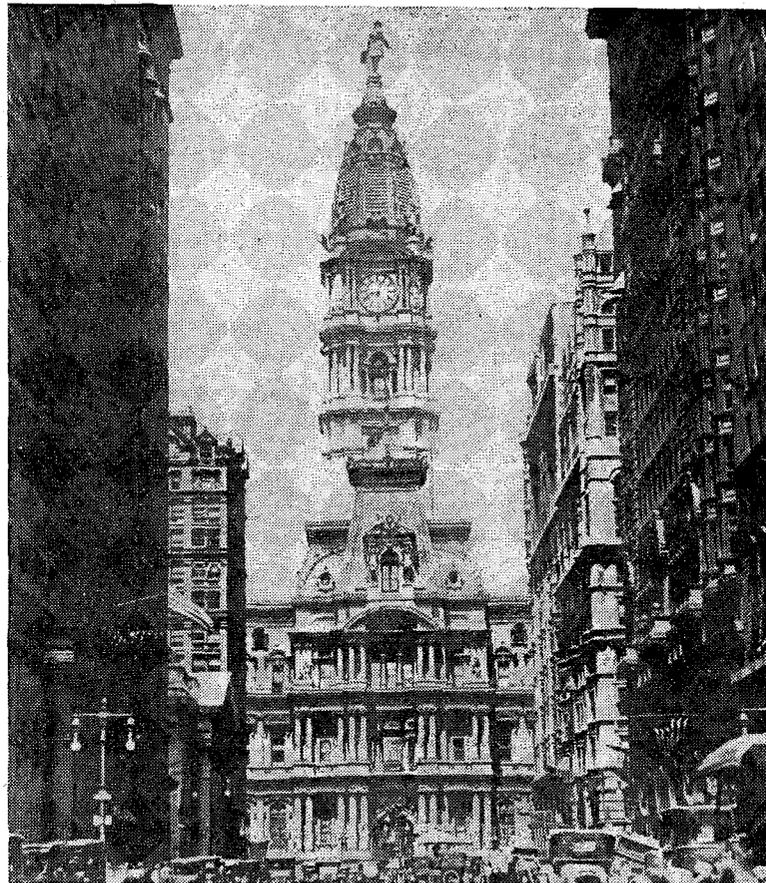


Philadelphia Story

Samuel Putnam explains why the third largest city in America provides its inhabitants with water commonly called a "Scoogle highball." Playing politics with the people's health. Shame of a great city.



IT SOMETIMES takes an outsider, a visiting stranger or some one with a bit of perspective, to jar a community out of its self-complacency and cause its members, if only for a fleeting second, to see themselves as others see them. Philadelphia has recently been exposed to two such jolts. One came not long ago, when President Roosevelt, without mincing his words, declared that the city's drinking water was "a stench in the nostrils of the nation" and was endangering national defense in the Philadelphia area. The other was handed us when that effervescent and inimitable Irishman, Mike Quin, came to town, took one whiff (from the railway station) of the Schuylkill River, which is the source of our water supply, and promptly dubbed it the "Scoogle River." The "Scoogle" it shall be forevermore.

Now, it is not to be presumed that any preponderant number of the nearly 2,000,000 Philadelphians are readers of Mike Quin's *Daily Worker* column; but Mike is a master of word coinage, and a phrase like that has a way of traveling. In the past it has been a standing joke among us to refer to a glass of water as a "chlorine cocktail." But since Mike's visit it has become a "Scoogle highball." For that word "Scoogle," somehow, seems to sum it all up: not merely the stench that rises from the Schuylkill, wafted for miles when the breeze is right (and far, far worse than the odor of the Chicago stockyards on a windy day); not only the filth and human sewage which fills the river, and which we must consume over and over again at our water taps; but the even greater filth and stench found in the neighborhood of the Republican-appeaser-dominated City Hall, beneath the blushing statue of William Penn.

The fact that we Philadelphians can pass the matter off with a jest is in itself a very bad sign. "Corrupt and contented" is the phrase that has been applied for years to the "city of brotherly love," and we have come to laugh at that, even—as if it were something to laugh about! At long last, however, a light is beginning to break through our benighted sophistication and our wisecracking civic indifference. Philadelphians are finally beginning to see just who the forces are behind this "Scoogle" stench. Like their O'Dwyer-Tammany Hall parallels in New York City, the ward-healing politicians who give us this drinking water, along with our unspeakable slums, our fire traps, our waterless fire plugs, our lightless streets, our robber gas rates and streetcar rates, our thousands of undernourished school children, our pitiful health services—these are, precisely, the forces that are working, all but shouting, for a Hitler victory; they are the forces openly lined up with the America First Committee and the Lindbergh betrayers.

That this is so, is definitely shown by the jubilation with which the recent more-than-dubious Republican victory at the polls was greeted at the America First "rally" held here on November 5. To an audience that was one-third empty seats, the speakers boasted that the President's foreign policy had been "repudiated" by the voters, in returning to office the same old gang of "Scoogle" henchmen. (Incidentally, the courts have impounded the ballots, and the official results of the election are, at this writing, not yet known. The lukewarm Democrats, who failed to put up a fight on any vital issue, claim that the election was stolen outright, and the returns, certainly, were suspiciously close.)

Meanwhile, we Philadelphians really would like a decent glass of water for a change. So would the thousands who have come here to work in our defense industries, and whose health, as the President pointed out, is being seriously menaced. A glass of drinkable water. It seems little enough to ask; but it is too much to ask of our "city fathers," apparently. Not even an epidemic of dysentery, such as occurred some years ago, and which local physicians said was caused by the sewage that we drink, can prod them into action.

After all, so runs their reasoning, what have they to fear? Have they not been in power for fifty-odd corruption-filled years, as part of the notorious Boies Penrose-Pew-Grundy machine which has made Pennsylvania politics the disgrace of the nation? When they get in a tight spot, as they have repeatedly shown, there are ways and ways of "winning" an election. But one of their best allies, unfortunately, is an indifferent electorate—did not some 400,000 voters, or approximately thirty-eight percent of those registered, stay away from the polls this year? Did not Philadelphia labor put up a half-hearted, last-minute fight, while the Democrats, in the name of "party unity" (not national unity), were busy appeasing the appeasers within their ranks?

What, then, does it mean to the City Hall gang, when a report such as that by the Interstate Commission of the Delaware River Basin is turned in? The report in question, on "Pollution Control," issued in January 1940, contained the statement: "The Philadelphia-Camden metropolitan district is responsible for the Delaware River's reputation as the most grossly polluted water area in the nation. With Philadelphia drawing half of its water supply from this source, it follows that no

other large city in the nation has an equivalently polluted source of water supply." [Italics mine—S. P. It may be remarked that the Schuylkill River is a tributary of the Delaware.]

CONFRONTED WITH SUCH FACTS as these, the local Republican plunderbund shrugs them off with the assertion: "Philadelphia's drinking water is treated with chlorine, and is therefore perfectly fit to drink"—which is what Mike Quin means by "a bad taste on top of a bad taste." They will even dig up a military "authority" or two to prove their point. But the Interstate Commission does not agree with them. Neither do the Philadelphia doctors. There are those recurring epidemics of dysentery. There's a mild one on right now. And it hardly takes a medical man to see that the very proximity of an open sewer like the Schuylkill, whether you drink the water that comes from it or not, is enough to imperil the health of the city.

Once in a long while things get so bad that an abortive gesture has to be made. In February 1940, it was announced that the \$6,000,000 collected in water rents would go to provide better water; but only \$2,000,000 was actually spent for the purpose; the remaining \$4,000,000 went to the city's gilt-edged bondholders—the Main Line crowd and the Morgan banks—as payment on principal and interest, just as does fifty-seven cents out of every tax dollar collected in this municipality. About a month later, in March 1940, an ordinance was passed authorizing the city to borrow \$18,000,000 to improve the water supply. But the money has not been borrowed; not a move has been made in this direction.

The "Scoogle highball," however, is not by any means the only thing that the long-suffering citizens of Philadelphia have to put up with. This third largest city in the nation, tenth largest in the world, sprawling over more than 129 square miles, has been declared by housing experts to have *the worst slums to be found anywhere*. More than 81,000 families, or more than 300,000 persons, according to these experts, are living in "sub-standard conditions." More than 250,000 have no private toilets. In the Negro tenement districts scattered over the city, the outdoor toilet and the open cesspool are frightful sources of typhus and other infection. The firetrap slum houses, together with water hydrants that give no water in case of fire, have resulted in numerous tragedies. In January of this year two men and a boy were burned alive as the firemen vainly rushed about for water. This was but one of what the papers described as "an epidemic of fires," which took the lives of seventeen persons in one month.

The housing situation is rendered still worse by the 25,000 or more families of defense workers that have moved or are moving in. In this connection, the federal government proffered its aid by offering to put up \$19,000,000, to build low-cost homes for 20,000 workers. The offer was declined with thanks! The real estate interests must be served.

It is the same story in every phase of our civic life. Every time that we board a street car, we pay three cents out of an eight-cent fare to the famous "underliers"—meaning certain "first families" and financial interests which, back on the threshold of the Mauve Decade, simply took over our streets in the guise of a "franchise" and have been charging us for it ever since. And now, despite the fact that the transit company is making millions and always manages to pay its preferred stock (not the common stock) holders their dividends, it is planning to raise the fare to ten cents a ride or three rides for a quarter, which amounts to fifteen dollars a year more than the garden variety New Yorker pays for his transportation.

Or supposing we glance, if we have the heart, at our gas bill. The meter may read 400 or 600 cubic feet, but we have to pay for a minimum 800, or seventy-five cents. The gas company made a net profit in 1940 of \$26,635,784; yet it is so poor that it cannot afford to repair its mains, and the result last spring was a disastrous explosion in a South Philadelphia street, that killed five persons and injured thirty. Philadelphia streets at night are in semi-darkness, yet the city council turned down a request for \$500,000 to provide more adequate lighting. In these dark streets women have been attacked and slugged and holdups and juvenile crime are on the increase.

As to Philadelphia's public health services, the figure of \$32,000 allotted for tubercular

children—when in the center of the city seventeen out of every 1,000 persons are suffering from the disease—speaks for itself. Four child hygiene physicians are provided for a population of 1,951,000. At least 100,000 public school children are victims of malnutrition, many of them being too weak to attend classes; yet when the federal government recently offered to throw open its warehouses and provide food for them, both the city council and the school board opposed such aid, on account of the trifling cost which they would have to bear in distributing the school lunches. Shamed by a newspaper "crusade," they hemmed and hawed and insisted on a "survey." It now appears that they are being forced to take some action, but it remains to be seen how far they will go.

And these are the men who rule the city of William Penn. They are the ones who not long ago had the Communist Party thrown off the ballot, because, they alleged, the Communists sought "to overthrow the government by force and violence." Under their regime, violence has become a commonplace of our daily lives. The government of Philadelphia was overthrown half a century ago. It is about time that it was being restored; and there are signs that it is going to be, as the anti-Hitler forces gather strength, and as they come fully to realize that corruption and appeasement go hand in hand.

We will not put up with the "Scoogle" forever.

SAMUEL PUTNAM.



"Have you seen Ham Fish around?"

A LAWYER LOOKS AT THE BROWDER CASE

A legal memorandum discussing precedents in American jurisprudence for executive action. The attitude toward other passport cases. Why he should be freed.

HUNDREDS of thousands of Americans have put their signatures on petitions urging the freedom of Earl Browder. Every category of the people is represented in the growing demand for his release: trade unionists, public figures, working men and women who feel strongly that something less than the national tradition of fair play operated in this case. They urge that executive action right the injustice that has been done. Therefore, it is appropriate at this time to examine the tradition of executive action to ascertain how it applies in the Browder case.

Earl Browder, secretary of the Communist Party, was sentenced to four years in a federal penitentiary on the charge that he had violated—on two counts—the provisions under Section 220, Title 22, of the United States Code. Contrary to a cultivated misconception, no issue of false passport was involved. The use of the passport in 1937-38—the period in question—was deemed criminal only because Mr. Browder, when applying for a passport in 1934, used the word “none” in replying to a question on the application blank in a way which was later construed to mean that he had never had a passport. This was admittedly the sole charge. The passport he was penalized for using was not false or defective, and this is admitted. No issue of moral turpitude was raised against him; and the government conceded that no question of moral turpitude was involved.

Although no one was harmed, and the government itself conceded the absence of any moral turpitude, a sentence was imposed that far exceeds any penalty in comparable or even graver cases, including passport stealing and outright forgery. Normally a case in the category of petty offenses drawing suspended sentences or somewhere between thirty and ninety days, Browder was given the incredible sentence of four years and \$2,000 fine.

The four-year sentence is the total of two terms of two years each (i.e., on each of the two counts) which were directed to run consecutively rather than concurrently. This in itself is a shocking departure from settled judicial policy in imposing penalties upon multiple counts in an indictment. Where the circumstances are as closely connected in origin, character, and commission as in Browder's case, the long established practice is to treat them for purposes of punishment as a single offense. This is done by prescribing that separate terms, if imposed at all, run concurrently and not consecutively, even though in form the indictment alleges separate counts. The Browder case was unquestionably within this principle of rudimentary justice. Here was the same passport, issued upon the same application, containing the same declaratory item in question and used, though at different times, in

precisely the same way. Yet, in disregard of the settled policy governing imposition of criminal sentences, the two-year terms—each grossly excessive by every unbiased standard—were directed to run consecutively.

Contrast this anomaly with the case of *Ulmer vs. United States* 219 Fed. Rep. 641, 134 C.C.A. 127. The defendant testified falsely three different times during bankruptcy proceedings. The last occasion was a week after the first two. He was indicted for perjury upon three separate counts. Reversing consecutive sentences upon each count and holding that all three acts constituted but one offense, the Circuit Court of Appeals sharply remarked, “. . . this conclusion seems to us inevitable, as one of practical necessity. The contrary would lead to the unthinkable result that if a witness had testified twice on the



same occasion to the same thing, and had been tried for perjury on the first statement and acquitted, he could still be tried and convicted upon the second statement.” (219 Fed. Rep. at p. 647.)

The exceptional severity of the two-year term upon each count and the harsh direction that the terms run consecutively have combined to produce a judicial enormity which, so long as Earl Browder remains imprisoned, is a continuing reproach to American justice. It is for just such a situation that the power of executive clemency was designed. Its prompt exercise in this case would be an act of justice.

The President's clemency power is derived from Article 2, Section 2, of the Constitution. “The President shall have power to grant reprieves and pardons for offences against the United States, except in cases of Impeachment.” It is amplified and implemented by a statute enacted in 1909, i.e. Section 568 of Title 18 of the United States Code:

Pardoning power. Whenever by the judgment of any court or judicial officer of the United States, in any criminal proceeding, any person sentenced to two kinds of punishment, the one pecuniary and the other corporal, the President shall have full discretionary power to pardon or remit, in whole or in part, either one of the two kinds, with-

out, in any manner, impairing the legal validity of the other kind, or any portion of either kind, not pardoned or remitted (R. S. E. 5330; Mar. 4, 1909, C. 321; 327, 35 Stat. 1151).

Earl Browder was “sentenced to two kinds of punishment,” i.e., to four years' imprisonment (corporal) and \$2,000 fine (pecuniary). The fine was paid in full, which leaves the “corporal punishment” clearly within the statutory scope of the President's executive power.

BUT how have the courts interpreted this clemency power? What are its adjudicated scope and purpose? And, above all, what have been the criteria of its exercise, applicable to the circumstances of the Browder case? For this power, like every other under our constitutional scheme, has been shaped and conditioned by its experience in practice. The positive result has been at least the outline of a policy and, on the negative side, the decisive rejection of anything like merely personal prerogative. “A pardon in our days,” wrote Mr. Justice Holmes for the unanimous Supreme Court in 1926, “is not the private act of grace of an individual happening to possess power. It is a part of the constitutional scheme.” (*Biddle vs. Perovich* 274, US 480, 486, 47 Sup. Ct. 664, 71 Law. ed. 1161)

This had not been so always. In fact, Holmes here was pointedly rejecting Marshall's view of a century before when the old man—Federalist to the end—imputed to the executive pardoning power virtually all the attributes of royal prerogative. “A pardon,” he wrote in 1833, “is an act of grace, proceeding from the power entrusted with the execution of the law. . . . It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court.” (*United States vs. Wilson* 7 Peters 150, 160-161)

But to return to the Biddle case, Mr. Justice Holmes goes on to expound the high public purpose of the presidential pardoning power under the Constitution:

“When granted [i.e. a pardon], it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed.” (274 US at p. 486)

Two years before the Biddle case, Chief Justice Taft defined the purpose of the President's clemency power more explicitly, if less profoundly, than Holmes. “Executive clemency,” wrote Justice Taft in 1924, “exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstance which may properly mitigate guilt. To afford a