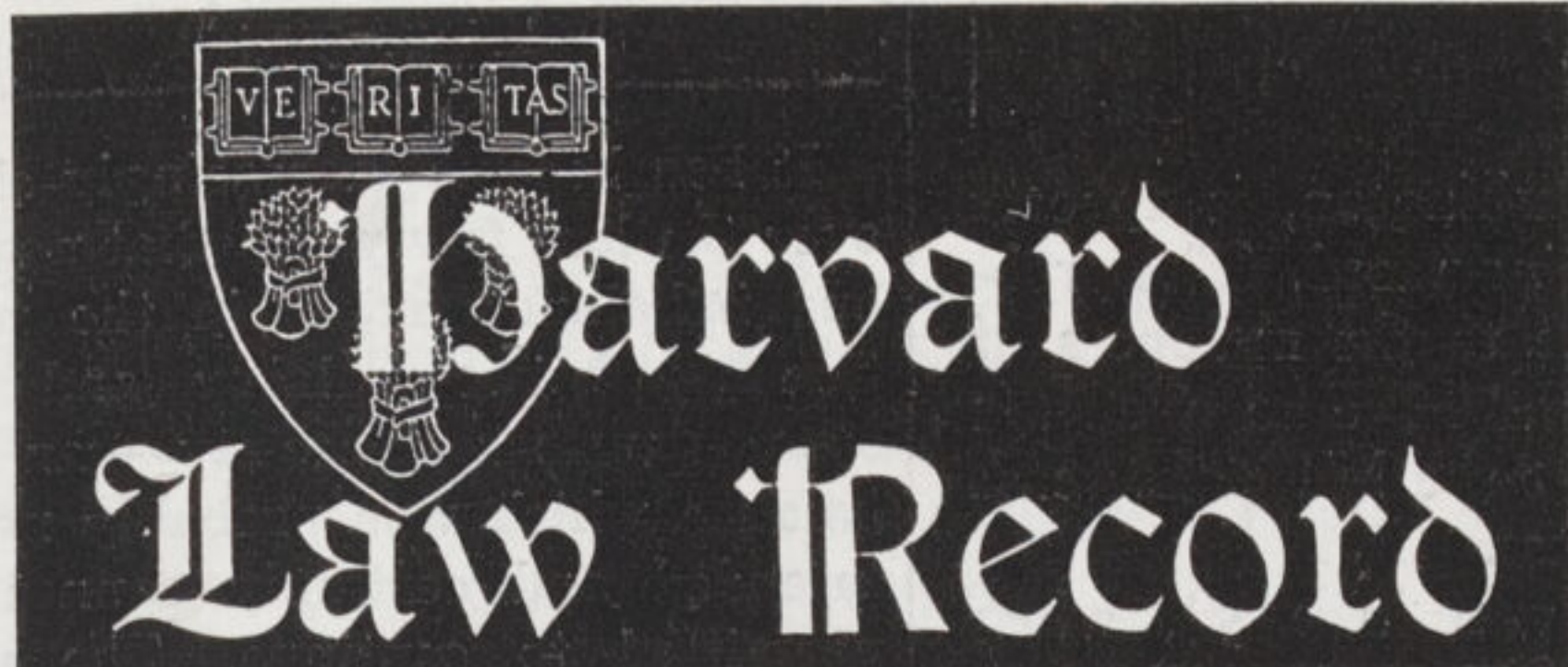




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NO. 3

Class Elections Tomorrow

Class elections for the class of 1961 will be held in Property II classes tomorrow and Tuesday. Students unable to vote at either of these times may obtain ballots at the receptionist's desk in Langdell Hall on Thursday, February 23. Ballots that are not returned to the receptionist by 5 p. m. on that day will not be counted.

As reported previously in the RECORD, members of the third year class will be vot-

Benjamin Cohen Chosen To Give Holmes Lecture

By Charles F. Waite

Selection of Benjamin V. Cohen, S.J.D., as 1961 Holmes Lecturer was announced this week by Dean Erwin N. Griswold.

The lecture series will consist of three talks to be given on April 17, 18 and 19, on the general topic "The United Nations: Constitutional Developments, Growth and Possibilities."

Dr. Cohen received the Ph.B. and J.D. degrees from the University of Chicago in 1914 and 1915. The S.J.D. degree was conferred on him by Harvard in 1916, the year of his admission to the Illinois bar.

His record of service in the development of national law includes participation in the drafting of the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935 and the Fair Labor Standards Act of 1938.

He served as associate general counsel to the Public Works Administration in 1933-34.

Among his activities in the international

(Continued on Page 8)

ing to fill the positions of Class Marshal, Secretary and three committeemen. Those elected will then appoint four additional committeemen to provide geographical representation for regional liaison with the Secretary.

Candidates for the office of Class Marshal are the following: Marvin J. Garbis, Charles A. Goldstein, Bevis Longstreth, Jr., Gerald M. Stern and Herman Wilson. Candidates for Secretary are Edward L. Baxter, John R. Quarles, Jr. and Michael E. Schoeman. Those in nomination for the office of Committeeman are Michael E. Freeman, Harvey A. Harris, Stanley Y. Mukai, William G. Hieber, Jr., Jerry F. Rotman, Thomas A. Skornia, H. Lawrence Tafe, III, and Sydney S. Traum. Defeated candidates in the class election are eligible for appointment to the remaining four places on the committee.

The officers will be elected for a period of five years and the committeemen for a period of ten years. After this election, all the positions are appointive, and selection of future officers and committeemen is the responsibility of a nominating committee comprised of the seven committeemen but not including the marshal and secretary. Incumbent officers and committeemen may be reappointed.

Today is the last day for second-year students to register for the Williston Competition. To participate in the Qualifying Round, eligible students must give their names to the first-year secretary of the Board of Student Advisers in Austin Hall before 5 p. m. today.

Hearsay

What with the new administration in Washington, it appears that the number of Federal judges will finally be increased. The problem of court congestion has brought itself home to the members of Congress, and the President and Attorney General have assumed the roles of motivating forces in an effort to see that the bill to increase the number of judges gets to the floor of Congress.

The last increase in Federal judgeships was in 1954, when President Eisenhower added thirty new seats. Since then there has been, almost annually, an attempt further to increase the seats in an effort to keep up with the demands of justice on the Federal courts. That justice suffers because of court delay is a truism that finds no opposition.

The delay in Congressional approval of the further increase has been due to the practicalities of politics. Even with the concession in 1959 by the then Attorney General William P. Rogers that the new seats would be split on a fifty-fifty basis, nothing was done. Although we realize that politics is a practical business, it seems useless and grossly unfair to deal with the Federal judiciary strictly on party lines.

We are not so naive as to expect that objectivity will be the sole criterion in appointing men to the fifty-nine posts that are to be created. We urge, however, that ability be the main criterion for selection.

The judicial system is, to the litigants before the court, the most tangible aspect of the thing which they know as "law." With individual rights in the hands of the judges and with the trust that is placed in "the law" in the background of each case, it is to be hoped that the appointees will be competent first and party affiliates last.

Harvard Law Record

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COMMENT

By Fenno

It has become increasingly clear over the last few years that a serious imbalance exists in the relationship between labor and the other elements of society — an imbalance which was probably never intended and certainly cannot be permitted to continue. The pro-labor laws enacted during the 1930's were meant to correct the opposite imbalance which existed at that time.

They did that — and more. By permitting unions to obtain a monopoly of the labor supply without being subject to the anti-trust laws, they opened the way for the abuses which are so apparent now.

The effects of this imbalance are only too obvious. The blame for much of the sluggishness of business in recent years can be laid upon the doorstep of organized labor. Prices of consumer goods are in many cases excessive because wages have risen far more than was warranted by increases in productivity. Feather-bedding and make-work rules deny the consumer the benefit of technological improvements.

Exports Suffer

As a result, sales of foreign-made goods have increased in this country, and American exports have suffered. Large numbers of consumers whose incomes are relatively fixed have been frozen out of the market. Unjustified strikes and secondary boycotts have added to high costs and prices. And in spite of extremely high wages, workmanship is often shoddy.

This imbalance has remained uncorrected because of the undue political influence which labor wields. With its vast, tightly-knit organization and almost unlimited funds for political "education," labor has achieved an unwarranted influence in government.

In short, labor is gaining a strangle-hold on the American economy and government. Something must be done to halt this — before it is too late.

Dorms To Be Improved

By Clark P. Giles

Sound transmission-reducing improvements, recently tested in several rooms in Ames Hall and deemed successful, will be installed in a large group of rooms in the Harkness dormitories this summer. The location of the rooms to be renovated has not been determined.

Vice Dean Louis A. Toepfer stated that the changes made have caused a profound difference in the sound-proof qualities of the test rooms. Other experiments have been conducted on rooms in Story Hall in previous years but have not been as successful as the Ames Hall project in reducing sound transmission. "It is true these improvements do not eliminate the sound problem, but they reduce it drastically," Mr. Toepfer said.

Project To Be Extended

Assistant Dean Wesley E. Bevins announced that the sound reducing improvements would probably be made on "a substantial block of rooms—likely a whole building, depending on the bids—to see if the project is as successful as we hope it will be." If the predictions of improvement are verified by reactions of students in the remodeled rooms, the project will be extended to other buildings in future summers. Future renovating will be limited only by cost and use of the buildings during the summer by the Program of Instruction for Lawyers.

Construction work on the test rooms was done by the Department of Buildings and Grounds. Bolt, Deranek and Newman were the acoustical engineers for the project. The expanded program this summer will be done by general contractors on the basis of competitive bids. As the planned project will be on a much larger scale than the Ames Hall experiment, no definite estimate of the cost can be made until the bids are returned.

Improvements To Be Made

The improvements consist of relocating the openable window sash in alternating rooms so that windows will no longer open immediately adjacent to each other. The tests conducted indicated that little was to be gained by the use of any other type of window opening. The window openings will still be vertically above one another, but little sound is

transmitted in this manner from floor to floor.

Partitions will be beefed-up by attaching plaster board material to the present walls a small distance from the cinder blocks. The space between the cinder blocks and the plaster board will be filled with an insulating material. Regular plaster will be placed over the plaster board material. This additional buttressing will extend from the edge of the window to the hall partition.

The doors will be gasketed around the outside with rubber tubing and sills installed to prevent direct sound transmission from the halls through these spaces. The conduits for pipes and electric wires running between the rooms and the floors will be sealed and recalked.

Rooms Slightly Smaller

Each partition between the rooms will be buttressed on one side only. The additional thickness of the wall will make each room approximately one and a quarter to one and a half inches narrower. A different texture of the two partitions of each room—one will be plaster and the other cinder block—and a brighter color scheme to be used in redecorating will tend to make the rooms appear larger and more habitable.

As the improvements are installed in each room it will be completely redecorated. While this is being done the illumination problem will be explored to determine if there is a feasible and better method of lighting the rooms.

Holiday at Law School

Washington's Birthday, Wednesday, February 22, will be a holiday at the Law School. Classes will resume on Thursday.

Roscoe Pound To Deliver

Lecture in Washington

Dean Emeritus Roscoe Pound will deliver the first annual Edwin A. Mooers Lecture at the Washington College of Law, The American University, Washington, D. C., on March 25, 1961. The subject of Dean Pound's lecture will be "The Foundations of Law."

Bull & Bear To Hear Stevens

By Paul Freehling

Mr. Roger L. Stevens, Broadway theatrical producer and real estate investment broker, will address the Bull and Bear Club tomorrow at 1:40 p. m. in the Wheeler Room of Holmes Hall. Mr. Stevens will speak on the real estate investment trust (the so-called Massachusetts trust), which has recently been given extraordinary tax status. He will also comment on investments in Broadway plays. All students and faculty are invited.

Mr. Stevens is well-known as the producer of many successful Broadway shows, including "West Side Story," "Cat on a Hot Tin Roof" and the current hit "The Best Man." He has produced or co-produced a total of 77 presentations in the past ten years. Mr. Stevens has the ironical distinction of having produced over a dozen plays which, although being financial failures, were chosen for inclusion in the annual collection *Best Plays*.

Mr. Stevens mixes real estate with producing, for he is a director of a New York corporation which manages six Broadway theaters. But he is also active in real estate investment off Broadway and outside New York. He has participated in housing developments in New Haven and slum clearance in Washington.

Syndicates' Purchases Listed

Syndicates which he has headed have bought and sold, among other properties, hotels in Los Angeles and Havana, a skyscraper in Cleveland (the Terminal Tower), numerous properties in Oakland and Milwaukee, plus most of downtown Seattle. In 1951 one of his syndicates purchased the Empire State Building for a price in excess of \$167,000,000; the building was sold for a substantial profit in 1954.

Recently Mr. Stevens has devoted considerable time to real estate investment trusts—unincorporated investment associations which qualify for special tax treatment. To be eligible, the "trust" must be owned by 100 or more persons no five of whom own a majority in interest. In general, if 75% of the association's gross income is derived from real estate investments, and if 90% or more of net income is distributed to the "trust"

owners, the income is taxable to the owners and not to the "trust."

The real estate investment trust allows investors with only a small amount of investing funds to obtain an interest in diversified real estate holdings without incurring the double taxation of corporate dividends. Some real estate managing corporations, by modifying the corporate form, will be able to escape corporate taxation.

Mr. Stevens has held numerous civic and political positions. In 1956 he served as finance chairman of the Democratic National Committee. In 1959 he was national chairman of the 75th birthday celebration for former President Truman. Mr. Stevens has also been a director of the Metropolitan Opera.

YAF To Present

Cuban Critic of Castro

Dr. Manuel Dirigon, former Cuban Consul General in Boston and now a political exile, will discuss "The Cuban Revolution?" on Tuesday, February 28, at 8 p. m. in the Wheeler Room of Holmes Hall.

An outspoken critic of the Castro regime, Dr. Dirigon will speak of the impact of the Cuban situation on the freedom of the Western Hemisphere. This will be the first meeting sponsored by the newly-formed Young Americans for Freedom, a movement devoted to political and social action in support of conservative principles.

All are invited to attend.

Yale Law School

Plans Conference

The World Community Association of the Yale Law School is sponsoring a conference on "The Lawyer's Role in International Trade." The conference will be held in New Haven, Connecticut, the week-end of March 3-4, and there is no charge for attendance by students.

Lectures and seminars will be given in the areas of trade, anti-trust, regional markets and taxation in the international legal field.

Hypnotist Leaves Audience Awake

By Robert C. Berry

For people who have shuddered wonderingly at the tales of the dire Svengali's hypnotic powers over the hapless Trilby, last Friday evening's talk by Dr. Martin Orne before the Law School Forum must have been something of a damper. "Any jackass can hypnotize," said Dr. Orne. The main factor is not any fancied occult powers of the hypnotist, but rather the subject's willingness to be hypnotized.

Speaking on "The Nature of Hypnotism," Dr. Orne, an instructor at the Harvard Medical School and a leading authority in the field of hypnotism, directed his remarks to an estimated crowd of 275 in the James Barr Ames Courtroom, emphasizing the specific, sobering and factual possibilities, rather than the fanciful or absurd, that exist in the use of hypnotism. He remarked on the manner in which the very mention of hypnotism often conjures fantasies and evokes the wildest of images. Many of these fantasies he proceeded to debunk during the course of the evening.

A question inevitably put to him, Dr. Orne said, is the possible anti-social behavior a person might engage in while hypnotized. In other words, can the hypnotized person be made to do something anti-social, indeed illegal, that he would not do normally?

While never giving a definite "yes" or "no" answer to this, Dr. Orne did indicate he felt that a person could not be forced to act against his normal inclinations. However, he emphasized, a person's normality is subject to many conditions and circumstances and must be fully understood in this light. As an example, he said he believed that he could hypnotize someone in the audience, could hand that person a gun with bullets, could direct him to shoot someone, and that the hypnotized subject would do so. He said this would happen, not because the person was hypnotized and powerless to do otherwise, but because the person, awake or hypnotized, would believe that it was make-believe and that no one such as Dr. Orne would let him commit murder, particularly before an audience. Thus, being willing to cooperate, he would go through with the act.

Dr. Orne mentioned tests that had been made where the hypnotized subject would



Dr. Orne places H. Stephen Cranston, 2L, between two chairs in order to demonstrate that one who is not under hypnosis can perform the same feats of physical prowess as can one who is hypnotized.

stab people with rubber daggers or would take fake poisonous pills while being told they were the real thing. All this was done obligingly. But when the person was asked to undress before others, the subject immediately awoke. As Dr. Orne explained, there is always "a sixth sense of reality" that will intervene for the hypnotized subject when a situation passes the point of make-believe, or where it passes what the person reasonably infers is the point of make-believe.

No Laboratory Evidence

The doctor did note that his conclusions as to anti-social behavior were largely subjective. "There is no laboratory evidence to date, at all, to show that subjects will or will not do what they do not want to do." This, he explained, was because the proposition was largely untestable.

If a person believes a subject cannot be forced under hypnosis, then in a given situation this person can safely assert that the subject did or did not do the thing because he would or would not have done it in any case. On the other hand, if a person believes that a subject can be forced to act, and the subject fails to so act, the advocate can al-

ways retreat to the proposition that the test was improperly performed or that the hypnotist inadequately handled his function.

During the talk and the question period following, there were various fanciful ideas about hypnotism on which Dr. Orne threw the proverbial cold water. One was the idea that a person's powers of memory could be increased under hypnosis. Noting that he usually receives 20 or 30 inquiries of this nature "around exam time," he ruefully emphasized that it just isn't so. Nor is there anything to the idea that the hypnotized is under the exclusive power of the one who put him in trance. The subject can be influenced by anyone who will speak to him in a low voice and with a little patience.

Another basic point is that the hypnotized cannot perform feats of physical prowess which he could not do in a "highly motivated" state of awakening. To demonstrate this, the doctor had a volunteer from the audience, though fully awake, lean back and become perfectly rigid, even when suspended between two chairs with someone sitting on his stomach.

Though much of the talk was devoted to dispelling fancied concepts of hypnotism, Dr. Orne did mention several legitimate and far-reaching functions. Important examples of hypnotic treatment include major surgery without sensation, age regression to recall repressed memories (rather than merely forgotten instances), blocked sounds, induced hearing and indeed the inducement of almost any type of sensory distortion, including memory.

Dr. Orne cautioned against any of this being done by "amateur" hypnotists. Though the simple act of hypnotizing does not lead to too much trouble, he said, the amateur who goes beyond and attempts treatment is courting disaster.

Sanford Kadish, visiting professor of law, was moderator of the program.

Law Wives Party Is Great Success

By Mrs. Robert S. Ketchum

Last Saturday afternoon the Harvard Law Wives held their Faculty-Student Cocktail Party in Harkness Commons. The party is an annual affair given by the Law Wives at which the faculty are guests.

The presence of Dean and Mrs. Erwin N. Griswold gave many students and their wives a chance to meet and talk with them. Many faculty members and their wives also attended the party.

Piano music added to the festivity of the occasion. This was a new addition to the event and was appreciated by many.

The hors d'oeuvres, which were very impressive and certainly in great abundance, were prepared by the members of the Harvard Law Wives.

Professor Berman To Lead Discussion

A luncheon meeting will be held at Canterbury House, Christ Church, Cambridge, on Thursday, February 23, from 1:10-2:30 p. m. Discussion will be focused on an essay by Reinhold Niebuhr, "Love and Law in Protestantism and Catholicism." All law students who are interested are invited. Mimeographed copies of Niebuhr's essay may be obtained from Professor Harold J. Berman.

A Recordless Week

The RECORD will not publish an issue next week. Our regular weekly schedule will be resumed the following Thursday, March 2.

Alumnus Is Designer Of FDR Memorial

Norman Leonard Hoberman, the architectural creator of the design recently selected by a group of architecture experts for a memorial to Franklin Delano Roosevelt, is a graduate of the Law School. Mr. Hoberman is a member of the class of 1951 and received his LL.B. degree *cum laude*. While at the Law School, Mr. Hoberman was a member of the *Harvard Law Review* and a member of the Brandeis Club.

Mr. Hoberman's proposed monument to F. D. R. consists of eight perpendicular tablets inscribed with quotations of Roosevelt. The tombstone-type monument is designed to be constructed of concrete and marble. Approval still must be obtained from various government agencies, Congress and the public. The cost is estimated at over four million dollars and will be raised by public subscription.

Young Republicans Hold Panel

By Paul R. Matia

The Harvard Law, Graduate and Business School Young Republican Club presented a panel discussion on "The Role of Private Enterprise in America's Foreign Policy" last week in the James Barr Ames Courtroom, Austin Hall. The members of the panel were Sinclair Weeks, former Secretary of Commerce; Prescott C. Crafts, Jr., international banker associated with the First National Bank of Boston; Professor Raymond Vernon of the Business School; and Professor Milton Katz of the Law School. Louis Lyons, Curator of the Nieman Foundation and a Boston news analyst, served as moderator.

Involves Many Departments

Professor Katz, formerly Director of the Ford Foundation and at present the head of the International Legal Studies program at the Law School, pointed out that "foreign economic policy" encompasses a wide range of problems and involves a large number of government departments. The Defense Department is concerned with troop expenses abroad, the Labor Department with foreign wage rates, the Federal Communications Commission with international allocation of radio frequencies, and other agencies with similar matters. For this reason, Professor Katz said, it would not be easier—as has been suggested by some—to have a single Department of Foreign Affairs to handle all these activities.

The role of private enterprise must be considered because American business is operating all over the world and because private enterprise is the principal repository of American skills. The value of American business abroad in 1958 was \$30,000,000,000.

Principal Battle Area

Mr. Weeks, currently Chairman of the United Car Fastener Company, emphasized the importance of foreign economic policy in the cold war. He cited Khrushchev's statement that "we value trade least for economic reasons and most for political purposes." We must win the trade war in order to win the cold war, Mr. Weeks said, and the principal battle area will be in the underdeveloped nations.

Private enterprise must move into the un-

derdeveloped nations before government enterprise is established; otherwise these nations will never have the opportunity to see how private enterprise works. In order to encourage private enterprise to invest in underdeveloped areas, Mr. Weeks said, the United States government should liberalize its anti-trust and tax policies.

Professor Vernon recently returned from Mexico, where he explored various problems of American economic policy. He outlined the problems which must be faced by both the business and the receiving country before there can be any investment by American private capital. The American company faces two main problems: the high degree of risk involved in investing in underdeveloped areas and the scarcity of managerial personnel. In regard to the latter, Professor Vernon said the company must decide whether it can afford to have its key personnel "go down to Timbuctu" for the period of time required to set up a foreign operation.

Receiving Country's Problems

The prospective receiving country faces problems, too. One is the balance of payments. Professor Vernon remarked that seven per cent of Australia's outgoing payments are sent to the United States by General Motors as dividends. The receiving country may also question whether it wants to be in the type of business the American firm is prepared to establish.

A third problem is competition with local business. A large American soap company that invests in Mexico may force fifteen small Mexican companies out of business. That the American company's product is superior is immaterial to the Mexicans who are adversely affected.

There is also a fear among underdeveloped countries that an American company will exploit natural resources faster than might be economical because of the company's desire to recover its capital investment. A government-owned firm doesn't have such pressure to recover capital, and only too often these countries choose the government firm.

Discussing ways of making private enterprise more effective overseas, Mr. Crafts expressed surprise that American business

operations overseas succeed as well as they do. He criticized the poor job private enterprise has done in publicizing its foreign operations to the American people and in representing itself in Washington. On the latter point, however, he noted that there is no single government agency to which business can address itself.

Several Suggestions Given

Mr. Crafts offered several suggestions. The principal need is for a more favorable investment climate in the underdeveloped countries. Toward this end the United States should abandon its "hands off" policy and instead encourage positive national leadership. An improved United States information service would also help. The World Bank has been effective in achieving the necessary financial conditions in the underdeveloped nations, and more such development banks are needed. Tax incentives should be offered by the United States and by the host government.

Government As Partner

Finally, American business needs a more constructive approach. It must reconcile itself to different ways of doing things. Business should "think small," since it is the economical smaller venture that is needed in the underdeveloped areas. American business should seriously consider the joint venture method, Mr. Crafts said, with government as a partner. The development of a mixed economy is favored by the underdeveloped countries, and a combined operation stands to be much more successful.

Professor Katz warned against too much mixing of government and private enterprise, noting that government performs properly only when it does something that is in its nature to do. Where private enterprise can operate effectively by itself, the government should not become involved.

Holmes

(Continued from Page 1)

field, Dr. Cohen has served as advisor to the American delegation to the U.N. General Assembly. In 1950, he represented the United States before the International Court of Justice at the Hague.

The Holmes Lectures will be given on each of the consecutive evenings at 8 p. m. in the James Barr Ames Courtroom of Austin Hall.

Code Publication Bill Introduced by Kefauver

Senator Estes Kefauver has introduced a bill in the Senate to provide for the publication of a United States Treaty Code Annotated. Such a reference work is not presently available.

The senior Senator from Tennessee has indicated that the University of Tennessee will be willing to provide the staff for the publication of the code under the direction of Professor Salo Engel. Professor Engel is the Head of the Department of Political Science at the University of Tennessee.

Alumni Notes

LL.B. '14 — Charles J. Biddle has been elected chairman of the board of trustees of the Drexel Institute of Technology, Philadelphia, Pennsylvania.

LL.B. '37 — Abram T. Collier has been awarded the McKinsey Foundation \$1000 Award for the best article published in the Harvard Business Review in 1960. Mr. Collier is vice president and general counsel of John Hancock Mutual Life Insurance Company.

LL.B. '42 — Leonard S. Siegel has been installed as Commander of the Masonic War Veterans of the State of New York, Temple Post No. 19.

LL.B. '49 *c.l.* — Bernard A. Feuerstein has been appointed secretary and general attorney of Fairbanks, Morse and Company, Chicago, Illinois.

LL.B. '49 *c.l.* — Edwin L. Gasperini has announced the formation of a partnership under the firm name of Gasperini and Koch, 375 Park Avenue, New York 22, New York.

LL.B. '51 *m.c.l.* — Jerome Ackerman has become a partner in the firm of Covington and Burling, Union Trust Building, Washington, D. C.

LL.B. '56 — Alan J. Underberg has become a member of the firm of Moser, Johnson and Reif, 47 South Fitzhugh Street, Rochester 14, New York.

LL.B. '57 — J. Rosenzweig has moved his law offices to 1445 Northwestern Bank Building, Minneapolis 2, Minnesota.

FEATURES SECTION

Eichmann: International Problem

By Professor Milton Katz

The following article is an excerpt from a speech delivered before the New Jersey Institute for Practicing Lawyers.

The Eichmann case is packed full of emotion, drama and political and historical significance. In my view, it also happens to be interesting and to have long-range significance from the point of view of law. I believe it is significant from the point of view of law in a double sense.

On the one hand, as I shall try to show, it has implications for one of the larger problems which confront the world today: how far and in what way can disputes between nations be resolved through law?

In another aspect, it also has considerable significance for law as law presents itself to practicing lawyers; law in the sense of the daily work of lawyers and judges.

I should like to avoid any discussion of the Eichmann case in the political sense or in the dramatic sense or in the emotional sense. I shall confine myself to the Eichmann case in the legal sense.

I would like to remind you of the facts of the case. About six months ago, we all read in the newspapers that a man named Eichmann had been transferred — and I use the word “transferred” because I am trying to be as neutral as possible — from Argentina to Israel, where he is going to be tried under an Israel statute to which I will return in a moment.

Professor Katz is Henry L. Stimson Professor of Law and the Director of International Legal Studies at the Law School. He edited a casebook on Administrative Law and co-authored The Law of International Transactions and Relations: Cases and Materials. Professor Katz received his A.B. from Harvard in 1927 and his L.L.B. from the Law School in 1931.



Professor Katz

The Argentina Government contended that officers and agents of the Government of Israel had entered Argentina, had kidnapped Eichmann and by force had transferred him across the sea to Israel. There was another story which also appeared in the press at the time. The second story was that a group of volunteers who had dedicated themselves to tracking down and pursuing to the uttermost ends of the earth, the perpetrators of some of the crimes during the Hitler period in Germany, had found that Eichmann had found an incognito refuge in Argentina; they had gone to Argentina as volunteers; they had spoken with him and persuaded him voluntarily to board an airplane and go back to Israel with them.

If the second of the versions should be accurate, many of the problems which I will discuss would not be involved in the case. For that reason, that is, because we want to be able to discuss all the problems, I am going to assume that the first version of the story is accurate — namely, that these men

were officers and agents of Israel and that they had kidnapped Eichmann. In the later negotiations which the Government of Israel conducted with Argentina, I find very little evidence that they were insisting on the second version. It would seem fair to assume, at least for the sake of discussion, that the first version was accurate, that he had been kidnapped and had been transported by force into the airplane and across to Israel.

Those in outline are the essential facts of the case. He is going to be prosecuted under a statute which was passed in Israel in 1950, after the time in which the crimes which most people assume that Eichmann committed took place. The statute is in three parts. It deals with three groups of crimes as defined by that statute.

One is the category of so-called crimes against the Jewish people. The second is the category of war crimes. The third is the category of crimes against humanity.

I shall confine myself for all practical purposes to categories two and three — war crimes and crimes against humanity. I shall do so not because the part of the statute which charges him with crimes against the Jewish people is insignificant, unimportant, or not worthy of our attention. But I want to concentrate upon those two paragraphs of the statute which deal with crimes against humanity and with war crimes, because I believe that the problems raised by these paragraphs might have arisen if, for instance, the nation which had kidnapped Eichmann and brought him to trial had been Sweden or Denmark. In short, the specific relationship of Eichmann to the Jewish people is not an indispensable part of this case in the legal sense, although it is, of course, a vital part of it in the actual and historical sense.

The only other fact to which I will refer is one with which you are familiar. Eichmann apparently was charged by Hitler with special responsibility for attempting to exterminate the Jewish people in Europe, and he is generally believed, according to the testimony at the Nuremberg trials and according to the findings of various Foreign Offices, to have been responsible for the killing, the murder of close to six million people, in Germany, Poland, The Netherlands, France, Denmark, Norway and Czechoslovakia.

Those facts raise three different groups of legal problems. They have to be dealt with separately to be comprehensible, and especially if their significance is to be appreciated.

The first group of problems has to do with the complaint of Argentina against Israel. Argentina's complaint in brief was that Israel, in capturing and kidnapping a man who was present within Argentina and taking him out of Argentina to Israel, had violated the law of Argentina and had also violated international law. The first group of problems revolves around that charge.

There is a second group of problems which I want to skip for the moment, because it represents something intermediate between the first and third.

Other Problems

The third group of problems has to do with this question: What is the proper reach of the legal system of any country? How far may the legislation of one country extend beyond its own borders and beyond its own nationals? The crimes for which Israel will charge Eichmann were crimes committed by him outside of Israel, in the countries which I named a moment ago. There is, therefore, no obvious territorial basis for the extension to this activity of Israeli statutes. Eichmann was not a national of Israel so that they were not purporting to punish one of their own nationals.

The question therefore arises, may any state—Israel or the

United States or England—pass statutes which purport to regulate the conduct of people outside the borders of that state who are not nationals of that state?

In between the first and third group is the second group of problems which Eichmann may raise in the courts of Israel, in the first instance, and thereafter perhaps before other tribunals, possibly international tribunals. This group might be described in essence as revolving around this question: What right do you have to try me when you got jurisdiction over me by kidnapping?

I would mention one other feature which perhaps can be best put into the third group, and that is the apparent retroactivity of the Israeli legislation. The statute of Israel was passed in 1950, and Eichmann's deeds were done, as far as one can tell, during the period which ended in 1945.

These are the three groups of problems. Before I analyze them, I would like to indicate why I think these problems have a broad gauge and long range significance over and above the inherent drama with which this whole thing is packed. Let me turn to the first group and suggest what its broad gauge and long range significance may be.

Argentina charges Israel with a violation of its borders, a violation of its law, and with the assertion within Argentina of Israeli governmental authority. They say: When your agents and officers under your direction, or at least with your acquiescence and consent or ratification, purported to arrest a man in Argentina, you purported to exercise governmental power within Argentina, because only a government has the right of arrest; and when you try to exercise governmental power within Argentina you are violating not only the borders of Argentina and not only the law of Argentina, but also the sovereignty of Argentina. The underlying question which this example illustrates is this: What happens when a state violates international law with respect to another state in the modern world?

Both Argentina and Israel are members of the United Nations, as are most other states in the world today. Under the U. N. Charter and certain other multilateral treaties, no state may use armed force to vindicate its asserted right except in self-defense against the armed attack of another state. If, therefore, Argentina wanted redress from Israel, since she is prohibited from going to war about this violation of her borders, the alleged violation of her sovereignty, is there anything in the society of this world which affords her a remedy other than war?

I think it is quite basic, so elementary that most of us overlook it, that if you prohibit force, you can only do so if you replace it with law. And this is the first great question which was raised by the Eichmann case in one of its aspects.

Violation

Now, I will say without trying to document it, because it seems fairly clear, that Israel's conduct as against Argentina was a violation of international law as well as a violation of Argentine law. Argentina had a valid claim against Israel under international law. She might have brought that claim, she might have tried to assert it in the International Court of Justice. She chose instead to proceed politically before the Security Council of the United Nations. The Security Council issued a finding to the effect that the conduct of Israel did cause a danger to international peace and security and requested Israel to give appropriate reparations to Argentina.

Argentina and Israel have now treated it as a closed incident. Argentina accepted the Israeli apologies and certain other steps as adequate reparations, and the matter stands closed. It is closed, however, only because Israel was prepared to acknowledge that she had violated international law and was prepared to offer reparations, and only because Argentina was ready to accept the relatively mild reparations which were offered. They were essentially apologies, recognitions that Argentina's sovereignty

had been infringed, reaffirmations of Argentina's rights, and a few other things. This was possible because one takes it that the Argentine Government really was not frightfully concerned about the particular individual and was concerned primarily to vindicate its own position under international law. That phase of the case, therefore, is for practical purposes closed, but I mention it as a reminder that this sort of thing which happened there raises a question to which we are going to have to find an answer.

If people injure you in any way that falls short of armed attack, are you without an effective remedy? Under public international law in its present stage of development, and under the U. N. Charter, as presently construed and applied, remedies are not available except within very narrow limits.

Let me carry you over to the significance of the third set of problems, the questions relating to the appropriate reach of the legal system of Israel. Let me illustrate what that really means. Supposing that New Jersey should pass a homicide statute, the ordinary statute making murder a crime punishable by life imprisonment or death. Suppose, however, that the statute should by its terms provide that it applies to anyone who murders anybody anywhere in the entire world. Suppose that a Frenchman murdered another Frenchman in Paris and subsequently took a trip to New Jersey and was arrested in New Jersey and tried for murder. What about that?

I think that if he challenged the

New Jersey statute under the Constitution of the United States, the Supreme Court of the United States would hold that New Jersey had no jurisdiction. I am inclined to think that the case would never reach the Supreme Court of the United States, that the New Jersey courts would find some way to construe that statute, to say that the statute was not meant to apply to homicide committed in France by one Frenchman against another Frenchman; that such an application would lie well beyond the reach of the legal system of New Jersey.

Reach of System

Let me pause for a moment on that phrase, "reach of the legal system." This is not a question of jurisdiction over the person of the defendant. In the hypothetical case I just gave, that Frenchman came to New Jersey. There is no question that New Jersey arrested him in New Jersey and had jurisdiction over the person. The question was not a question of the jurisdiction of the court over the defendant. The question was what is the proper reach of the legal system of New Jersey?

Such questions also arise now not merely between states of the United States but internationally, and they arise in a much more difficult form than the homicide case. The homicide case is difficult

enough, and the French might have protested as well as the man who was captured.

Let me try to carry you a little further into an analysis of the second — the intermediate — set of problems. The second set involves the problem raised by a request on the part of Eichmann to the Israeli court — which we may anticipate — that the court dismiss for lack of jurisdiction over his person, because he was kidnapped and brought within Israel by force. This sounds like a rather unique case, doesn't it? It did to me, until I started checking. It turns out that there is a good deal of precedent concerning this question. Much of it comes from the Supreme Court of the United States.

The first case was *Kerr v. Illinois*, about a hundred years ago. Illinois wanted Kerr for embezzlement, but he had thoughtfully left Illinois and traveled to Peru. The United States had an extradition treaty with Peru. The President of the United States issued a warrant to an appropriate officer, who was designated to go to Peru, and request extradition of Kerr from the proper Peruvian authorities.

He seems to have been a man who liked things done briefly. For reasons which don't appear in the reports, he decided not to present his papers to the Peruvians. He

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found his man and confronted him with a gun, put him aboard a cruiser, and brought him back to California. The California authorities had no business meddling with the case under any theory, but they obligingly assisted in the arrest and helped to ship the prisoner to Illinois, where he was prosecuted for embezzlement. He was convicted.

The case was brought to the Supreme Court of the United States. It was pointed out that Kerr was kidnapped by an official, his rights had been violated not only by Federal officers, but by California and Illinois officers, and that on top of

everything else the actions of the President's emissary had been in violation of our treaty with Peru.

The Supreme Court said this might well be true; Peru might very well have a grievance against the United States, and the prisoner perhaps might some day have a claim against the people who had kidnapped him. But nevertheless, there was nothing wrong with the Illinois judgment of conviction. Illinois had jurisdiction, Kerr was given a fair trial; and there is nothing, said the Supreme Court of the United States, which we can do about it, nor indeed which we ought to do about it.

It has come up at least five times in the past hundred years in the Supreme Court of the United States, and on each occasion the Supreme Court has taken the same position — that the court had jurisdiction over the person.

British courts have taken the same position consistently for a hundred years. I have found only one case to the contrary. This was a case in a French tribunal.

Now let us return to the third phase of implications of the case, involving the reach of the legal system of Israel. Under established doctrines of international law, a state may extend its statutes, may

Profiles of Leaders

Mrs. Jerry F. Rotman is president of the Harvard Law Wives. A graduate of Central High School, Sioux City, Iowa, and the University of Iowa with the class of 1956, Louise has a teaching certificate for both the elementary and secondary levels. She lives with her husband, a third year student, and two young sons at 41 Linnaean Street in Cambridge. Louise finds that her sons and the Law Wives keep her rather busy.

Although most women are rather slow to admit their age, Louise says she was born on September 11, 1933, in Sioux City, Iowa.

The Law Wives is a social and cultural group which affords an opportunity for the wives of law students to become acquainted and to share cultural, recreational and educational activities.

Other officers of the club include Mrs. Jack S. Levin, first vice president; Mrs. Peter H. Wolf, second vice president; Mrs. Thomas A. Skornia, treasurer; Mrs. Donald L. Morgan, corresponding secretary; Mrs. Burke Mathes, recording secretary; Mrs. John R. Mannix, social chairman; Mrs. Robert S. Smith, hospitality chairman; Mrs. Robert S. Ketchum, public relations chairman; and Mrs. John C. Culver, faculty-socials chairman.



Richard E. Smith, a third year student from Worcester, Massachusetts, is president of the Law School Forum. A graduate of North High School in Worcester and the University of Alabama, where he received his Bachelor of Arts degree in 1958, Dick spent almost eight years in the army between September, 1948, and June, 1956. Married in June, 1951, Dick is the father of a son and two daughters. He has served the Forum in many other capacities since coming to the Law School and is the first president in its fifteen-year history to be re-elected to that position.



The Forum is a non-political organization of students, incorporated under the laws of Massachusetts, whose purpose is to bring to Harvard outstanding personalities in the fields of government, education, entertainment and the arts.

Other officers of the Forum include Josiah S. Murray III, 3L, Durham, North Carolina, planning vice president; Stephen P. Robin, 2L, Washington, D. C., administrative vice president; and William R. Granik, 2L, Washington, D. C., treasurer.

The Forum is self-supporting and receives no financial aid from the University or the Law School except the use of its office.

extend its legal system to any conduct that takes place within its own territory. That is obvious enough. It may also extend the reach of its statute to anyone who is a national of that state, wherever he may be. As one moves away from the foregoing categories, the clarity of the law gives way to dimness.

Other Categories

There is a third category of jurisdiction which is sometimes referred to as protective jurisdiction. The best illustration I can give are laws against counterfeiting. If a Dutchman counterfeits French currency in Holland, if he should subsequently be arrested by the French authorities, they may prosecute, and it is held widely that this is a proper extension of French legislative power.

Then there is a fourth category, about which there is much disagreement, but which some states purport to apply, which is known as "passive personality." The gist

of it is this: If the *victim* of the crime was one of a state's own nationals, the state may apply its law to the crime and prosecute.

There is a fifth category, called "universality." There are a limited number of crimes — just two, perhaps — which are well established, with respect to which all states and all legal systems agree that anybody who can find the fellow has a right to prosecute. The first is piracy. The second is slavery and the slave trade.

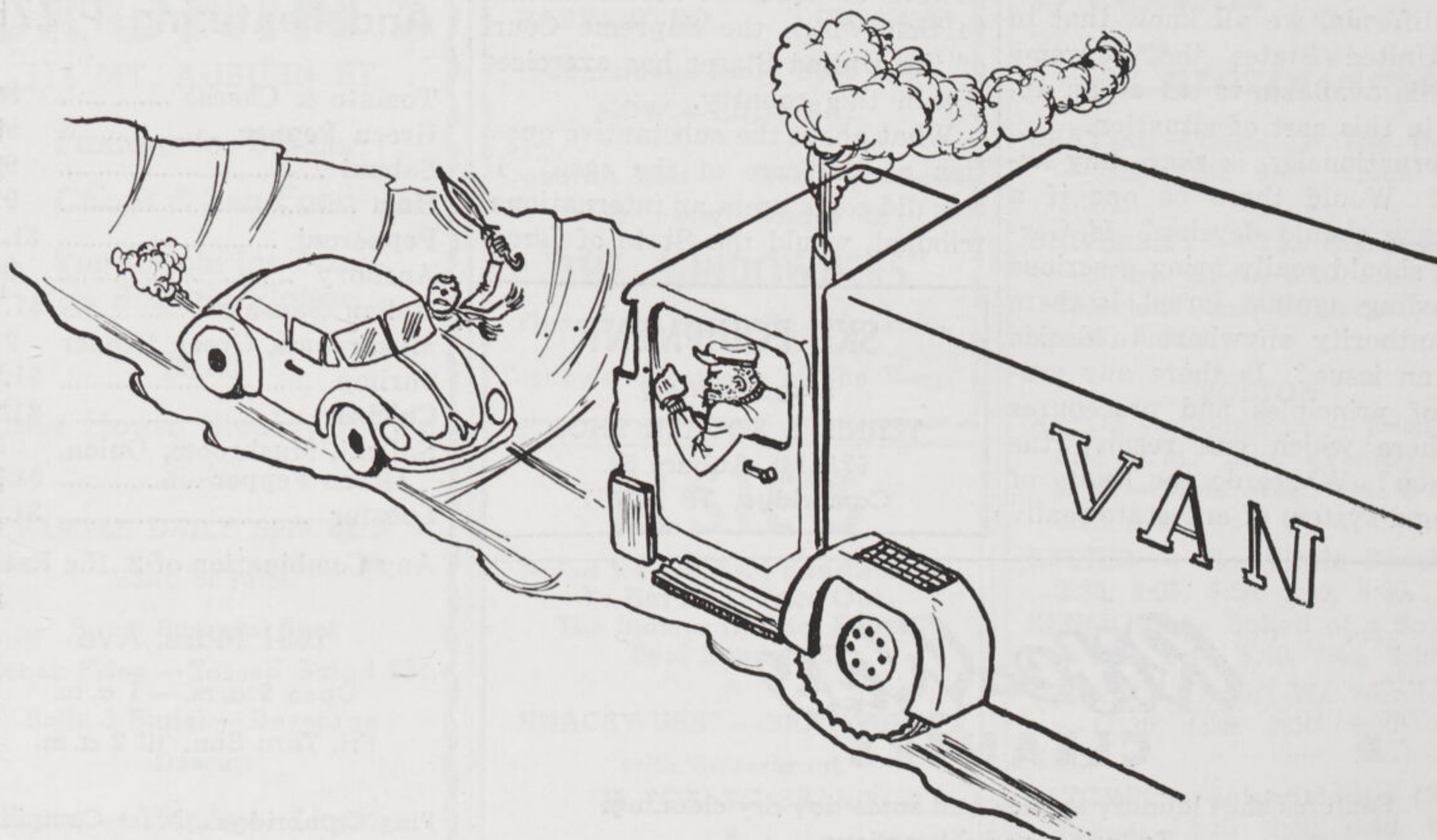
I pause here to draw your attention to a procedural question. Typically, a challenge to the conduct of a state under international law may only be raised by the state of which the victim is a national. In the Eichmann case, the only state which could in any international tribunal question Israel's extension of its statutes to conduct which took place within Europe on the part of one not a national of Israel — the only state which can raise that question is the Federal Republic

of Germany (or possibly East Germany if the latter should claim that Eichmann was a national of East Germany). Neither of those states has manifested the slightest desire to do so.

So in a strictly lawyer's sense, one might agree that this question doesn't arise, since the only party capable of bringing the case has made it quite clear that it won't do so. That would end the case in the technical legal sense, perhaps, but not in the larger substantive sense.

Let me again remind you of some of the cases I mentioned before, and their implications. What happens when the laws of different states reach out in such a way that people who travel around the world or enterprises which do business in two or ten or twenty states, as so many companies do today, find themselves in a position where they are just caught? What would happen if one of the states involved should undertake seriously to challenge the other?

Commentaries



Speak softly and think big.

There is at least one dramatic case, in which such an issue was squarely raised. It was a relatively simple one. It involved a French ship in the Mediterranean on the high seas which rammed a Turkish ship. Eight Turks were killed in the collision. The French ship subsequently went on to Istanbul, where the Turkish authorities arrested the officers and prosecuted them for homicide under a Turkish statute which was broad in its terms. It applied to anybody who committed one of these crimes anywhere. The Government of France brought a proceeding against Turkey in the Permanent Court of International Justice—this is the famous case of the *S. S. Lotus* (the name of the ship)—and insisted that international law prohibited Turkey from conducting this kind of prosecution.

Representative

All of us who are familiar with the Federal system in the United States will recognize what this represented and what it potentially could represent. We all know that in the United States if the law of one state, say New Jersey, purports to tax a man in California, or purports to regulate business conduct in California, we all know that in the United States the Supreme Court is available to act as an arbiter in this sort of situation.

Internationally, is there any arbiter? Would there be one if a real row should develop? If Germany should really bring a serious proceeding against Israel, is there any authority anywhere to decide such an issue? Is there any system of principles and procedures anywhere which can resolve the question? Where do the limits of the legal system of any state really

end? Is it a free-for-all? May each state extend its legal power as far out as it chooses? Are we back to the point where the only way to resolve this conflict is by conflict in the violent sense, that is by war between the states involved?

Territorial

In the *Lotus* case, the court went all around the problem and finally ducked it. They ducked it in a time-honored way, which American lawyers will recognize. The court figured out that although the collision happened on the high seas, the Turkish ship was really Turkish territory, and therefore the killing could be compared to a killing by a man standing in Canada and shooting across the border into New York State; that's a crime under New York law, and New York could prosecute. So could Turkey in the *Lotus* case.

It was a seven to six decision even on this basis. It's the only thing in contemporary law to suggest that there might be some situations in which the International Court of Justice would intervene and try to exercise a regulating and adjusting function between the powers of different states similar to that which the Supreme Court of the United States has exercised within this country.

What about the substantive question at the core of the case? If this did come up in an international tribunal, would the State of Israel

have a valid case under international law, or would she merely be in a position where she might in effect say: We are going to do this, because there's no one who can stop us?

The terms of the statute of Israel which I referred to describe a crime against humanity and a war crime. The forms of the statute are verbatim the same as those in the Charter of the International Nuremberg Tribunal. Furthermore, at least in the case of war crimes, there's a body of precedent which goes back at least to the eighteenth century, to the effect that certain crimes, abuses of behavior in time of war, recognized and called war crimes, may be punished by any state anywhere at any time.

You will recognize, of course, that the Constitution of the United

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States itself embodies this principle. Congress shall have power to punish piracy and other offenses against the law of nations. And in one of the Supreme Court decisions which grew out of the prosecution of one of the Japanese war crimes, the Supreme Court of the United States explicitly affirmed the principle that any state may punish war crimes wherever and whenever committed.

What about the question of retroactivity? This is a problem which is familiar in our own legal system and many others. I myself don't consider that a really serious problem in the Eichmann case. The theory of non-retroactive statutes, ex post facto laws, and all the rest, is that you have no right to make criminal something which wasn't criminal when the man committed it.

When Eichmann committed his acts, they were in violation of well-established doctrines of international law as they then stood. I don't see how in any substantive sense the question of retroactivity may be seriously raised.

I will say a word about the concept of crime against the Jewish people, although I have concentrated upon the case as it appears under the statutory provisions relating to war crimes and crimes against humanity. May I suggest that the Israeli statute's definition of crimes against the Jewish people has far-reaching implications which do not appear on the surface? Let's consider the kind of world in which we live today.

There are Turks living on the island of Cyprus. There are Greeks in Turkey. There are Pakistanis in India. There are Indians in Pakistan.

Significance

In the world in which we live and the world which we can foresee, the problem of what one does about minorities may repeatedly affect us. The significance and widespread potential incidence of this danger has been recognized in the proposal for a so-called genocide treaty.

At this point, may I leave the technical legal analysis and concentrate on the long-range implications? We have a world in which

by law, through the United Nations Charter, resort to war is prohibited except in self-defense against armed attack. Given the nature of modern weapons and given the size of the antagonists who might meet in a war today, all of us feel profoundly that if that prohibition against war or some other prohibition against war is not made to stick, none of us has a very happy future or perhaps not a very long one.

We therefore face the question, if war is outlawed, what do we put in its place? This is not an academic question, for all of the reasons which I have tried to bring home to you. The actions of states, the great dramatic actions which make the headlines, like the Congo and Cuba, make it clear that the question is anything but academic.

A U-2 incident, or a Venezuela-Dominican Republic dispute, perhaps can be handled through formal inter-governmental negotiations. Even in such cases the settlement may be hard enough, particularly if the governments involved have a profound or mutual distrust.

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The Flute And The Arrow —
11:00, 2:10, 5:20, 8:30.

By contrast, however, the infinitely varied problems arising out of the far-flung activities of economic and business life can only be handled if there is available an adequate and relevant legal system. I mean not only treaties and statutes and principles and precedents, but also courts and lawyers. Unless a legal system and hard-working lawyers are available to handle the thousands of small "details" through which these problems manifest themselves, the details might slowly snowball into one big concentrated aggravation of unmanageable mutual irritation that might explode.

I am not going to offer any solution. All I am saying is that this generation of Americans, Japanese, Indians, British, Congolese and everyone else faces these problems.

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We face these under the shadow of the destructive power of modern weapons. They represent a challenge to good sense and to statesmanship. In the terms of our own profession, they also constitute a challenge to legal imagination, legal wisdom and legal craftsmanship.

If this challenge is met, I suggest that it will be done in the manner in which law has always met its challenges. No one ever reared back and invented the common law. No one ever reared back and invented the civil law system of Europe. These are slow accretions, the product of countless tens of

thousands of lawyers and judges in generation after generation after generation, each of them doing his own job in his own way as it came to him in his own law office or court.

I venture to suggest that most of our profession are going to run into these things. That is the way law is. I therefore would like to say in conclusion that what the Eichmann case reveals to us is that each of us in his daily work, in his simple daily work, the things we think of as dull, drudging jobs, is in a position where very lightly he touches the destiny of the world today.

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