

The Harvard Law School Record

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Debate On Supreme Court; Sutherland And Rodell Vie

Nominating Felix Frankfurter as "the Emily Post of the Supreme Court" and "the Justice with the water-bug mind," Justice Reed as "a kindly old coot," Chief Justice Vinson as "not in the same league with his predecessors Hughes and Stone, who did twice as much twice as well," Justice Clark as "Truman's most incredible appointment," Justice Minton as "the supposed liberal," and Justice Burton as "a decent, plodding guy who just hasn't got it," Professor Fred Rodell of the Yale Law School set firecrackers under two-thirds of the Supreme Court in the space of a two-hour debate with Professor Arthur E. Sutherland.

Answering the Yale critic in this Forum-sponsored special legal program, Professor Sutherland archly pointed to Mr. Rodell as a traditionalist who was following in a line of criticism of the Court which began with vehement denunciation of Marshall's opinion in *McCulloch v. Maryland*. "Twaddle," he said, "was what the old New York *Herald* called Mr. Justice Davis' opinion in *Ex parte Milligan*, which is now looked on as one of the great civil liberties cases."

"How casually irresponsible can the Supreme Court get?" Professor Rodell asked, in pointing out some ten instances in which, "in my opinion," the Justices had wrongfully denied certiorari or appeal. He went on to review several cases in which the Court had taken jurisdiction, and which he claimed supported his thesis that the Court's members are not as vigorous in striking down infringements of civil liberties as they should be.

He named as the "Court's only first class statesmen" Justices Black, Douglas, and Jackson, saying of the former two that "the 'Vinson slow-down' has left them with not enough work to keep them busy."

Intimating that Mr. Rodell's feud with the Court should not have been carried to the pages of a national magazine, Professor Sutherland observed: "You cannot have both sides pleased by what a judge does."

"I have been just as annoyed by denial of certiorari in some cases," he continued, but "inherent in the business of being a judge or a lawyer is being annoyed by the outcome of cases," he quoted the advice of one attorney to another after the latter had lost a case, as "go over to the tavern and swear at the court."

"The reserved opinion," he concluded, "is a good thing for all of us to cultivate today." He expressed his belief that "a certain amount of charity in government is a desirable thing," and that Washington was "too full of vitriol."

Lawyer's Loyalties Discussed By Lyne

"It is no longer true that 'the trial lawyer lives well, dies poor, and is soon forgotten,'" Daniel J. Lyne, LL.B. '12, told a Student Bar Association audience in his talk on "Trial Tactics and Justice."

Mr. Lyne spoke as the fourth lecturer in a series of five talks sponsored by the SBA on the general topic of "Lawyers' Problems of Conscience."

He pointed out as true that the trial lawyer's life is spent in the "front line trenches" in the service of others. For this reason, he said it was necessary for a trial practitioner to have a deep sense of justice and an ability to recognize and respect the rights of others.

He singled out the public prosecutors and attorneys for legislative investigating committees as two types which owe a special obligation to the profession, the public, and the person on the witness stand. Mr. Lyne went on to deal extensively with the various loyalties a trial lawyer faces in the preparation and prosecution of a case.

It was suggested that the defense of those accused of criminal acts not be entrusted to a small group of lawyers of limited education and cynicism. He recommended that the young lawyer with conscience, who values personal rights over property rights, should defend the accused. The growth of the Voluntary Defenders, he observed, has

(See Lyne on page four)

Brandeis' Ideals Cited By Freund

An unswerving belief in the freedom and responsibility of the individual was the cornerstone of the philosophy of Mr. Justice Brandeis, said Professor Freund who spoke last Wednesday evening to a Forum audience.

Mr. Justice Brandeis' philosophy of life took shape in his mid-thirties, said Professor Freund, when the Homestead strike of 1892 and related experiences with working people gave rise to his belief that the potentialities of ordinary men must be developed. It was this thought, the speaker maintained, which underlay all of Justice Brandeis' subsequent acts and decisions and which stamped with a well defined coherency his many diverse activities and interests.

At the bar, Brandeis was the "People's Advocate" in all controversies. But, Professor Freund went on to qualify, Brandeis was interested in more than victory; he used each occasion for constructive development. In a N. Y. garment industry dispute, for example, Brandeis used the settlement as basis for an industry protocol which is still in use.

Professor Freund outlined Brandeis' advocacy of Federalism as fostering diversity and responsibility in civil rights matters, and related how Brandeis joined with the majority which struck down a state law forbidding the teaching of a foreign language in the public schools as an undue abridgement of the freedom to teach.

He never reconciled himself to the new Supreme Court building because he felt that the prestige of the Court lay in its intrinsic power to persuade and not in the mere trappings of authority.

Professor Freund saw in Justice Brandeis a Periclean figure of firm and inflexible character with essentially simple ideals and with the resourcefulness to translate those ideals into the legal and social institutions of the twentieth century.

Grad Center May Offer TV Entertainment Soon

Vice-Dean Livingston Hall has approved a Dormitory Council plan to attempt to have some manufacturing company donate a television set to the Graduate Center, so long as no advertising scheme will be involved. The gift would be acknowledged by a small metal plate giving the donor's name, as is customary.

A suggestion to provide for magazine racks and national magazines in the various Commons rooms has been referred to Assistant Dean Wesley Bevins for approval, while the administration announced it would welcome suggestions for the refurbishing of the first floor of Holmes Hall. The Law School said it would be willing to purchase new furniture for that purpose.

Responding to complaints, the Dormitory Council conferred with the appropriate authorities and announces that more heat will be provided during the day, and heat will be supplied until a later time each evening.

Douglas Will Preside At Ames Finals; Case Involves International Law Issue



Kaiden-Kazanjan

JUDGE CHARLES E. CLARK



JUSTICE WILLIAM O. DOUGLAS



Bachrach

JUSTICE HAROLD P. WILLIAMS

Arguments For Suggested Amendment Are Repudiated In Chafee's Conclusion

This is the final installment of an article written for the RECORD by University Professor Zechariah Chafee, Jr., dealing with a constitutional amendment approved by the A.B.A. 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."

Fourth, the framers wanted the national government to be able to have treaties performed after they were ratified. They were fully aware that for many treaties this meant having them "become effective internally." Compliance by state officials and by citizens of the states had to be assured. Both the French Treaty of 1778 and the British Treaty of 1783 made this plain to them, and some of their drafts were even more explicit on this point than the final text of Article VI. Thus the basic formulation of this article, made by Luther Martin of Maryland, declared that the legislative acts of the United States and all treaties "shall be the supreme law of the respective states as far as those . . . Treaties shall relate to the said States, or their citizens and inhabitants . . ." (Emphasis supplied.) This draft was adopted on July 17, unanimously.

The Convention was thoroughly satisfied with the fact that the Articles of Confederation had concentrated the control of foreign affairs exclusively in the central government. Yet it was also keenly aware of one damaging defect in this control. This was that the central government was helpless whenever a state or its citizens chose to violate treaty provisions. On the very first day when the Convention got down to the merits, Randolph of Virginia enumerated the defects of the Confederation, among which was—"They could not cause infractions of treaties . . . to be punished." These complaints of state breaches of treaties kept recurring. Madison, writing years later, said that in every proceeding of the Convention, from start to finish, the necessity of "paramountship" of national laws over state laws was taken for granted.

"Every vote in the Journal involving the opinion proves a unanimity among the Deputies, on this point. . . . [The] necessity of some adequate mode of preventing the States in their individual characters, from defeating the Constitutional authority of the States in their united character, . . . had been decided by a past experience. . . . [The] radical defect of the old confederation lay in the power of the States . . . to

disregard or to counteract the authorized . . . regulations of Congress."

The only disagreement in the Convention was as to what should be the remedy against recalcitrant states. Five such remedies were suggested at various times. (1) Randolph's opening speech suggested a Council of Revision, composed of the Chief Executive and a convenient number of national judges, with power to examine every national and state law and to veto it. (Some early state constitutions had set up such a body.) (2) Two days later, however, he moved to entrust Congress with the power to negative all state laws contravening the articles of Union, which Franklin amended to include "any Treaties subsisting under the authority of the union." From this motion there was no dissent. (3) An additional remedy proposed simultaneously was for Congress to be able to call forth troops against any offending state, but this caused controversy. Madison thought this was like declaring war against the state, and Gerry said the new system would give the national government the means to secure itself without this method of armed force. (4) On June 15th, Patterson of New Jersey introduced his comprehensive draft, which included the remedy eventually chosen. Treaties were to be the supreme law of the respective states, so far as they related "to the said

(See Chafee on page three)

World Law Club Hears H. Bonnet Tomorrow

Henri Bonnet, French Ambassador to the United States, will speak tomorrow evening at 8 p. m. in Harkness Commons, as a guest of the recently formed World Law Club, it was announced by Louis Del Duca, 3L, of Philadelphia, newly-elected president of the group. The Ambassador will speak on "Current Trends in French Foreign Affairs."

With students from some 30 foreign countries now in the Law School, the men founding the club are striving to provide means for an exchange of cultural information through lectures and informal discussions.

The club is now holding luncheons on alternate Wednesdays from 1 to 2 p. m. in the Commons, at which experts on various fields of international relations speak to the group. At the first meeting Associate Dean David Cavers spoke on "The Developing Field of World Law," and at the March 5 meeting Professor Carl Friedrich of the Harvard Government Department discussed "Problems of European Federation."

William O. Douglas, Associate Justice of the Supreme Court of the United States, will preside as Chief Judge of the Ames Circuit when attorneys for the Ames Circuit and Marshall Clubs argue the case of *Russian State Steamship Line v. J. Howard McGrath, Attorney General of the U. S. and Successor to the Alien Property Custodian* in the finals of the Ames Competition next Monday, at 8 p. m. in the Courtroom.

Sitting on the bench with Chief Judge Douglas will be Charles E. Clark, Judge of the United States Court of Appeals for the Second Circuit, and Harold P. Williams, LL.B. '06, a Justice on the Supreme Judicial Court of Massachusetts.

The issue of the case is whether a United States court will give weight to a Latvian nationalization decree when the Executive Department of this country recognizes neither the Latvian Soviet government nor any of its laws and decrees.

The ship was in Latvian waters in 1940 when the nationalization decree was passed. Plaintiff-appellant maintains that the ship became the property to the Latvian government at that time. The captain of the ship was ordered to sail for Murmansk, but went to England instead. Thereafter, the ship reached New York where a libel was brought by representatives of the original Latvian owners. After Germany invaded Latvia, the Alien Property Custodian vested the insurance proceeds of the ship on the ground that the proceeds belonged to a person in enemy occupied territory.

After the war the Russian State Steamship Line, as transferee of the Latvian government, brought suit against the Alien Property Custodian in the Ames District Court when its claim for the proceeds of the ship was denied. The District Court dismissed the case on motion for summary judgment and plaintiff appealed.

Arguing for the Russian State Steamship Line, plaintiff-appellant in this controversy, are William A. Carroll, 3L, of Corcoran, Cal., and Richard A. Myren, 3L, of Madison, Wis., of the John Marshall Club. Counsel on the brief were: Robert B. Hudson, 3L, of Los Angeles; Rodney W. Loeb, 3L, also of Los Angeles; Stanley V. Ostrow, 3L, of Pittsburgh; and Floyd Wilkins, Jr., 3L, of Fowler, Cal.

Urging the cause of the Government will be Joseph R. Cortese, 3L, of Youngstown, Ohio, and Philip C. Potter, Jr., 3L, of New York City. On the brief for the Jeremiah Smith Club were: Robert P. Cook, 3L, of Allston; Phil N. Crawford, 3L, of Lakeport, Cal.; Theodore J. Horvath, 3L, of Cleveland; William J. Kelly, 3L, of Beaver Falls, Pa.; Richard E. Mansfield, 3L, of Riverside, Ill.; and Arthur V. Savage, 3L, of Morristown, N. J.

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Ames Judges

It is exceedingly unfair to expect that a first year man should be required to spend hours in the preparation of an Ames brief and oral argument in order to gain some insight into the means and methods of legal research and advocacy, and then to find that his judges have done nothing but lightly glance over the brief and issue sheets, and then sit down and pretend to be expert enough to listen to the argument.

We recognize that there are time limitations on the effort these student-judges can put into the preparation of the cases. However, there should be a certain sense of tradition and responsibility toward the school and its systems which should impel these men to give sufficient time and effort so that both they and the counsel will benefit.

Unfortunately the prevalent attitude towards the judging of these arguments seems to be that second and third year students look forward to opportunity to bedevil two or four first year men for an hour or so. Not enough of these judges look at the argument as a test of their abilities as students of the law, as legal analysts, and as judges. Often in class these same students are to be heard venting their spleen upon what they term an "asinine opinion," but when they in turn are given the opportunity to decide the issues they, too often, become the object of the derogatory remarks of the counsel.

When a man accepts the responsibility of acting as a judge, he must accept the work entailed as well. Counsel have put in a great deal of work. The least that they can expect is a fair hearing of their cause. And there cannot be a fair hearing where there is inadequate knowledge of the issues presented.

The Board of Student Advisers is doing its job, and it is doing it well. But its function is mainly supervisory. It controls the project, but cannot run it without student aid. And that aid must come not only from those who act as counsel but from those who participate in the arguments as judges.

It is no small matter that is involved. Ames forms a vital part of our education as well as being an integral part of the school tradition. The Board of Advisers, alone, cannot keep it alive.

LETTERS to the EDITOR

To the Editor of the RECORD:

I have been much interested in the letter from two second year students in your issue for February 28, and the response by the Chairman of the Board of Student Advisers in the following issue. The question relates to the accuracy of scores reached in arguments in the Ames Competition. Perhaps a third point of view may be of some interest.

In considering the field in which we are operating it may be important to understand that anything like mathematical precision is rarely attainable. It would no doubt be possible to

Gallery

WILLIAM S. BARNES
Foreign Research Director



The impetus to study the law and legal systems of the nations of the world has in the past come almost exclusively from the academic sphere. In the last decade, however, there has been an increase in the practical need for knowing what other people think of when they say "law." As in all human experience, where the motivation for human activity is self-preservation the intensity of the work will be the greatest.

William S. Barnes, Research Director of Foreign Research Study at Harvard Law School, first became interested in law as a global concept when the instinct for self-preservation was at high pitch. He was shot down while flying support missions for the British Eighth Army in the push from El Alamein. While wearing Arab garb he was captured by the Italians and was saved from a spy's fate by the animosity between the Germans and Italians and some very quick talking which convinced his captors that he was an American fighter pilot.

There was a great deal of time if nothing else at Stalag Luft No. 3 and a small group of P.O.W.'s soon found they had a common interest. Together they organized a law study group and regular classes were held. Through the help of Mr. Barnes' parents and Professor Seavey the proper texts were sent to the group through the neutral mail service. Because of his background in Government and International Relations acquired at Yale, Mr. Barnes led a discussion group on these subjects. The idea arose within the group that there should be some way in which lawyers and law scholars could help make a more durable peace after the war ended.

World Law Group

Liberation finally came, and in 1946 Mr. Barnes returned to the Law School, married and began his second year. The new idea conceived at Stalag Luft No. 3 soon materialized into a student group calling themselves the World Law Group. The problem, as Mr. Barnes states it, was and remains: what is the most effective way to accomplish results in terms of world government and order, and how can the role of law be extended to influence world relations? The School had already shown its interest and a program for the development of a course in Comparative Law was under way; but Mr. Barnes would have finished his studies at law school before the course was given. He felt that to make any headway toward an understanding of law as a factor in the settlement of international problems he first had to know what a German or French or Italian meant when he used the word "law". To accomplish this Mr. Barnes went abroad.

The choice of a country in which to study was difficult. Which was most representative? His ultimate choice made on the advice of Dean Pound was Switzerland. Dean Pound felt that Swiss law would be a composite of the older legal systems, its Code being one of the most recent.

devise a scoring system for the Ames Competition which would produce results down to the thousandth of a point. But such accuracy would be quite illusory. We should not overlook the conception or rule of "significant figures." In most of the problems with which the law deals, I doubt if results can be regarded as accurate beyond one significant figure, and often there may well be legitimate doubt about that one.

The point has been recently well put by Professor Maxwell Cohen of McGill University in an article entitled "The Role of Law and Lawyers in Industrial Relations," appearing in the December, 1951, issue of the *La Revue du Barreau*, of Quebec. He says: "The lay mind comes to the law as citizen, as student, as client,

After graduation from the Law School Mr. Barnes left with his family for Switzerland and enrolled in the Faculte De Droit at the University of Geneva. He studied under the G. I. Bill and completed the required course for the Doctorate in Private International Law (Conflicts) and Comparative Law. Mr. Barnes prepared to return home but was magnetically drawn to The Hague, where the International Bar Association was meeting. For a month he worked on the summarization of papers presented at the meeting.

The goal Mr. Barnes has set can be stated simply: to find a means whereby law can become an instrument of international peace. Getting down to details is another matter. None can hope to learn all about any country's law before starting to fit it in with others and make some practical use of the knowledge of Comparative Law. It is more important for a person who enters this field to try and discover the various approach as to the law that lawyers use in other lands.

Having this theoretical background Mr. Barnes has become interested in practical applications of it. When he returned from Europe he went to Michigan under Professor Hessel Yntema as a research associate in Comparative Law. While at Michigan his job consisted mainly of assisting in the editing of *Conflict of Laws, A Comparative Study*, by Ernst Rabel. During the summer Mr. Barnes organized and served as Executive Secretary of an Institute on Legal Problems of World Trade.

At the suggestion of Professor John Hazard, the United States delegate to the UNESCO International Committee on Comparative Law, Mr. Barnes attended the Committee's meeting in Paris in 1950 and subsequently made a study for the U. N. This study was concerned with documentation, the major problem now before the committee. At present he is a member of the Sub-Committee on Documentation which is engaged in preparing a catalogue of sources of national law.

Law School Atmosphere

In line with these interests Mr. Barnes' favorite course at Law School was Conflict of Laws. "I spent a year trying to figure out what the name of the courses meant, and once I did it all began to make sense."

He did say, however, that his opportunity to attend both before and after the war made him aware of the transition the School had undergone because of the war and the veterans who returned. They were students who applied themselves more intensely and seriously as contrasted with the same students who in 1940 were distracted by the thoughts of leaving for war, perhaps never to come back. This atmosphere of seriousness continues and is for Mr. Barnes one of the things which has made the work in foreign law so productive for the short time it has been going on.

Another condition existing here right after the war was the more intimate contact between teacher and student. Because of the small number of students, seminars and classes were carried on with a great deal of individual discussion and instruction. A seminar with Dean Pound which had only eight students was a cherished experience and an unusual opportunity for learning.

Because this field is so broad, Mr. Barnes has decided that his own work to be useful must concentrate on a single aspect of Comparative Law. He has chosen cooperatives—their existence in the countries of the world and the way in which these countries define what a cooperative association must be. This is the subject of his doctoral thesis. Once a comparative study is done then the potentialities of cooperatives as an international trading unit will be able to be assessed. In this way Mr. Barnes sees each field of law as being able to contribute to the growth of a global concept of law and out of these ideas a smoother more peaceful intercourse between nations.

These ideas present a Herculean labor, but such strong determination will bring continued accomplishments.

L. B.

Sub Judice

PRISONER OF CHILLON

Harnik parked his car along the street curb and went about his business. Meanwhile Levine came along in his car, and unable to find a convenient spot to park, doubled parked along side of Harnik's car, and went about his business. Harnik returned. Unable to move his car he was forced to wait around until Levine came back.

Harnik brings action for damages for discomfort and inconvenience suffered.

Held: Harnik has a cause of action.

The court cited a Washington, D. C. decision which held that passengers subjected to radio broadcasts while riding on a public conveyance had the right "to be free from the bombardment of sound." The court went on to say that if a "captive audience" had the right to pray for relief—so could a "captive motorist," and that the public highway was not to be used as a "stableyard for vehicles." *Harnik v. Levine*, 106 N.Y.S. 2d 460 (1951).

LOVE ME OR LEAVE ME

Under New Jersey law, an unjustified, wilful, obstinate, and continuous refusal of a spouse to cohabit over a period of two years gives rise to grounds for divorce on the theory of desertion.

It was on such a theory that Louie sought to part legal company with Stephanie. The trouble in maintaining such a claim stems from the difficulty in procuring witnesses. Added to this was the defense of condonation which Stephanie attempted to bring forth at the trial. The only testimony giving such evidence was that of a mutual friend of both husband and wife who testified that the couple had spent a night in her apartment during the statutory two year period.

Held: Divorce granted.

A shocked court, after reviewing the evidence, said that the record supported the trial judge's finding that the admitted acts relied upon by the wife as evidence of condonation did not have the effect of destroying the husband's cause of action.

"We might well disregard this contention of the defendant on the ground of her failure to plead condonation. However, we are satisfied from our review of the evidence that the trial judge correctly held that the wife premeditatedly and fraudulently engaged . . . (in such acts) . . . with her husband for the express purpose of destroying his cause of action."

"In desertion cases the continuity of the two year period of desertion may be interrupted by . . . (marital) . . . relations . . . and may condone the offense after the cause of action accrued, but the relationship must be sincere and with the purpose and intent of future conjugal kindness." *Sabia v. Sabia*, 84 A. 2d 559 (N. J., Jan., 1952).



... And then there was the conveyancer who measured the land by "leaps and bounds."

social control, part of, and dependent on, the social order, on fallible, biased beings using the heavy tools of human language."

Of course I do not mean that we should not strive to do the very best job we can. That is inherent in the very conception of law and law study. But it may help us in the task if we keep clearly in mind the limitations which are often inherent in the work we are doing. Although these observations relate directly to the law itself, I suspect that much the same considerations may be applicable to the scoring of Ames arguments.

DEAN ERWIN N. GRISWOLD

CHAFEE—(Continued)

States or their Citizens," and to bind state judges, regardless of state laws to the contrary. (5) A final remedy, suggested by Hamilton soon afterwards but never taken seriously, was for the national authority to appoint all the state governors, who would have power to veto state statutes.

After a month's consideration of remedies (2), (3), and (4) by the Committee of the Whole, it reported on July 17 in favor of remedy (2) — letting Congress negative state laws which contravened Acts of Congress or treaties. The Convention struck this out for fear it would disgust all the states and prevent their acceptance of the Constitution, and unanimously adopted Luther Martin's proposal (already quoted), which vested the negative power in the judiciary. A month later, the remedy of control by armed force was rejected, because Gouverneur Morris said it was superfluous when treaties were going to be laws, enforceable in the courts. After some slight alterations, such as leaving no doubt that past treaties made under the Confederation were included, the supremacy clause assumed its present form.

The proposed amendment would upset everything the unanimous vote on Luther Martin's motion accomplished. Treaties would be the "Supreme Law of the Land" only in words. Some treaties could not be enforced without the added difficulties of getting an act of Congress, and others could not be enforced at all, although international exigencies might make it very desirable to promise more than what Congress can do under its domestic powers.

For instance, American citizens and corporations might be receiving valuable corresponding privileges abroad as in the Italian Commercial Treaty of 1948. Under the proposal, however, the states will be supreme in this form of foreign affairs, and not the nation. As Pinckney told the Convention, "if the states were left to act of themselves . . . it would be impossible to defend the national prerogatives, however extensive they might be on paper"; by this means, he went on, foreign treaties had been violated repeatedly under the Confederation.

One point which stands out prominently in all the Convention debates about treaties is the close linkage between problems of the treaty power and the nature of our federal system. Questions of how treaties should be concluded and enforced cannot be viewed in

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NEWS
IN BRIEF

PBH DANCE

The Form 1040 Trot, an informal dance sponsored by PBH, will begin Saturday evening at 9 p. m. in Harkness Commons, with music supplied by George Graham's band.

Tickets will be on sale today and tomorrow in Austin and Langdell South from 10 a. m. to noon, and at the Commons during the noon and evening meal.

CLASS ELECTIONS

A list of all candidates nominated for positions as officers in the Class of 1952 will appear in next Thursday's Record. Voting will begin that afternoon and extend through noon of Monday, March 24.

Ballots will be obtainable at the Receptionist's desk in Langdell and must be returned to her. All third year students are eligible to vote in this election.

LAW WIVES

Next Wednesday, March 19, at 8 p. m., the Harvard Law Wives will hear a talk on handwriting analysis by Miss Virginia Drew.

COFFEE HOUR

At the Tuesday Coffee Hour Dmitri B. Shimkin, a professor at the Russian Research Center, will discuss "Russian Resources Problems." The meeting will begin at 1:30 p. m. in the Harkness Lounge.

PLACEMENT

George Peirce, of the accounting firm of Arthur Andersen & Co., of Boston, will be in Langdell North next Tuesday, March 18, at 4 p. m., to discuss opportunities in his firm for lawyers interested in tax careers.

Arrangements will be made at this meeting for individual interviews with Mr. Peirce on Wednesday. Interested students should leave their names at the Placement Office.

DEMOCRATIC CLUB

The Law School Democratic Club will hold a meeting next Thursday, March 20, at 2:00 p. m. in the Wheeler Room in Holmes Hall to discuss the potentialities of the various candidates for the Democratic nomination for President.

At the meeting, the Executive Committee will discuss future plans for the remainder of the term.

Glueck, Ike Contribute To Symposium;
Book Gathers Views On 'Welfare State'

"The Welfare State and the National Welfare," edited by Sheldon Glueck. (Cambridge, 1952) Addison-Wesley Press. 289 pp. \$3.50.

Unless we are sadly mistaken, this will be the most talked-about, controversial, and important book on political affairs from now till November, 1952. Professor Glueck has loosed a bombshell, the force of which is bound to shake the politico-economic theories of thousands of thoughtful people.

It appears that it was General Eisenhower who turned Professor Glueck's suggestion for such a volume back on the Harvard instructor, and encouraged him to bring out such a work. This occurred, it should be noted, in November, 1949, while Ike was still President of Columbia, and long before he announced his candidacy.

It is fortunate that Professor Glueck edited the book, since this task forced upon him the duty of preparing an introductory statement, and in many ways, this section contains many of the most profound passages in the book. Entitled "Liberalism and the Management of Welfare," the introduction seeks to pose the questions and give the reader a frame of reference by which to orient his understanding of the articles which follow.

Basically, Professor Glueck is worried about our national surrender to the "narcotic appeals of an Alice-in-Wonderland economic policy." He cites the evergrowing reliance upon the "patent medicine of legislation," upon the central government to cope with all our problems, and he asks: "Where are we heading under the 'Fair Deal'?" What scares Professor Glueck, no little is the sad truth that, for merely daring to ask such a question, he will undoubtedly become a target for left-wing vituperation.

This reviewer has already experienced the distaste of hearing several people throw terms like "Reactionaries" or "out-moded old fogies" after merely glancing at the cover of this book! These are the same people who style themselves "Liberals" and resent any criticism of New Deal-Fair Deal policies, as the expression of the views of "selfish interests." What Professor Glueck asks is not the abolition of our social legislation, or a return to laissez-faire, but merely a "pause for reflection." Professor Glueck does not duck the problems involved, and he takes a forthright stand on many of them. We will leave it to the reader to discover what his position is.

Of major interest, of course, is the chapter containing the views of General Eisenhower on a number of issues. Entitled "The Middle of the Road: A Statement of Faith in America" this collection of speeches sets forth the heart of much of Ike's political and economic thought. In a speech to the American Bar Association, Ike lists what he considers the three "fundamental principles" of American life: 1) that individual freedom is our most precious possession; 2) that all our freedoms are a single bundle, the destruction of one leading inevitably to the destruction of all; and 3) that freedom to compete and cooperate make our system the

most productive on earth. One is impressed with the mildness of Ike's views; he does not demand, he does not dogmatize, he does not insist. In all matters, he suggests, proposes and speculates; and one feels that Ike is open to counter-arguments, that new data, new facts will be accepted and considered and opinions changed if necessary.

In truth, Ike's pronouncements breathe with the spirit of what is really that much maligned term, liberalism. It would be unfair to Ike to attempt to condense his politico-economic philosophy into a few paragraphs. The reader must open the book and let the man who may be our next President speak for himself. Let it suffice for this reviewer to assure that he does so with force, eloquence, and integrity.

In addition to Professor Glueck and Ike, there are twelve other thinkers represented in this symposium. Make no mistake about it, these men are all critical of the "Welfare State"; as Professor Glueck clearly states, "This symposium is, frankly, one-sided, although it is many-faceted." This is a "company of protesters," but as distinguished a group as can be found, including Democrats, Republicans, New-Dealers "and, perhaps, a somewhat disillusioned Fair Dealer or two."

There are lawyers, economists, educators, journalists, and so on. They are good men, thoughtful men, honest men, progressive men, who are not insensible to society's needs, but who are worried about society's future. There's Barney Baruch, for example, gently warning of the dangers of deficit financing; there's the brilliant mind of Dean Roscoe Pound examining the perils of too much bureaucracy; Dr. Vannevar Bush brings his scientifically trained mind to grips with various economic problems. And so it goes. The essays are, it should be noted, concerned with domestic matters, taxation, bureaucracy, liberty, political machinations and the like. One finds certain common themes running through them, the discovery of which is highly interesting, considering the diversity of the contributors.

Of course, all is not sweetness and light. The reader will find much with which he may disagree. For example, while one may find thought-provoking Raymond Moley's admonition that the right we are losing under the "Welfare State" is our liberty to use our personal income for purposes determined by ourselves, the further statements that "there are no personal liberties under socialism," or that the plight of Great Britain is conclusive proof of the inevitable collapse of welfare states, should be greeted with that healthy

Alumni Notes

LL.B. '29—Israel Gorovitz has opened offices for the general practice of law in Boston.

LL.B. '40—John W. English announces the formation of a partnership for the general practice of law in Erie, Pa., under the firm name of English, Gilson, Baker and Bowler. Bernard Koteen has opened an office for the practice of law in Washington, D. C.

LL.B. '41—John A. Bowler announces the formation of a partnership for the general practice of law in Erie, Pa., under the firm name of English, Gilson, Baker and Bowler.

Law '45-'46—Gordon B. McLendon has been chosen one of American's ten outstanding young men by the U. S. Junior Chamber of Commerce. He is president of the Liberty Broadcasting System, Dallas, Texas.

LL.B. '48—Walter J. Kreske has opened a Boston office for the practice of patent law.

LL.B. '48—Charles T. Munger and E. Leroy Tolles, Jr., have joined the Los Angeles firm of Wright and Garrett.

LL.B. '49—J. Rudolph Grimes served as a member of the Liberian delegation to the signing of the Japanese Peace Treaty in San Francisco last September. He has now returned to his home in Monrovia, Liberia, where he is a practicing member of the Bar. He has also been appointed to the position of Counselor of the Department of State of Liberia.

LL.B. '51—Paul L. Blawie and Austin K. Wolf have become partners in the firm of Cohen and Schine, in Bridgeport, Conn. Herbert Glaser is associated with Harvey L. Silbert in the practice of law in Los Angeles. Walter S. Long, Jr., has joined the New York firm of Gifford, Woody, Carter and Hays. Chester C. Shore has joined the firm of Cohn and Marks in Washington.

skepticism which is the hallmark of the lawyer, and which refuses to commit itself until further investigation is made and all the facts adduced.

In short, there are to be found some extreme views and statements in this book, as well as moderate and profound. But, in this reviewer's opinion, each essay has something in it to prod the mind, and stimulate thinking, reevaluating, and re-examining. The volume is more than an expression of the philosophy of the Eisenhower-for-President movement: it is a manifesto of liberty, honesty, and integrity in matters political, social, and financial. We predict that the votes of countless Americans will be influenced by this modest, but potent volume.

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CHAFEE—(Continued)

isolation from the rest of the Constitution. They were constantly tied up in the minds of the framers with questions about the length of the President's term, the composition of the Senate, and the proper relation between the states and the nation. Thus, the treaty power is part of a seamless web. Supporters of the proposed amendment have made a good deal of the facts that we are almost the only country on earth where treaties are self-executing, and that in many other countries both Houses of the national legislature participate in the ratification of treaties. But what other nations do about treaties has very little significance for us, because they do many other related things very differently from us.

Our whole political system has at least three characteristics which are intimately connected with the operation of our treaty power. Some or all of these general characteristics are lacking in nations whose handling of treaties resembles methods in the proposed amendment.

Ours is a federal system, in which forty-eight divisions of the nation have a large amount of sovereignty and do a great deal of independent law-making. Thus with us there is a big opportunity for local legislation to conflict with national promises to other nations. The self-executing operation of treaties is a badly needed safeguard against such breaches of national good faith. No such safeguard is needed in a unitary nation like Great Britain where Parliament is an omnipotent legislature. There, the national government which makes the treaty is the only government with the practical ability to enact statutes bearing on the subject-matter of the treaty. Here, forty-eight small sovereigns can do so, and unless they can be effectively restrained our country might be a check-board with some states complying

with the treaty and others flouting it. Such an evil can exist only in a federal system, and the framers made treaties self-executing because that was the best way to stop this evil, which had cursed the Confederation.

The national legislature in the United States does participate to some extent in the conclusion of treaties, through a two-thirds vote of the Senators present. This is a fair equivalent for the majority votes in both Houses which is necessary in some countries to ratify the treaty, and in Great Britain to transform the treaty into domestic law. The British insistence on such action by Parliament is a natural outgrowth of their constitutional struggles against the Stuart Kings. The Crown can make treaties all by itself, and if treaties so made become the law of the land, without anything more happening, this would enable the Crown to change domestic law without any participation by Parliament. Such a result would violate the whole principle of Parliamentary supremacy, which is a main part of the unwritten British Constitution. When Charles I endeavored to make laws without Parliament, he lost his head. The Revolution of 1688 took place to make sure that that sort of thing would never happen again. Domestic lawmaking through royal treaties is as abhorrent as royal levying of ship money or royal suspension of *habeas corpus*.

Our country does not have a parliamentary government like Great Britain. There the necessity of an implementing statute to make any treaty domestically binding is not a serious obstacle to its effective enforcement, because the Executive is chosen by the majority of the House of Commons. The Cabinet and that majority are one at heart. The Cabinet advises the King to make the treaty, and the Cabinet can count on the Commons to pass whatever legislation is needed to make the treaty work. The House of Lords will go along or be whipped into line.

Our President has no such assurance of obtaining a rapid vote in both Houses of Congress for a statute to implement a treaty. Sometimes he belongs to the opposite political party. Still more often, the majority at one or both ends of the Capitol feels completely free to disregard his wishes. Although two thirds of the Senate ratified it, a majority may turn against him on the statute; and when the majority is still with him, there is always the possibility of filibustering to delay the statute indefinitely. Of course, the House will be still more uncertain. Remember that several states may be defying the treaty. Consequently, it would be far more difficult to make a treaty enforceable in courts through indispensable implementing legislation than is the case in England. The British situation is so different from ours that it has no lesson for us. What matters infinitely more is the wisdom of the Philadelphia Convention in fitting the treaty power into the federal system, so that the great nation they founded would be able to manage its foreign affairs effectively.

After the plan for treaties set up by the Philadelphia Convention for the strong reasons outlined above has operated with considerable success for 160 years, what new facts have arisen which ought to lead us to throw overboard their reasons and their plan? Aside from the existence of different treaty methods in nations with very different political systems from ours, the chief argument advanced seems to be the possibility that the United States might at some indefinite time become a party to some treaty emanating from the United Nations, and that such a treaty might be very harmful to us.

Even if we assume that a very bad treaty might be submitted by the United Nations, why do we need a constitutional amendment to protect us from it? If the treaty is bad, past experience indicates that either the President would not sign it or at least thirty-three Senators would vote against it. I see no basis in fact for believing that the Senate, which has been called the graveyard of treaties, will suddenly nurture treaties like a crowded incubation ward in a lying-in hospital. The safeguards set up in Philadelphia against unwise treaties are there as much as they ever were.

If we cannot trust the President to refuse to sign a harmful treaty and if we cannot trust over two-thirds of the Senators to refrain from ratifying this bad treaty, then the country will have come to a sorry pass indeed. There will be little use then in relying upon Supreme Court Justices, who are chosen by the President and the Senate, to save us through their interpretation of the proposed constitutional amendment. One of the few sure maxims of government is that you have to trust somebody.

At most, the alleged danger from the making of harmful treaties is only hypothetical. The backers of this proposal do not point to a single American treaty that was ever ratified, and say, "This treaty is so bad that it shows the

urgent need for changing the Constitution.' They give fears and not facts.

At most, this is only a hypothetical danger. Every constitutional amendment in the past has been adopted to meet a situation which has actually happened, and not something which is vaguely apprehended. The first Ten Amendments were promised in order to prevent the Constitution from being rejected in several state conventions. The Eleventh and the Sixteenth were adopted to supersede specific decisions about the Supreme Court, which were widely regarded as objectionable. The Twelfth and the Twentieth cured confusing situations which had occurred in the choice of a President and in the delay between the election of a new President and Congress and their assumption of office.

The three Civil War amendments were primarily aimed to end slavery and attempts to treat the emancipated slaves as second-class citizens; beyond this, the framers were aware of the desirability of avoiding other types of arbitrary state action. The Seventeenth Amendment was meant to remedy unsatisfactory conditions which had plainly revealed themselves in the legislative election of Senators. The Eighteenth Amendment was aimed at the evils of intoxication and the Twenty-First was aimed at the evils of prohibition. The Nineteenth removed the existing evil of the denial of suffrage to half the adult population.

The latest Amendment, forbidding a third term, was not proposed until after a President had been elected for four terms. Thus far we have adopted every constitutional amendment like practical men for practical reasons and so as to take care of practical situations. The

complexity of international affairs is far too great today for us to stop being practical and cripple our power to negotiate effectively with other nations, on merely conjectural grounds.

The essence of the proposed constitutional amendment is nullification by states of one of the most important functions of the national government. Therefore, it is highly appropriate to quote against this proposal the statement made by James Madison toward the end of his life on the attempted nullification by a state of the tariff laws of the United States:

"A political system which does not contain an effective provision for a peaceable decision of all controversies arising within itself, would be a government in name only. Such a provision is obviously essential; and it is equally obvious that it cannot be either peaceable or effective by making every part [of the nation] an authoritative empire. The final appeal in such cases must be to the authority of the whole, not to that of the parts separately and independently. . . . It was this view which dictated the [supremacy] clause."

LYNE—(Continued)

helped to bring alleged criminals this sort of aid.

Mr. Lyne discussed certain pre-trial skirmishes that a lawyer will go through, and once in the trial, he recommended that oral testimony be supplemented with visual evidence as much as possible. Charts, pictures, models, and reproductions were discussed as forms by which the jurors would be aided to a better understanding of the facts and issues.

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