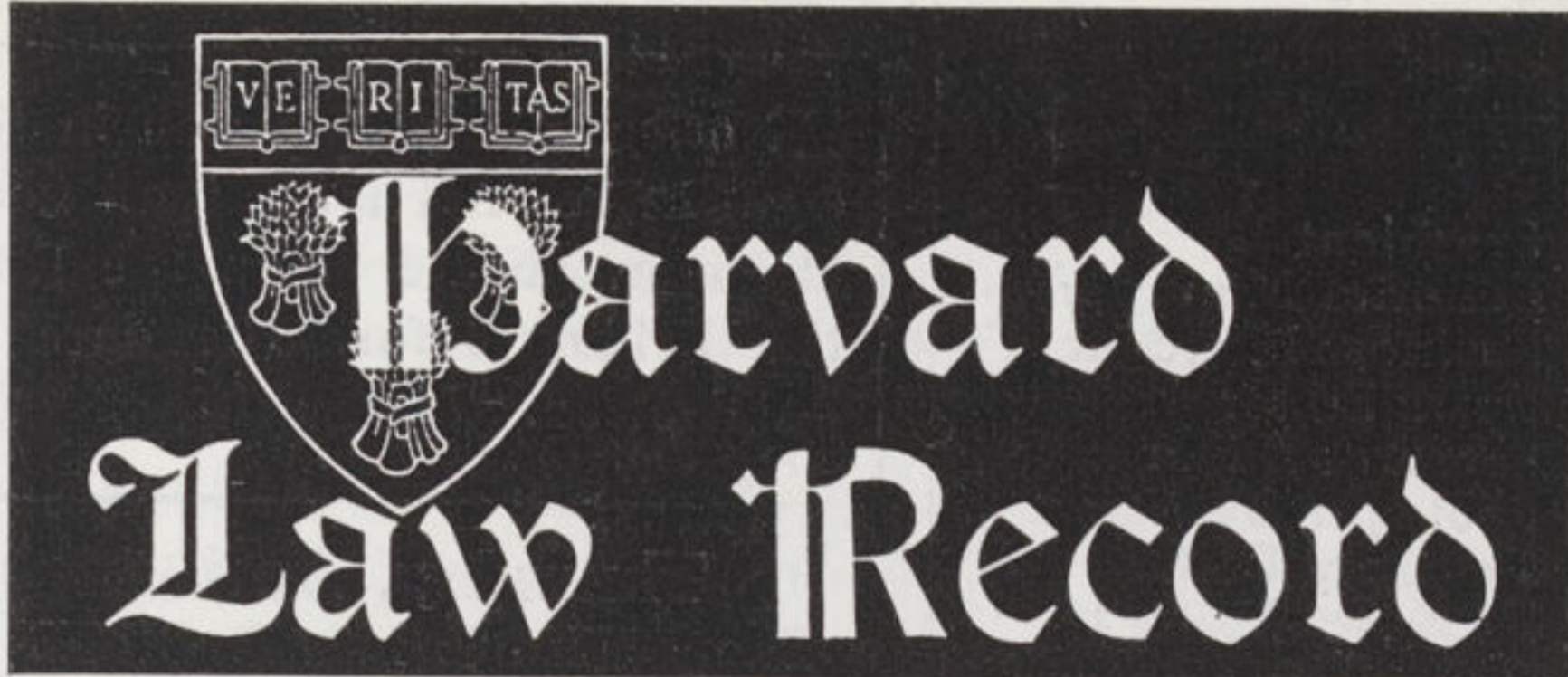


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International Administrative Tribunals

A recent meeting of the International Law Club featured Mr. Woonsang Choi, former chief of the legal section of the Korean Foreign Ministry, and a former vice-consul in Los Angeles. His topic was "The Law of Relations Between International Organizations and Their Officials: The Jurisprudence of International Administrative Tribunals."

Describing this area of law as "very unique," Mr. Choi pointed out that the applicable law is neither domestic, international, or, borrowing Dr. Jessup's term, "transnational." This law has developed along with the growth of international law and organizations, but stands somewhat by itself.

By way of illustrating its rapid growth, Mr. Choi called attention to the fact that the maximum number of staff members of the

League of Nations, at any time, was slightly more than 700. Today, there are an estimated 20,000 persons employed by the United Nations and other international agencies.

Special Problems

Specialized legal problems arise because of the privileges and immunities enjoyed by



Mr. Choi

international organizations. Since national courts will usually not accept jurisdiction over disputes between employees and the organization, there must be some legal system available to govern these relations. This is now handled by a special administrative tribunal. As a consequence, "a new field of

Frankfurter Triumphs

Last Monday evening, the Frankfurter Club triumphed in the final round of the Ames Competition, emerging as the ultimate victor over all those presently in the third year who entered the Ames Competition a year and a half ago.

Arguing against the Root Equity Club, those of Frankfurter were judged to have done the best overall work for the brief and orals. The oralists for the Frankfurter Club were Arthur I. Settles, Sunnymeade, Calif.; and Richard T. Watson, Maple Heights, Ohio.

On the brief were Michael P. Arra, Mt. Kisco, N. Y.; Charles S. Blankstein, Greensboro, N. C.; Stephen I. Hochhauser, Ossining, N. Y.; David A. Rakov, Newton, Mass.; Herbert J. Korbel, New York, N. Y., and Burton A. Schwalb, Hyde Park, Mass.

A more complete report on the argument will be in next week's RECORD.

(Continued on page 5)

Harvard Law Record

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Hearsay

The old tradition that some sort of hiatus, referred to as spring vacation, must be observed has now passed. With such interruption neatly put aside, it is now a straight course to final exams.

The signs were unavoidable. The earliest portents were those stalwarts who ignored the school catalogue and stayed here, studying away. Of course, the School tried to curtail this tendency a bit by closing the library over the weekend and cutting down the hours that the doors were open during the vacation period. But this could not phase the determined ones. Many a good outline was typed in the solitude of individual apartments.

Of course, there were those who did take off for a few days, but they started dribbling back into Cambridge about Wednesday of last week. The heavy guilt feelings at staying away from the beloved grounds were just too much. So everyone started back to the grind.

As the student body began to reassemble, the oft-heard questions were asked again. "Get any work done at home?" "Did you finish your paper?" "Start reviewing yet?" Naturally, all hoped to hear negative responses, since the interrogators had done none of the things themselves.

It is all part of the socio-psychological pattern around the Law School. Anyway, all questions just waste time. After all, for some, exams are little more than a month away.

A month away! Why am I sitting here, writing this stuff? Don't answer that.

CALENDAR

Notices for publication in the RECORD offices not later than noon. Calendar should be in the RECORD the Friday before the date of publication.

Thursday, April 14

The BULL & BEAR CLUB will present the Hon. Edward N. Gadsby, Chairman of the Securities and Exchange Commission, at 1:40 p. m. in the Harkness Meeting Room. All invited.

Two more in the series of lectures being given by George F. Kennan on "Soviet Foreign Policy in the Stalin Era" will be presented in Lowell Lecture Hall at 4 p. m. on Thursday, April 14 and Tuesday, April 19.

The Gustave Courbet Exhibition at the Boston Museum of Fine Arts will continue until Sunday, April 17.

Sunday, April 17

The FORD HALL FORUM will present James C. Buchanan, Latin American correspondent of the *Miami Herald*, speaking on "Why Fidel Castro's I. O. U.s Are Coming Due" at 8 p. m. in Jordan Hall.

Wednesday, April 20

The HARVARD LAW WIVES will meet in Harkness Commons at 7:30 p. m. Mrs. Erwin N. Griswold will speak on "Have Disability, Will Travel."

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Ames Quarterfinal Results

The Ames Quarterfinals concluded recently with the Gower-Herwitz, Gardner, Jaffe, and Magruder clubs emerging victorious. Following are capsule summaries of each of the arguments. All participants are in the second year at the Law School.

GOWER-HERWITZ v. LANGDELL

In the first argument, which pitted the Langdell club against the Gower-Herwitz club, the case argued was *Simaese Block Co. v. Dur-All Co.* Oralists arguing this private antitrust action were George P. Martin, Jr., Royal Oak, Michigan and Robert A. Zeiger, Harrison, N. Y. for Gower-Herwitz, and Robert B. Bunn, Honolulu, Hawaii and Edward M. Bull, East Lynne, Connecticut for Langdell.

Other members of the winning Gower-Herwitz team were:

Roger Bellenson, Mt. Vernon, N. Y.; Michael Freeman, Glencoe, Ill.; Simeo Gallo, Schenectady, N. Y.; Thomas Gill, Cambridge, Mass.; Herbert Kahler, Alexandria, Va.; and Paul Kalos, Freeport, N. Y.

GARDNER v. DAWSON

This argument involved the case of *Gomillion v. Lightfoot*, where an Alabama statute sought to gerrymander Negroes from the city of Tuskegee. The two judges who expressed their views on the law expressed the belief that the statute was invalid under the Federal Constitution.

Arguing for the Gardner club were Craig M. McAtee, Fort Dodge, Iowa and Robert W. Scrivner, Topeka, Kansas. Mr. Scrivner, in addition, was selected the best oralist for the four Ames arguments at this level. Oralists for the Dawson Club were Charles H. Baron, Philadelphia, Pa. and William D. Popkin, New York, N. Y.

Working on the brief for the winning Gardner club were:

S. Donald Gonson, Buffalo, N. Y.; Charles R. Kinnaird, Indianapolis, Ind.; Robert S. Smith, Jacksonville, Fla.; Gwynne Wales, Cambridge, Mass.; Jerome P. Weiss, Syracuse, N. Y.; and Loren Wittner, New York, New York.

JAFFE v. BRUCE

The case of *Gallagher v. Crown Kosher*

Super Market drew an unusually large crowd in the third round. The court declined to decide the issue at law, whether certain provisions of the Massachusetts "Lord's Day" statute are unconstitutional.

Oralists for the victorious Jaffe club were Charles C. Collins, Ridgewood, N. J. and Thomas A. Skornia, Wheaton, Ill. Representing the Bruce club were Benson D. Scotch, Union, N. J. and Robert S. Rifkind, New York, N. Y.

On the brief for the winners were: Charles L. Bradford, Damville, Ky.; Thomas F. Field, Cambridge, Mass.; A. Remy Fransen, New Orleans, La.; Robert T. Hanlon, Maplewood, Mo.; David C. Weisberg, New York, N. Y.; and Jack C. Wood, Franklin, Ind.

MAGRUDER v. KAPLAN

The final quarterfinal argument involved a personal injury action, *Spaulding v. Ames Memorial Hospital*. Arguing for the winning Magruder club were Thomas G. Conway, Kingston, N. Y. and John M. Wisdom, New Orleans, La. Oralists for Kaplan were Robert E. McQuiston, Reading, Pa. and Herbert W. Yanowitz, Sharon, Pa.

Other members of the victorious Magruder club were: Richard Burnham, Cook Falls, N. Y.; Jacqueline Crawford, Ridgewood, N. J.; Garret Hobart, New York, N. Y.; Ed Leckey, Johnstown, Pa.; Sheldon Shapiro, Malden, Mass.; and Herman Wilson, Tyler, Texas.

Four Appointments For Next Year

Four new men have been appointed to the Law School faculty for the academic year, 1960-61. They are Caleb Foote, Sanford H. Kadish, Friedrich Kessler and Philip E. Areeda. Professors Foote, Kadish and Kessler have received one year appointments as Visiting Professors, while Mr. Areeda will become an Assistant Professor of Law.

Professor Foote, B.A. '39 Harvard, M.A. '41 Columbia, LL.B. '53 University of Pennsylvania, is a professor of law at the University of Pennsylvania. He served as Consultant to the Division of Human Rights

of the United Nations from 1957 to 1959. At the Law School, Professor Foote will be the Walter E. Meyer Visiting Research Professor of Law. He will be engaged in research on criminal law and family law, and will have no class duties.

Professor Kadish, B.S.S. '42 City College of New York, LL.B. '48 Columbia, is a professor of law at the University of Utah. He was an editor of the Columbia Law Review from 1946 to 1948 and a Visiting Fulbright Professor at the University of Melbourne in 1956. Professor Kadish will be the Ezra Ripley Thayer Teaching Fellow. He will teach a section in Criminal Law.

Professor Kessler, J.U.D. '28 Berlin, a professor of law at Yale, will teach Contracts and Jurisprudence. He was a co-editor of a casebook on contracts that was published in 1953. Reputed to be one of the most popular teachers at the Yale Law School, Professor Kessler will take over the teaching schedule of Professor Fuller, who will be on a year's leave of absence.

Mr. Areeda, LL.B. '54 *s.c.l.*, is presently a member of the White House Staff serving the Administration as an economic adviser. His title is that of assistant special counsel. At the Law School, he was a note editor of the Law Review. Following graduation, he traveled in Europe for a year on a Sinclair Kennedy Fellowship.

Due to his position with the government, Mr. Areeda will not begin teaching until after January 1, 1961. During the second semester of next year, he will conduct a course and a seminar on Administrative Law. He has received a three year appointment.

Republican Meeting

Six members of the Law School Young Republican Club remained in town an extra day at the beginning of spring vacation to attend the annual election meeting of the Massachusetts Council of Young Republicans and succeeded in placing a member of the delegation at the head of the College Caucus in the state organization for the second straight year.

Jerry B. Fulmer, 2L, Franklin, Pennsylvania, succeeded L. Manning Muntzing, 3L, Moorefield, West Virginia, as Chairman of the Caucus, a group made up of Young

Republican Clubs from Harvard College, Harvard Law School, Wellesley, Boston University, and several other Massachusetts colleges.

Legal Aid Elects

The Legal Aid Bureau has selected its officers for next year, with Robert E. Jordan, III, 2L, So. Boston, Virginia chosen as President.

Other officers include: Arnold K. Mytelka, Jersey City, N. J., Vice-president; Michael E. Schoeman, New Rochelle, N.Y., Secretary; Joseph P. McGrath, Wilmington, Del., Treasurer; Ricardo A. Mestres, Jr., Belmont, Mass., Senior Director; Charles A. Goldstein, Perth Amboy, N. J., and Sheldon L. Baskin, Highland Park, Ill., Junior Directors.

The officers will serve for one year, until the 1961 spring elections, except for the two junior directors, who will hold office until next December.

Resolution:

The International Law Club has passed the following resolution concerning the Connally Amendment. Copies of the resolution have been sent, with requests for action consistent therewith, to the Foreign Relations Committee of the Senate and the Foreign Affairs Committee of the House.

"We the members of the International Law Club of Harvard Law School:

"Noting the recent discussions concerning the self-judging reservation in the United States acceptance of the compulsory jurisdiction of the International Court of Justice,

"Taking into consideration the detrimental effects of this reservation as a contradiction to the avowed ideal of the rule of law in international relations to the establishment of which this club is dedicated, and as an inherent violation of the elementary legal maxim that no one should be judge of his own cause,

"Considering further that both the Statute and the practice of the International Court of Justice are to the effect of not infringing on the domestic jurisdiction of the parties once the court decides that the matter is, according to international law, within their domestic jurisdiction,

"Resolve to express our opinion in favor of the elimination of this self-judging reservation from the United States acceptance of the compulsory jurisdiction of the International Court of Justice."

Adm. Tribunals

(Continued from page 1)

practice has been opened," and future lawyers should have an understanding of this body of law.

Mr. Choi defined an international official as "an individual who exists in accordance with agreements between sovereign states, performing functions for a community of several states."

The body of law governing these officials is often referred to as "international administrative law." This terminology may be misleading, since there is no administrative law which can truthfully be classified as "international." As Mr. Choi put it, "the term is not the best for describing the body of law discussed."

History Traced

In a brief summary of the history of international organizations, Mr. Choi noted that the first international official was the inspector appointed by the Central Committee of Rhine River Navigation in 1804.

The first legal dispute of any magnitude over an administrative official involved an employee of the League of Nations who was dismissed by the Secretary-General before his contract expired. He appealed his dismissal to the Council of the League, which declined jurisdiction, claiming it was actually a party to the contract and could not decide. However, they did appoint a committee of jurists to settle the controversy. The committee decided that the employment relationship could not be abruptly terminated without cause. This has remained a "cardinal principle."

In 1927, an administrative law tribunal was formally established within the League. This body was the only one to survive the League and was transferred to the I.L.O. of the United Nations. In 1949, the U.N. Administrative Tribunal was established, but certain agencies still attach themselves to the older I.L.O. tribunal.

Procedure

In his discussion of procedure under these bodies, Mr. Choi explained how a "letter of appointment," signed by the Secretary-General serves as an employment contract.

The body of law which applies to this

agreement is based upon the integral law of the United Nations. This consists of the Charter, the regulations of the General Assembly, staff rules and rules of the administrative tribunal.

One overriding consideration in this area is security of tenure. The need for tenure is particularly acute, since a professional international civil servant will find it difficult to obtain other employment.

Incident

In a celebrated incident in 1953, the United States State Department requested the Secretary-General to fire 21 American employees of the United Nations who had pleaded the Fifth Amendment before a Congressional committee. The Secretary-General acquiesced.

An appeal was thereupon lodged with the Administrative Tribunal, which upheld the rights of the discharged employees. Although no specific reasons were given for the decision, it is generally agreed that staff members are not required to give up their political views and national sentiments. However, they do owe professed allegiance to their international organization and cannot take advice from the governments of which they are citizens.

In conclusion, Mr. Choi emphasized the important role played by the administrative tribunals in carrying out a "new, important function." By bringing international administrative law under juridical control, a legal order with the international organization is helped toward establishment. This, in turn, contributes to an effective legal order in the international community.

— Amitay

Seavey to Wake Forest

Dr. Warren A. Seavey, Bussey Professor of Law, Emeritus, will be Babcock Visiting Professor of Law at the Wake Forest College School of Law during the 1960-61 term.

Professor Seavey will teach two classes in the school each semester. He will teach courses dealing with torts, restitution, and agency law.

Since his retirement at Harvard in 1957, Professor Seavey has taught at Boston College, New York University, the University of Texas, and Vanderbilt University.

Appears Before Law Wives

Dr. Samuel Miller, Dean of the Harvard Divinity School, spoke to the Law Wives recently on the subject of "Religious Significance in Contemporary Art."

True art, he said, is never a candid camera representation of life. Instead, it attempts to penetrate the surface of existence and depict what is behind visible sensation. The artist combines what he sees behind the surface of things with what exists peculiarly within himself.

The climate of culture in which an artist lives is another determining factor. Dr. Miller feels that today's culture has no real unity. This accounts for the many schools of contemporary art. Today's political, scientific, religious and aesthetic senses have no real contact with each other. A contemporary artist picks out one sense, then builds it into an expression of beauty and of art. But this fragmentation of the senses results in an art, which because of its sensitivity to contemporary culture, is frequently taut with tension.

Law Enrollment Down

In relation to the nation's population, the number of persons studying law in the United States has been cut in half in the last decade. This comes from a report of the Survey of the Legal Profession, based on a 1949-1959 law school registration comparison.

In 1949, there were 56,102 law school registrations, compared with 42,540 in 1959. Because of this drop, and because of the nation's overall population increase, the number of law students has dropped from 47 per every million of the total population to 24.

Alumni Notes

LL. B. '29 — Ernest H. Breuer, who is Law Librarian of the New York State Library, has written a Bibliography Bulletin entitled "The New York State Court of Claims: Its History, Jurisdiction and Reports." The Bulletin is published by the University of the State of New York.

LL. B. '35 — Lee Epstein, who teaches at Pratt Institute and the City College of New York, recently lectured at the Rhode Island School of Design on "Business and Legal Problems of the Industrial Designer."

LL. B. '42 — Edward A. Smith has formed a firm for the general practice of law with George Schwegler, Jr., and Howard Swartzman under the name of Smith, Schwegler & Swartzman, with offices at 1411 Commerce Trust Building, Kansas City, Missouri.

LL. B. '53 *m.c.l.* — Walter A. Apfelbaum has formed a partnership with Herbert M. Klein for the general practice of law with offices at 1413 Ainsley Building, Miami 32, Florida.

LL. B. '53 — Edward Genn has been made a partner in the firm of Brown, Genn and Brown with offices in the Colorado Building, Washington, D. C., and in Maryland and Virginia.

LL. B. '55 — William M. Gross has been appointed assistant counsel for the State Health Department of Pennsylvania. Mr. Gross, of Harrisburg, will represent the Department at State Sanitary Water Board hearings, and assist the general counsel.

LL. B. '55 — Robert J. Birnbaum and Stephen L. Bernstein, LL. B. '58, have formed a partnership for the general practice of law under the firm name of Birnbaum and Bernstein, at 135 Broadway, New York.

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Capital Punishment: The Anachronism

Man has probably spent more ingenuity on designing ways to destroy other human beings than on any other single item. He who tries to study all the methods by which man has fashioned a weapon to kill faces an imponderable task.

Consider the multitudinous past practices of drawing and quartering, burning at the stake, disembowelment, stoning, crucifixion, pouring honey over the accused and leaving him to the ants, bending two saplings to the ground and tying part of the condemned to one tree, part to the other, and then releasing the restraints on the saplings. Consider the passing of a hot iron into a person's entrails, such as was allegedly done to Edward II, or the press, or the rack, or flagellation. And, of course, consider the true and trusty swing of the axeman, toppling the head into the box of sand.

These devices may well seem revolting and barbaric to the modern citizenry. Today the accent is on death that is swift and "merciful." But the end result is the same. Execution, lethal gas, hanging, guillotining, garroting, and the firing squad — some of the official methods still used — are completely final in exterminating human life.

In the last 30 years, 1930-1959, a total of 3,666 persons have been executed under the state and federal authorities of the United States. Since five states (including Alaska and Hawaii) have no capital offenses, and since three others limit capital punishment to rarities, the executions apply to 42 states, including Delaware which outlawed capital punishment in 1958, and the District of Columbia.

The figure of 3,666, standing alone, says very little, it is true. However, it might be noted that 3,666 nearly totals the combined deaths of Americans in the War of 1812 and the Mexican War, 1846-48. Moreover, it is not too far behind the statistics of the Revolutionary War.

On the other hand, a mere 3,666 pales beside the annual death toll in traffic accidents for a *single* year in the United States, some 37,000. Indeed, the figure barely equals the

traffic deaths in the one state of California for a single year. To top it all, 3,666 seems almost insignificant when it is noted that this might have been considered a slow *day's* traffic at Auschwitz's horror camp in Poland in World War II.

Although going into the methods of execution and corresponding statistical exercises are, admittedly, rather feeble approaches to capital punishment, they still have one evident function; they remind man that he is still killing others, just as man was killing in times that are today considered archaic and barbaric.

Yet It Continues

Capital punishment continues. Some people say it is on the decline and will die a natural death. (Only 49 were executed last year in the United States. *Only*.) Others point to the fact that the death penalty has been limited — no longer is a person hanged for theft of a loaf of bread. (Although the burglary of \$1.95 almost cost Jimmy Wilson his life but two years ago.) Indeed, perhaps as it could ideally be employed, some people say capital punishment might be effective. (But the chances are presently 100 to one against an intentional homicide resulting in an execution.)

Of what justification, then, is capital punishment?

The greatest rallying point for adherents of capital punishment seems to be in the fact that society must be protected, and that the death penalty does this by 1) ridding society of the particular offender and 2) deterring others from committing the same crime.

Of course, as to this first alleged function, it can readily be pointed out that life imprisonment, with nearly absolute provisions against parole, would just as effectively rid society of the particular individual. Beyond this, the only plausible argument is that letting him live costs the taxpayer precious money. But surely a justification cannot rise or fall on money. If for no other reason, the spectre of possibility that the person might wrongly be put to death is surely more basic than a concern over cost.

The question of deterrence is more complex. Certainly it is not a new bone of conflict. Largely, the most that can be said is that statistics are quite ineffectual one way or the other in saying that capital punishment is or is not a deterrent to crime, notably murder.

Even so, deterrence is still heatedly discussed. Those opposing capital punishment note the states where it has been abolished and point out that all these states are among the ten with the lowest murder rate per capita in the United States. (Figures do not include Alaska or Hawaii, since no figures were available.)

Those upholding capital punishment answer this by contending that these states traditionally have had a low murder rate.

The argument there again falls on the opponents of capital punishment. They point to the fact that abolition of the death penalty did not increase the murder rate in the states in question.

The surrebutter comes hurling back that the statistics employed are not accurate, since these states, in practice, had discontinued the death penalty long before the formal abolition, and that the comparison must be made between the times when capital punishment was in actual use and when it was not.

But this, of course, propels the argument far back into the last century, which cannot, it is finally contended, be an accurate comparison for the present day.

In other words, returning to what was said previously, the question of deterrence is, at best, inconclusive.

No Justification

This raises a conclusion, one which we adopt, namely: without the contention of deterrence, there is nothing that provides a vital justification for the institution of capital punishment. This contention is based not only on lack of arguments for capital punishment, but more on arguments against.

The very concept of capital punishment, and the employment of this concept, raises several negative points. Most of these have been aired thoroughly before and will not be repeated, except to note that we agree fully with those arguments that attack capital punishment as a degradation which man inflicts upon his own dignity.

Going beyond this, one of the greatest arguments against capital punishment, to our minds, is that it can be an instrument for discrimination of the most lethal nature. When it is considered that perhaps only one out of every 100 intentional homicides will result in an execution, it would seem there is a dangerous possibility that those few who are actually put to death are specifically singled out for one reason or another. The statistics, unfortunately, lend credence to this proposition.

In the 3,666 total mentioned earlier for 1930-1959, 1,972 of those executed were Negroes, compared with 1,653 whites and 41 of other groupings. This means that well over half were Negroes, though the Negro population comprises about 10 percent of our nation's total.

Perhaps the crime rate is higher per capita among the Negro population than the national average, but there are no statistics that would contend the figure exceeds the 50 per cent mark, or even comes close to it. As a topping to it all, this lopsided ratio zoomed even higher in 1959, with 33 of the 49 executions being Negroes.

Great Challenges

One of the greatest challenges to society should be the impartial fulfillment of justice. Even if capital punishment is abandoned, disparagement on racial and religious grounds will undoubtedly continue in certain areas of the country. However, it would at least be better to be less final. Putting a man to death principally because of his race, and only secondarily because he has possibly committed a crime, which might or might not be punishable by death, is beyond adequate words for its repugnant character.

There is another great challenge. This is to turn men's lives, warped though they may be, into something useful in the sight of society. Even if the convicted are to be kept behind high walls for their entire lives, this does not mean that reformation is useless. To say this is to deny, for example, the worth of the hermit poet or the cloistered nun or any of a number who deny themselves the main stream of society.

Capital punishment should be abolished by the state and federal governments of this nation. Revoked should be this instrument for discrimination. Discarded should be the degradation on man's estimate of himself.

FEATURES SECTION

Prof. MacLachlan--Tallyho and Farewell

Professor James Angell MacLachlan retires in June. Lawyer, teacher, scholar, and athlete he will be remembered at the Law School as one of the most independent and forceful members of the faculty, more spirited and active than many of his juniors.



This June, one of the most colorful and fabled members of the faculty departs from the Law School. Professor James Angell MacLachlan, who presently teaches Property I, Creditors' Rights, and conducts a seminar on Problems in the Law of Corporate Reorganization retires at the age of 69, after 33 years service on the staff.

Professor MacLachlan has been described by Dean Emeritus Roscoe Pound as "a very bright and useful man on the faculty," and by Professor John M. MacGuire as "vigorous and very brilliant." The highly respected Professor, because of his ruddy features ("Red Mac"), stocky and powerful build, energetic drive, forceful mannerisms, and outspoken bluntness has long been the fond object of good-natured anecdotes told

by faculty and students alike.

Legend has it that when the west wing of Langdell Hall was under construction, Professor MacLachlan carelessly wandered into an unguarded elevator shaft and plummeted down several stories. Except for minor bruises, he was unhurt. The following day, another professor solicitously enquired of Mac about his health. "Tell me," asked the professor, "is the old tale true that when you fall down like that your whole life passes before you?" "No," retorted Red Mac, "all I could think about was what a damned fool I was." "Well then, I guess the old tale is true," smiled the professor.

Scientific Bent

Unknown to most of his students, who look upon him only as an authority in Creditors' Rights, Bankruptcy,

and Property Law, Professor MacLachlan has always had a scientific bent. Indeed he majored in Astro-Physics as an undergraduate at the University of Michigan, where he obtained his A.B. in 1912. Even today he is attending an extension course in Physics at Harvard College. But the "scientific exactness and verbal ability" which law demands provided the incentive, and in 1913 he forewent a career in Physics and came to Harvard Law, after having coached sports in a Michigan high school for a year.

"In those days", Mac recalls, "we had a faculty of only 11 professors, since Harvard was much smaller. The giants on the staff then were Williston, Scotty, Pound, and Thayer." Three years later, he emerged from Langdell Library and Gannet House

with an L. L. B., via the Law Review route.

Mac then moved to Chicago, where he began practice with Holt, Cutting & Sidley. But within a year, Wilson asked Congress to declare War, and Mac promptly joined the Field Artillery. He is probably one of the few soldiers sent to France who admits that he saw very little action.

Practice in Chicago

After his discharge, MacLachlan resumed practicing in Chicago. But Dean Roscoe Pound remembered the "very bright student" whom he had taught before the War and wanted him for the faculty. "He was in one of the best firms in Chicago," says Dean Pound. "They didn't want me to take him away at all. He undoubtedly would be one of the top men of the Chicago Bar today." Dean Pound succeeded, however, and in 1924 MacLachlan became an assistant professor.

Professor MacLachlan takes great pride in his first Law Review article, "Proximate Cause," 39 *Harv. L. Rev.* 149 (1925). "Mr. Seavey cited it several times in his tort works," MacLachlan recalls. The article emphasized the difficulties of definition of this elusive tort concept; and one can sense the scientist's mind striving for precision as the Professor wrote, "The usefulness of the law of proximate causation is largely dependent upon the particularity with which the requisite legal terms are defined and described, and the consistency with which they are used. Definiteness devined without definition may be as illusory as justice administered without justices." P. 197.

Although he is best known

today for his work in Bankruptcy and Creditor's Rights, Professor MacLachlan's first love was Anti-trust. It was not until the early 1930's that he concentrated his energies on Bankruptcy.

In 1932, he and several associates initiated the National Bankruptcy Conference which worked with Congress and the S. E. C. The Conference's findings eventually were crystallized in the Chandler Act of 1938. In 1939, he and Professor John Hanna of Columbia published the first edition of their casebook on *Creditors' Rights and Corporate Reorganization*, a work which is used widely in law schools throughout the country.

During World War II

But now the international scene was quickly deteriorating. MacLachlan became an ardent interventionist. Even as early as 1934, in a newspaper interview after a trip to Europe, including Germany, he expressed alarm over the direction and purpose of the Fuhrer's Third Reich.

"The generation of that time," MacLachlan reminisces, "had grown up in the disillusion of World War I and said 'to dickens with Europe.' Once Hitler realized that we disregarded his aggressive actions, he thought, 'That's the way to deal with those bastards. Get tough.'" He joined several interventionist organizations and penned several trenchant letters to the *New York Times*. "It is reported that, when Hitler was photographed by his official photographer under the *Arc de Triomphe*, he remarked that the next pictures would be before the Nelson Monument and the Empire State Building, respectively," he wrote in the *Times* in 1940.

In 1941: "Could our Navy immediately contribute to the common cause if freed from political restraints? Ask the Navy!" . . . Perhaps Hitler is not so far wrong. If we are not a decadent pluto-democracy, we act like one."

In Washington

After Pearl Harbor, Professor MacLachlan joined the army of lawyers who fought out the war in Washington. He did a short stint as Special Counsel for the Office of Price Administration before he was transferred to the War Relocation Authority. "I was supposed to file a brief to sustain the constitutionality of the evacuation of the Japanese. There was no goddam excuse for evacuating the Japanese — 100,000 of them. There were only about 8,000 whom they had reason to suspect."

About 1½ years later, he "got out of that job when I found out it was a phony. Apparently the best thing I did there was to depart." For the last two years of the War, he was a contract renegotiator for the United States Maritime Commission. Then he resumed his place on the faculty in Cambridge, where he has taught uninterruptedly until today.

Visitors to the Law School during the spring are always surprised to see Professor MacLachlan playing catch with students on the grass in front of Langdell Hall. His wife recalls that several years ago, during the April holidays, they were enjoying an automobile trip when Mac found an open field, pulled over, and spent the next several hours "limbering up his arm" by firing assorted fast balls and curve balls to her.

He has traditionally assumed the pitching chores in

the annual Faculty — Law Review World Series. Professor MacLachlan enthusiastically recalls that last year "I bunted my way to first base and drove in two runs when that dumb-cluck fielder threw wild to the plate." Then he adds, "Not bad for an old man."

MacLachlan has always had various athletic interests. When he was 12, he played on a local Ann Arbor golf team, composed almost entirely of boys much older than himself. At Michigan, he was on the Varsity track team where he ran in a meet at Harvard Stadium. Professor MacGuire can remember many tennis games he has played with the "determined and pugnacious" MacLachlan. Indeed, Mac's energy knows no bounds. Last year he took flying lessons, though the instructor was hesitant at first because of his pupil's age.

Professor MacLachlan has summarized his classroom philosophy as: "Make the student think it out for himself." He has never been one to "lay out" the material. MacLachlan feels that his method has been successful. "It's very satisfying to have students come back and tell me that I made them get things for themselves."

Professors MacLachlan and MacGuire are largely responsible for the modern system of students admission in the Law School. In the late 1920's, more than 30 per cent of the students were dismissed after their first year. The two men examined over 7,000 records of law students to determine which factors in the students' educational and emotional background are necessary for a successful three years in law school. Their findings were eventually adopted by the admissions committee.

Reknowned Lineage

Professor MacLachlan's lineage is pervaded by reknowned professors and university presidents. His great-grandfather was a president of Brown, his grandfather president of Michigan, his father a history instructor at Michigan and the University of Chicago, where he won a Pulitzer Prize, and his uncle president of Yale.

But Mac, born in Ann Arbor, Michigan, often scoffs at the graduates of prestigious eastern colleges who are contemptuous of their classmates

from the provinces. Several years ago, he thundered at his Property I class, after an inept recitation by a student, "So many of you men from these fine old colleges spend your time being gentlemen and just drift into law school, that it takes a lean hawk from the West to knock you on your ear."

Not surprisingly, Mac's two sons and three daughters inherited their father's inclination toward science. One is a physicist, another an anthropologist, another a geologist, and one daughter is married to a physicist. His youngest daughter is still in college.

Professor MacLachlan and his wife have no plans for the immediate future after his retirement. "But you can be sure I won't be inactive" he emphasizes. Nobody who has met Professor MacLachlan, inside or outside of the classroom, will doubt that.

— Terry

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- 12:45, 4:10, 7:50.

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3:50, 5:45, 7:35, 9:30.

TELEPIX — Aparajito, 11:30, 1:30,
3:30, 5:30, 7:30, 9:30.

Health Service at Harvard

The protection afforded a student's physical and mental health are quite extensive at Harvard. Through the various institutions in the Cambridge area, including a clinic in the Law School, every attempt is made to insure the student's well-being. In this article are described the various university institutions, as well as some interesting sidelights on particular health plans, what happens in case of serious illness, the extent of mental care, and other problems.

Being the intellectually-oriented creature which he is, the Harvard University student is apt not to give much thought to his own health nor to the practices and problems of those whose job it is to keep him in sound physical and mental condition.

He grumbles about that \$42.50 medical fee which appears on his term-bill, curses medical science and its lack of proximity as he makes his way to Stillman Infirmary in the dark of night clutching his aching stomach, and is highly indignant, as well as sorely discomfited, when infectious organisms wriggle past the Sanitation inspectors undetected, causing a minor catastrophe in the form of mass Dining Hall poisoning.

But his attitude of ignorance and apathy often changes to one of acute personal interest when the spectre of illness does curtail his intellectual pursuits by attacking that infirm citadel of the mind, the body. Then of necessity he seeks aid in one of the various health centers of the University.

Contrary to expectation, the officials of the University Health Service are more pleased than disturbed by this ambivalent attitude. As they are fond of saying: "The less reason the student has to know about us, the better we are doing our job." This is because the primary objective of the University Health Service is prevention of illness and the promotion of health. Only secondarily does the Service consider its task to be the treatment of sickness, whether physical or mental.

However, the Service realizes that illness, like death and taxes, is ever with us. To combat it as

effectively as possible within the Harvard and Radcliffe community, which numbers in excess of 20,000 individuals, the Service maintains a staff of approximately 100 doctors, all of whom hold Corporation appointments. In addition, the Service has access to some 300 doctors practicing all phases of medicine in the Greater Boston area for purposes of consultation. Hence, the Service is able to procure and furnish to all University students the best possible medical care at the least possible expense.

At present the Health Service is housed in various locations scattered throughout the schools of the University. The central organ of this widespread system is the Hygiene Building on Holyoke Street, while smaller centers are maintained at the Medical School, the Business School, the Law School, Dillon Field House, and Radcliffe. Those suffering more serious illnesses requiring confinement are treated at Stillman Infirmary. Any surgery which must be performed is done at one of several Boston hospitals affiliated with the Health Service.

Upon completion of the new medical building a number of these centers will be consolidated so that treatment may be more effectively and efficiently administered at a single location. No longer will the student be required to traverse the distance between his room and Stillman Infirmary in search of medical aid after health center hours. At the new building a doctor will be on duty 24 hours each day.

Presently the Service handles in excess of 100,000 visits each year by students, faculty, and employees of the University. The most com-

mon illnesses treated are those of the upper respiratory systems, while accidental injuries run second in order of frequency. The majority of the illnesses treated are of minor seriousness but many would become major if not treated in the early stages.

Each year presents its share of the more serious illnesses, however, such as infectious mononucleosis, hepatitis, and tuberculosis. Aside from the usual sprains and fractures incurred in the course of athletic contests each year, the most common form of physical incapacitation requiring surgical treatment is appendicitis.

The Health Service also provides dental care. Over the years it has been found that most students enter the University in need of some kind of restorative treatment, varying from the extensive to the minimal. Because of this factor, and due to the limitations of space and staff, the dental phase of the Service has shifted its emphasis from restorative treatment to diagnosis. In years past, all entering students have been X-rayed and furnished with the findings, so that they may seek proper treatment.

Mental Care

During the past several years the Health Service has greatly expanded the scope of care afforded the student in the field of mental health. This reflects the realization in medical circles that the individual's physical health is closely interrelated with his mental condition and outlook. The services of five full-time and two part-time psychiatrists are available at the separate center located at 78 Mount Auburn Street. Students sought this aid at the rate of some 1000

visits last year, and many of these did so on their own initiative.

The most common problems presented are those of anxiety, produced by conflicts or tensions within the individual, and depression. The causative factors tend to be of a personal rather than of a University-induced nature. The report of the examining psychiatrist is treated with strictest confidence by the Health Service, and the information is released to others only at the student's request.

Insurance Program

The University Health Service also administers the voluntary health insurance program which annually attracts the participation of approximately 90 per cent of the student body. For a minimal premium the student is able to secure year-round protection for himself and his dependents. Since the expense of a university education is a sizable burden on most family budgets today, the insurance program is designed to alleviate the necessity of further cash outlays for unexpected illness or injury of a nature requiring extended hospitalization.

In some cases the benefits of the program provide the necessary financial difference enabling the student to continue his education, where otherwise he would have to drop out of school for a time. A unique feature of the program lies in its administration by a member of the Health Service. This results in a more sympathetic hearing of questionable claims and often in an adjustment more favorable to the student.

Baby Plan

A recently-instituted health plan has resulted in the appearance of a charge for "BABY" on the term bill of some married students. Under this plan, for a flat fee, the wife of the student receives clinical care at the Boston Lying-In Hospital during pregnancy and until she gives birth. Any necessary care of both mother and child thereafter is also covered by the plan. The student is billed periodically by the University over the gestation period. This provision for having babies on the time-payment plan is

grounded on very practical considerations; for the student who is hard-pressed financially will find it much easier to obtain a loan for the purpose of meeting "educational" obligations, rather than for other more personal expenses.

At present, approximately 80 student-wives are participating in the program. Their reactions have been varied, the primary objection being that the mother-to-be is unable to select her own private physician under the clinical approach utilized, but instead must accept treatment by the doctor on duty at the time of her visit.

In addition to the extensive and varied health programs mentioned, the University Health Service also carries on research in all phases of medicine, especially those pertinent to providing better care in a university community. Investigation of the causes of academic failure, the relationship of smoking habits to personality, the emotional and intellectual development of the Harvard College student during the college years, and the childhood characters of the scientist contrasted with those of the non-scientist are just a few of the subjects which have occupied the researchers of late. The cost of financing these programs has proved something of a drawback; for it is an established policy of the Health Service to use the health fees paid by the students exclusively and entirely for medical services rendered to the student.

Criticism

Staunch advocates of the free-enterprise way of life have criticized the Health Service on the ground that it allegedly contributes to the destruction of student ini-

tiative by providing such extensive benefits at nominal cost. However, the director of the program, Dr. Dana L. Farnsworth, sees in the benefits extended by the Health Service an example of community initiative, rather than a lack of such in the individual. He believes that a community, which is able to provide for itself such extensive benefits, not only shows characteristics of individual initiative in the present, but also indicates a real awareness of the future.

Dr. Leo J. Cass, director of the Law School health center, dismisses the argument that Health Service "philanthropy" is destroying student initiative by observing that the separation of the health fee from regular tuition on the term bill indicates to the student that he is, in fact, paying for the service he receives, and also effectively eliminates the possibility of drawing paternalistic inferences from the activity of the Service.

Law School Center

The removal of the Law School, geographically speaking, from the center of the University scene has resulted in the establishment of a fully-equipped clinic in Austin Hall to serve all Law School students and faculty, as well as all the women enrolled in the various graduate schools located near the Law School. Although all of the benefits of the University Health Service described above are open to the law student, he receives certain additional advantages through the activities of "his own" health center.

The administration of these added benefits begins with the medical form each applicant for admis-

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sion to the Law School is required to submit. The Law School health officials carefully examine this form to determine in advance whether the prospective student has any peculiar health condition which would advise against participation in the rigors of the curriculum.

Because the group which it serves is numerically smaller than that seeking help at the central Hygiene Building, the Law School center is able to practice a policy of ministering to all who seek aid. This means that, although it is generally a policy of the University Health Service not to treat dependents of students, the Law School center is able to make exceptions, particularly under emergency conditions. The fact that the "jurisdiction" of the Law School center is more limited also allows the doctors in attendance to devote additional time to those students in need of more extensive examination and treatment.

More Alert

Although it too is primarily confronted with respiratory ailments, the Law School health center minister generally to an older age group and therefore is more alert to the possibility of serious adult diseases cropping up among the students. The doctors watch small lumps very closely, due to the more frequent occurrence of cancer among adults. Ulcers, collapsed lungs, and even a case of leukemia have come to the attention of the Law School health officials during the past year.

In the area of mental health, the Law School center's familiarity with the peculiar health problems of the law student enables it to serve most effectively. A psychiatrist is available for consultation by all students. It is of note that a sizeable number of students seeking his aid have emotional problems stemming from the keenness of the competition at the Law School.

Unlike the other medical centers in the University Health program, the director of the Law School center is also a member of the School's faculty. This is indicative of the close working relationship between

the Law School administration and its health officials, which results in advantages to the Law student that are indeed *suri generis*.

Special Attention

Whenever a law student is subjected to disciplinary action, the director of the health center is first consulted for his recommendations. In the case of students who fall victim to extended illnesses during the school year, the Law School health service may recommend a reduction of the individual's academic obligations for that year.

For example, if the health director feels that illness has incapacitated the student's working ability by 50 per cent, he may recommend a commensurate reduction in requirements. If the administration accepts this recommendation, the student will normally take all his exams and so long as he passes 50 per cent of them, he will be considered as having successfully completed the entire year's work.

If the student fails more than 50

per cent, the director may recommend that he be given a medical leave of absence which operates as a dismissal without prejudice to the merits. If adopted by the administration, this allows the student to return the following year to repeat the work with no adverse effect on his record.

In the case of students who are taken ill on the day of an exam, the health center conveys him to Stillman Infirmary, where he is held incommunicado until he is sufficiently recovered to withstand the rigors of the blue book. There is no such thing as a medical excuse from a Law School examination.

Thus, daily, the University Health Service, through a variety of programs administered by all members of its extensive organization, attempts to provide that brand of health which the World Health Organization defined as "a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity."

— Meyer

Letters to the Editor

To the Editor:

I wish to publicly thank the members of the Harvard Student Legislative Research Bureau for the cooperation, help, and fine draftsmanship which they have demonstrated in helping with the preparation of a Code of Ethics Bill for the State of Rhode Island.

This bill has been presented in the House of Representatives of the Rhode Island General Assembly on March 15, 1960 and received a great deal of favorable comment. Governor Del Sesto of the State of Rhode Island has assured me that he will sign this bill and a great deal of interest in it has been shown by various citizens groups.

Your Student Legislative Research Bureau has performed a real service to the citizens of Rhode Island, your Law School and the country as a whole.

Thomas W. Pearlman

LL.B. '52

Deputy Republican Floor Leader
House of Representatives

To the Editor:

Your recent discussion of poetic justice and solicitation of former students moves me to submit the attached, conceived during my days at the Law School.

Ignorantia Legis, Neminem Excusat

Habeas corpus, ultra vires,
Causa mortis, mala fides

Ex parte, pari delicto,
Non obstante veredicto

Persona grata, in capite,
Res judicata, pendente lite

(Malum prohibitum, ratio
decidendi,

Obiter dictum, animus revertendi)

Ad valorem, pro tanto,
In personam, quo warranto

Eo nomine, prima facie,
Non sub homine sed sub lege.

Harvey A. Leve,
LL.B. '52

Book Review

By George M. Abi-Saab

J. N. Anderson: ISLAMIC LAW IN THE MODERN WORLD New York University Press, 1959.

This book originated from five lectures delivered by Professor Anderson at the Law School of New York University in the fall of 1958. J. N. Anderson, Professor of Oriental Laws at the University of London and Director of its Institute of Advanced Legal Studies, is one of the foremost English speaking authorities on Moslem Law. This small book bears witness to this fact. In only 100 pages he gives a complete, if brief but by no means shallow, description of the present state of Moslem Law and the scope of its application.

There are many writings about classical Moslem Law, as well as many expositions of the Westernized Codes adopted in the Arab countries. But this is the first book that gives a clear idea of the balance between them, and the attitude of the modern Arab jurists and lawyers in this regard. Except for very few sentences, the book could have been written by a secular jurist from any Arab country who respects his cultural heritage but realizes the need for progress.

The book is not intended primarily to be a treatise on the institutions of Moslem Law. It is more of a history of law, particularly of Moslem Law, in the Moslem countries, for the last hundred years. It gives, however, a compact but profound description of the two crucial institutions of Moslem Law, namely the law of marriage and divorce and the law of inheritance. But this is done basically to illustrate the reforms introduced and the manner of their achievement.

Conceptions

The book begins with a lecture entitled "Conceptions of Law: Islamic and Western," which tries to bring to the forefront the basic differences between the two systems. In Islam, law, the *Sharia*, is the master science that reflects, more than anything else, the Islamic system as a whole.

Law is fundamentally divine, emanating directly or indirectly from God, and as such, it is basically immutable. From this it follows that law is not merely the sum total of rules that govern social relations, but it extends to embrace also the beliefs and the ethical system to which a Moslem has to adhere. As such, it embraces all human actions, but because of that, it is not all enforceable.

With these characteristics, the author proceeds to match the system with the different schools of jurisprudence. He finds that it does not fit into the patterns of the Positivist School, the Historical School, the Sociological School, nor the Realist School. It is nearest to the Natural Law School, but is not identical with it, because, although Islam had a minority Rationalist School, the majority maintains that goodness and badness are not intrinsic in actions, but are the results of God's command and prohibition.

Sources of Law

The author then reviews the sources of Moslem Law: the *Koran* and the *Sunna*, the prophet's traditions, which were not enough to construct a complete legal system and had to be supplemented by two subsidiary sources: consensus and analogy. He also goes into the development of the four orthodox schools and the freezing of the system in the eleventh century A. D., and observes that although, in theory, all parts of the *Sharia* rest on revelation, a distinction was made in practice. Rituals and family law were always regarded as the core of the system, while public law has been less meticulously observed.

The second lecture, entitled "Islamic Law and Modern Life: Reconciliation in the Middle East," traces the situation as it developed since 1850, and the reception of Western legal systems in the Middle East. It begins by stating that the legal reforms, far from being alien to the soul of the peoples concerned, reflect their "social prog-

ress and national development," and that reforms introduced in areas that are still exclusively Islamic represent "a most significant example of modernism in Islam." Then follows a description of the developments since 1850.

Family Law

The third lecture is devoted to the law of marriage and divorce. Family law has always been regarded as the hard core of the *Sharia*, and because of that, it has been its last bastion, where it still reigns in most of the Moslem countries.

For this reason, the battle between reform and conservatism has particularly manifested itself here, illustrating "how a nominally immutable law can be changed in practice." After a brief survey of Moslem Law on the subject, the different reforms and their strategies are summarized, revealing a gradation in boldness, Tunisia being the most radical.

The fourth lecture is devoted to "The Islamic Law of Inheritance." This is also an area in the heart of the *Sharia*. Most of its rules came in the *Koran*, which makes any tampering with them almost impossible.

This law is applied throughout the Moslem World, even to non-Moslem subjects in some states (e.g., U. A. R.). It is also the foremost example of "the logical and technical excellencies" of the *Sharia*. The author displays in this lecture a vast knowledge not only of the doctrines of the four orthodox schools, but also of those of the heterodox schools and of pre-Islamic Arabia. However, this might be a rather heavy dose for the uninitiated in the subject for

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whom the book is primarily designed.

Muslim Trends

The last lecture, entitled "Contemporary Legal Trends in the Muslim World," winds up the survey with a general statement of the situation as it stands now, and the lines along which future developments are likely to take place. It surveys the terrain quickly to put Moslem states into three categories:

1. Those who still formally adhere to the *Sharia* in all aspects of life, although there is an increasing use of legislation in them, like Saudi Arabia, Yemen, and Northern Nigeria.

2. Those who have officially given up the *Sharia* as the enforced law of the land. This category includes only Turkey.

3. Those who adopted an intermediate position, including most of the Arab countries.

No Dichotomy

In the countries of the last category, up to 1850 no distinct dichotomy existed between the *Sharia* and the non-*Sharia* law. From that date on, Western Codes were introduced in criminal and commercial law. The dichotomy existed before, especially in commercial and public law, but this was the first time that it had been frankly recognized. Family law stayed predominantly Moslem in the substantive rules and in the courts that applied them. As to civil law, the dichotomy was not very clear. The Ottoman *Mejalla* was a codification on Western patterns, of Islamic concepts, and the Egyptian civil code included a number of provisions taken from the *Sharia*.

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From 1915 onward, even in the sphere reserved to Moslem Law, reforms were introduced, not by open secularization, but by using certain expedients and techniques. Reforms were accepted as the only alternative to complete abandonment. But on the other hand, with the Arab renaissance and the rise of nationalism, there is now a trend towards more use of the *Sharia* principles in civil law.

In Egypt, religious courts were abolished, and the *Sharia* is handled now by civil courts in matters of family law. It seems that this unification of jurisdiction in the hands of the secular civil courts will be followed by other countries. This, in addition to the fact that most of the applied *Sharia* rules are now promulgated in legislation, makes for a rapprochement in civil law between the two systems, and gives a true picture of the state of social progress of these countries, drawing on their history and on Western institutions at the same time.

Dynamic

The book gives a vivid and dynamic impression of a system of law, supposedly divine and immutable, but in effect adjustable and responding to social needs. The functional approach dominates this interpretation. It might be added that the increasing drawing on the *Sharia* in civil law, alluded to by

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Professor Anderson, does not mean the borrowing of the rules as they are, but rather the use of *Sharia* concepts, distinctions, and techniques of Roman Law.

After the publication of the book, both the U. A. R. and Iraq promulgated a law of personal affairs. The U. A. R. law, which will come into effect on October 1, 1960, is revolutionary in that it abrogates the right of unilateral repudiation by the husband, and makes marriage to a second wife conditional on the prior consent of the court.

The book has also an excellent six-page bibliography of books and articles on the subject, in English and French.

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