to some positive, holistic conception of human society—the act of civil disobedience being only one, quite limited, but sometimes necessary and often effective course taken, *vis à vis* the politics of power, in behalf of this ideal. The importance of such thinking is clear from an observation by Joan Bondurant in her essay, "The Nonconventional Political Leader" (included as a chapter in *Leadership and Political Institutions in India*, Richard L. Park and Irene Tinker, eds., Princeton University Press, 1959):

The suggestion that, ideally, society would be best governed by a class that does not want to rule but agrees to do so for the good of society has been advanced more than once in the course of centuries of man's reflection upon political processes and institutions. But a system of extraparty, extra-institutional leadership, established through demonstration of sincerity, service, effectiveness, and direct appeal, and functioning as political conscience within a system of representative, democratic government, has not yet been formulated. Such a possibility lies implicit in the recommendations of Gandhi and the suggestions of those who currently re-examine the Gandhian experiment.