

The Harvard Law School Record

VOL. 8 NO. 1

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PRICE TEN CENTS

Student Dorm Fund Drive Will Be Launched Today

Briggs Heads Fund Raisers; Put Model Rooms On Exhibit

The nation-wide \$2,500,000 fund-raising drive for the planned Graduate Center and Dormitories will be aided by an appeal to be made to all law students in their class rooms. The Student Committee on Dormitories and Harvard Law School Fund has elected William C. Briggs, 3L, as Chairman of the student drive. Today, tomorrow and Friday, Briggs will explain the necessity for the drive and request students to volunteer as solicitors. Actual solicitation of funds will begin February 17 and continue throughout the month. Every student will be given a pledge card, which will provide for payment over a five year period. Those signing pledge cards will not be solicited again as alumni.

The Student Committee, which was formed to give the students a voice in the room design and the recreational facilities, had the architects construct model rooms in the Biology Building to aid the Committee in making intelligent judgments. A joint-student-faculty group held meetings in these rooms, rearranged furniture, and had partitions erected in an effort to arrive at the best design possible.

Present plans call for accommodations for 499 students in the new dormitories and Hastings. (Perkins Hall will not be available to law students.) Of this number 354 will be in doubles and 145 in singles. The new dormitory will house 386 students—146 in suite doubles, 104 in one room doubles, and 136 in singles—and Hastings will house 113 students—104 in suite doubles and 9 in singles.

The Student Committee reports that a grill may be set up in the dining room of the Commons Hall for the convenience of students between meals and during the evening. The report states that a

NEWS IN BRIEF

FACULTY ARTICLES

The January issue of *Fortune* magazine contains an article by Dean Griswold exploring the background of the 1948 Revenue Act and its social and economic effect on the middle class. In another article Professor Cox discusses the Taft-Hartley Act and outlines alternative legislation.

"I Had Polio," an article written by Harriet Ford Griswold in conjunction with the current March of Dimes campaign, appeared in the January 29 issue of *Colliers*.

STUDENT BOARD

The officers of the Board of Student Advisers for the spring semester are as follows: Chairman, John Hally; First Year Chairman, Bernard Feuerstein; First Year Facts Chairman, George Benedict; Second Year Chairman, Bernard W. Nimkin; Second Year Facts Chairman, Robert A. Breckheimer.

Board members accepted as of January 31, 1949 are as follows: Morris J. Coff, (Denver '47); Warren J. Greene, (Harvard '46); McChesney H. Jeffries, (Davidson '47); Frank G. Parker, (New Mexico '44).

CHINA FORUM

Roscoe Pound will discuss the situation in China with Professors John K. Fairbank and Edwin O. Reischauer of Harvard College and Senator George W. Malone of Nevada on a Law School Forum program, Friday, February 18, 8 p.m., at Rindge Tech auditorium.



WILLIAM C. BRIGGS

TO ALL ACTIVE MEMBERS OF THE HLS ASSOCIATION

Upon recent receipt of second dues notices for the fiscal year, 1948-49, many members have indicated that they had not received a first dues notice. To clarify this situation, the Association wishes to explain that the first dues notice was mailed to all active members in October and was placed inside the cover of the 1948 Treasurer's Report.

CLASS OF 1949 ELECTIONS

In a closely contested election held yesterday, the class of June 1949 elected Casimir DeRham, Jr., (Harvard '46), of Tuxedo Park, N. Y., as class secretary; Daniel Needham, Jr., (Harvard '43) and Rhodes Lockwood, Jr., (Williams '41), both of Cambridge, were chosen marshalls.

The class secretary will be in charge of future gatherings of the January and June classes of 1949, while the marshalls will plan graduation arrangements.

Congressmen, Experts To Probe Probers At Forum

Ferguson, Hebert, Klots, Strout, Howe Begin New Series

"How Can We Improve Congressional Investigations?" will be the subject under discussion at the first meeting of the Harvard Law School Forum's spring series, this Friday, 8 p.m., at Rindge Tech auditorium.

Speakers will be Homer Ferguson, Republican senator from Michigan; F. Edward Hebert, Democratic congressman from Louisiana; Allen Klots of the American Bar Association, and Richard Lee Strout of the Washington Bureau of the *Christian Science Monitor*. Professor Mark DeWolfe Howe will act as moderator. The roundtable discussion following the prepared speeches will be broadcast over WHDH at 9:35 p. m.

Senator Ferguson formerly a judge in Michigan, has been a member of the Senate since 1942 and was recently re-elected. He will examine the problem of congressional investigations in the light of his experience on the Special Committee to Investigate the National Defense Program.

Representative Hebert will speak from the point of view of a former member of the House Committee on Un-American Activities and its most outspoken critic from within the Committee.

As a member of an American Bar Association committee examining methods of improving congressional investigation procedures, Mr. Klots will make positive suggestions for improving committee hearings in the future.

Mr. Strout, a veteran of nearly 25 years on the Washington scene, is expected to criticize the personnel rather than the procedural flexibility of the House Committee on Un-American Activities.

Griswold Asks For Housing, Research, In Annual Report

Dean Erwin Griswold, in his annual report to the President of the University, has advocated a seven point program by which the Law School could put itself in a position where it would continue to attract many of the best law students and train them to deal with the central problems of the day . . . the adjustment of human relationships and the preservation of individual liberties.

He called for completion of the housing program for law students, as a means of improving the legal education afforded by the Law school. In order to offset the increased tuition charge necessitated by the great increase in costs the dean pointed to the need for increased scholarship aid for the students. At present the scholarship fund is capable of supplying only 8% of the students whereas actually twice that number need such aid. Attention was also called to the need for increased funds for professorships.

The need felt for more individualized supervision over first year work has resulted in the establishment of teaching fellows. This program, said the dean, will be undertaken on an experimental basis but support for its continuance on a more permanent basis will be sought as a part of the fund raising drive during the coming year.

The dean also focused on the continued needs of the Law School's library, and referred to current plans to make the resources of the library available on short notice to law offices and others in all parts of the country through the utilization of the microfilm processes and airmail. In line with the dean's plan to make the Law School a greater

(Continued on page four)

Roscoe Pound's Analysis Of Chinese-American Affairs; Hits U.S. Aims For Compromise, Misconception of Red Role

Professor Roscoe Pound, recently returned from China where he served as Adviser to the Ministry of Justice, has written this article especially for publication in the RECORD.

American policy in the far East ought to take into account more than China. It should take account of China, Korea, and Japan in one comprehensive and consistent policy—even one comprehensive Asiatic policy. Indeed it should be part of a world-wide policy of at least ranging ourselves with the constitutional governments which are endeavoring to set up democracies operating under law. Economic unification of the world, the bringing of every part of the world to our back door by radio and aerial transportation require that a foreign policy look at the world as a whole. It should look at this land or that with respect to the whole and as to the effect of what we do or leave undone upon the picture of the whole world.

Such has not been the American policy as to China since the war. Our policy has been one of consistent and insistent pressure upon the National Government of China to compromise with the Communists where no compromise was possible. Before the Chinese Constitution was adopted, abrogation of the frame of government under which China had been unified in a National Government was demanded and today, while the National Government is functioning under a Constitution, summary throwing over of that Constitution is a prime item in the Communist demands. If any proof was needed, what has happened in Czechoslovakia is proof that no middle way is possible under Communist domination. It shows no less that Communists with Russia behind them will accept nothing short of complete domination. Witness what has been happening in Yugoslavia. Coalition of a constitutional government operating under a Bill of Rights with Communists is impossible except on the terms in which Mark Twain characterized the Biblical prophecy of the lion and the lamb lying down together—the lamb inside.

Our policy has been in effect to undermine the morale of an exhausted and war weary people by insisting that it could have peace only by yielding to the Communist demands by compromise amounting to abdication. We must remember that recent China has been long and severely afflicted by war. One might begin with the Opium War in 1840 when a Western power forced opium on the Chinese government of that day. Aggression went on for a generation, and in 1885 France sliced off a great territory. There followed continual and increasing extortion of cessions and concessions by European powers and successive insurrections. At the time of the Boxer Re-

bellion the European powers and the United States intervened. There were no less than eleven insurrections in twenty-five years before 1911-1912 when the monarchy collapsed. Then followed a long struggle from 1912 to 1928 with the war lords. In 1931 the Japanese set up a puppet regime in Manchuria and began a series of aggressions culminating in the invasion in 1937 and eight years of occupation of a large and richest part of the country. With the expulsion of the Japanese and while reconstruction was going on the Communists set up a civil war. All this weakened the will of the people to resist, and we have made it weaker by persistent calling upon the Government to give in. It must be remembered also that during the war, without the knowledge or consent of the Chinese people, we undertook to give away not a little of Chinese territory.

Chinese Communism

I hear it said that Chinese Communism is only a mild Socialism, distinct in all but name from the Soviet brand. The conclusive answer to this can be seen in emphatic pronouncements from Chinese Communists themselves as to the place of Communism in China in the world Communist regime promoted in Russia. Even more an answer is to be found in what has happened in Poland and in Czechoslovakia. What so-called "liberation" by Communism means is brought out by Bernard Goldstein, the only leader of the Jewish community in Warsaw at the time of the liberation by Russia. Goldstein was a Socialist. But this was not enough. He tells us that he soon found that the liberation was but another destroying tyranny.

What speaks for itself is the flow of refugees by tens and hundreds of thousands from the Communist occupied areas to national centers where the Government has found shelter for them, fed them, and provided work for them. There is no such flow into the "liberated" areas; it is only out of them.

Communist demand for abrogation of the Constitution means abrogation of the Bill of Rights. The Bill of Rights in the Chinese Constitution is not a mere parchment. It is safeguarded by an independent Judicial Yuan—an independent coordinate department of government—in which the Grand Justices have the ultimate power of interpreting the Constitution and are authorized to enforce the express provisions of the Constitution that executive acts and ordinances and legislative acts in contravention of the Constitution are null and void. Demand that this excellent modern Constitution, put into effect at the end of 1946, be thrown over before it has had a fair chance to operate, and while the Government was in the throes

of reconstruction after a long hard war on its own soil, is but an example of what Communists do the world over in setting up despotic military regimes intolerant of individual rights and repressive of all freedom of belief, opinion writing, and teaching.

American Pressure on the Chinese Nationalist Government

For three years in which I served as Adviser to the Chinese Ministry of Justice, I saw the effect of constant pressure from America on the Chinese Government while it was struggling with a huge task of reconstruction. It was setting up a constitutional government and putting the constitutional organization in operation thereunder. It was restoring the courts and judicial organization and the administration of justice, disrupted by the Japanese. It was restoring the educational system and rebuilding educational institutions. It was restoring and rebuilding penal and correctional institutions, often torn down and everywhere left seriously impaired by the Japanese occupation. It was reconstructing the process of administration. It was rebuilding bridges, railroads, roads, and lines of communication and transportation destroyed or dislocated by the Japanese during eight years of holding the greater part of the country. Within a year from the time the National Government got back from Chungking the work of reconstruction had made marvelous progress. I conducted a thorough survey of the administration of justice in three provinces and six cities, and could report to the Ministry that the courts, the codes, and the correctional institutions were functioning well, and in spite of many difficulties growing out of the Japanese occupation the administration of justice in Eastern China would bear comparison with the administration of

(Continued on page three)

Everts, Tabor, Elected To Lincoln's Inn Offices

The Lincoln's Inn Society announces the election of the following officers: William P. Everts, Jr. (Harvard '39) of Brookline, Mass., president; John K. Tabor (Yale '42) of Pittsburgh, Pa., vice-president; John L. H. Chafee (Yale '47) of Portland, Maine, treasurer, and Philip H. Suter, Jr. (Yale '45) of Milton, Mass., secretary. Men elected to the board of governors are Salisbury Adams (Minnesota) of Duluth, Minn.; Charles Biddle (Princeton '47) of Andalusia, Pa.; Lucius H. Biglow, Jr. (Yale '48) of Old Lyme, Conn.; Robert D. Hazlett (Princeton '46) of Pittsburgh, Pa.; George H. Kidder (Tufts '45) of Cambridge, Mass., and Albert C. Petite (Harvard '45) of Scottsbluff, Nebraska.

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Editorials

CASE OF SIDNEY REDMOND

The following are excerpts from a recent editorial in the *St. Louis Post-Dispatch*, which we believe should be called to the attention of our readers:

"You wouldn't believe it could happen in this decent, fair-minded, liberal-spirited City of St. Louis. But it did. Sidney R. Redmond, a Negro lawyer of fine educational background and considerable attainments, was denied membership in the St. Louis Bar Association because of his race. It is true that 227 lawyers, a very considerable majority, favored Redmond's admission, but it was blocked by 75 adverse votes.

"In blackballing Redmond, the Bar Association minority reversed the recommendation of its own Committee on Admissions. . . .

"It was impossible to tell at Monday night's meeting just who were the ringleaders in the movement to bar Redmond. The Ku Klux faction kept its identity concealed. There were no speeches against Redmond, and most of the debate revolved around technical rules of order and procedure. There was, however, at least one notable speech in his behalf. Jacob M. Lashly said:

"Redmond is entitled to admission on his merits. I am not a white man through any merit of my own. I was born this way. Redmond is a man of culture and high character and he has brought to the bar no dishonor. He is a credit to his race and our profession."

"That eloquent statement by a former president of the American Bar Association, as well as a former president of the local body, did not sway the 75. They proceeded, in the secret vote, to turn thumbs down on a graduate of Harvard College and Harvard Law School; a past president of the National (Negro) Bar Association; a member of the Board of Aldermen of the City of St. Louis; a public-spirited citizen whose accomplishments in the law and on behalf of his community are at least equal to those of many members of the association which barred the door to him.

"It is clear the officers of the Bar Association expected trouble from an anti-Redmond group. Under ordinary procedure, admission of new members is a routine affair and no ballots are provided. . . .

"At this meeting, members were handed a slip of balloting paper at the door. John Stockham said that he objected to the distribution of this balloting paper on the ground that it represented 'conscious planning on what is to happen.' Ivan H. Light remarked that 'this is the first time in 30 years we have ever had a written ballot.' . . .

"Let it be emphasized that the St. Louis Bar Association is not an exclusive social club. It is an organization of public service and it has rendered such service in the past in a distinguished way. Moreover, its broad-mindedness on the Negro question was demonstrated last year when the association voted in favor of admitting Negroes to the University of Missouri Law School. There is nothing in its qualifications or its purposes that justifies turning down the membership of Sidney Redmond. He was barred because of the color of skin.

"The law is defined as the quintessence of reason. The object of the law is justice, and it is to this great ideal that every member of the

bar is pledged to devote himself. Reason and justice flew out of the window Monday night. Therefore, the blackballing of Sidney Redmond, even though it was accomplished by a miserable minority of 75, stands as a reproach to the St. Louis Bar Association. It will continue to humiliate the Bar Association until the action is reversed."

We would go further than this last sentence. Unless the legal profession as a whole makes felt its disapproval of the action in St. Louis, it will stand as a disgrace to the entire profession. J. S.

Letters to the Editor

To the Editor of the RECORD:

I recently gave to my classes some information about Harvard Law men now prominent in Washington. Among the group that included Dean Acheson, Secretary of State; David E. Lilienthal, Chairman of the Atomic Energy Commission; John J. McCloy, President of the International Bank for Reconstruction and Development; Frank Pace, Jr., Director of the Budget; Kenneth C. Royall, Secretary of the Army, and John L. Sullivan, Secretary of the Navy, the following averages were earned: 76, 73, 72, 71, 67 and 64.

In view of a feeling, sometimes bitterly expressed, that only the honor society men get a break, the foregoing statistics are quite significant. The fact is—and I believe it deeply—that a Harvard Law School education gives to a man the basic training which enables him to meet the toughest of competition in the toughest of jobs, whether or not the particular student scores well on our competitive examination system. It is the herd that he runs with that counts and the fight that he has to make to keep up. The Bull expressed it as Spartan Education and I am sold on it.

Mr. Royall made the *Review* and so did Mr. Acheson—which is heartening evidence that membership on the *Review* is, at least, no disqualification for success.

W. BARTON LEACH,
Professor, Harvard Law School

To the Editor of the RECORD:

As a former supervisor of the Shakespeare Club who took the club records with him according to custom, I feel great relief in reading R. M.'s illumination of the Bacon-Shakespeare controversy reported in a recent issue of the RECORD. I am happy to be joined by a group of truth-lovers who can now share my distress at judges' histrionics and actors' judgment.

A few notes from my records may contain interest.

1. Chancellor Shakespeare and Playwright Bacon were co-founders of Actors Equity.

2. R. M. reports that Shakespeare had difficulty in carrying the Great Seal into court, and finding no volunteers to aid him henceforward denied his aid to volunteers. Indeed he did. However, for the RECORD, it may be added that the Great Seal was in fact a "flipped beeste" (probably *Phoca vitulina*) which had been brought from the New World by Sir Walter Raleigh as a gift for W. S. and which, for a number of years, juggled India rubber balls and played *America* on a set of reedy pipes (hautboys) backstage at the Globe. It was only natural that the Bard insisted on retaining his favored pet while forming his nocturnal pact with Bacon. The groom reports that Bacon weighed the matter for some time feeling vaudeville to be dead, and delayed agreement by saying that the seal was a matter to be considered. Later judges of the Law Courts many times gleefully commented on the incident from the bench by way of ridiculing Chancery, saying, "The seal imports consideration." The original *locus sigilli* was a spot three English feet to the right and the length of two Chancellors feet forward of the woolsack, from which spot "the beast was oft times heard to applaud the decrees of his master."

3. After his elevation to the woolsack W. S. was still apt to mingle with the groundlings at the Globe, judicial duties permitting. During one particularly hilarious performance of Bacon's brilliant *Richard III* the fifth act was rendered sensational by a husky lad who was appearing as the Duchess of York. Upon Richard's crying "A horse! A horse! My kingdom, etc." the youth appeared with a Clydesdale gelding slung across his shoulders, presenting it to Richard with the words, "You asked for it, sire, now pony up." As the groundlings roared, Shakespeare reportedly remarked to a dark lady on what would have been the aisle that both English and American authorities indicated that the king was bound to the contract. Significantly he added, "He didn't really wish the animal. I decry such specific performances." (Italics mine.) The comment reached the clerks at Westminster, and through a copyist's error another pillar was added to the temple of English equity.

VIVENTIS

Gallery

ARTHUR A. BALLANTINE
Large Firm Practitioner



A recognized leader among the large New York law firms is the firm of Root, Ballantine, Harlan, Bushby and Palmer. One of the two senior partners in the firm is Arthur A. Ballantine, an examination of whose career suggests a pattern—a pattern of an ability to recognize the problem presented by the situation and to work out the most practical approach to its solution.

The problem presented by the first year in the Law School was met in part by meeting once a week with a small study group to discuss the questions raised in each of the first year courses. The approach was successful, for his performance in the first year examinations brought an invitation to join the *Law Review*, an invitation which he declined because of other commitments. He was one of the Harvard students who gave his time without remuneration to the Prospect Union, which provided free instruction to working men. In addition, he helped pay his way through Law School by serving as president of the Harvard Cooperative Society.

He began practice with Gaston, Snow and Saltonstall, a large Boston firm. Recognizing that any research he did for a senior partner was to be the basis of an answer that the senior had to give a client, the young lawyer put himself in the place of the senior partner in the first instance and prepared an answer in such form that it could be used by the senior by merely signing his name to it, if he chose to do so. Ballantine suggests that any such letter or memo be submitted without explanation or extenuation to stand or fall on its own merits. As to memos, he points out, "There is no prize for looking laborious," noting the tendency of the young lawyer to submit long memos, whereas a short one is so much more valuable. When the problem calls for a letter to a client, the thing to strive for is "a negotiable expression of thoughts." The criteria should always be definiteness and brevity. A memo in expansion of the reasons for your conclusions and pointing out the doubts as to the uncertain points may always be appended, but the letter should always concisely state your conclusions in such form that they may be acted upon.

He counsels that when given a problem, the first and most important thing is to find out whether you know all the facts and really understand what the issues are. A tendency which he has found common among young lawyers is to make an assumption and rush to the books when a thorough investigation of the facts might have revealed that the assumption was way off the track.

Ballantine believes that a lawyer can better advise his client if he is familiar with actual court procedure. In this connection he feels it is difficult to overemphasize the importance of trial work early in every lawyer's career. It is extremely valuable to see how witnesses stand up under questioning, how judges rule and how juries react under varying situations. Aware of the deficiency of the young law graduate in the techniques of actual practice, he interested himself in the Practising Law Institute at its inception and has been its president since it was chartered in 1938. The object of the Institute, a non-profit undertaking, is to fill the gap between law and practice.

Mr. Ballantine was one of the earliest on the scene in the history of federal tax law. During the first World War he was called to Washington as a consultant on the excess profits tax, and later in 1918 he became Solicitor to the Department of Internal Revenue. He then joined Elihu Root, Jr., and Emory R. Buckner, a former classmate in the Law School, in general practice. He was recalled to Washington in 1927 as adviser to the Joint Committee of

Sub Judice

TITLE FOR TWO THESPIANS

Two actresses, Maxine Sheppard and Nancy Clark, filed petitions seeking to assume the one name of Nancy Clark-Sheppard. Planning to engage in the theater as a partnership and desiring equality in all respects, particularly in publicity, they each separately averred that "The theater and its allied arts are justly famous throughout the ages for their generosity. Unfortunately, this generosity does not always extend within their own ranks. Especially is this true in regard to publicity and personal fame. We are about to launch this theatrical partnership. Realizing the human frailties of woman, in particular her petty jealousies over career, we feel that by thus bearing the same name much of this will be eliminated. Therefore, we wish to circumvent the possibility of having the spotlight of publicity trained more upon one of us than the other. We wish to share and share alike in publicity, the life blood of a performer." *Matter of Clark, Matter of Sheppard*, 120 N. Y. Law Journal 1522 (Supreme Ct. Special Term Part II Dec. 14, 1948. Held: Applications denied. Mr. Justice Aurelio: "To approve these requests would create a situation which may veritably lead to a 'Comedy of Errors'."

ELECTRIFYING PLEA

Taranow entered a plea of guilty to murder in the trial court. Under the Pennsylvania statutes (Act of June 24, 1939, P. L. 872, sec. 701), it was then the duty of the court to determine whether the crime was murder in the first or second degree, and if in the first degree, whether the punishment should be the death sentence or life imprisonment. Three judges sitting as the court *en banc* heard witnesses for both Taranow and the Commonwealth and determined that his crime was murder in the first degree. Taranow was sentenced to death and appealed imposition of the capital penalty. Held: the sentence was justified. The statute provides that the court "shall at its discretion impose sentence of death or imprisonment for life." "The point . . . is not whether this court would have imposed the death penalty, but whether the discretion vested in the court below was judicially exercised." The record showed no abuse of discretion.

New York forbids a plea of guilty to a capital crime, but the usual practice is to allow a defendant to plead guilty if he wishes. Such pleas are to be carefully examined, however, and if the trial judge is notified that the prisoner pleaded guilty under hopes of special mercy or other mistake, it is reversible error to refuse a trial. In many states the procedure is such that a defendant can plead guilty to second degree murder without exposing himself to the risk of execution, but under the Pennsylvania statutes he has no such choice. The indictment is for murder, and it is up to the jury, or the court if a plea of guilty is entered, to determine the degree of the crime. *Commonwealth v. Taranow*, 59 A.2d 53 (Pa. 1948).

Congress on Internal Revenue Taxation, and again in 1931 to serve as Assistant Secretary of the Treasury. He was Under-Secretary of the Treasury during the bank holiday and stayed on in that capacity until the banks reopened. He had a good deal to do with working out the plan for reopening the banks and considers his service in that connection as probably the most useful of his career.

Mr. Ballantine has specialized in public service corporations, business organizations and taxation. He has written extensively in these fields and has been an instructor at Harvard Law School and at Northeastern Law School.

The firm consists of 15 partners in addition to himself and Elihu Root, Jr., who are the two seniors. There are in addition at least 60 associates. The firm practices in all phases of the legal profession except patent law and admiralty. It is among the first law offices to have monthly dinner meetings of the staff to promote acquaintances and an interchange of ideas. An office bulletin is published once a week which discusses current developments of general interest to the staff. They have tried and have succeeded in preserving much of the spirit of the Law School. In so doing, they have done much to negate the idea that practice in New York need be a dreary and slave-driving routine. As Mr. Ballantine views it, the members of his firm are engaged in a professional service to adjust the economic life of the community to its legal institutions. He believes this common purpose can best be accomplished in a compatible group whose members can work together smoothly. D. A.

Alumni Notes

LL.B. '10, S.J.D. '17—*Manley O. Hudson*, Bemis Professor of International Law at the Harvard Law School, has been elected as one of the fifteen members of the International Law Commission by the General Assembly of the United Nations. The Commission will undertake the task of preparing conventions to develop and codify international law.

LL.B. '17—*Philip W. Thayer* has been appointed Dean of the School of Advanced International Studies in Washington, D. C. He will continue as Professor of International Law.

LL.B. '24, S.J.D. '25—*James M. Landis*, former Dean of the Harvard Law School and Chairman of the Securities and Exchange Commission and more recently Chairman of the Civil Aeronautics Board will be Washington counsel for the new partnership of McGoldrick, Winn, Dannett and Burke, with offices at 37 Wall Street, New York City.

LL.B. '28—*Matthew Brown* has formed a partnership for the practice of law with *Alford P. Rudnick*, LL.B. '29, *Hirsh Freed*, LL.B. '36, and *Charles A. Rome* under the name of Rome, Brown, Rudnick & Freed with offices at 85 Devonshire Street, Boston.

LL.B. '42—*Stanley M. Epstein* of New Bedford, Mass., has been appointed instructor in Law I and Law II in the Northeastern University Evening School of Business.

POUND —(Continued)

justice on the Continent of Europe and in America. There has been a tendency in America to be unreasonable in what was expected of the National Government in China. It was impossible to expect one hundred per cent. constitutional democracy and one hundred per cent. perfect administration of justice of a country of continental extent and four hundred million population which had never known democratic political institutions nor justice, according to law in the Western sense. It was impossible to expect this perfection to be achieved in a generation after the revolution of 1911-1912, two thirds of which was taken up with fighting to establish a national government against the War Lords and in standing out against Japanese invasion and occupation, and the remaining time largely taken up in resisting the Communists. When looked at on the background of these difficulties the work of the National Government since 1928 deserves all praise.

We must bear in mind that China had to suffer more and fight longer than any other of the allied countries or German occupied countries in the last world war. What the Government had to do was to set up a well organized, modern, constitutional democratic state operating according to law. When this was done it could go about fundamental economic and social reforms. But to try these while endeavoring to set up constitutional gov-

ernment might have defeated both. Chinese popular habits of thought and conduct which had crystallized for ages were not to be remade over night. As I have put it before, form had to come before reform. Let us not forget that we have serious problems of race prejudice and discrimination and of class relations in this country which we have left unsolved for much more than a generation. We do not consider our polity inefficient or reactionary because we have not solved them.

Communist Claims As to Social Reforms

I have heard it said that explanation of the progress made by the Communists in China is to be found in neglect of the National Government to take up and push certain fundamental social reforms undertaken and carried forward by the Communists. I have heard it said that these are four: Education of the peasantry, agrarian reform, the youth movement, and the advancement of women.

I suspect that Communist education of the peasantry is simply indoctrination in Communism. Over a large part of China the National Government has had to do over again much of what it had achieved in the way of popular education. As to education of the peasantry I have in my possession some charts which I found in more than one place which were used for teaching good agricultural methods, and how to read at the same time. One institution in Soochow is devoted to the training of teachers to carry forward this mode of instructing the peasants. It will not do to say that the Government has been doing nothing for peasant education.

I have heard it said repeatedly that the Chinese peasant is under a feudal system of land tenure. Nothing could be more mistaken. The difficulties of the Chinese peasant do not arise from feudalism or from large estates that need breaking up. As far back as the third century B. C., the Chinese abolished feudal tenure and primogeniture. The agrarian problem in China grows out of the very success of that reform which caused the land to be divided and subdivided endlessly. The trouble is not too large estates but minute farms too

small to sustain a population some times denser in rural areas than in cities of the West. This has been aggravated by the introduction of a Western law of inheritance which makes for increased subdivision. Where there had been a household inheritance, a system borrowed from Continental Europe has introduced a modern individual inheritance. When an owner of a small tract dies leaving five children instead of the household succeeding, the inheritance must be divided into five. This makes against use of the implements we use, and yet the Chinese farmer gets a larger yield from an acre than cultivators of Europe or America. Next to minute subdivision of the land his troubles arise from the complete dislocation of transportation and so of distribution during the Japanese occupation.

As to the youth movement it has gone forward in the domain of the Government quite as much as elsewhere in the world. The Communists have no exclusive claim in this respect.

As to the advancement of women, subdivision (7) of Article 26 of the Constitution provides for election by women's organizations of delegates to the National Assembly or National Peoples Congress, the body which elects the

President and Vice President, and has power of amendment of the Constitution. At the session last spring in which the Constitutional Government was organized a number of women sat as delegates. Also a number of women have been elected as members of the Legislative Yuan, and in the course of the survey of the administration of justice in Eastern China I found women judges in many of the courts. In each of the cities which I visited I found a woman judge sitting in domestic relations cases and cases of juvenile delinquency. I doubt very much whether the Communists have done anything comparable to what the Government has achieved in this connection.

I have heard it said that while the Government was carrying on the war, the Communists were reaching the people through a program of social reform. What this really comes to is that while the Government was exerting itself to the utmost to set the country free from the Japanese occupation, and since the war has been exerting itself to the utmost with difficult problems of reconstruction, the Communists have been active in indoctrinating in Communism and in destruction.

(Continued on page four)

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Calendar

LEGAL WORLD Treasure Room

During the month of February the Treasure Room will exhibit manuscripts on medieval English law and derivative printed books including Bracton, Britton and the Registrum Brevium.

N. Y. Practice

All men interested in taking a course in N. Y. Practice to be given in Cambridge during this semester, who have not already indicated this intention, please contact Howard Cohen, 3L, within next few days at UN 4-2842 between 6 and 7 p.m.

Ames Competition

The following is the schedule of Ames arguments this spring: Final on Friday, April 1, 1949. Quarterfinals on Tuesday, March 29; Tuesday, April 5; Wednesday, April 6; and Friday, April 8. Third round first year arguments will be posted on the bulletin boards.

GRISWOLD —(Continued)

force in the development of legal knowledge, he urged the development of an active division of research. Through it, work could be done which would be of direct benefit to practicing lawyers, and it would deal with such legal problems as are involved in modern labor relations, legislative problems, and in many areas where law and related fields overlap.

In closing, the dean called attention once more to the proposed World School of Law which would attract young men from all countries of the world. Such a School would, in time, build up a large group of former students dispersed throughout the world and would lead to an interchange of information and ideas which would be a factor in bringing the various countries closer to understanding and cooperation.

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POUND —(Continued)

Objections Raised to Standing By the Nationalist Government

Let me speak briefly of the objections which are raised to our standing by a Government which we treated as an ally during the war—a Government which is one of the United Nations. It is said frequently that the Chinese officials and public men are reactionary. In my experience what is said to be their reactionary attitude is simply one of inquiry whether measures proposed to be borrowed from the Western world are applicable in China. It does not take long for an Adviser of one of the Ministries to learn that much which he has been inclined to urge at first sight needs thorough examination to be assured that it can be made to work under the conditions in which it must be applied. Much is said about corruption of Chinese officials and public men. I inquired very carefully as to corruption in the administration of justice, conferring with bankers, business men, industrialists, members of chambers of commerce, and newspaper men. In no case could I get anything specific. Under the monarchy corruption was notorious. There was a general feeling that under the courts as they are today nothing but a tradition of suspicion could be shown. One newspaperman suggested to me that the pay of the judges was so inadequate that it stood to reason they must be corrupt or they could not live. In fact I found the judges with inadequate salaries eke out their meagre salaries by teaching law. This is something which such lights of our American bench as Joseph Story and Thomas McIntyre Cooley did and many other judges have had to do in American judicial history. It is said also that the Chinese officials and public men are ignorant and inefficient. Association with them for fourteen years has convinced me that this is quite unfounded. Let me name a few with whom I had especially long and close association. Dr. Wang Chen-hui, head of the Judicial Yuan, is a D.C.L. of Yale and Barrister of Gray's Inn. He is recognized as an outstanding jurist everywhere. His translation of the German Civil Code into English is regarded as a classic. Dr. Hsieh Kwan-sheng is a Docteur en Droit of the University of Paris, author of a history of Chinese law in French, published in France. He did signal work in keeping the machinery of justice going during the war and his experimental court at Chungking to try out the draft code of civil procedure was a real contribution to the science of law. Dr. Su, the Minister of Education, a Doctor of Philosophy of Berlin, is a learned scholar and liberal administrator of great good



PROFESSOR ROSCOE POUND

sense. His judgment as to what is practicable in legal education in China has been of real value for reconstruction. Judge Y. H. Kuo, President of the High Court of Shanghai, would be a notable judge anywhere. Just before leaving I made a report on his draft of a statute on conflict of laws. It is a masterly piece of work much better than the draft prepared for the Pan American Congress of codification of law for the Western hemisphere. No American city has a better court than his.

I have heard complaint that the Chinese officials do not take advice. On the contrary, I suspect they sometimes have relied too much upon advice from experts from the Western world unacquainted with the conditions to which their advice was to be applied. At any rate, I have found that the Chinese officials give marked attention to advice so far as money is available to carry it out. Where they do not it is usually because of lack of money to do what ideals indicate. Under the Constitution the Legislature controls the funds and officials can do no more than appropriations allow.

Complaint has been made in this country that the Government ignores minority parties other than the Communists. These minority parties, however, are made up of leaders with few or no followers as it was demonstrated at the time of the first elections under the Constitution when the majority party agreed to withdraw its candidates in certain districts and leave a free field for the minority parties. Very generally candidates ran by petition and defeated the candidates of these parties at the election. Moreover one of the leaders of a minority party which has probably the most following is listed by the Communists as a war criminal along with the leaders of the majority party.

I hear it said also that the Government has been guilty of gross violations of the Constitution. As to this it should be noted that the Constitution was not in force until the end of 1946 and the Government was not fully organized under it until the spring of 1948. Much of what I have read is based on conditions during the war which, of course, were abnormal. In the second place, it must be remembered that civil war is still in progress. We in America have not been too scrupulous to enforce the Bill of Rights or adhere to the strict terms of the Constitution in times of civil war or even of world war. President Lincoln was accused of violation of the Constitution during our civil war. The action of our government toward citizens of Japanese birth in California or its setting up of military rule in Hawaii and super-

seding of the courts there during the last world war serve to remind us that a Bill of Rights is sometimes embarrassing to a government under the stress of war. But certainly it is not for the Communists to preach adherence to a Constitution.

Again, it is complained that the Government employs a secret police. But we maintain a secret service and certainly the FBI do not go about in uniform. Moreover, the third degree has had a high development with us even in time of peace. When war is in progress and a fifth column is active a government cannot confine itself to a uniformed police. Detectives in plain clothes are an everyday matter even in time of peace.

What can the Communists show in the way of constructive achievements even remotely to compare with what the Chinese National Government has done under the greatest of difficulties in the way of building up a constitutional regime and in reconstruction after eight years of enemy occupation?

What Communist Domination of China Will Mean

Will Communist domination mean a country with which we in America can have commercial relations such as we have had increasingly for one hundred years? Will it mean a country with which we can have the cultural relations which we have maintained increasingly for more than fifty years? One has only to look at the pronouncements of the Chinese Communists as to American relations to answer these questions.

What, then, are we to do in our relations with a Communist regime? For one thing, I submit we must bear in mind the effect of what we do on Korea, on Japan, and indeed on all Asia if not on Continental Europe. We must remember the effect of what we do on the remnant in China for the situation need not be more despaired of than when the Japanese occupied the best part of the land. If we give continued aid and comfort to the Chinese Communists by our attitude toward even the remnant of the national government we shall be undoing what we have been striving to do toward maintaining democratic constitutional government in other parts of the world.

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