

The Harvard Law School

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Review's Nov. Issue Features Article By Professor Gardner

The first issue of Volume 67 of the *Harvard Law Review* will feature articles by Professors George K. Gardner, Albert E. Kahn, and Mr. Charles C. MacLean and a student Note reviewing the principal cases decided during the last term of the Supreme Court.

The lead article, by Professor Gardner of the Harvard Law School, deals with the present state of the law regarding discharges from the public service. His article focuses around the case of *Angilly v. United States* which denied a remedy to a federal customs inspector whose personnel record was left open to



George Gardner

public inspection following his discharge for failure to produce Cashier's receipts for custom duties he had collected. Professor Gardner is critical of the decision, and drawing upon an analogy to the Magna Carta, suggests that the law should provide certain safeguards for federal employees in such conditions.

Professor Albert E. Kahn of Cornell University and presently on the staff of

(See REVIEW on page three)

Underwriter Speaks On Unlisted Trading

On Oct. 28 the Bull & Bear Club learned about the unlisted securities market from Mr. R. Victor Mosley, partner and vice-president of Stroud & Co., Philadelphia's largest underwriting firm.

Mr. Mosley, a past president of the National Security Traders' Association, criticized the unfavorable attitude with which "over-the-counter" securities are viewed by many investors. He emphasized that the stocks of a large majority of corporations in the United States are not listed on exchanges and are traded over-the-counter, or as Mr. Mosley prefers to call it, in the "National Securities Market."

Unlisted trading includes all United States government bonds, real estate securities, bank stocks, and almost all corporate bonds. An important segment of the unlisted market is that of municipal and public authority bonds, which are currently affording tax-free yields of from 3½ to 4½%.

Part of the unfavorable publicity which unlisted trading has received, Mr. Mosley explained, has been due to poor merchandising by dealers in these securities.

(See UNLISTED on page four)

LAW WIVES

The Law Wives will hold their first bridge and canasta evening for this year in the Wheeler Room next Monday night, Nov. 9, at 8 p.m. Any law wife interested in an evening of cards is invited to come. Refreshments will be served.



Paul A. Freund

Freund, Cox Speak At N. E. Legal Clinic

Professors Archibald Cox and Paul A. Freund took part last week in a two-day legal clinic presented by The New England Law Institute. This was the first such clinic organized to attract lawyers from all the New England states. It was part of the program of the Institute designed to provide for the post-admission education of the lawyers of this area.

Prof. Paul A. Freund, Charles Stebbins Fairchild Professor of Law, lectured on the subject of "Foreign Divorce." Prof. Freund brought his audience up to date from the time of the *Williams* cases. He included Federal cases and all pertinent cases from the New England States.

One of the cases discussed by Professor Freund of noteworthy significance was the recent third circuit decision, *Alton v. Alton*, that involved a Virgin Islands divorce under a statute that dispensed with the requirement of domicile if there was six weeks' continuous residence by the petitioner, plus personal jurisdiction over the defendant. By a four to three vote the statute was invalidated. The majority opinion was written by Judge Herbert F. Goodrich.

(See CLINIC on page three)

Early Response Slow In Charities Appeal

Seventy-six students, only 5 per cent of the student enrollment, have contributed to the Law School Combined Charities Drive during the first few days of the campaign, Chairman Gene Baker, 3L announced Monday. While the number of contributions was unusually low, it totalled \$377.21, almost \$5 per person. The Drive collected over \$3300 last year.

The Drive will continue to accept contributions at its table in Harkness Commons during meal hours or by mail at 23 Everett St.

Last year over 30 charities received aid from money collected by Combined Charities, Baker said. The largest single gift was \$1000 to the Community Chest. United Cerebral Palsy, The Salvation Army, The Massachusetts Heart Association, Inc., and the East End Union of Boston were some of the local groups which received help. Balancing these community organizations on the Drive's list were such charities as CARE, and Unicef in the field of foreign relief and The National Scholarship Service and Fund for Negro Students at the college level.

A complete list of the groups aided last year has been posted on the bulletin board in Harkness Commons.

Officer To Address Students On Opportunities In The Navy

The Placement Office has announced that Lt. W. A. Scoops, Jr., U.S.N., from the Boston U. S. Naval Recruiting Station and Office of Naval Officer Procurement, will address students about opportunities in the Naval Service on Monday, Nov. 9, at 3:15 p.m. in the Langdell Courtroom. He will be introduced by Asst. Dean Wesley Bevins.

The Navy sponsors an Officers Candidate School at Newport, R. I., in which a select number of male college graduates are given concentrated courses in naval subjects and upon graduation are commissioned in the Naval Reserve.

Defenders Choose 13 New Members

Thirteen second-year students were selected to the Harvard Voluntary Defenders at a meeting of the organization held last week.

The new members, with their home addresses, are: Robert J. Alderdice, Pittsburgh, Pa.; C. Robert Bell, Hutchinson, Kan.; William O. Forbes, Nashua, N. H.; George K. Freeman, Jr., Raleigh, N. C.; Leslie M. Geller, Patterson, N. J.; Robert M. Horwitch, Chicago; Charles M. Isaak, Salem, Ore.;

Also, Allan F. Milledge, Miami, Fla.; Carl R. Peterson, Warroad, Minn.; John S. Sammond, Milwaukee; Timothy W. Stanley, New Britain, Conn.; Lester J. Ward, Pueblo, Colo.; William P. Wood, Conshohocken, Pa.

Thirteen men were chosen from more than 60 who turned in written applications. Because the organization is expecting an increase in its case load, it considered the possibility of taking in more men, but chose not to do so at the present time.

The Defenders have already assigned the new members memoranda to do for its Boston office. They concern appeals taken by Wilbur G. Hollingsworth, chief consul, in regard to introduction of certain types of evidence in narcotics cases.



Wesley Bevins

Two such courses are conducted. The General Line course, lasting 16 weeks covers 25 classroom hours each week allocated among the following subjects: Navigation, Naval Weapons, Naval Orientation, Military Justice, Operations, Seamanship, Machinery, Damage Control, Leadership, and Military Drill. Line officers are commissioned officers who are eligible to command at sea.

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Visiting Professor Derham Discusses Structure Of Australian Judicial System

The following article was written for the RECORD by David P. Derham, Professor of Jurisprudence, University of Melbourne, Australia. Mr. Derham, who is visiting the Law School until January, is interested in Constitutional Law, Conflict of Laws, Jurisprudence, and legal education methods. He will participate in a discussion of the role of federal courts in Australia and the United States on Tuesday, Nov. 17, at 8 p.m. in the Meeting Room on the first floor of Harkness Commons.

On the first of January, 1901, under

the Commonwealth of Australia Constitution Act (an Act of the United Kingdom Parliament) New South Wales, Victoria, South Australia, Queensland, Western Australia, and Tasmania were united in a Federal Commonwealth.

Clause 9 of that Act contained a Constitution for the new federation. That Constitution showed in its plan and in its terms that the inter-state conventions which drafted it had been strongly influenced by the Constitution of the United States of America. The similarities are striking and United States authorities have been and are important in the judicial interpretation of the Australian Constitution. On the other hand there are major differences; some of them are fundamental. Not the least of those is the legal origin of the Constitution in a United Kingdom Act. Several important matters are given clear expression which, in the United States, were only resolved after Supreme Court litigation. In general the drafting is more modern.

States Get Federal Cases

Chapter III of the Australian Constitution provides, by section 71, that the judicial power of the Commonwealth is vested . . . "in a Federal Supreme Court, to be called the High Court of Australia and in such other federal courts as the Parliament creates, and in such other courts as it invests with federal jurisdiction, . . .", thus revealing an intention to differ from the United States system of federal courts.

Consistently with that intention the power to invest existing state courts with federal jurisdiction has been used widely. Some special federal courts (e.g., in Bankruptcy and in industrial matters) have been created but on the whole the power to create such courts has been used sparingly. Thus state courts of all degrees now exercise federal jurisdiction subject to conditions set out in the investing legislation. It is probable that

(See DERHAM on page four)

Clubs To Get Facts For Drafting Final

The Kent Club and the Toepfer-Bacon-Leach Club, finalists in the Ames drafting competition, will receive their facts tomorrow as the deciding round gets under way.

This year's problem involves drafting the provisions of an agreement of merger which will be the certificate of a registered investment company under the Investment Companies Act. In addition, the finalists must submit memoranda explaining their choice of language and their use of certain provisions where problems arise.

Judges have not yet been picked, but last year three attorneys from prominent Boston law firms served in this capacity. The members of the winning club will divide a prize of about \$60 awarded in book certificates.

The men who last spring earned the right to participate in this fall's finals are:

Kent Club: M. E. Pulitzer, W. M. Lovejoy, R. D. Hartshorne, S. Hoar, E. G. Sparrow, J. C. Heigham, R. V. Pugh.

Toepfer-Bacon-Leach Club: T. M. Swain, R. M. Eigner, C. G. Patten, J. G. Kilpatrick, D. R. Baker, J. H. Olive, G. P. Murphy, R. D. Harburg.

Forum Speakers Differ In Appraisal Of 'The Censor' In Lively Discussion

Four Harvard Law School Forum speakers set out to catch and appraise *The Censor* last Friday night. The difficulty was that he had ridden off rapidly in several directions, like Stephen Leacock's hero.

The speakers agreed he had kept a number of plays from opening, or staying open, in Boston, that the ban on certain books had uneven results though it boosted circulation for some books elsewhere, and that obscene material was unlikely to be distributed commercially here.

Conflict was sharp on the pragmatic test: have we really missed any good plays or books? and on the ethical issue: should freedom of expression properly have limits, and who should set them?

The theater was the biggest loser to censorship—the trivial getting by and the serious being banned—according to Miss Elinor Hughes, drama critic on the *Boston Herald*. She saw the attack on language and situation as hurting the free expression of ideas. "There is no sense or logic," she said, "in banning Lillian Hellman's *The Children's Hour* and letting *Maid of the Ozarks* flourish."

Msgr. Francis Lally, editor of *The Pilot*, opposed throwing out censorship for its mistakes. He held that we can profit by them and produce a more intelligent censorship. "Freedom is not free at all," he maintained. "It includes the making of bonds as well as the breaking of them. (Freedom at intersections depends on traffic lights; freedom to hit piano keys is limited by rules of harmony.)"

His comment on the right of private pressure groups to be heard and weighed drew sharp attack from Mr. Gerald Berlin, Boston attorney, who said that pushing criticism to the point of economic boycott was not democratic. Msgr. Lally defended Cardinal Spellman's urging of a boycott by New York Catholics on the movie "The Miracle."

Ticking off the list of best-sellers and classics banned in Boston, Mr. Berlin brought delighted response from the audience. From the works of Theodore Dreiser (*bete noir* of the prosecutory body) through *All Quiet on the Western Front*, *Manhattan Transfer*, and *U. S. A.* *Confidential* the censors' hand was heavy, he said, the all-time winner of attention probably being *Strange Interlude* in 1927. He admitted the board was not as restrictive today, however, and mentioned the innovation of hearing expert

(See FORUM on page three)

Kluckhohn Foresees No Ukrainian Revolt

The cold war has given increasing scope and importance to the role of the social scientist, Clyde K. M. Kluckhohn, director of the Russian Research Center and Professor of Anthropology at Harvard, said at the Coffee Hour Tuesday.

In this intensely interesting and enlightening session of the Coffee Hour, Professor Kluckhohn touched on problems ranging from possible Ukrainian defection in the Soviet Union to those of the training of individuals in the use of new weapons and gadgets and their suitability in various assignments where a peculiar adaptability is required. He recounted the statistically significant results obtained in a war time experiment to pick in advance persons who would succeed in missions that were extremely dangerous. He further revealed that success had been achieved where various training techniques were utilized to

(See KLUCKHOHN on page three)

COFFEE HOUR

On Nov. 10, in the large meeting room of Harkness Commons, Prof. Zelman Cowen will speak on "Austrian Life and Problems."

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Parking Problem

The facts are these. Each year approximately 3000 cars are registered with the University Police. Of this number, between 700 and 800 are driven by Law School people. For the total number of cars, there are available the following facilities: For overnight parking on the grounds, spaces for 200 cars, and there is always a substantial waiting list for these; about 900 units are available for daytime commuters at the Business School; relatively few places are available here.

The net result of these allocations is that unrestricted area for about 500 cars is available in this vicinity. This area is located at the front and rear of Austin, around the Nuclear Laboratory, and on the right hand side of Divinity Street from Kirkland Street. The difficulty is that this unrestricted area is available to privileged as well as to no-cost registrants. But assuming that "privileged" drivers do park in their reserved area, a law student has about one chance in four of getting a parking space at 8:50 a.m. Of course this is not always the case; convenience often dictates otherwise.

Additional parking areas are the obvious, but unavailable, solution. Perhaps one approach may be to stiffen the requirements for parking in the unrestricted areas. This does not eliminate the need for registration, however, since such procedure avoids needless entanglements with Cambridge Police. Furthermore, people with reserved space should not be permitted to use the unrestricted areas, but even this is only a partial solution.

Until the answer is found, the overflow will have to use municipal parking areas.

Extend Library Hours

The Ames Competition, that invaluable exercise in legal research, has begun. And with it have begun the congestion and confusion in Langdell Library which we experience every semester during the Competition. No law student has escaped the annoyance of discovering that the Reporter he seeks is not on the shelf, or that he is third in line for a particular volume of Shepherd's Citations.

Only limited steps can be taken to alleviate the present unfortunate conditions. One such measure, which should be put into effect immediately, is to lengthen the hours which Langdell Library is open. This would distribute the tremendous number of man hours which are spent there over a longer period. The most logical revision of library hours would be the extension of the closing time on Sunday until 11 p.m. In addition, the library should remain open until midnight on weekdays, and until 6 p.m. on Saturdays. Desk service could still cease at 10 p.m., which would eliminate the problem of obtaining personnel to work any later than they now do.

The other important step toward making efficient study possible in Langdell lies in students observing rules of library courtesy. There are now flagrant violations of the paramount rule that every volume which is taken from a shelf should be returned to that shelf immediately after its use. The library staff is currently spending many hours each day replacing large numbers of Reporters which have been carelessly left lying on tables. Many students are also removing as many as a dozen Reporters from the shelves at once, thus depriving others of their use for a much longer period of time than is necessary.

If students and Administration will cooperate in the solution of this problem, Langdell Library will be a much less difficult place in which to work.

Gallery

JOHN McNAUGHTON
Assistant Professor of Law



John McNaughton, one of the new appointees to the Harvard law faculty, comes to the University with varied and diverse experience. The interviewing process is often put into reverse by this ex-newspaperman. Journalism is, however, only one of a variety of interests that have so far preoccupied Professor McNaughton. Indeed, his appointment by Harvard last spring as Assistant Professor of Law comes on the heels of considerable prior legal experience as a student, counsel and draftsman for a government agency.

Majored in Economics

Although born in Bicknell, Ind., Mr. McNaughton moved to Pekin, Ill., at an early age and refers to this city as his home town. He attended De Pauw University in Greencastle, Ind., where he did undergraduate work in economics. Even today, he occasionally betrays himself by such terms as "marginal utility," and "maximization of resources." After graduation in 1942, Mr. McNaughton entered the United States Navy, seeing duty in the North Atlantic and South Pacific.

Back from the wars, Mr. McNaughton, taking the first steps toward his present post, went through Harvard Law School on the accelerated schedule, and received his diploma in September, 1945.

Rhodes Scholar

Having finished his Harvard training, he was off to Britain as a Rhodes scholar. His departure was somewhat delayed by the arrival of a son, Alex, born in December of that year. Mr. and Mrs. McNaughton first met at De Pauw where both were students. Mrs. McNaughton is the former Sally Fulkman of LaGrange, Ill. She was also a navy officer when they were married in December, 1943.

Mr. McNaughton's stay in Oxford had hardly begun when he left in July, 1949, for Paris to join the E.C.A. staff. There he acted as assistant

to Ambassador Milton Katz, a former Professor of Law at Harvard. Mr. McNaughton helped to draft the European Payments Union agreement and to negotiate the purchase of strategic materials for the United States government. He obtained a leave of absence from October to Christmas, 1950, to return to Oxford to fulfill the requirements for a M. Litt. in International Trade. He then resumed his work in Paris, but resigned in July, 1951.

Defeated for Congress

Back in the States he turned his attentions to journalism, becoming editor and legal counsel of the Pekin (Pop. 22,000) *Daily Times*. Had it not been for the political landslide in 1952, Mr. McNaughton might never have come to Harvard to teach. In that year he was an unsuccessful candidate for Congress. He found the campaign, however, a "very valuable experience."

It was with this rich and diversified background that Mr. McNaughton entered the teaching profession this fall with his appointment here as Assistant Professor of Law. Regarding the appointment he says, "I don't think I would have gone into teaching had it not been the teaching of law, and law at one of two or three schools." More emphatically, he observed, "It had to be law and Harvard is one of those schools," for it is one of the few schools which offers that "breadth of activity" which he wants. He remarked that Harvard Law School is "less ivory tower."

Will Do Trial Work

Although the new appointee will carry two terms of Commercial Law and share the load with Professor Maguire in Evidence, he will not confine himself merely to the classroom. An arrangement has been worked out whereby he, in conjunction with his teaching of the course in Evidence, will assist in trial work for one of the larger Boston firms.

Mr. McNaughton has a keen interest in International Law and, more broadly, international affairs. He believes that only through an appreciation of the latter's importance can world harmony and peace be achieved. In this respect, he considers legal training a tremendous asset. He hopes to see the law produce and continue to produce the "experts in relevance" necessary for this trying and extremely delicate work. Only through the agency of such men will that community of peoples which "sees eye to eye on basic principles" and which the United States now leads, be preserved.

The Law's Threefold Function

It is Professor McNaughton's contention that the study of law furthers this end by its threefold function of promoting the analytic thinking of its students, of inculcating in them those broad underlying principles which might best be called morality, and of teaching them some substantive law.

In an ever-changing and irrational world John McNaughton sees it as the law's obligation to teach men to use what powers of reason they have.

D. W.

Off the Record

POWER OF SUGGESTION

In Professor Seavey's Restitution class:
Student (posing a hypothetical): "A owed B a debt . . ."
Prof. Seavey: "Are you sure it wasn't that B owed A a debt?"
Student: "You're right! B owed A a debt . . ."

KNOW HOW

Law partner (interviewing a prospective clerk: Have you had any practical legal experience?
Prospective clerk: Yes sir. In a dry cleaner's.
Partner: I beg your pardon.
Prospective clerk: Yes sir, I used to press suits.

BENT STRAWS IN THE WIND

"Think it's too early to start working for Stevenson?"
"Let him do his own research, friend. I just got my own facts."
"No, you've got me wrong. I know you're worried, but let me explain it in brief."
"Don't mention that word!"
"Look—I'm talking politics. I hear the Democratic Club has got about 55 members and the Young Republicans about 32. Any tip here? Sound like key numbers?"
"Topic and key number, friend. Supplement! Take another Searchbook! Better try the DWI."
"All right, skip it. But I think it's pretty fine these campus politicians are helping the Cambridge Civic Association get out the vote."
"Langdell, Langdell—this is Ames, remember?"

"You sound like you've got a pretty bad case . . ."

"Don't mention that word!"

"But if you recover you might want to take in the club meeting they're planning in November."

"November! Great guns! Is it that late? I've got my argument on the 20th!"

"Here, better carry my books in your other hand—you're walking round in circles."



"ACTUALLY, AROUND THE LAW SCHOOL I'M KNOWN AS QUITE A 'GRIND'."

Sub Judice

BROAD HUMOR

A very enlightening expose on the subject of burlesque was recently handed down by the New Jersey Supreme Court.

Plaintiff had petitioned the Newark director of public safety for a license to operate a theater exhibiting burlesque shows. The license was refused under an ordinance prohibiting the operation of theaters and commercial stages without the "approval" of the public safety commissioner.

Plaintiff's application was simply that he intended to stage "burlesque" shows. The esteemed court reviewed the heritage of "burlesque" at this point.

"Burlesque today is descriptive of two very different kinds of show. Legitimate burlesque, and once the only kind, is clean and wholesome entertainment. Webster defines it as 'a type of theatrical entertainment, developed in the United States in the 19th century, characterized by broad humor and slapstick presentation.' In contrast, that which has been termed modern burlesque has been described as 'a plotless musical entertainment consisting of a series of unrelated episodes and dances, all with the purpose of depicting or suggesting sexual subjects or objects.' The one outstanding characteristic of modern burlesque is that it is sex-centered."

The court then concluded "the piece de resistance" (Fr.) is the girl who disrobes partially or entirely and this act varies with the political season and the locality. Although an operator may not be willing to say so to an inquirer, usually adopting a sanctimonious air, he knows, and everything in his theatre indicates he knows, that he is giving a sex show, sans excuses, sans philosophy, and above all sans clothes."

"A burlesque show answering the latter description may well be considered outrightly lewd and indecent," said the court.

The petitioner had, however, insisted that his plan was to stage the dictionary-type of burlesque and not the type with the colloquial meaning acquired in some areas.

Held: License improperly denied. Alleged conduct of present licensee in staging indecent burlesque shows could not be the basis for inference that applicant would stage indecent shows. The fact that the petitioner was many years ago friendly with the brother of a notorious racketeer suggested nothing as to the type of burlesque show applicant would exhibit, and was not a proper ground for denial of the license. *Adams Theatre Co. v. Keenan*, 96 A2d 5319, Supreme Court of New Jersey, April 27, 1953.

FOUL STRIKE

Mr. and Mrs. Schentzel of Allentown, Pa., traveled to Philadelphia one Sunday to see the ball game between the Phillies and the Cubs. Arriving at Shibe Park, they found a "tremendous crowd." Hubby became part of a long ticket line and finally secured two tickets that were guaranteed by the seller to be "pretty-good." When they were led to their seats, hubby, demonstrating his protective instinct, noted that they were perilously close to the playing field and not behind the screen. Besides, he had left his glove in Allentown.

He immediately returned to the ticket line and after a long wait was unable to exchange them. Back to the stadium they went, apparently resolved to sit in the dangerous spot.

By this time it was the sixth or seventh inning. It might as well have been a hockey game as far as Mrs. S. was concerned, her previous baseball experiences being limited to weekly TV games in which she apparently took little interest.

To make a long story short, they had been seated but a few minutes when a pop foul meandered over to their box and struck Mrs. S.

For the injury sustained, Mrs. S. brought this action of trespass against the Philly management for negligence.

Held: Trial court verdict for plaintiff reversed, and judgment entered for defendant.

In spite of the fact that Mrs. S. had never seen a baseball game, and that she knew nothing about it, and that foul balls never go into the stands on TV, the appeal court ruled that, like all spectators at sporting events, she had assumed the risk of harm arising out of the normal course of events.

The court said, "Plaintiff was a woman of 47 years of age. There is nothing to support the inference that she was of inferior intelligence. Consequently, she must have been cognizant of the 'neighborhood knowledge' with which individuals living in organized society are normally equipped. We think that the fact that foul balls are hit at baseball games is such a matter of common everyday practical knowledge as to be a subject of judicial notice." *Schentzel v. Philadelphia National League Club*, 96 A 2d 181, Superior Court of Pennsylvania, April 14, 1953.

FORUM—(Continued)

testimony on material up for censorship introduced in the case of *Strange Fruit*.

Mr. Dwight Strong, executive secretary of the New England Watch and Ward Society, squelched intimations of overweening power exercised by the Society. "It has no official policy on censorship and has acted only once in the past five years on an obscene material charge—action that led to stopping sales from a penny arcade downtown." He said further that only one book in the past five years has been "removed from



Msgr. Francis Lally

sale by due process of law."

The Forum will present its third program of the year on Tuesday, Nov. 10, at 8 p.m. The topic discussed will be "Religious Intermarriage" and will be held at the New Lecture Hall. To hold forth on the topic and discuss its ramifications will be four competent speakers. Among them are Rabbi Maurice L. Zigmond, Director of the Hillel Foundation at Harvard University and Visiting Lecturer at Yale, Department of Anthropology. Also on the program is Mrs. Emily Mudd, President of the American Association of Marriage Counselors, Reverend Robert C. Dodds, minister to students at the First Church in Cambridge, Congregational, and the noted Chicago psychiatrist and social psychologist, Dr. Joseph Spiegel, presently a visiting Professor at Harvard University.

Spartans v. Crusaders
Feature Game Of Week

The Grad-Law basketball schedule for Monday and Tuesday, Nov. 9 and 10, has been announced by Commissioner Downey. On Monday, at 4 p.m. the Independents will open the program against the Douglas Club in the strong "Law" division. In the "Equity" division, the Bombers will jump off against the Subpoenas. On Tuesday, at 4 p.m. the defending champion Spartans will play their first game against the Crusaders led by Paul Larkin and Carroll Mealey, 3Ls. The 5 o'clock game will show the Chancery D team testing the Tortious Ten, a group of first-year men.

PRINCETON ALUMNI

The Princeton Classes of 1951, 1952, and 1953 and their friends will hold a reunion immediately following the Harvard-Princeton football game in the lounge of Gallatin Hall of the Business School. Setups provided; BYOB.

KLUCKHOHN (Continued)

teach men the use of new weapons.

Professor Kluckhohn said that with the exceptions of situations involving extreme fear, fright, and hunger, it has been established that human beings react to stimuli only with reference to factors peculiar in their own culture. Thus, it is of critical importance that these various cultures be studied and analyzed in order that a valid prediction of the individual response be made.

Status Important

The professor discounted the opinion of some that the Ukrainian peoples are ready to overthrow their Russian masters. The factors which induced the defections in 1941 are not operative in the same degree today. "For one thing," he said, "much of the Ukrainian Nationalists has since been killed or already has escaped." He added that the view of the Russian citizen is more likely to be influenced by his status in the Soviet society than by any other factor including his nationality.

NAVY—(Continued)

except in cases where they have been designated for limited duties in specialized fields such as Law and Communications.

The Staff Corps Indoctrination Course which lasts eight weeks, requires 29 classroom hours a week covering Naval Orientation and Military Justice, Leadership, Operations, Logistics, Administration, Forum for Discussions, and Military Drill. Those who successfully complete this course are commissioned and then given an additional eight weeks' training under the cognizant Navy Bureau to which they are to be assigned for subsequent duty. Staff officers are eligible for command at sea.

With exception of students with educational deferments, no candidate should apply for this program who has received notice to report for induction, unless such notice is cancelled to permit his enlistment in the service of his choice.

Particularly of interest to Law graduates are unrestricted line commissions in Air or Naval Intelligence. To qualify one must be a graduate of a college or university with a baccalaureate degree obtained by acquiring a minimum of 120 semester hours or their equivalent, and should have educational and/or professional experience in one or more specialized fields, among which is Law. Applicants must be recommended by the District Intelligence Office.

Those who successfully complete training will be appointed Ensigns, USNR. All applicants must sign an agreement to serve on active duty for a period of three years following appointment. They must also agree to maintain membership in the Naval Reserve for a period of eight years following appointment, including the period of active duty.

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CLINIC—(Continued)

L.L.B. '14, and declared that it would be a denial of due process for a court to assume jurisdiction on such a footing of residence and personal jurisdiction.

Professor Archibald Cox took part in a panel discussion on labor law. The panel consisted of Professor Cox, Ralph M. Goldstein, L.L.B. '31, of Boston, and Robert M. Segal, L.L.B. '42. The discussion centered around decisions and statutes relating to the field, the subject being approached from both the point of view of the company and of the union.



Archibald Cox

Professor Cox outlined the pertinent legal principles in supplying the necessary background of both statutory and case law, while Mr. Goldstein discussed the various problems facing an attorney responsible for advising an employer-client. Mr. Segal, on the other hand, spoke from the viewpoint of a union's lawyer.

In the limited time allotted to the session the panel was able to deal with four major problems. The first area discussed was that of restrictions upon the employer's freedom to address his employees on unionization. The panel covered problems presented by the "captive audience" and "Bonwit-Teller" doctrines.

The second phase of industrial relations considered was grievance arbitration, specifically the enforcement of the provision in collective agreements calling for the arbitration of disputes arising thereunder.

The panel next dealt with strikes and picketing, and in particular it considered secondary boycotting under the NLRA, as well as picketing for union recognition and bargaining rights.

The last topic was "Labor Law in a Federal System." Specific aspects approached by the panel included extent of Federal jurisdiction and the extent to which Federal legislation excludes the application of State law.

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Alumni Notes

L.L.B. '02—Charles Dennis, formerly the United States District Attorney for the Western District of Washington, has returned to private practice in Seattle.

L.L.B. '14—Charles B. Rugg, Hon. ibid. '36, has been appointed a member of the Massachusetts Board of Examiners.

L.L.B. '24—James M. Landis, former Dean of the Law School and Chairman of the Securities and Exchange Commission, has been appointed as chancellor of the Asia Institute, New York City, a graduate school devoted exclusively to Asian affairs.

L.L.B. '27—Joseph B. Abrams has been elected President of the newly organized Massachusetts Trial Lawyers Association.

L.L.B. '36—Frank Pace, Jr., former Secretary of the Army, has been elected executive vice-president and a director of the General Dynamics Corporation.

L.L.B. '49—Francis N. Cushman has been appointed an assistant United States Attorney for the Western District of Washington in Seattle.

L.L.B. '52—Joseph J. Thalhoffer is now Deputy District Attorney of Klamath County, Oregon. Mr. Thalhoffer is a former President of the RECORD.

Arthur S. Ecker has been sworn in as Assistant U. S. Attorney for the Southern District of New York.

REVIEW—(Continued)

the Attorney General's National Committee to Study the Anti-Trust Laws evaluates contemporary standards of anti-trust policy. The essential criterion by which such a policy should be evaluated, he suggests, is the traditional legal concept of intent to monopolize rather than an objective test of market power or performance.

Tax Problems Discussed

Mr. Charles C. Maclean, a tax specialist in the firm of Root, Ballantine, Harlan, Bushby & Palmer, discusses the problems raised by Section 117(m) of the Internal Revenue Code and the collapsible corporation. Inasmuch as the sale of stock of the collapsible corporation is taxed at ordinary income rates as compared to the capital gains tax rates imposed on the sale of stock of the ordinary corporation, the article will be of special significance to lawyers whose clients are faced with such problems.

For the fifth consecutive year, the Review will present a survey of the principal cases decided by the Supreme Court in its last term. Highlighting the Note is a short introductory paper by Professor Mark DeWolfe Howe. His foreword seeks to discover a philosophy which underlies and unifies several of the major cases. The Note itself will attempt not only exposition and analysis of the cases, but will evaluate and appraise the work of the Supreme Court. In the words of its Editors, "if no case is decided until it is decided rightly, this process of evaluation would seem to be necessary, and if the making of law is a cooperative venture, it seems more than likely that this academic reconsideration of the issues is not without its value."

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UNLISTED (Continued)

ties. No one has taken the trouble to explain to the investing public the important role which the security trader assumes in securing capital for small businesses. Many small companies which are unable to borrow money from banks can raise capital only by selling stock in the unlisted market. Because some of these small companies inevitably fail, a stigma has been placed on the dealers who underwrite these "cat and dog" stocks, and the stigma has spread, without foundation, to a large part of unlisted stock transactions.

To stress the honesty which characterizes transactions among dealers in unlisted securities, Mr. Mosley pointed out that in the past 30 years there has not been a single law suit in the United States between security dealers, notwithstanding the fact that there are several thousand such dealers who conduct business daily by telephone with firms and persons whom they do not know and have never dealt with before.

High Rate Of Return

Mr. Mosley showed to the Club copies of the National Daily Quotation Sheets, published by the National Quotation Bureau, which are published each afternoon and mailed to all security dealers, containing the bid and asked prices of thousands of securities. In a final comparison between listed and unlisted securities, Mr. Mosley pointed out that \$1,400 invested in listed securities in 1938 would be worth \$2,600 today, but that the same \$1,400 invested in unlisted securities in 1938 would now be worth \$3,600, and the dividend return on the unlisted securities would have been greater than that of the listed securities.

Meeting Nov. 12

The next meeting of the Club will be held on Nov. 12, when a partner in Kidder, Peabody & Co., investment bankers, will speak on "The Role of Investment Banking in Industry."

On Oct. 26 Club officers were guests at a luncheon meeting of the Boston Security Analysts Society, at which Mr. R. C. Enos, President of Rockwell Spring & Axle Co., was the principal speaker.

DERHAM—(Continued)

this marked divergence from the course pursued in the United States was because, in a young country like Australia with a small population, the erection of two separate systems of courts would have imposed too heavy a burden of expense and too heavy a demand on the legal talent available.

Members of the High Court and of other federal courts have life tenure under Section 72, as interpreted, of the Constitution but state courts invested with federal jurisdiction must be taken as they are found.

Parallel to U. S.

The original jurisdiction of the High Court is provided by sections 75 and 76 of the Constitution, and those sections also define the matters which fall within original federal jurisdiction generally. Direct copying from the United States Constitution is apparent. Those sections read:

Section 75 "In all matters

- (i) Arising under any treaty;
- (ii) Affecting consuls or other representatives of other countries;
- (iii) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
- (iv) Between states, or between residents of different states, or between a state and a resident of another state;
- (v) In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;

the High Court shall have original jurisdiction."

76. "The Parliament may make laws conferring original jurisdiction on the High Court in any matter:

- (i) Arising under this constitution, or involving its interpretation;
- (ii) Arising under any laws made by Parliament;
- (iii) Of Admiralty and maritime jurisdiction;
- (iv) Relating to the same subject-matter claimed under the laws of different states."

At the present time the legislative

power under Section 76 has been exercised in respect to (i) and (ii) only.

In addition to the federal jurisdiction described, the High Court, unlike the Supreme Court of the United States, was given, by Section 73 of the Constitution, a general appellate jurisdiction which makes it an appellate court for each state for purely state litigation having nothing whatever to do with federal questions. It is, of course, an appellate court for federal matters whether appealed from a federal court or from a state court exercising federal jurisdiction.

State Systems

It is now necessary to say something about the state judicial systems before the federal system can be seen as a whole. At the time of federation all the states had their own independent judicial systems. Supreme Courts (being superior courts of record) and a variety of inferior courts, civil and criminal, existed. In each state the Supreme Court had been organized to provide both original and appellate jurisdictions. They were, on appeal, final courts except for an appeal to the Privy Council sitting in England. It should be emphasized that each state was a distinct and independent legal district.

So far as non-federal litigation was concerned, federation did not disturb those systems except to provide additional channels of appeal from state Supreme Courts, i.e., an appeal to the High Court as alternate to an appeal to the state appellate court and an appeal to the High Court as an alternative to an appeal to the Privy Council. From the High Court an appeal in such matters could be taken to the Privy Council only by special leave from the Council.

In practice, distance and expense have forced almost all appeals from State Supreme Courts into the High Court, and very few appeals are taken to the Privy Council.

Position Of High Court

Where federal litigation is concerned the High Court has been made an obligatory court of appeal from state courts. Elaborate legislative provisions have made appeals to the Privy Council from state courts on matters within federal jurisdiction virtually impossible. Such matters can only reach the Privy Council, if at all, on appeal from the High Court. Furthermore, no appeal involving a question as to the limits of power, inter se, of the Commonwealth and a state or states, can go to the Privy Council without a certificate from the High Court. Only once has such a certificate been granted. That liberality is not likely to be repeated.

Strict Stare Decisis

There is, therefore, on all Common Law and Federal Law matters, a hierarchy of courts unified in the laws they declare by the ultimate pronouncements of either the High Court or the Privy Council. The English doctrine of precedent is accepted in Australia, so that all courts are strictly bound by the decisions of courts higher in the same hierarchy. The High Court and the Privy Council do not consider themselves strictly bound by their own decisions; but they do show extreme reluctance to overrule themselves. It is not surprising, therefore, that there is greater consistency and uniformity of doctrine in Australia than in the United States.

So much is reasonably clear where precedent and authority are concerned. But another, less clear, process is evident in the Australian courts attitude towards

the Common Law: a process which seems to be aimed at making real Mr. Justice Holmes—"brooding omnipresence in the sky."

The Privy Council is not part of the English judicial system for these purposes; but such is the prestige of the House of Lords, and so preponderately are its members English judges, that it follows the Lords' decisions on Common Law matters. The High Court is not technically bound by Houses of Lords decisions, but it will follow decisions of that body in preference to its own. To avoid multiplicity of appeals it has even directed state courts that where High Courts and House of Lords decisions conflict, they are to follow the Lords. Further, in the interest of Common Law unity, the High Court has said that it will follow decisions of the English Court of Appeal even in preference to its own decisions—but not slavishly. Clearly it will not do so when the High Court holds a strong view that the Court of Appeal is wrong. [See e.g. *Koop v. Bebb* 84 C. L. R. 629 (1951) where four members of the High Court adversely criticized the Court of Appeals decision in *Machado v. Iontes* (1897) 2 Q. B. 231.] The possibility and the desirability of trying to bring the "brooding omnipresence" down to earth by these means are matters for debate.

Problem of Uniformity

To the extent that uniformity of doctrine is achieved in this system, the problem of deciding what law should be applied by a court exercising federal jurisdiction (e.g. in diversity cases) is diminished. But the problem cannot be eliminated if only because of difference between state legislation. To the extent that there are differences between state

laws, the Australian courts have to face the same problems as are faced in the United States (e.g. in *Erie Railroad Co. v. Tompkins*, 304 U. S. 64.) The problem may be accentuated in Australia, however, by the fact that the High Court is a migratory court (with original jurisdiction), sitting from time to time in each of the states, with no internal territorial jurisdictional limits. It has a registry in each state, and a central registry where any federal action can be initiated. Furthermore, in some important matters a litigant has a choice between commencing his action in the original jurisdiction of the High Court or in a state court exercising federal jurisdiction.

Rule Modified

Thus, a federal case can be, and where the action is against the Commonwealth, is not unlikely to be, litigated in a state which has no other connection with the case than the fact that the court happens to be sitting there. For this and other reasons the primary rule that courts exercising federal jurisdiction will apply the law of the state where they are, has to be modified. In tort actions against the Commonwealth at least, it appears that the *lex loci delicti commissi* will be applied. [See "The Experience of the Australian Federation," *Zelman Cowen* (1953) 6 *Vanderbilt Law Review* 638—particularly at pp. 656-662.] But the authorities otherwise are scanty and unsettled.

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