

The Harvard Law School Record

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PRICE TEN CENTS

'Serve The Public Interest,' Smith Urges SBA Audience

Distinguishing the three responsibilities of a lawyer, to his client; to the court, and to the public, Reginald Heber Smith, LL.B. '14, pointed up "Lawyers as Public Spirited Citizens," in the third of a series of five talks being presented by the Student Bar Association on "Lawyers' Problems of Conscience."

Frequently, Mr. Smith noted, the responsibilities to the client, the court, and the public will conflict, and he could think of no way in which to list them so as to account for changing circumstances.

While doctors and ministers have each only one loyalty or confidential relationship, the three the lawyer must keep in mind at all times was taken to show the greater burden cast upon the practitioner.



REGINALD H. SMITH

Mr. Smith, himself a barrister active in service to his profession and the public, is a partner in the Boston firm of Hale & Dorr, and was the 1951 recipient of the American Bar Association Medal.

"Young members of the profession should keep the pressure on," he urged, and bring themselves to fore in organizational work with legal organizations.

"As soon as possible join all the bar (See Smith on page four)

Record Collection Enlarged By Bennett

In response to a list of desired music for the record collection in the Wheeler Room, Lawrence G. Bennett, LL.B. '12, of 15 Broad Street in New York City, has just sent 52 albums to supplement the library established by Professor Zechariah Chafee, when he presented the Law School with a custom-built phonograph.

These records, which have already been cataloged and processed for use by Thomas Mantel, 2L, of Indianapolis, who is in charge of the record concerts regularly presented in the Wheeler Room, will greatly enlarge the variety of the programs.

Mr. Bennett was a room-mate of Donald Fairfax Ray, the man to whom the phonograph was dedicated, and was present at the ceremony last year, at which time he expressed his interest in establishing the collection on a firm basis.

The record library now has some 140 albums of the lesser-known major works of the classical composers, as well as light opera and variety forms. Mr. Bennett's contributions included several of the Beethoven *Quartets*, Gilbert and Sullivan, and early Renaissance music.

Concerts are presented in the Wheeler Room each Monday, Wednesday and Friday from 4 to 5:30 p.m.; on Tuesdays and Thursdays from 7 to 8:30 p.m.; and from 3 to 5:30 p.m. every Sunday.

Exam Results To Be Released Today

Mid-year examination grades in Accounting, Evidence, Insurance, the Jurisprudence Seminar, Restitution, and World Organization will be available in the Courtroom after 1:30 p. m. today. Those students who wish to be advised of their grades in these courses before the results of all the other examinations are released can apply for them at this time.

Harrison Dimmitt, Secretary of the Law School, cautioned students seeking their grades against asking for them at his office or at the receptionist's desk as they will not be available at either place. A good measure of confusion will be avoided if students follow this advice.

When the grades of the examinations not listed above are ready notices to that effect will be posted.

Amory Takes CIA Post On Leave Till Sept. '53



PROF. ROBERT AMORY

Loss Made Visiting Prof To Continue SEC Work Assumes Duties March 1

When Professor Robert Amory leaves the faculty shortly to become an Assistant Director of the Central Intelligence Agency, Louis Loss, Associate General Counsel of the Securities and Exchange Commission, will take over the teaching of the Securities Seminar and two sections of the second year course on Corporations.

A leave of absence until September, 1953, has been granted Professor Amory so that he may join the CIA, it was announced yesterday.

The government assignment which Professor Amory accepted has forced the withdrawal of his candidacy for the Eleventh Congressional District seat to the Republican Convention.

It was announced that Professor Robert Braucher would assume Professor Amory's duties as adviser of second year students. There was no word on who would take over Professor Amory's Accounting sections next fall.

Professor Amory had returned to the Law School after a one-semester leave of absence to complete a tour of duty at the General Staff College at Fort Leavenworth, Kansas, and the infantry school at Fort Benning, Georgia.

Rumors Confirmed

The news that Professor Amory would join the Central Intelligence Agency confirmed rumors early last week that he was going to leave the Law School to take a security position.

Mr. Loss, a 1937 graduate of the Yale Law School, with a baccalaureate de-

(See Amory on page three)

Forum Hears Bowie On Schuman Plan; Move Held Step Toward United Europe

Concentrating on the objectives of the project, what steps are being taken, and the significance of the work if it can be completed, Professor Robert Bowie last week addressed a Forum audience on "The Schuman Plan."

The talk was one of a series of Legal Programs presented as a school service by the Harvard Law School Forum.

The Schuman Plan, Professor Bowie said, is one of many piece-meal steps which must be taken before the goal of a United Europe can be achieved. Coal and steel, he indicated, are the two industries on whose strategic importance the entire Plan is based.

Conflicts Interrupting Trade

Citing some of the publicized difficulties which beset the free flow of coal and iron between France and Germany, he attributed these conflicts interrupting trade to governmental and private control, discriminatory tariffs, double pricing, and subsidies. While France has an adequate supply of iron ore and Germany has large supplies of coal, neither country has both, Professor Bowie noted in explaining why these two minerals are the heart of the plan.

Reviewing previous attempts at unity in Western Europe, he mentioned the Ruhr Authority, which was set up in 1948 to cut through trade barriers and prepare a free market. Three years later, France, Germany, Italy, and the Benelux countries met to plan what he described as a single competitive market for the whole community.

Political Institutions

The political institutions which the Schuman Plan created are five in number. These bodies are: the High Authority, composed of nine non-partisan representatives from the countries involved; a Council of Ministers, who

represented the treaty states; the Common Assembly, having power to censure the acts of High Authority members; a Court of Justice to rule on constitutional



PROF. ROBERT BOWIE

issues; and a Consultation Commission, which serves the top agency in an advisory capacity.

Professor Bowie drew a parallel between the powers of the High Authority and the anti-trust laws in our own country which are used to bear down on unfair trade practices.

Further functions of the authority created by the Plan are research into market conditions, with publication of results in this field, and the extension of loans to enterprises wishing to expand their activity.

At least a five-year transitional period will be required before this step toward European unity can be realized, he said.

Chafee's Article Analytically Criticizes ABA Backed Constitutional Amendment

This article was written for the RECORD by Professor Zechariah Chafee, University Professor. Three further installments will be printed in forthcoming successive issues.

At a time when our country is assuming heavier responsibilities in foreign affairs than ever before, the American Bar Association is giving serious consideration to a constitutional amendment which is intended to diminish the ability of our government to carry out agreements with other nations.

In its latest form the proposal reads: "A provision of a treaty which conflicts with any provision of this Constitution shall not be of any force or effect. A treaty shall become effective as internal law in the United States only through legislation by Congress which it could enact under its delegated power in the absence of such treaty."

These sentences would be added to the supremacy clause in Article VI:

"This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Also important for this discussion is the treaty-making clause in Article II, section 2, which says of the President:

"He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the senators present concur; . . ."

The proposed amendment, when analyzed, falls into three separate parts: (1) It declares to be void a treaty provision which conflicts with anything in the Constitution. (2) It will prevent a great many treaty provisions from being self-executing. They will not become "the supreme Law of the Land" and bind our courts unless and until Congress follows up the particular treaty by a statute enacted in the ordinary way by both Houses and signed by the President. (3) Such a statute will be unconstitutional unless it could be validly passed by Congress under its domestic powers, just as if there had been no treaty. Consequently any treaty provision going beyond those domestic powers can be practically nullified by any state whose laws violate the promises made by the United States in the treaty.

Treaties and Constitutionality

The first part of the draft amendment need not detain us long. It is unobjectionable in itself, but unnecessary. It just states expressly what by well-supported interpretation is already in the

Constitution. (This point is fully discussed in [1951] Wisconsin Law Review at 429 ff.) The fact that Article VI brackets treaties with the Constitution as "the supreme Law of the Land" does not mean that they are both on the same level.

Acts of Congress are "supreme Law" too, and yet everybody knows they are on a lower level than the Constitution. For purposes of binding our courts, etc., treaties stand no higher than Acts of Congress. A treaty can be subsequently overridden by a federal statute. *Chinese Exclusion Case*, 130 U. S. 581 (1889); and several later decisions. When a treaty can be knocked out by a statute, it is certainly not so good as the Constitution.

No doubt, the question whether the treaty power is subject to constitutional limitations has never been squarely decided by the Supreme Court, because fortunately no American treaty has come near enough to violating the Constitution to make the issue worth litigating. However, two of the most distinguished men on the Court have made clean-cut statements on the matter.

(See Chafee on page four)

Jacobs and Brennan On N. J. High Court

Two graduates of the School were recently appointed to the Supreme Court of New Jersey, by Governor Alfred E. Driscoll, LL.B. '28. The two new high judges are Nathan L. Jacobs, LL.B. '28, and William J. Brennan, Jr., LL.B. '31.

Judge Jacobs, until now Chief Justice of the Appellate Division of the Superior Court, was Note Editor of the *Review*, graduating second in his class behind Dean Griswold.

During the 17 years he spent in public and private practice before being named to the Superior Court, he served variously as Chief Deputy Commissioner on the Alcoholic Beverage Commission, Chairman of the State Labor Arbitration Board, and counsel for the State Office of Price Administration.

Judge Brennan was until January, 1949, a partner of the firm of Pitney, Hardin, Ward and Brennan in Newark, at which time he was named to the Superior Court by Governor Driscoll.

In 1942 Judge Brennan entered the army with a major's commission, and was a colonel when he left the service in 1945. He served for a time as Chief of the Army Labor Resources Section, Office of the Chief of Ordinance.

Other service positions were as chief of the Labor Board of the Army Service Forces, and Staff Adviser to Secretary of the Army Robert P. Patterson.

Actress Cites Need For Honest Drama

"I was born a staunch Republican—that's a good start." With these words Miss Ann Revere, star of stage, motion picture, and television described her experiences as a witness before the House Un-American Activities Committee in an informal Coffee Hour program last Tuesday afternoon.

Describing herself as a "fugitive from Hollywood" Miss Revere, who is currently appearing in Edward Caulfield's "The Idea" at the Brattle Theatre, looked back on the events which led to her subpoena before the Un-American Activities Committee on March 5, 1950. The actress "started to educate herself after leaving Wellesley" and turned to what she called a "Lincolonian democracy" in which one person is not all-wise but which draws its strength from the collective wisdom of the people.

Against this philosophical background, Miss Revere attributes her sudden projection before a congressional committee to three incidents: as a member of the Screen Actors' Guild she antagonized two people; she was an "amicus curiae" for the Hollywood Ten; and she was a Wallace supporter.

Miss Revere "was faced with three possible courses of action." The first was to rely on the First Amendment and tell the committee, in effect, to "drop dead." This would have landed her in jail. The second possibility was to cooperate. But this would lead to acquiescence in the right of this committee to, in effect, "inquire into men's minds." The third was to take refuge in the protection of the Fifth Amendment. Although refusing to answer questions on the grounds of self-incrimination would appear more incriminating than not, Miss Revere felt that "an-

(See Revere on page three)

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Professor Amory

Within one year Professor Amory has twice been called from the classroom into the service of the government. Mr. Amory's absence will be acutely felt by the entire student body.

Though degrees of appreciation may vary, few men have won a higher degree of respect from their students. Always one to insist upon the most realistic and practical approach to any legal problem, the members of his classes have long come to expect a discussion from him of the motives that impelled the various situations and how best to meet the competing desires.

It is always a treat for the members of his class to hear Mr. Amory, in his sincere manner of delivery, give the human side of the law the place which it deserves. The colorful language which adorns many notebooks is evidence of this. The consensus is that "Listening to this prof. lecture gives me a kick. He really comes through when the subject-matter doesn't." It is no idle chatter to say that the student body absorbs the law which is discussed by Mr. Amory in his down-to-earth lectures.

Many is the draft conscious student who has remarked, "If I have to go in, I wouldn't mind serving under the 'Bullet'." Perhaps that statement and the tag-name attached expresses most vividly the high esteem which all hold for Mr. Amory.

Certainly everyone wishes Mr. Amory the best in his new post, but at the same time we hope somehow he will be able to return earlier than expected.

Inanimate Books

Until we get an automatic, revolving atomic library it will help all those engaged in the mutual quest for knowledge, if, after using a book from the open shelves in the library, the user would replace it in its proper space.

LEG WORK

Trowbridge, Scotland, magistrates decided that a woman walking in the gutter and having a strap ripped from her sandal and a stocking torn by a passing car—was not a victim of an "accident" in law.

Mrs. Irene Fox was summoned for failing to stop after an accident and failing to report an accident to the police within 24 hours.

Kathleen Canes said Mrs. Fox's car scraped her sandal. The car stopped, and while she was looking at her stocking moved off again.

Mrs. Fox said she did not know there had been an accident.

"A woman stepped from the pavement into the car," she added. "I stopped, opened the car door, and asked if it had hurt her. She didn't answer. I noticed her stocking was torn."

The Bench dismissed the case.

The clerk: The act states: "Damage or injury

Gallery

CHARLES RICHARDS CHERINGTON
Acting Dean



"How can you run a government if you don't know anything about the law?" For several decades complaints of this nature have been heard with increasing frequency. Exasperated lawyers have all too quickly concluded that non-lawyers in government are either obtuse or just plain stupid. Non-lawyer administrators have concluded that lawyers are a group of narrow-minded individuals wrapped up in and overcome by technicalities of their own making. That mutual understanding of the other's problems and techniques would benefit lawyers, administrators, and the country as a whole is fairly obvious. Charles R. Cherington is the man who is doing something to bring about this understanding.

"Cherry" Cherington was born in Montclair, N. J., in 1913. He prepared for Harvard at Phillips Exeter and entered the College in 1931. In his college days he found time to be an editor of both the *Harvard Critic* and the *Harvard Advocate* while compiling a scholastic record that won him a key from Phi Beta Kappa. He majored in government and graduated *magna cum laude*. After a great struggle he decided his interest in the law was stronger than his desire to do further study in the field of government, and he entered Harvard Law School in 1935.

Upon receiving his LL.B. in 1938, he passed his bar exam and entered the Boston law firm of Peabody, Arnold, Batchelder, and Luther. After practicing a year he was offered an opportunity to combine his legal training with further study in the field of government. He accepted a position as an instructor in government at Harvard University and at the same time began to work for his Doctorate. In 1942 he served as an administrative analyst for the U. S. Bureau of the Budget. He received his Ph.D. in 1944.

His appointment as a faculty instructor followed in 1945, and in 1946 he became an Assistant Professor. In 1948 he rose to be Associate Professor of Government and Secretary of the Graduate School of Public Administration. In the same year he published a study entitled "The Regulation of Railroad Abandonment." Recently he was appointed Acting Dean of the Graduate School of Public Administration, 1951-52.

The scope of his work may perhaps be indicated by listing some of the organizations with which he is associated. In addition to being a member of the American Bar Association he is a member of The American Political Science Association, The American Society on Public Administration, and the American Economic

Association. In the College he teaches Government Regulation of Business, designed to acquaint undergraduates with the legal, political, economic and social problems stemming from extensive governmental control of our economy.

The manner in which The Graduate School of Public Administration attempts to correlate various disciplines of the social sciences and the various other Graduate Schools is perhaps best illustrated by what Professor Cherington calls "The Faculty Free Lunch Seminar—Contemporary Issues in Public Regulatory Policy." Six professors conduct this seminar, representing the Economics Department, the Government Department, the Business School, and the Law School. Professor Jaffe is the Law School representative. Other courses at the Graduate School of Public Administration are conducted by Professors Cox (Public Regulation of Collective Bargaining), Surrey (Taxation), and Sutherland (Current Problems of Constitutional Law).

Public Administration and Social Policy

As Professor Cherington puts it, "Through the agency of the Graduate School of Public Administration an attempt is being made to direct the work in the social sciences at Harvard more specifically and effectively toward the larger problems of policy and administration with which modern governments are confronted. It is desirable, indeed necessary, to have a few lawyers participate in this program, creating an awareness of the legal problems involved but at the same time never losing sight of the larger social context. The role or function of the law is therefore viewed as a part of the total social process."

"I think we have made a lot of progress in the past ten years," says Professor Cherington, "and a tremendous amount of credit must be given to Dean Griswold. His scholarly insight and breadth of vision coupled with the vigor with which he fights for what he believes in, have accomplished a great deal." Professor Cherington recalls that when he was a student here "we were trained to be superior common law lawyers, and public law was largely ignored as something quite inferior." Today, he feels, the curricula conforms more closely to present day realities, and public law is given the attention it deserves.

Seven Year Plan

The future, he feels, will bring even closer co-operation between his school and the Law School. More courses appealing to law students will be offered by the Graduate School of Public Administration, and he hopes to encourage more of his students to take courses here at Law School, as a few are now doing. In addition, the seven year plan for law students has great potentialities.

Professor Cherington is Chairman of the Committee on Administration of the Seven Year Law Plan, a program designed to integrate the work of a student over the full seven years of his college and law school studies. At present only a handful of students have been admitted to the plan because of the uncertainty concerning the draft and certain administrative difficulties involving examinations. The committee is currently working on a revision of the plan and expects it to expand rapidly when more normal times come back.

The lawyers of the future are bound to be grateful that more and more public administrators exhibit an understanding of the legal problems involved in the administrative process. The nation, too, can well give thanks that higher education is today setting itself the task of properly preparing men to occupy positions of public trust and authority. It is fortunate that a man of the calibre of Professor Charles R. Cherington is a leader in this movement.

D. C.

Sub Judice

MY KINGDOM FOR AFFECTION

"This case follows a familiar pattern. An elderly person (in this instance the aunt, Catharine S. Gibbons), having some property and an unusual affection for a younger relative (her niece, the defendant, Hilda A. Brimm) conveys her property to her niece for which the latter is to provide her a home and care during the remainder of her lifetime; and as is fairly common in this type of situation, human frailties cause the plan to go awry.

"At the time of the agreement the plaintiff, herein sometimes called Aunt Catherine, was aged 75 and in ill health; she owned a home and furniture, some farm land and farm equipment . . . and also possessed a savings and checking account. She conveyed all of the aforementioned property to Hilda by deed, bill of sale and assignment, in consideration of the latter's promise to provide her with a home . . . and proper burial.

"As is quite usual, there was a third ingredient with which Aunt Catherine had not reckoned, Hilda's husband, for whom she did not have the same love and affection she had for her niece. After a few months of comparative success under this arrangement, small dissensions arose, grew into greater troubles and ended in a complete rift, resulting in this law suit by the plaintiff to recover her property."

Aunt Catherine attacked the contract on the ground that when she signed it she was too aged and infirm to be responsible for her actions. She also contends that the defendants have broken the contractual requirement that she be provided with support, and claims that she may rescind on that ground.

Held: Judgment for defendants affirmed.

The court accepted the trial court's finding that the contract had not been broken as reasonable on the evidence. As to the question of Aunt Catherine's lack of comprehension at the time she signed the contract the court looked at the fact that she was an experienced woman, who had been married four times, she held the contract three days before signing it, and she acted in accordance with the terms of the contract several months after the signing thereof. *Gibbons v. Brimm*, 230 P. 2d 983 (Utah 1951).

ERRATUM

Sub Judice case of Feb. 14, 1952. "The Laundryman Cometh" should have been cited as *Brookhaven Steam Laundry v. Watts*, 55 So. 2d 381 (Miss. 1951).



HESS v. PAWLOSKI

"It's up to you, judge," the defendant said. "How long would you like to stay?"

"I don't mind," Stevenson said.

"How about six months?" Judge Howard asked.

"Oh I appreciate that. Thank you very much," Stevenson said.

"Write me a letter in the spring if you want to come out earlier," the judge said as Stevenson left the courtroom. *Washington Evening Star*, (Dec. 5, 1951).

PRODIGAL BUNNY

It was noted in the Cambridge Chronicle last week that Robin Amory, nine-year-old son of Professor and Mrs. Robert Amory was preparing to ask the police to issue a six-state alarm for his rabbit "Whiskers," who disappeared before completing his task as director in a newly-formed merger. Fortunately the pet returned, though hotly pursued by five dogs.

Off the Record

to a person," not to a stocking. The chairman said that it was on that we dismissed the case.

POET-TREE

I think that I shall never see
A thing as nice as equity.
A court that looks for *bona fides*,
And treats us all like lords and lides.
A court that looks for 'stoppel and laches,
But hands out justice by the batches.
All interested parties interpleaded there,
A thing at law we'd never dare.
They'll handle a mortgage or a trust,
They're never by a suitor cussed.
For poems are made by fools like me,
But Chafee, alone, makes equity.

IF I MUST SAY SO

Professor Scott, in *Trusts*: "... and now as it is said in the *great words of the Restatement* . . ."

HOUSING PROBLEM

Jerome Augusta Stevenson has a fixed address for at least six months, courtesy of Municipal Court Judge Andrew J. Howard.

Stevenson, 54, who had no fixed address up until the time he appeared before Judge Howard was charged with unlawful entry. A policeman testified that a vacant house Stevenson was using for a home at 50 G Street N.W., caught fire.

Policeman Walter Ialacci said Stevenson was using a lantern to cook some cabbage on the wood floor.

The judge asked Stevenson if he was hungry and where he got the cabbage.

The defendant said he "picked it up at the O Street market."

Stevenson told the judge he hadn't had a place to live and a job for the last nine months.

"Would you like to spend Christmas in jail?" Judge Howard asked Stevenson.

Biography Of Mr. Justice Sutherland Yields Understanding of Legal Theory

Mr. Justice Sutherland, by Joel Francis Paschall (Princeton University Press, 1951), 267 pp., \$4.00.

For readers who are accustomed to think of George Sutherland as a narrow-minded reactionary, oblivious to the need for social and economic progress, this book will come as something of a surprise. For, as Dr. Paschall clearly indicates, Sutherland was passionately devoted to the cause of "progress." But it was a rigid concept of progress which the late Associate Justice of the Supreme Court embraced; it was progress in the Darwinian and Spencerian sense—the progress of the jungle.

Progress a Process of Survival

In this sense, progress consisted of the inevitable force of evolution, a force no mere legislature could cope with, a force which produced unhappiness as a by-product, as Herbert Spencer recognized. "Pervading all nature," wrote Spencer, in his magnum opus, *Social Statics*, "we may see at work a stern discipline, which is a little cruel that it may be very kind. . . . The poverty of the incapable . . . the starvation of the idle, and those shoulderings aside of the weak by the strong, which leave so many 'in shallows and in miseries,' are the decrees of a large, far-seeing benevolence. . . ." It followed, of course, that the effects of the plan of this "far-seeing benevolence" ought not and can not be assuaged: "The process must be undergone," concluded Spencer, "and the sufferings must be endured. No power on earth, no cunningly-devised laws of statesmen, no world-rectifying schemes of the humane, no communist panaceas, no reforms that men ever did broach or ever will broach, can diminish them one jot."

New Approach to Sutherland

Dr. Paschall's analysis of Sutherland's ideology is then, based upon an acceptance of the idea that the Justice "walked in the shadow of Herbert Spencer"; once this is recognized, argues the author, it becomes easier to understand Sutherland's votes in Congress and on the Supreme Court. For how else can one explain the "liberal" record Sutherland compiled on many issues while he was in Congress? There, it will be remembered, he vigorously supported the eight-hour day for U. S. employees, the Children's Bureau, Postal Savings Banks, Workman's Compensation, and other bills; he was a motivating force behind the codification of the Criminal Code, and urged the adoption of Federal Rules of Procedure. On the other hand, he opposed the F.T.C. Act, and the Sherman Anti-Trust Act, to name but two.

Dr. Paschall explains these votes by analyzing them carefully and showing that each accords basically with Spencerian principles. Whether or not one agrees with him, the process is both illuminating and interesting.

Changed on Reaching Bench

Once Sutherland reached the Court, however, his "liberal" tendencies seemed to be well under control. In a series of opinions, from 1922-1930 he did more to undermine social progress as we understand it—or think we understand it—today, than any man in America: minimum wages for women were rejected (*Adkins v. Children's Hospital*), city zoning ordinances fell (*Nectow v. Cambridge*), maximum ticket resale prices were not allowed (*Tyson v. Banton*), state regulation of fees charged by employment agencies became an undue interference with private business (*Ribnik v. McBride*), strikes of laborers were forbidden on grounds that they interfered with interstate commerce (*Bedford Cut Stone Co. v. Journeymen Stone Cutters Ass'n.*), and so it went. On the other hand, can we overlook Sutherland's great opinions in *Powell v. Alabama*, or *U. S. v. Curtiss-Wright Export Corp.*?

Mr. Paschall attempts to analyze these cases so as to fit them into a logical pattern. I leave it to the reader to decide how successful he has been. The author seems sometimes to explain too much, to rely too much on Spencer as the key to Sutherland. But the influence of the former cannot be under-estimated. "I doubt," wrote Holmes to Lady Pollack, "if any writer of English except Darwin has done so much to affect our whole way of thinking about the universe." Certainly no writer influenced Mr. Justice Sutherland more.

Historical Rather Than Biography

Mr. Paschall's book is less the biography of a man, than the history of an idea. But unless the idea is understood, the student will fail to understand much that is important in American constitutional history. The author's presentation is succinct and fast-moving, and his narrative holds the reader's interest throughout this short volume. It is to be recommended as an indispensable presentation of the "other side of the picture" as reflected in the story of the man whose power of intellect, and integrity of character were such that "he stands as one of the major landmarks in American constitutional law, the landmark from which the new departure was taken in 1937." Mr. Justice Sutherland is truly symbolized by Dr. Paschall's subtitle: "A Man Against The State." In the end, the State won, but the struggle was fierce and is not yet entirely over. One cannot but wonder, as a parting thought, whether the State has won too much.

D. S.

DALTON-ELCOCK BAR REVIEW

This review, preparing candidates for the Massachusetts Bar Examination, is given twice a year; September through December, evenings; and in June, days.

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NEWS IN BRIEF

CHAFEE LECTURE

On Wednesday, March 12, Professor Zechariah Chafee will deliver the second Roger Baldwin Civil Liberties Foundation lecture in the McMillan Theatre of Columbia University. Professor Chafee will speak on "My Thirty-five Years in the Fight for Freedom."

LEGAL AID

An additional three men were elected to the Legal Aid Bureau this semester. The new men are: Martin M. Friedman, 2L, of Montclair, N. J.; Robert A. Riegert, 2L, of Cincinnati; and Robert L. Shults, 2L, of Pine Bluff, Ark.

The two new Junior Directors elected to the Bureau's Board of Directors are Robert H. Haggerty, 2L, of Hollis, N. Y., and Wilton B. Persons, Jr., 2L, of Montgomery, Ala.

AMES

With the second series of arguments in the first year Ames Competition now beginning, the Board of Student Advisers revealed that only four students failed to participate in the program without having been given permission.

There were a total of 66 first-year clubs, including a large number of new names, and 495 students went through the traditional ritual of finding the law, relating it to the facts, and presenting their views to a three-man appellate bench.

The Board noted that as of last December 13 there were 510 first year students, 16 having left since the beginning semester. The Board also repeats its request for second and third year men who are interested in judging forthcoming arguments to leave their names at the Austin Hall office.

Two ex parte briefs and five three-party arguments are included in the total of 246 arguments.

YEARBOOK

Subscriptions are still being accepted for the 1952 edition of the Harvard Law School Yearbook, expected to make its appearance immediately after the spring recess.

The Yearbook is dedicated to Judge Learned Hand, and this six-page feature includes a biography by Professor Elliot Richardson, and articles by Justice Felix Frankfurter, the late Robert P. Patterson, LL.B. '15, and George Wharton Pepper, former President of the American Law Institute.

A memorial to the late Professor E. Merrick Dodd has also been included.

AMES CALENDAR

Round 6: Brief conference today. Rounds 1 and 2: Brief exchange Monday and Tuesday, respectively. Rounds 7 and 8: Brief conferences Monday and Tuesday, respectively.

PBH BOOK COMMITTEE

A three-day sale of out-of-date texts by the Book Committee of PBH, was held a success by the chairman, James B. Johnson, 3L, of Billings, Montana. At prices ranging from 10 to 50 cents, 250 volumes were sold.

The Committee renewed its plea for contributions of usable books from the student body so that its program can be furthered.

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PBH MIXER

Next Friday afternoon from 4 to 6 p. m., PBH will present a special Mixer Dance in the Harkness Commons Lounge. The four-piece orchestra of George Graham will supply the music, and refreshments will be served.

Tickets, at \$.75 each, will be sold from Tuesday through Friday, and sales have been limited to 175. Girls from Simmons, Wellesley, Radcliffe, Wheelock, and Newton College of the Sacred Heart have agreed to come.

George Meyer, 3L, of Detroit, chairman for the social, said he expected this dance would surpass the success achieved by the last mixer, given October 4. The sale of tickets has been limited, he said, to prevent overcrowding.

LAW WIVES

Karl M. Compton, former President of M.I.T., will speak informally at the regular meeting of the Law Wives next Wednesday at 8 p. m. in the Wheeler Room.

CAFETERIA SUGGESTION BOX

A suggestion box has been placed at the head of the ramp leading to the Cafeteria at the suggestion of the Dorm Council. Students aggrieved by particular menus may now submit formal complaints and allegations.

YOUNG REPUBLICANS

Former Assistant Attorney General of Massachusetts George Fingold will address a meeting of the Young Republican Club today at 8 p. m. at Phillips Brooks House. A well known racket-buster, the speaker recently announced his candidacy for the Attorney Generalship.

S. J. A.

With a goal of \$4000 to be collected from the Law campus, the Student Jewish Appeal got under way last week. The Drive is affiliated with the Community Jewish Appeal of Boston.

The campaign will last until the end of the month, and it is hoped that the response will be even finer than last year when the University over-subscribed its quota \$10 per student.

During the month students will be visited and pledges and money will be solicited. Those who make pledges are urged to redeem them at the earliest possible time in order to have the annual allocations meeting as soon as possible.

At this meeting, to which everybody is invited to participate, it will be determined where to allocate the thirty per cent of the funds retained by the Student Jewish Appeal.

FORUM LEGAL PROGRAMS

Professor Mark DeWolfe Howe will give a lecture on the legal and political philosophy of Mr. Justice Holmes next Wednesday at 8 p. m. in Langdell North Middle, as another in the series of Legal Programs sponsored by the Harvard Law School Forum.

The following Wednesday Professor Paul Freund will speak on the principles and thought of Mr. Justice Brandeis.

AMORY—(Continued)

gree from the University of Pennsylvania, will teach on Thursdays, Fridays, and Saturdays, and continue his work with the SEC during the early part of each week. He was named a visiting Professor of Law, effective March 1.

Loss' Book Acclaimed

Mr. Loss is the author of "Securities Regulation," recently published by Little, Brown & Co. Judge Jerome Frank has said of this study, "I venture to guess that it will be the *Wigmore* in its field." Professor Amory noted that the treatise was already being used as the text and background source book for his seminar.

With the SEC since his graduation from Yale Law School, Mr. Loss served as the Chief Counsel of the Trading and Exchange Division from 1944 through 1948. He has been Associate General Counsel since that time.

Teaching Background

Beginning in 1947 he conducted a seminar for one semester each year at Yale on "SEC Aspects of Corporate Finance," and during the other semester since 1949 lectured on the same subject at George Washington Law School.

Prior to these teaching assignments, Mr. Loss taught part-time at the Law School of the Catholic University of America in Washington, D. C., during 1941-42. He is the author of several law review articles as well.

Mr. Loss will not be in Cambridge until shortly before his duties are to begin. It is expected that he will make no changes in the assignments for the sections in Corporations I.

REVERE—(Continued)

swering grants the right of the person to ask the question." Her choice was to place herself in the hands of one of "the less scrupulous members of your profession." As a result of these investigations Miss Revere said that she was deprived of a livelihood in films and TV.

Asked her view on the effect of this Red Scare on the film industry, Miss Revere cited the award-winning "A Place in the Sun" as one prime example of artistic compromise. Miss Revere termed the picture "a social criticism" which told the story of the desire of a boy to rise from the mission house life into which he was born to the world of riches and cadillacs. In one of the final scenes, in which Miss Revere portrayed the boy (Montgomery Clift's) mother, she admitted her failure. When the picture was released this scene had been cut and she emerged as "Whistler's mother" and the entire picture had lost most of its poignancy. Miss Revere mentioned this movie as only one of several potentially fine productions which, in their cutting reflect a marked trend to the popular "happy ending."

When asked why she chose silence rather than defending her beliefs, she said that it takes times to find oneself after the experiences which she had undergone.

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School Basketball Leagues Begin Play

Hemenway Gymnasium was again busy last week with League Basketball activity as the second year of tourneys got under way. As of last Friday there were two-way ties in each of the leagues.

The thirteen Law and Graduate School teams competing in the activity were divided into two leagues by John Harty, 2L, of Johnstown, Pa., director of the tournament, on the basis of comparative strength of the lineups.

In League "A," Chancery C and the No Names were tied at two victories apiece, Chancery C having defeated Divinity and the Bookworms, while the No Names took over the Legal Eagles and Lincoln's Inn.

The stronger League "B" also had a tie for top leadership. The Lakers trounced Chancery B and the Neversweats, while the Gnats eked out a two-point victory over Chancery A and then blasted the Cowboys.

Two-game scoring honors went to Joseph N. Thomas, 1L, of Gary, Ind., playing for Chancery C, with 38 points on 18 field goals and two free throws. David Atcheson, 2L, of Seattle, playing with the League "B" Lakers, was first in his division and fourth in the over-all standings, with 31 tallies.

BASKETBALL STANDINGS

LEAGUE "A"

	Won	Lost	Pct.
Chancery C	2	0	1.000
No Names	2	0	1.000
Legal Eagles	1	1	.500
Bookworms	1	1	.500
Divinity	1	2	.333
Lincoln's Inn	0	1	.000
Re-educators	0	2	.000

LEAGUE "B"

	Won	Lost	Pct.
Gnats	2	0	1.000
Lakers	2	0	1.000
Neversweats	1	1	.500
Chancery A	1	1	.500
Cowboys	0	2	.000
Chancery B	0	2	.000

SMITH—(Continued)

associations you can, and work. There is plenty of room for workers," he said. The Student Bar Association was pointed to as an example of a society the student could join now.

Mr. Smith also suggested membership in the American Judicature Society, which is accredited to the ABA House of Delegates.

Returning to the lawyer-client relationship, Mr. Smith said that a lawyer must put himself second, even in his capacity as a citizen, to the interests of his client. If continuing the relationship would amount to subversion or treason, he suggested the lawyer get out from under the relationship rather than violate it. This might be done by getting a waiver from the client; if this became impossible, he should then sever his connections.

CHAFEE—(Continued)

About sixty years ago, Mr. Justice Field said in *Geofrey v. Riggs*, 133 U. S. 258, 267 (1890) that the treaty power in the Constitution is limited "by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government itself and of that of the States." He repudiated any contention that the treaty power authorizes "what the Constitution forbids, or a change in the character of the government or in that of one of the states. . . ." And about twenty years ago, shortly before Charles Evans Hughes became Chief Justice, he told the American Society of International Law (Proceedings, 1929, pages 195-196) that the nation would not have the power to make an agreement if there were "some express prohibition in the Constitution" against it, or if the treaty were intended "to make laws for the people of the United States in their local concerns. . . ."

The Supreme Court has never said anything since these two statements which shows the slightest inclination to repudiate them. The *Migratory Bird Case*, 252 U. S. 416 (1920) although frequently invoked by the supporters of the proposed amendment, flatly denies that either the treaty or the implementing Act of Congress "conflicts with any provision of the Constitution" (to quote the proposal). Mr. Justice Holmes refused "to imply that there are no qualifications to the treaty-making power" and no express prohibition in the Constitution was involved in the case.

The decision did concern the Tenth Amendment, and this was squarely held to authorize what the national government had done. The true point decided by this case was that the powers "delegated to the United States" in foreign affairs are much wider than those so delegated for domestic purposes, and the powers "reserved to the States" are correspondingly much smaller; therefore, this extensive area of national control over dealings with other countries validates, not only treaties themselves (as had been repeatedly held for more than a century), but also Act of Congress passed to carry out the promises in treaties.

In short, Field, Hughes, and Holmes all stress the vital distinction which the Constitution makes between the relations of nation and states for domestic affairs and their relations with regard to the subject-matter of a treaty. Contrast the third part of the proposed amendment, which would make federal-state relations coextensive in these two very different realms. Later I shall return to this vital distinction and develop it more adequately.

Whereas the first part of the suggested amendment does not alter our existing constitutional law, the second and third parts of it will certainly bring

about very substantial changes. The nature of each change will now be made clear by comparing the present operation of the treaty power with the way the proposal would work.

SELF-EXECUTING TREATIES COMPARED WITH COMPULSORY IMPLEMENTATION BY ACT OF CONGRESS

The most far-reaching part of the proposal consists of the words, "A treaty shall become effective as internal law of the United States only through legislation by Congress. . . ." This will wipe out our existing constitutional principle, by which most American treaties are self-executing. In order to understand this word, it must be remembered that there are two aspects to the binding effect of a treaty. In the first place, it becomes internationally binding after the performance of certain acts



PROF. Z. CHAFEE

—in this country, signing by the Executive and its ratification by two-thirds of the Senators present. After these acts, the good faith of our government is pledged to the performance of the treaty. A violation of it by our government may lead to diplomatic remonstrances by the other nation involved, and possibly to stronger measures or to a proceeding before an international tribunal. This aspect of creating international obligations is true of all treaties in all countries.

Secondly, a good many treaties are intended to become binding upon the officials and private citizens of the nations signing it. In order to have effective performance of this aspect of a treaty, it needs to be enforceable in the ordinary courts in the same way as regular statutes. This domestic effect of a treaty does not inevitably accompany its creation of international duties. For example, some treaty provisions may not call for judicial proceedings at all, e.g., our promise to pay Spain for giving up the Philippines.

Still, many provisions do need to "become effective as internal law," for example, when the citizens of each nation are given reciprocal rights to travel and reside in the other nation. Although in Great Britain, the courts will pay no attention to such a provision until it is implemented by Act of Parliament, the American situation is quite otherwise. Because Article VI makes the treaty "the supreme Law of the Land" and renders it binding on every state judge, the treaty will usually take effect automatically in the United States. No Act of Congress is required to imple-

ment it, except on rare occasions when express language in the treaty may prevent such a result.

As an example of this self-execution under Article VI, take the treaty which had the greatest importance for the men who framed that article—our Treaty of Peace with Great Britain in 1783. This agrees "that creditors on either side shall meet with no lawful impediment to the recovery of the full value in sterling money, of all bona fide debts heretofore contracted." (24 *Journals of Continental Congress*, 248, Washington 1928). Congress did not pass any statute to implement this promise. Within a few years, after the Constitution went into force, a British creditor tried to collect a debt owed him by a Virginian. The lower court denied relief because a Virginia statute of 1777 had confiscated such debts. Thereupon the Supreme Court gave the British creditor his money because the treaty was law and kept the contrary state statute from being law. *Ware v. Hylton*, 3 Dall. 199 (1796).

Now, let us suppose that the language proposed by members of the American Bar Association had been part of Article VI of the original Constitution. The collection of private debts was certainly a matter of "internal law," and hence when Congress did nothing, the Supreme Court would have been helpless to aid the British creditor. The treaty with Great Britain would have been flatly violated, and grave reprisals on the part of the British might well have followed. Yet under the Constitution as its wise framers wrote it, the British creditor was satisfied, and probably many more like him were paid voluntarily, now that litigation was seen to be useless. Thus the renewal of commercial relations between the two countries was encouraged.

The reply may be made that President Washington could have gone to Congress for the legislation made indispensable by the suggested amendment. But would he have got it? Senators and Representatives from states whose citizens owed large sums to our former enemies would have fought tooth and nail against the enactment of such a law.

The ability of the President and the Senate to make treaties does not amount to much unless accompanied by national power to get those treaties faithfully carried out. That power to stand firmly behind our international agreements will be gravely impaired if the self-executing operation of treaty provisions affecting states and private citizens is abolished and an Act of Congress is the only way to prevent them from flouting our promises to other nations. Even when such provisions happen to fall within the domestic powers of Congress, the good faith of our nation is much more likely to be tarnished under the proposed amendment than under the Constitution as it was written in 1787.

During whatever interval elapses be-

Alumni Notes

LL.B. '29—Schuyler W. Livingston is again associated with the firm of Milbank, Tweed, Hope and Hadley in Washington, D. C.

LL.B. '31—James E. Nickerson has become a member of the New York City firm of Root, Ballantine, Harlan, Bushby and Palmer.

LL.B. '32—William Stix has become a member in the firm of Thompson, Mitchell, Thompson and Douglas of St. Louis, Missouri.

LL.B. '34—John Litwack has been made a partner in the Boston firm of Widett and Kruger.

LL.B. '34—Bennett Boskey announces the formation of a partnership for the general practice of law under the firm name of Volpe and Boskey, in Washington, D. C.

LL.B. '40—Francis A. Goodhue, Jr., has become a member of the New York firm of Root, Ballantine, Harlan, Bushby and Palmer.

LL.B. '48—Arthur L. Berger is now associated with the firm of McNeese, Wallace and Nurick in Harrisburg, Penn. Theodore Ellenoff is a member of the New York City firm of Gartenberg and Kliegman.

LL.B. '49—John F. Minicus is associated with the White Plains, N. Y. office of the firm of Bleakley, Platt, Gilchrist and Walker.

LL.B. '50—Samuel Dash has left the Appellate Section of the Criminal Division of the Department of Justice in Washington and is now head of the Appellate Division of the District Attorney's Office of Philadelphia County, Penn. William B. Lawless, Jr., has joined in the formation of a firm under the name of Williams, Crane and Lawless in Buffalo, N. Y.

LL.B. '51—Joseph S. Hockey is in private practice with Leon Himmelfarb in New York City. John S. Nolan is associated with the Washington firm of Miller and Chevalier.

Between ratification of the treaty by the Senate and the day when both Houses of Congress consent to pass an implementing Act, if they ever do, private citizens will be able to violate the treaty with impunity, state legislatures can pass statutes ignoring its terms, state judges must brush the treaty aside as no concern of theirs, and the nation to which we gave our solemn promises can hold us up to scorn as contract-breakers and deny our citizens any of the treaty benefits in its own territory.

A bargain which is ignored by one side is not going to be observed very long by the other side. And the next time we have some important question to settle with that nation and seek to open negotiations for a treaty, we are unlikely to get very far.

(TO BE CONTINUED)

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