



Harvard Law Record

Castro Here Saturday

Larson Speaks on Law Day

Christian Unity Appraisal



278 Applicants Reject Harvard

More Swift & Erie

Harvard Law Record

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CALENDAR

Saturday, April 25

The FEDERAL TAX INSTITUTE program considering Subchapter C of the Internal Revenue Code (relating to taxation of corporations and their stockholders) will be held at John Hancock Hall commencing at 9:30 a.m.

Fidel Castro will speak at the HARVARD LAW FORUM on the Cuban revolution.

Sunday, April 26

The Hon. Paul M. Butler, Chairman, Democratic National Committee, will speak on "Human Rights for All Americans" at the FORD HALL FORUM, Jordan Hall, 8 p.m.

Friday, May 1

The 3L BEER PARTY will be held, weather permitting, in front of the World Tree from 4 p.m. to 7 p.m. In the event of inclement weather, it will be held in Harkness Commons. Judge Magruder will act as master of ceremonies and Professor Leach will perform. Students interested in playing in the Dixie band should contact Dick Plotka.

Letters

To The Editor:

In the March 26, 1959, issue of the RECORD, you reprinted some comments from students on the question of whether a course in Evidence should be required. I can assure you as a lawyer with 10 years of general and administrative practise in Washington, D.C. that there is no more important course in the entire curriculum at Harvard. The basic principles of evidence that I learned from Professor Morgan have stood me in good stead almost every day of my professional life. Whether I am appearing in a trial court, an appellate court, before an administrative agency, or negotiating with private parties or Government officials, the laws of evidence invariably come into play.

The importance of evidence as it is taught at Harvard is constantly brought home to me as I watch lawyers who have not had the bene-

(Continued on page 15)

Rebels Visit Law School Forum

The Harvard Law School Forum will present an address by Fidel Castro, Premier of Cuba, this Saturday at 8:30 p.m. at Soldier's Field.

Dr. Castro is on an official trip to the United States. He will arrive in Boston that afternoon accompanied by 36 advisers and staff members. Among those traveling with the erstwhile guerilla leader are the Minister of Finance; the Minister of the Treasury; the president of the National Bank of Cuba; the premier's financial adviser; a medical officer; six Cuban guards; fifteen television and newspaper people from Cuba; Seniorita Celia Sanchez, the premier's personal secretary, who was with the rebel forces when they were hiding in the forests of the Sierra Maestra; and the wives of some of the ministers. Four U.S. State Department officials are also with the party.

To facilitate the Forum presentation, the organization has been in daily communication with the State Department Security Service in Boston. The Federal Bureau of Investigation is also cooperating in the handling of Dr. Castro's visit to Harvard. Seven Security

men have been assigned to the premier during his visit here.

For the occasion, 150 Policemen including Harvard, Cambridge, mounted, and plain-clothesmen, will be on duty at Soldiers Field. Dean McGeorge Bundy of the University will introduce Dr. Castro to the audience.

The program will have complete local and network radio coverage. Representatives of national magazines, newspapers, and the wire services will be present.

Dean William S. Barnes, Director of the World Tax Series, will act as official University representative during Dr. Castro's stay in Cambridge. Dean Barnes will meet the group in New York and accompany them here.

Negotiations with the Castro government began last January, according to John Samuels, 2L of Galveston, Texas.

"In the first place, Fidel Castro wanted to come to Harvard," he said. He was contacted by the Forum with the assistance of other students who were associated with members of the revolutionary movement.

Theologians Appraise Christian Unity Prospects

Christian unity was the theme of the Harvard Law School Forum's program Friday evening in the Ames Court Room. The first speaker, the Rev. Douglas Horton, Dean of the Harvard Divinity School, sketched the historical outlines of the ecumenical movement. Beginning in 1910 with the formation of the International Missionary Council, and followed by the Faith and Order Movement and the Life and Work Movement (The last two have since merged into the World Council of Churches), many Protestant sects, of which there are more than 250 in the United States, have been working toward "organic union." Dean Horton, in calling for reunion, warned that one must be honest about the reasons that separate the sects; often theological reasons are given for divisions that are based entirely on social antipathy.

Dean Horton was followed by Father Gustave Weigel, S. J., Professor of Theology at

Woodstock College, Woodstock, Md. Father Weigel discussed three proposed methods of union; union by conversion, union by compromise, and union by comprehension. He perceived serious obstacles under all three approaches. He submitted that conversion is unrealistic, that compromise erroneously implies that men rather than Christ can determine what is the true faith, and that comprehension (each church retaining its distinctiveness but admitting the validity of particular rites common to all) would not produce the organic unity sought.

However he suggested that a union based on service to mankind in need, characterized by Charity, was desirable and attainable. He concluded that any other kind of union would only be possible between the "middle of the road" Protestant sects.

The final speaker, Professor Julian V. Casserley of the General Theological Semin-

ary in New York City, attempted to place the problem of Christian unity in broad perspective and insisted that "schism has become an intellectual impossibility." However, Professor Casserley warned, Christian reunion must not be a "reunion by frivolity;" it must not be an easy reunion of those who have no very great theological beliefs ("Even schism is better than this."). Professor Casserley's formula for Christian unity: conversion, not of one Christian to the religion of another, but "of all of us to the relatively undivided primitive church."

— Levinson

Republican Leader Delivers Law Day Speech, May 1.

This year's Law Day speaker is Arthur Larson, author of the best selling book, *A Republican Looks at His Party*, and Professor of Law at Duke University. His subject will be "World Rule of Law — The Time Has Come." This second annual commemoration of Law Day under the sponsorship of the Student Bar Association will take place in the James Barr Ames Courtroom at 2 p.m. Friday afternoon, May 1.

A graduate of Augustana College, Sioux Falls, S.D., he holds A.B. and A.M. degrees in jurisprudence from Oxford. Formerly he served as Under Secretary of Labor. He has practiced law in Milwaukee, Wisc., and served on the faculty of the law schools of the University of Tennessee and Cornell. He was dean of the University of Pittsburgh Law School.

Thomas More Speaker Reviews Education's Purpose

Savoring things of both the spirit and the flesh in a fashion worthy of its patron, the St. Thomas More Society held its annual banquet at the Harvard Club, Wednesday night, April 15.

New officers presented to the diners were Lawrence G. Bodkin, Jr., 2L of Brooklyn, N.Y., President; Peter J. McGinn, 2L of Riverside, R.I., Vice-President; Paul M. Caron, 1L, of Arcadia, Cal., Secretary; and James H. Manahan, 1L of Madelia, Minn., Treasurer.

Dom Aelred Graham, Oxford educated Prior of Portsmouth Priory in Rhode Island, addressed the Society on the subject of Catholic university education. Working with the

analysis in Henry Cardinal Newman's *The Idea of a University*, Dom Graham reemphasized that a university is not a research laboratory for the education of mathematicians and chemists but is an institution whose prime purpose is to develop the powers and faculties of the mind, remove common inaccuracies and develop sound mental habits. The Benedictine schoolman thought Catholic colleges well equipped to instill a healthy skepticism and a critical detachment from the problems and issues of the day, so vital to wisdom in Newman's sense. Graham's full text will appear in *Commonweal* on April 24.

— McGinn

Army Offers Commissions

Colonel DeVere Armstrong, Professor of Military Science and Tactics, issued an invitation for law students to investigate opportunities in the Reserve Officers Training Corps. Students who have prior ROTC training in any branch or prior military service can receive a commission at graduation if they complete the requirements of the Harvard Department of Military Science.

According to Col. Armstrong, each law student's status is determined individually. In most cases a student is required to take a year and a half of classroom instruction, to drill one afternoon a week for two years, and to attend six weeks summer training at Ft. Devens, Mass.

Under present Army regulations, a law graduate who has been commissioned can delay his active service requirement until after he has taken a bar exam. Active duty is for either six months or for two years, depending upon both the graduate's choice and Army quotas.

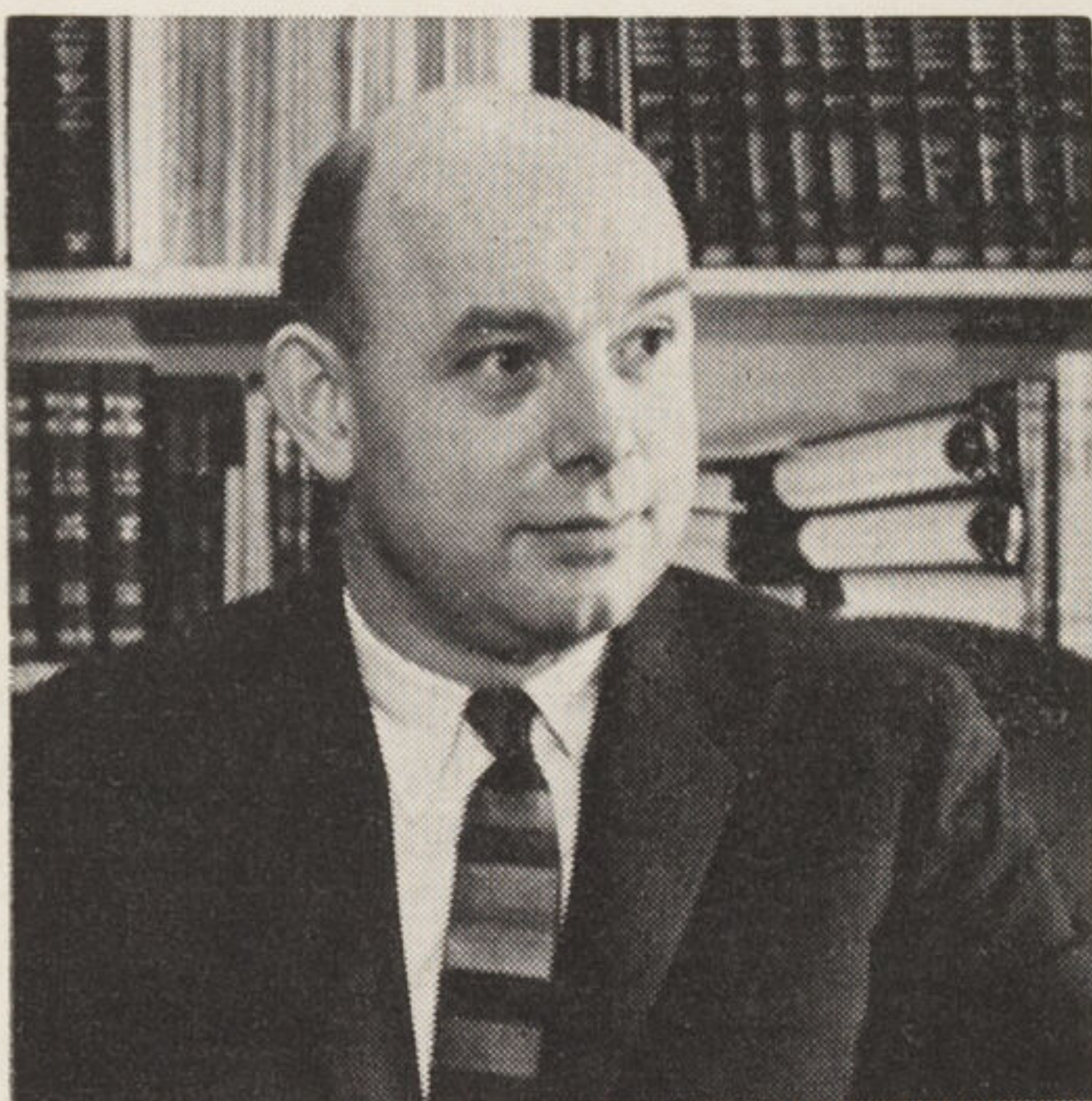
Harvard's ROTC unit can commission graduates in any branch of the Army, but normally does not give commissions in the Judge Advocate General Corps, which requires three years of active duty.

International

Zoltan M. Mihaly, 2L of Cambridge, Mass. has been elected Chairman of the International Law Club for the 1959-60 school year. The other officers are William Gray, 2L of New York City, Vice-Chairman; Nazeeh S. Habashy, 2L of Cairo, Egypt, Secretary; and Herbert H. Kaiser, Jr., 2L of Monticello, Ill., Treasurer.

278 Applicants Rejected Harvard

Each year the Law School accepts about 800 applicants for admission to the first year.



Louis A. Toepfer

Consistently, 33 to 35 percent of the accepted students choose not to come to the Law School.

Of the 128 accepted students who entered other law schools, larger scholarships was given as the reason for the choice by 64 (50 percent) of the students. The Law Schools offers 75 scholarships to entering students. This covers about 15 percent of the class. Louis A. Toepfer, vice dean, observed that many of the students who accepted the scholarship grants at other schools were not aware of the school's policy to make financial aid available to virtually all second and third year students in need of such help.

The Admissions Office has compiled information on the accepted applicants who withdrew before registration. The office sent out letters to the 278 students who were accepted, but did not register. Replies were received from 259 (93 percent). A summary of the information obtained from the correspondence is presented in the following table:

PRESENT STATUS OF APPLICANTS WHO DID NOT REGISTER IN 1958

The following summary was compiled from letters and reply postcards sent to all 1958 applicants who were accepted and withdrew.

Total accepted and withdrew	278
Number of replies	259
Per cent replying	93%

ACCEPTED AND WITHDREW

Present Status	Number	Percent	Intend to Reapply
Other law schools	128	49	7
Military service	47	18	43
Other study	55	21	31
Employed	16	6	11

Reasons for Attending Other Law Schools

	Yale	Columbia	Penn.	Mich.	NYU	Chicago	Stanford	Va.	Others
No. at School	44	16	5	7	14	8	9	4	21
Preferred									
Curriculum	5	—	—	—	—	—	—	—	1
Size	25	2	—	—	1	2	2	1	3
Teaching Meth.	10	1	—	—	—	—	—	—	—
Closer to Home	6	2	1	—	1	1	2	2	2
Lower cost	—	3	2	2	1	2	1	2	5
Larger scholarships	15	9	2	3	11	6	7	2	9
Other reasons	8	3	—	2	—	1	3	1	2

Harvard Sets Work Record

"There is no other school in the world where students are asked to work so hard as they are at Harvard; and nowhere else do students seem so anxious to study." So spoke Zoltan Mihaly (rhymes with "Le-high") 2L of the Law School. After a distinguished career as an Eastern European legal scholar associated with law schools in Budapest, Prague, Vienna, Warsaw, and Moscow, Mr. Mihaly is presently studying to qualify as a practicing lawyer for the second time. He received his first degree from Budapest's Pazmany Peter's School in his native Hungary which he left with his wife in 1956 in the exodus following the abortive revolution of that year.

When Mr. Mihaly left Hungary he was abandoning a highly successful career as a judge. During the last years he had served as a justice on one of the two specialized supreme courts of the country — The Department of Principle of the Central Arbitration Commission; and he was highly valued among the younger officials of the government.

Although his prospects in government service were bright, he successfully avoided joining the Communist Party and became active in a lawyer's resistance organization, connected with Pazmany Peter's. It was part of a nationwide network of such groups that sought to bring autonomy and democracy to Hungary by applying pressure in strategic areas. Such organizations comprised thousands of people like Mr. Mihaly who had been personally successful under the Communist regime but were not satisfied with the situation of the country as a whole. "In Eastern Europe there is a great tradition of staying close to the people; and when the people are unhappy, their leaders cannot be happy."

Mr. Mihaly's success was owed, in part, to a combination of fortuitous circumstances. He was born of working-class parents in

1927 in a city of Czechoslovakia called Bratislava. The city is located at the junction of four cultural areas, and when the young Zoltan played on the streets he communicated with his friends in German, Czech, Magyar and Slovakian, the last being very like Russian. After attending elementary school and gymnasium in Czechoslovakia, he left for Budapest and Pazmany Peter's in 1945. Five years later he graduated with highest honors and stayed on at the school as an assistant and then an associate professor for three years. His working-class origin, knowledge of Russian, and brilliant career in law school made him a model of the Communist dream of young Hungary, and in 1948, when, he became an arbitrator for the Central Arbitration Commission there were others besides Zoltan Mihaly who took great interest in his future.

Ringside Seat on Communism

In the Central Arbitration Commission, Mr. Mihaly had a ringside seat from which to watch the Communist legal and economic systems in operation. As an arbitrator he presided over controversies involving different state-trading organizations, and received a good deal of insight into the problems inherent in the Communist economy. When he was promoted to the Department of Principle he became a member of a group that decided certified questions framed by puzzled arbitrators; in this capacity he received invaluable experience doing research in Hungarian and foreign Communist law. He was also afforded the opportunity of mingling socially with his opposite numbers in other Communist countries, through which associations he had a chance to gain intimate knowledge of the situation in other jurisdictions. Mr. Mihaly has taken advantage of his valuable and unique background by writing a book on Communist law and several articles on Communist economy and law which are shortly to be published.

The Hungarian Revolt of 1956 was not the first taste of civil strife for Mr. Mihaly. He grew into a young man under the German occupation of Czechoslovakia, and in 1944 joined in a Nationalist revolt against the Nazis. Although the Nationalists were successful in driving out the demoralized German troops, they paid for their success with many human lives; Mr. Mihaly watched many childhood friends die from Nazi bullets while fighting at his side. "At the time, the Russian troops had marched to within thirty miles of us but hung back until the fighting was done. They preferred that the Germans be gotten rid of without risking any good Russian soldiers even though we were struggling against great odds. Also they wanted the Nationalist leaders to show themselves so that they could mark them for death once the Communists came into power."

Resentment Beneath Facade

Had anyone visited Hungary in April of 1956 they would have thought that the Communist regime was enjoying unshakeable popular support. The visitor would have found young people working efficiently as aspiring government officials and earnestly endeavoring to master the rigors of the "official" Russian language. But beneath the surface was a growing deep-seated resentment and yearning for freedom that pervaded the entire people. One of Mr. Mihaly's friends affected a loyal Communist veneer but was, in secret, fanatically pro-American. "On a table in the middle of his Budapest apartment sat a life-size bust of his great idol Abraham Lincoln. Had this been discovered he would have been immediately convicted of 'imperialist provocation'. As it was it was a source of great discomfort to his friends when they visited in his rooms." By October all of Hungary had become a tinder box of emotions, and when the spark came accidentally, revolt spread quickly and spontaneously. The resistance groups had no time to organize on a nationwide scale, but they did operate autonomously. One of the larger battles of the campaign was fought at Pazmany Peter's which was partially destroyed as a result.

By December, Mr. Mihaly could see that the future was not going to be healthy for the Revolutionary forces, and he resolved to take his wife Clara and leave the country.

On December 2nd they left Budapest with four friends for a farm about twenty miles from the Austrian frontier where they had arranged to meet someone who was to guide them across the border. After four days of planning, the group set out on the night of December 6 on a trek that comprised twelve hours of alternately pushing through snow-covered tangled forest and hiding from the Russian platoons that patrolled a border already guarded by dogs, barbed-wire and machine-guns towers. The trip was particularly hard on Clara Mihaly who was then in her sixth month of pregnancy with the Mihalys' son Stephen. They reached Austria at five o'clock a.m. on December 7 and were overwhelmed with happiness and relief. "It was the most marvelous feeling to see the warm glow of lights from the homes and churches of the peaceful villages. You cannot appreciate the feeling of release we had at that moment unless you have lived with the terror of Communist rule."

After three weeks of enjoying the hospitality of new-found friends in Vienna, the Mihalys received word that they could come to America. On Christmas Eve they left Bremerhaven on a U. S. warship, "There were many tears . . . However unfree, Hungary was our home," and arrived in Brooklyn and Camp Kilmer on January 7. After only a few days the Mihalys had received several offers for work or study among which was one from the Harvard Law School which was, predictably, accepted. However, quite unpredictably Mr. Mihaly chose not to pursue graduate study in Comparative Law or Russian Studies, but rather to begin his legal career anew by working for his LL.B. This he has done for the past two years as a Rockefeller Scholar for the first year and a half, and now as a John Hay Whitney Fellow.

See Merits on Both Sides

Having studied to become a practicing attorney under two different legal systems, Mr. Mihaly has formed definite ideas on the comparative merits of the systems and their schools. He feels that the civil law is more rational and consistent, than the common law, but that the latter is much richer and more resourceful as a result of its very complexity. "The trust is one example of a valuable institution that is the result

of the common law's ability to meet new situations by developing new devices. Such a thing as a trust is unknown to the Civil Law." Mr. Mihaly has found that the differences in the systems are reflected in their respective schools. At Pazmany Peter's, principles of law were learned by lecture and textbook, and the overall attitude was one of treating the law as a science. The closest one came to using the case system was the presentation in class of "hypos" upon which the students would "play the piano," i. e. test out the principles upon every variation of the fact situation. Since attending Harvard, Mr. Mihaly has become a devotee of the case method which he feels gives one a greater appreciation of the law in action.

Mr. Mihaly is especially impressed by the Law School, particularly so by the quality of its teachers, curriculum, and physical facilities. His interest is piqued by the variety and scope of the subjects offered, although he feels there is insufficient emphasis on comparative law. And he is sure that there is no school in the world which can boast of anything to compare with our library,

dormitory system and the tunnel, which he feels compares "very favorably with the Moscow subway."

While attending law school in Budapest, Mr. Mihaly was "playing the piano" also at a local conservatory of music of which he is a graduate. Music has always been an important part of his life, and he has as strong a feeling for Bach, Beethoven and Brahms as for Blackstone, Brandeis and Barbeyrac. Since he has been in America, he has developed a strong affinity for jazz which he enjoys quite as much as his favorite classics; he confides that "Satchmo" is the only other musician who can give him the feeling that Bach does. Among his other American-developed interests are basketball and ping-pong for which he has developed such an insatiable appetite that he indulges daily in the basement of Richards Hall.

Mr. Mihaly's plans for the future include active practice for several years after which he intends to teach and do research in comparative and communist law. "But," he hastens to add, "first I must graduate."

— Baron

Gallery

Among the Visiting Professors of Law this year is a distinguished representative of a British university. Professor Ronald H. Graveson ceased to be Dean of the Faculty of Laws, King's College, London, in order to return to Harvard, where he was Gregory Fellow in 1934-35. He received his S. J. D. degree from Harvard in 1936. This year he is teaching courses in Conflict of Laws and Jurisprudence.

Professor Graveson brings to his service at Harvard a strikingly broad background in the two fields he is teaching and in the related fields of Comparative Law and International Law. He has served in a number of teaching positions; has qualified professionally and practiced first as a solicitor and subsequently as a barrister; worked in a legal capacity in the armed services in World War II; and since has served on numerous committees and in conferences, both British and international, in his fields of specialization. He is also Joint Editor of *The International and Com-*

parative Law Quarterly and is author of various books and articles in his field.

Through his achievements in the international field, Professor Graveson is currently a member of the International Committee of Comparative Law (UNESCO), on which he and Professor Yntema of Michigan represent the common law countries. Asked to evaluate the opportunities in the International Law field for fledgling lawyers, Professor Graveson observed that there is a tendency for international institutions to increase in number, "a striking application of Parkinson's Law," and as a consequence there are reasonable prospects for a career for one interested in the field. He noted, however, that there are two essential qualifications for the field, a reasonably good knowledge of at least one foreign language, "not necessarily Russian", and "being a good lawyer." "The field demands a good deal, not only in law, but in general intelligence and quick thinking."

British Branch President

During the last few years, Professor Graveson has been instrumental in organizing the United Kingdom branch of the Harvard Law School Association, and was recently elected its President. "That's one of the risks of being away at election time, one's chances of gaining office are materially increased." The United Kingdom branch has a membership of 25 or 30 people, which is



about one half the number who could qualify to join.

Asked his impression of changes in the School since he was here last, he noted that the faculty was much bigger and that there were many new faces. "Perhaps the smallest change is in the students. They talk, study, and live in much the same way, and consequently the other changes are less significant because the students do so much to put character into the Law School itself."

Teaching Very Different

Comparing teaching methods here and abroad, Professor Graveson commented that there was "a striking difference in treatment." In England lectures are given to classes sometimes approaching in size those here, but in conjunction with the lectures something like the case method is used in much smaller groups of about ten students. "The system here I like. I find it an exciting experience. The course of the class on the case system is less predictable than under a

lecture system, and for that reason more interesting to the teacher."

Foresees Change in England

In England, neither solicitors nor barristers are strictly required to undergo academic training, although most of them in fact attend a university. The requisite professional training which follows is substantially different for the two. He remarked that the degree of professional specialization here works out about the same, however, due to our large firms. He said that he felt that there might be some adjustment in the future between the two sides in the English system, because for most of the new members of the Bar there was not enough work.

Professor Graveson confided that his purpose in returning to Harvard was "to pay a debt." "The debt I'm paying is the great benefit of being here as a student, which is something I've always remembered. I'm particularly pleased to see that Dean Pound and Judge Hudson, both of whom I owe so much, are still here. Also, my course in Administrative Law from Professor Frankfurter taught me a lot about England. My one regret is that Professor Beale, under whose supervision I wrote my S. J. D. thesis, is no longer alive."

Developed Wide Interests

When Professor Graveson first came to Cambridge in 1934, his varied interests led him to enroll in a course in Chinese Art at the Fogg Museum. "I think the best way to approach the law is with a balance of interests." This early connection with the Fogg Museum has lately ripened into an interesting avocation. "A lawyer must have wide interests. One of mine is an interest developed last Fall when I came upon part of the Winthrop bequest to the Fogg Museum. Part of the bequest was a collection of antique clocks, and after chatting with the Director of the Museum, I undertook a survey of them. The survey is almost complete, and I hope that some outstanding clocks from the collection will be exhibited."

Professor Graveson, who holds LL.D. degrees from the Universities of London and Sheffield and a Ph.D. from London is currently engaged in writing in his fields.

— Skornia

From Swift to Erie - - The Real Brooding Omnipresence

Part II

Last week Professor Dean traced the genesis of the Swift doctrine and its flowering under Justice Story's hand; how it was immediately placed under fire by such formidable opponents as Holmes and Warren; and how the dissents of Stone, Brandeis and Holmes in the Black and White Taxicab Co. case was soon transformed into a majority opinion in Erie. He also noted the events which led to Brandeis' extreme position on the constitutional issue and finally discussed the possibility of an eventual return to Swift.

This week Professor Dean turns to a consideration of the personalities and influence of the Harvard Law School men who were involved in this momentous line of cases.



Louis D. Brandeis

by
HOWARD E. DEAN

A curious and neglected fact about the dramatic story of the rise and fall of *Swift v. Tyson* is that a significant thread ran through it linking the lives of most of its protagonists by a common bond, for they had studied or taught, or both, at Harvard Law School and had retained close ties with it until the end of their lives:

All can grow the flower now,
For all have got the seed.⁴⁹

Mark of a New Era

Mr. Justice Story, who graduated from Harvard College in 1798 and had gone on the Supreme Court in 1811, had declined Harvard's offer of the Royal Professorship of Law in 1828, but the next year had accepted the Dane Professorship, a post which he held until his death in 1845.⁵⁰ It is evidence of his great energies that he also remained on the Supreme Court during this period. In a letter to Richard Peters, the Supreme Court reporter, Story said of his appointment:

I have been driven to accept the Dane Professorship of Law in Harvard University . . . If you read the third number of the *American Jurist* you will see the objects and nature of the foundation. They show a liberal mind. I mean to lend all my

leisure to accomplish this noble design.⁵¹

Later he explained his reasons for undertaking his new duties in these words:

I have been long persuaded that a more scientific system of legal education . . . is demanded by the wants of the age and the progress of Jurisprudence. The old mode of solitary unassisted duties in the Inns of Court or in the dry and uninviting drudgery of an office is utterly inadequate to lay a just foundation for accurate knowledge in the learning of the law.

It is for the most part a waste of time and effort at once discouraging and repulsive. It was, however, the system in which I was myself bred; and so thoroughly convinced was I of its worthlessness that I then resolved if I ever had students I would pursue an opposite course. It was my earnest desire to assist in the establishment of another system which induced me to accept my present professorship in Harv. Univ., thereby burthening myself with duties and labors which otherwise I would gladly have declined.⁵²

One of the members of the committee elected to inform Story of his appointment to the Law School was Charles Jackson, Associate Justice of the Supreme Judicial Court of Massachusetts, and grandfather of Mr. Justice Holmes. Holmes was always very proud of

Judge Jackson and once made this quaint remark to Sir Frederick Pollack, who had complained of a siege of the gout: "A suggestion of gout strikes me as a mark of a good lawyer. My grandfather had it and many of his descendants, though I have been free."⁵³ But perhaps Sir Frederick was already reconciled to his affliction, for, in contrasting the robust common sense of the Anglo-Saxon with the aesthetic sensitivity and fine taste of the French, he had once quoted these lines:

Nature which gave them the gout
Only gave us the gout.⁵⁴

Story's appointment marked a new era in the life of the Law School, for with it came the change from a local to a national institution: "it was the fame and ability of Story which then gave to the Harvard Law School its impulse and which established its national character."⁵⁵ Some indication of his devotion to the Law School may be gathered from a letter he wrote from Washington in 1832 to Professor Ashmun, complaining that he had never known a winter to pass with "so few refreshing cases," and confessing, "I would rather work in

the Law School than here."⁵⁶ A former student wrote after a visit to Story: "In speaking of his regard for the Law School, the Judge said that 'next his own children were his foster children,' and I really believe that he spoke as he felt."⁵⁷

In 1833, in a letter to his friend Charles Summer, Story made this comment about the Law School: "I would to God, that I might be able to permanently associate my name with it as a perpetuity not forbidden by the law . . ."⁵⁸ This fervently desired association was memorialized by Story's great legal treatises which were the direct outgrowths of his professorship, for by the terms of his appointment it was provided that his law school lectures should be revised for publication. Commenting on this requirement, Story wrote to Mr. Justice Bushrod Washington, "Mr. Dane expects my commentaries on public, maritime and commercial law to fill when published *four goodly volumes*. What think you of my courage to undertake such a task?"⁵⁹

One of the students in the Law School under Story was the senior Oliver Wendell Holmes who once explained to a friend that he had thought earlier of going away to study law, "but that since Judge Story and Mr. Ashmun have come, the Law School is so flourishing that I have thought it best to stay where I am."⁶⁰ Not long afterward, however, Holmes, who later abandoned law for medicine wrote:

I will tell you honestly that I am sick at heart of this place and almost everything connected with it. I know not what the temple of law may be to those who have entered it, but to me it seems very cold and cheerless about the threshold. . . .

He added a poem which contained these lines:

Judge Story's bought a horse in town.
The Law School every day grows bigger . . .

Referring to his father's Law School studies, O. W. Holmes, Jr. once remarked that his father had "tasted our masculine diet, before

seeking more easily digested, if not more nutritious, food elsewhere."⁶²

Sherman and the Young Officer

John Chipman Gray, who followed Mr. Justice Field as an underminer of the *Swift* doctrine, had graduated from Harvard Law School in 1861, and, appropriately, had been Story Professor there from 1875 until 1883. In 1883 he was appointed Royall Professor and served in that capacity until his retirement in 1913. It has been said of Gray that "he was both first and last of the great teachers who surrounded Langdell,"⁶³ and that more than once "he had been offered a judgeship but always declined to sever his connection with the Law School."⁶⁴ On the occasion of his retirement in 1913 he wrote a letter to his last class in Property III in which he said:

Property III has been a perpetual delight to me, never wearisome. I have always felt that on both sides it was not an attempt to show how much we knew, or how smart we were, but that we were fellow-students trying to get at the bottom of a difficult subject.⁶⁵

The great English legal histori-

an, William Holdsworth, described Gray as "a great lawyer, a greater teacher, and . . . a great legal

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philosopher," and said of his famous treatise, *The Rule Against Perpetuities*, that, "with the possible exception of Judge Story, no book has been so frequently cited in an English court as Gray's *Perpetuities*."⁶⁶ Holmes regarded this book as "worthy of the great masters of real property law,"⁶⁷ and it is interesting to note that Holmes and Gray were awarded the LL.D. degree by Harvard on the same occasion in 1895.

In a tribute to Gray's memory, Holmes said:

It will be seen that I am trying to describe a master . . . who was listened to with equal respect by clients, by courts, and by all students of the law and at the same time an extraordinary and delightful man, whose conversation gave equal pleasure to specialists and men of the world.⁶⁸

Holmes also remarked of Gray that

it is worth recalling that when he was in the army he was the first officer to meet Sherman at Savannah after the march to the sea, and that he is referred to in Sherman's report of his operations as "a very intelligent officer whose name I have forgotten," a striking tribute to one who had barely reached manhood from the great commander at the crowning moment of his success.⁶⁹

Amusingly enough, Holmes, who had a very strong sense of duty in his choice of leisure-time reading, remarked enviously on several occasions that he almost wished that he could attain the lofty position of Gray and Henry James who thanked God that they had ceased to read to improve their minds.⁷⁰

Mr. Justice Frankfurter, in expressing his appreciation of the

lectures in which Gray launched his relentless attack on Story, has said that these lectures, "like vintage Burgundy, were given to the world in this wise and delicious little volume *The Nature and Sources of the Law*."⁷¹ But it should be noted that this kind of estimate of Gray's work has recently been impatiently thrust aside by Professor Crosskey, who has dealt as severely with Gray as Gray had done with Story. Describing Gray as "a professor in the Harvard Law School, well known as an expert on certain narrow and esoteric branches of property law,"⁷² Crosskey has said of his attack on *Swift v. Tyson* that Gray was "very obviously without any real knowledge of the subject on which he had assumed to speak."⁷³ Alluding to Gray's remark that Story's doctrine was a jurisprudential anomaly which squared neither with the theory that judges make law, nor with the theory that they merely discover it, Crosskey has said that Story certainly did not commit "the ridiculous error" of founding his decision as to the proper meaning of the Judiciary Act upon "any abstruse notion of juristic metaphysics." That, says Professor Crosskey caustically, Story "left for the naiveté and ignorance of later times."⁷⁴

Considering, then, the obvious superficiality of the views expressed in *The Nature and Sources of the Law*, it would be only natural to suppose that the book could have attracted little attention when it appeared, and have had little influence on opinion among lawyers, on the subject it

assumed to discuss. But exactly the contrary was true.⁷⁵

In the Grand Manner

Oliver Wendell Holmes, Jr. had graduated from Harvard Law School in 1866 and returned nearly twenty years later as Weld Professor of Law. Prior to this, however, he had taught Constitutional Law at Harvard, first in the College and then in the Law School. His friend Brandeis had been instrumental in securing Holmes for the professorship, having induced a former student, William Weld, to contribute a large sum of money toward the establishment of the

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Weld chair.⁷⁶ Although Holmes left the Law School only a year later to go on the Supreme Judicial Court of Massachusetts ("It was a stroke of lightning which changed the whole course of my life."⁷⁷), he had evidently enjoyed his professorship, for in August 1883 he wrote to his friend Pollock, who had recently been elected Corpus Professor of Jurisprudence at Oxford: "It must, I know by experience, be delightful and stimulating to expound to a lot of intelligent young men old enough to have serious opinions."⁷⁸

On the occasion of the founding of the Harvard Law School Association in the fall of 1886, during the celebration of the 250th anniversary of Harvard University, Holmes delivered an address on "The Use of Law Schools" in which he paid tribute to the Law School, saying that it was no wonder "that the graduates of Harvard Law School should wish to keep alive their connection with it,"⁷⁹ and adding that its business is not merely "to teach law or to make lawyers. It is to teach law in the grand manner, and to make great lawyers."⁸⁰ Commenting on the ardent cooperation of teacher and student from which had sprung the legal treatises which had "marked and largely made an epoch,"⁸¹ Holmes spoke highly of Story's contribution in its day, but he added that,

Story's simple philosophizing has ceased to satisfy men's minds. . . . No man of his or of the succeeding generation could have stated the law in a form that deserved to abide The law has got to be stated over again; and I venture to say that in fifty years we shall have it in a form of which no man could have dreamed fifty years ago. And now I venture to add my hope and my belief, that, when the day comes which I predict, the professors of the Harvard Law School will be found to have had a hand in the change not less important than that which Story has had in determining the form of the textbooks of the last half-century.²⁸

How right Holmes proved to be, and how amazingly prophetic this augury uttered forty-four years

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after *Swift v. Tyson* and fifty-two years before *Erie v. Tompkins*!

Pulitzer Prize

Charles Warren, whose *Harvard Law Review* article had thrown so much new light on the history of the Judiciary Act of 1789, had graduated from Harvard College in 1889, and had been a student at Harvard Law School from 1889 until 1892. He was engaged in law practice for many years in Boston, and then later in Washington, D. C. In addition to his practice and legal scholarship, he was long active in public service. He had served for six years as chairman of the Massachusetts Civil Service Commission, as assistant Attorney General of the United States from 1914 until 1917, and as a special advisor to the State Department in the early nineteen-thirties. On three occasions he was appointed by the Supreme Court as special master in cases involving Western states, and during World War II he was a member of the President's War Relief Control Board. In addition, he lectured on constitutional law and history at many American universities. He maintained a continuing interest in Harvard, serving as a member of the Board of Overseers, and later as President of the Harvard Alumni Association.

A prolific legal writer, Warren wrote many articles for law reviews, but he is probably best remembered for his Pulitzer prize-winning study, *The Supreme Court in United States History*, and for his valuable and illuminating *History of the Harvard Law School*

and of *Early Legal Conditions in America*. Unlike many scholars and teachers who may never learn whether their efforts have borne fruit, Warren had the great satisfaction of seeing that his work had a direct and acknowledged impact on our constitutional law, as in the article on the history of the Judiciary Act of 1789, and in the frequent citations by the Supreme Court of his study of the Court's history. In addition, his work formed the basis for congressional legislation dealing with espionage and sabotage in World War I.⁸³ Only three months before Warren's death in 1954, President Eisenhower, reacting to the Army-McCarthy hearings, had instructed the Secretary of Defense that the personnel of his department should not disclose official confidences or transmit documents in the course of congressional investigations. This presidential order was based on a memorandum prepared by the Attorney General, which in turn has been credited to a law review article written by Warren in 1930.⁸⁴

"Now I Have a Majority"

Louis Dembitz Brandeis entered Harvard Law School in 1875, graduating in 1877, and returned immediately for a year of graduate study. He was among the first

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groups of students to study under the new case approach inaugurated by the aptly named Christopher Columbus Langdell, who had become Dean in 1870. Of his studies at the Law School, Brandeis later said that, "those years were among the happiest of my life. I worked! For me the world's center was Cambridge."⁸⁵

After his graduation he was an energetic and loyal supporter of the Law School.

Brandeis' loyalty to the Law School stemmed from a deep sense of gratitude for what it had given him. It was more than an ordinary loyalty. In the years from 1880 to 1900, the Law School seems to have been Brandeis' chief interest outside of his profession; it was his first public work, his first crusade.⁸⁶

He helped Professor James Bradley Thayer collect materials for Thayer's course in constitutional law, and in 1882, the year Holmes joined the law faculty, he taught the course in Evidence. The notes taken by a student in this course were later borrowed by Holmes who is said to have been so impressed with them that he asked to be allowed to keep them.⁸⁷ Some time later Brandeis was offered an assistant professorship but declined, unwilling at that point to commit himself to an academic career. In 1893, just forty-five years before *Erie v. Tompkins*, he wrote a letter to President Eliot which, as Paul Freund has pointed out, foreshadowed strikingly the spirit of his opinion in *Erie v. Tompkins*.⁸⁸ Urging that the Law School offer a course on "the peculiarities of Massachusetts law," Brandeis said:

The school undertakes to teach in its other courses the general law, but the law of Massachusetts, while conforming in the main to the general law, has distinct individuality. Local customs, traditions and the peculiar habits of mind of its people have resulted in a spirit which is its own. This is manifested partly in its statutes, but even more largely in what may be termed its common law.⁸⁹

Brandeis was among the chief organizers of the Harvard Law School Association in 1886, a service which has been described as

his "greatest accomplishment for the school."⁹⁰ He was elected Secretary of the Association and was its early driving force: "his voluminous correspondence for the next decade shows that he was mainly responsible for its activities."⁹¹ In 1891, in recognition for his services to the Association, he was awarded an honorary Master's degree. Brandeis had also contributed money and advice toward the establishment of the *Harvard Law Review*, becoming its first secretary and trustee, retaining the latter post until his appointment to the Supreme Court in 1916. From 1889-90 and again from 1891-1919 he served as a member of the Visiting Committee of the Law School.

After he went on the Supreme Court, Brandeis continued his long and fruitful relationship with the Law School by having all of his law clerks selected for him "sight unseen" by Professor Felix Frankfurter, and six of them, Calvert Magruder, William F. McCurdy, James M. Landis, Henry M. Hart, Paul A. Freund, and Louis Jaffe, later returned to teach at the Law School.⁹² Paul A. Freund, Carl M. Loeb University Professor has said that, "within the confines of judicial office, Brandeis was an educator of the first rank. When he found that more than half of his clerks were engaged in teaching, he said with satisfaction, 'Now I have a majority.'"⁹³

The Great Oak

Three years after the death of Mr. Justice Holmes in 1935, and half a century after he had made his prophetic and aptly titled address, "The Use of Law Schools," at the founding of the Harvard Law School Association, the erosion of earlier legal doctrine proceeded to extinction,⁹⁴ (to borrow the words of still another Story Professor, Thomas Reed Powell), and an interesting and significant chapter in the history of American law came to a close in *Erie v. Tompkins*. With the exception of Mr. Justice Field, all of the leading

figures in this dramatic tale, Story, Holmes, Gray, Warren, and Brandeis, had been sheltered by the protecting branches of the Harvard Law School: "The leaves are falling as they have fallen in season and sometimes out of season, but the great oak of the Harvard Law School still stands — its deep roots nourished by noble tradition and high purpose."⁹⁵ Here, surely, was the real brooding omnipresence in this and many another story of men of law. "It is the crowning glory of this Law School," Holmes said, "that it has kindled in many a heart an unextinguishable fire."⁹⁶

Because of space limitations, footnotes are not printed. The RECORD will send them in mimeographed form to those readers who request them.

Letters

(Continued from page two)

fit of that training, or who have failed to study evidence, flounder about in trying to carry out their responsibilities in the judicial process. Believe me, Evidence should be a required course at Harvard so long as the Law School endures.

With good wishes, I am

Very truly yours,

Carl L. Shipley, LL.B. '48

To the Editor:

I was surprised by Mr. Samuel Storey's objection on page 14 of your March 12th issue to the new format. My own reaction and my wife's were precisely the opposite. It seems to us to make your publication more attractive and readable. In fact I showed a copy to the editors of the Cornell Law School "Forum" suggesting that they consider a similar change in the format of their own paper.

Sincerely yours,

Bertram F. Wilcox, LL.B. '22,
Cornell University

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