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Second Edition by Scott Marks Growth of Trusts

The second edition of *The Law of Trusts* by Austin Wakeman Scott, Dane Professor of Law, has just been published by Little, Brown & Co. of Boston. Bound in five volumes and retailing for \$100, the new set replaces the first edition, published in 1939.

The second edition has drawn heavily from the new decisions on trust law. Several sections have been modified or expanded, notably that on charitable trusts. Case references have been brought up to date throughout the work.

In his preface, Professor Scott emphasizes that "the law of trusts is living law. The growth in the law of trusts is shown in the thousands of cases which have been decided since the First Edition went to press." According to Professor Scott, the bulk of trust law was formerly shaped by courts in the New England and Middle Atlantic states, particularly Massachusetts and New York. In recent years, trusts have become an important economic factor in California, Texas, and other booming states beyond the Appalachians. This development has been reflected in a growing number of decisions in their courts of last resort.

Professor Maitland once wrote, "Of all the exploits of Equity, the largest and the most important is the invention and development of the Trust." In recent years the use of the trust has been greatly stimulated by heavier federal taxation on incomes and estates.

Seventeen-year Task

Professor Scott began work on the second edition as the first was rolling off the presses. His seventeen-year task was accomplished with the sole assistance of Miss Charlotte E. Lee, his secretary, who prepared the manuscript. Professor Scott is already gathering materials and notes looking toward a third edition, but he will not predict the date of its appearance.

In addition to teaching a course in Trusts required of all second-year students at the Law School, Professor Scott is presently revising the Restatement of Trusts, which is expected to be complete next year. As Reporter, he is being advised in this undertaking by Harrison Tweed, LL.B. '10, president of the American Law Institute; Herbert F. Goodrich, LL.B. '14, of the United States Court of Appeals for the Third Circuit; Raymond S. Wilkins, LL.B. '15, Chief Justice of the Massachusetts Supreme Judicial Court; John V. (See SCOTT on page four)



Austin W. Scott

Glueck Deplores Sentencing, Asks Crime Prediction Tables

Speaking recently before the Judicial Conference of the Third Circuit, at Atlantic City, N. J., Professor Sheldon Glueck analyzed the haphazard nature of the sentencing problem and the best manner to correct its most serious deficiencies through the use of the prognostic instrument approach.

He pointed out that "the entrusting of undisciplined discretion in sentencing practices can lead, at worst, to tyrannical abuse of power, and, at best, to erratic decisions." Although the general objective of "individualizing" the sentence by taking into account the makeup and situation of each offender is desirable, the more basic problem, according to Professor Glueck, is the development of a reliable technique of individualization based on scientific administration of criminal justice.

Citing several statistical studies of state and federal court records, he noted the fact that sentences imposed for similar offenses are not uniform as between various similar jurisdictions and even as between imprisonment and probation.

While not adhering to absolute uni-

the circumstances of the crime and those of the prisoner.

Professor Glueck emphasized that while discretion certainly has its place, "the problem is to provide a technique whereby discretion shall be allowed ample creative scope and yet be subjected to rational external discipline or self-discipline."

He rejected two possible answers—that of "twice removed" appellate review and "clumsy" mechanical legislative prescription of criteria to be applied by the judge in assessing the length and nature of the sentence.

Dr. Glueck then described the less mechanical system of the sentencing provision of the American Law Institute's Model Penal Code. It provides a guide for judges in a realistic process of individualized treatment of offenders. The objective is to bring about greater uniformity of treatment by establishing certain criteria to be taken into account in the exercise of judicial discretion.

But even such a device is insufficient, he (See SENTENCING on page four)



Sheldon Glueck

formity of sentence which would be a regression to statutory fixed punishments. Dr. Glueck believes that a just and scientific exercise of discretion in a large enough sample of cases ought to be reflected in a sentencing level.

It is not the lack of uniformity or the known fact of subjective influences entering into the process of sentencing in themselves that are important, remarked Dr. Glueck. Rather it is the cause of the lack of uniformity.

The central issue is, he said, how, on the one hand, to minimize the erratic and prejudiced influence of the judge's temperament (what is called the sentencing tendency of the judge) and, on the other hand, how to restrict the factors determining the sentence prescribed within the confines of

Brennan Named to Court In Surprise Appointment

William J. Brennan, Jr., LL.B. '31 of Rumson, N. J., was chosen last Saturday by President Eisenhower to be an Associate Justice of the United States Supreme Court.

Justice Brennan, now a member of the New Jersey Supreme Court, will take his seat on the United States' highest court on October 15, when Justice Sherman Minton will retire. Justice Brennan will serve under a recess appointment, subject to approval by the Senate when it meets next year.

In Washington, where Justice Brennan met with President Eisenhower last Saturday, the Justice said that his appointment was a complete surprise. Even after Attorney General Herbert Brownell, Jr., phoned him on Friday evening and asked him to come to Washington the next day on an important matter, Justice Brennan said that he had no idea why he had been summoned.



William J. Brennan, Jr.

For Gallery on Justice Brennan, see page two.

Among others who had been mentioned for the Supreme Court post was Chief Justice Arthur T. Vanderbilt of the New Jersey Supreme Court. But a few weeks ago President Eisenhower stated that the person he would appoint would have to be young enough to serve many years on the court. This ruled out the appointment of Justice Vanderbilt, who is 68 years old, or the possible nomination of John Foster Dulles, who is also 68.

Vanderbilt Recommendation

Justice Vanderbilt was reported to have written a letter to the President recommending the appointment of Justice Brennan, who at 50 will be the youngest man on the bench. Secretary of Labor James P. Mitchell of New Jersey was also among those suggesting Justice Brennan for the high court. The two men met when Mr. Mitchell was a personnel consultant for Western Electric and Justice Brennan was counsel for the company.

When the new appointee takes his seat on the Court next month, he will join

two other alumni of the Law School, Justices Felix Frankfurter, LL.B. '06, and Harold H. Burton, LL.B. '12. He is also the third member to be appointed by President Eisenhower. Chief Justice Earl Warren was named to the high court in 1953, and Justice John Marshall Harlan was appointed in 1955.

The first Roman Catholic to sit on the Supreme Court since Justice Frank Murphy died in 1949, his appointment is notable from two other aspects. As a former member of the New Jersey Supreme Court, he will be the only justice who has sat on a state court of last resort. Also, he is a lifelong Democrat, though he made it clear last week that he has never played an active role in politics.

Justice Brennan visited the Law School in March of this year, when he presided over a moot court in an Ames quarter-final round, argued by the Blackstone and Gardner clubs.

Law School faculty members generally approved the Brennan appointment. Professor Paul A. Freund, who was president of the *Law Review* here while Justice Brennan was a member of the Legal Aid Bureau, said he thought "he'll make a great justice."

Legislature Investigates Bias In State College Fraternities

Discriminatory practices by fraternities and sororities in Massachusetts colleges were the subject of an investigation completed on Wednesday by a special joint House-Senate investigative committee of the Massachusetts Legislature.

Under the chairmanship of State Representative Sumner Z. Kaplan, LL.B. '48 of Brookline, the Committee was appointed by the Legislature over the summer to inquire into the expulsion from the national Sigma Kappa sorority of the Jackson chapter for admitting two Negroes. After some preliminary hearings, the Committee decided to broaden the scope of its inquiry to cover the whole field of fraternities and sororities. Committee members felt that in this way the Sigma Kappa incident could be appraised more fairly, and the extent of such practices could be ascertained.

Among the witnesses who testified before the Committee were the deans of the Massachusetts Institute of Technology, the University of Massachusetts, Boston University, and Jackson College. According to Richard Goodwin, 2L of Boston, Administrative Assistant to the Committee, the investigation will definitely result in a report to the Legislature, and may lead to positive legislation during the 1957 session. The Committee's findings and recommendations are expected to be made public in about two weeks.

According to Mr. Goodwin, the primary question faced by the Committee is one of policy. There are some who feel that direct action should be taken to wipe out

all discriminatory clauses in fraternity charters. Most of the deans of the institutions, on the other hand, prefer to work out the problem in their own way.

If the Committee proposes legislation, the Legislature will face the problem of its effectiveness and validity: are fraternities functions of universities, and subject to certain state regulations, or are they private clubs?

Mr. Goodwin, who has just returned from two years of military service, is an editor of the *Law Review*. As an undergraduate he edited the *Tufts Weekly*, and conducted extensive research into discriminatory practices at his own and other state colleges.

Stassen to Speak

Harold E. Stassen, Assistant to President Eisenhower on Disarmament, will be guest speaker at the second Harvard-MIT forum tomorrow evening at 8:00 in Kresge Auditorium. Mr. Stassen will deliver a brief address, followed by questions from a panel of four Law School professors. Dean Erwin N. Griswold will moderate.

Truman Describes President's Duties, Raps Republicans

A capacity crowd of 1,800 filled MIT's Kresge Auditorium last Friday evening to hear Harry S. Truman discuss "The Office of the Presidency." Introduced by Dean Erwin N. Griswold as "the junior ex-President of the United States," Mr. Truman interspersed his address with several remarks of relevancy to the current political campaign, bringing mixed boos and applause from the audience.

After a 1,200-word lecture on the president's duties, Mr. Truman started discussing the Republican ticket. "President Eisenhower doesn't lead his party—he fronts for it," the former President commented. He also declared that the reelection of General Eisenhower and a Republican Congress "would be a double disaster—a disaster for Eisenhower and a disaster for the country."

Mr. Truman, who appeared to be in vigorous good health, boasted of the Democratic candidates' possessing "physical vigor and high moral character matched by their knowledge of public affairs." He continued by declaring that "the six jobs of the President make no allowance for failing physical vigor or the slowing up of mental powers."

(See TRUMAN on page four)

Parking Problem Remains "Rough"

There are no immediate prospects for changes in the disconcerting parking problem which faces Law School students, as well as virtually everyone else connected with Harvard University.

"Rough" is the word Sgt. Carl Ikels of the University Police used to describe the situation last week. Apparently, it will not improve this year.

There are slightly more than 1,200 automobiles registered for students who live in University buildings, and about 1,500 for those off-campus. These figures include all schools except the Business School. More registrations are being made every day.

The school ran out of parking spaces last July 10. Only a few have opened up since then, and they are filled from a sizeable waiting list.

More than 100 spots were lost this year because of the construction of a new electron accelerator in the Andover lot. Where more than 200 places had been available before, only about 100 may be used now.

The rest of the lots are far smaller; 80 places in Jarvis, 30 in Conant, 20 in Perkins Rear and 7 in Perkins South.

(See PARKING on page three)

Better Legal News

Newspaper coverage of the segregation decision and its aftermath has brought to the foreground an old journalistic inadequacy—legal reporting.

Both in quality and quantity, reporting of legal news has left much to be desired. Overemphasis on cases with popular appeal and neglect of important though less sensational decisions are characteristic of legal journalism.

"Getting news while it's hot" may be appropriate to other types of reporting; but trying to comment on a Supreme Court decision without reference to its full text can only lead, as it has in the past, to hasty distortions, inaccuracies and a general misunderstanding of the rationale behind the decision. The *New York Times'* practice of printing the entire text of key Supreme Court decisions is a heartening, though almost unique, indication of awareness of the importance of legal news.

Inferior legal reporting may also be attributed to the inadequate training of writers to cope with such a specialized subject. The press associations and the large metropolitan newspapers are able to afford specialists in finance, education, drama, science, music and military affairs, but they have failed to provide a legally trained person to supervise the reporting and interpretation of legal news.

Legal reporting is also inadequate in its scope. Important circuit court decisions are ignored. Coverage of administrative agencies is almost non-existent, except when their activities relate to business and financial news. The dearth of analysis of pending legislation is remarkable.

In an area as important as law, would it be too much for the larger newspapers to devote a section once a week to the discussion of important legal events, as they do daily for business news?

There are several ways of raising the level and enlarging the scope of legal reporting. One step in the right direction is that being taken by the *New York Times*, which has encouraged Pulitzer Prizewinner Anthony Lewis to spend, as a Nieman Fellow, a year of intensive study at the Harvard Law School.

Second, if newspapers would solicit analyses and discussions by professors of law and political science, they could render an invaluable service to their readers. The academicians themselves could take more initiative in this respect also. The contributions of Professor Paul A. Freund to the Boston papers are most encouraging in this aspect.

Third, it is the obligation of the Bar to take a more active interest by establishing fellowships or training programs for the development of specialized and competent legal reporters. There is much work to be done in laying the basic informational groundwork which the public must acquire to understand the crucial issues presented by legal news. If greater public understanding of what is to many an occult subject does not raise the status of the legal profession, it will provide, at least, a sounder basis for a much needed public appraisal of legal activities.

Though the deficiency be described and remedial suggestions offered, the central issue remains one of publisher motivation. Whether we like it or not a newspaper is a business proposition that must more than pay its way. What is desirable and what is practicable are often poles apart. A paper must sell and usually only materials that have sales potential to one or more segments of a paper's reading body are printed. There are items intrinsically interesting to readers, and items that are readable if given a proper presentation. And a proper presentation means more than avoiding the technical "denied certiorari" by substituting "refused to review." It means taking journalistic initiative to educate its readers, to exercise a pull rather than to cater solely to the reader's more primitive tastes.

This approach does not clash with financial reality. It is not true that only inferior papers sell. The *St. Louis Post-Dispatch* and the *Louisville Courier-Journal*, have for example, shown that responsible and intelligent reporting is not incompatible with mass circulation. In many cases, editors seem to have gone overboard in their low estimate of the mass intellect.

The responsibility of the publisher is all important, for unless newspapers undertake the task of explaining legal issues to the public to enable them to participate intelligently in a most important responsibility of citizenship, it is unlikely that any other media of communication can or will do so.

Harvard Law Record

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Current Case

How broad are the immunity privileges of Congress? An extension of these already far-flung prerogative powers seems to have been affirmed in *Methodist Federation for Social Action v. Eastland, et al.*, 141 F. Supp. 729 (1956), decided in the United States District Court for the District of Columbia.

Plaintiff, an unincorporated association, sought an injunction against the Public Printer and the Superintendent of Documents to restrain the publication of a pamphlet entitled, "The Communist Party of the United States—What Is It—How It Works—A Handbook For Americans." The "Handbook" contained references to the plaintiff which plaintiff considered derogatory and libelous, and made without the opportunity of a hearing. The passage objected to was: "... At times [the Communists] have been known to assume a name similar to some well-known and respectable organizations. An example is the Methodist Federation for Social Action which has no official connection with the Methodist Church," at p. 95 (emphasis supplied). The pamphlet itself was ordered published to the extent of 75,000 copies by a Concurrent Resolution of the Senate and House. These copies were to be sold to the general public and distributed to various departments of the federal government.

A three-man court hearing the case dismissed the injunction which had been granted (2-1).

Citing the broad language of the Constitution (Art. I, Sec. 6), members of Congress "for any Speech or Debate in either House . . . shall not be questioned in any other Place," the court drew the conclusion that it had no jurisdiction in the case. "Nothing in the Constitution authorizes anyone to prevent the President . . . from publishing any statement. This is equally true whether the statement is correct or not, whether it is defamatory or not, and whether it is or is not made after a fair hearing. . . . We think it equally clear that nothing authorizes anyone to prevent Congress from publishing any statement." "A judgment for the plaintiff would invade the constitutional separation of powers" (at 731). The court, it became clear, felt that on no occasion could it restrain the publication of slander and libel to the general public by Congress.

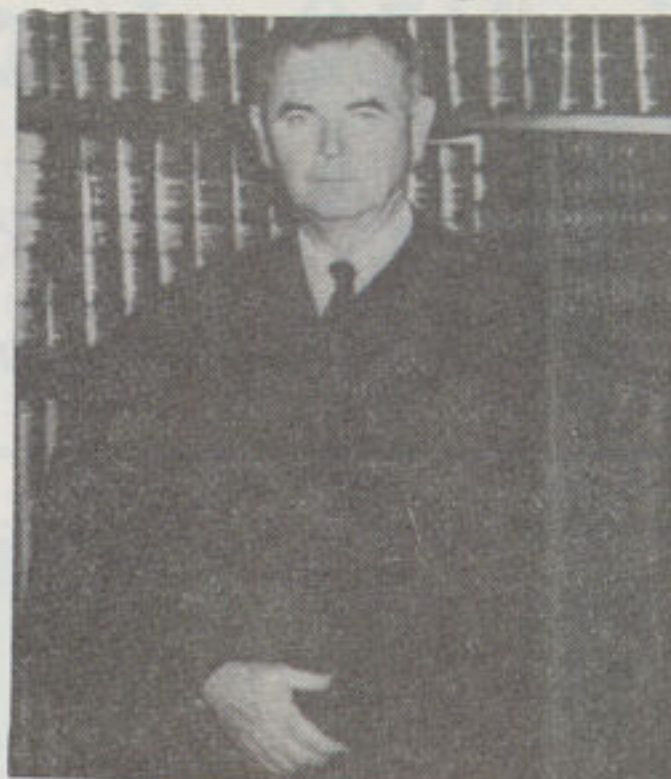
Limited Privilege

Wilkin, D.J., in a sharp and complete dissent covered the history of the Congressional immunity and its limitations. Pointing out that Parliament does not have an absolute privilege today, ("Lex parliamenti has at last become a part of *Lex terrae*" at 733) he quotes Cooley's *Constitutional Limitations* on the nature of the privilege, "These privileges are thus secured, not with the intention of protecting the members against prosecution for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions civil or criminal" (at 734).

The publication of 75,000 copies of the pamphlet, the judge points out, "is conceded [to be] some thing beyond strict legislative action. It seems clear that the handbook is beyond the absolute privilege" (at 735).

Judge Wilkin also points out that the plaintiff here was not attempting to bring any punitive action against the members of Congress, but to prevent the dissemination of a libel to the general public. "If the plaintiff is a Communist-front organization, it should be proceeded against according to the law which Congress has enacted. It should not be pilloried as a subversive agency before it has an opportunity to be heard" (at 735). "To say," the judge continued "that the courts of law have no jurisdiction over such a complaint is in effect, to say that Congressmen, by Concurrent

Gallery



WILLIAM J. BRENNAN, JR.
Supreme Court Nominee

"I had no inkling of my appointment," said William Joseph Brennan, Jr., LL.B. '31, Associate Justice of the New Jersey Supreme Court as he faced newspapermen after the announcement of his appointment as Associate Justice of the United States Supreme Court. He will succeed Associate Justice Sherman Minton who is retiring because of ill health.

Justice Brennan's modesty is belied by his career. After his graduation from the Law School in 1931, he joined the firm of Pitney, Hardin and Ward in Newark, New Jersey, where he had been a clerk during the summers of his Law School years. For eighteen years he continued with the firm, then as now the largest firm in the city, becoming a partner in 1938.

While in practice, he specialized in labor law and administrative law. His firm specialized in corporate and financial practice. Early in his career, Justice Brennan successfully argued the unconstitutionality of a provision of the National Industrial Recovery Act. Before the appeal by the government was heard, the decision in *Schechter Poultry Corp. v. U.S.*, 295 U.S. 495 (1935), invalidating the NIRA was handed down and further argument became unnecessary.

Justice Brennan entered the army in 1942 with the rank of major and became the Ordnance Department's labor lawyer. He was later made the chief of the civilian personnel division of Army Ordnance. Then came a promotion to colonel and an assignment as chief of the Labor Branch of Army Service Forces. He also served as aide to the late Robert P. Patterson, LL.B. '15, who was then Undersecretary of War.

Letter to the Editor

TO THE EDITOR OF THE RECORD:

In Dean Griswold's speech about the "Fear Around Us," he has used a lot of words to express a single thought. It is his idea that we should not use all lawful means to root out spies, subversives, and infiltrates (*sic*) but should exercise self-restraint and tolerance.

He admits that it is reasonable for us to fear the threat of military attack by Russia but he says that this reasonable fear should not cause us to fear spies or traitors because we are adequately protected by our military forces.

This does not make much sense to me.

How dependable is our military power, if it is honeycombed with espionage and treason and lacks the will to win?

And isn't an enemy who has spies in the Pentagon, saboteurs in the factories, traitors at the conference tables, infiltrates in the press, the unions, the churches and the schools, more to be feared than an enemy who, except for them would not have had Poland, China, the atom bomb, radar, asdic, the V.T. fuse, and thousands of our diplomatic, political, military, scientific and economic secrets? Reading the Jenner Report of 1953 scared some of us.

Dean Griswold also avers that it is reasonable to fear the Communist network of espionage, treachery and infiltration in peacetime but not enough to do anything much about it. He would leave the job to the FBI, forgetting that the FBI has no power to prosecute, no power to discharge, is forbidden to give information to Congressional Committees, and has had its definite and docu-

Resolution, may with impunity print, publish, and broadcast a libelous statement against any person or association" (at 736).

The judge takes exception to the majority in not extending the holdings of *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S. Ct. 624, where a unilateral action by the Attorney General was restrained by the courts.

Taking the holding in this case together with the *McGrath* case, it seems that when an Act of Congress requires an administrative agency to perform an act which has no direct legal consequences, the courts may not intervene, while if the administrative agency decides to perform this act unilaterally, and the results of the act have legal consequences, the courts may intervene.

—Chazen

Returning to the firm of Pitney, Hardin, Ward and Brennan, he became involved in litigation arising from the wave of post-war strikes in industry and public utilities. In one of these cases, Justice Brennan argued the constitutionality of the New Jersey compulsory arbitration law. The law, which required a binding adjudication in a public utilities dispute, was held constitutional only after it was amended.

As an attorney, Justice Brennan had long been keenly interested in the reform of New Jersey's then outmoded judicial system. While a member of the editorial board of the *New Jersey Law Journal*, he was the Board's spokesman in presenting many valuable suggestions to the Judiciary Committee of the 1947 New Jersey Constitutional Convention which created the present New Jersey court system.

In 1949, shortly after the new judicial system was put into operation, Governor Alfred E. Driscoll, LL.B. '28, appointed Justice Brennan to the Superior Court. This was the first of his appointments to judicial posts—each time by a Republican. Justice Brennan has always been a Democrat. A year and a half later, in September 1950, he was elevated to the Appellate Division and, in 1952, Governor Driscoll appointed Justice Brennan to the Supreme Court of New Jersey.

Reduced Trial Delays

While a member of the New Jersey judiciary, Justice Brennan compiled a record which brought him to the attention of the President.

As chairman of the New Jersey Court's Committee on Pre-Trial Procedure and Calendar Control, he naturally displays enthusiasm when talking of pre-trial practice in New Jersey courts. "Our state," Justice Brennan has said, "is probably one of the few in the entire nation where a plaintiff can file his complaint and be sure that it can come to trial within six months."

It is doubtful that Justice Brennan will convey that austere, almost icy appearance that has distinguished many of his predecessors on the Court. In him are blended the qualities of a competent judge and a warm and genial man.

Born in Newark, New Jersey, on April 25, 1906, Justice Brennan attended public schools there. In 1928, he was graduated from the Wharton School of the University of Pennsylvania.

Justice Brennan married the former Marjorie Leonard in May 1928, while he was still a student. The Brennans have three children—William, Jr., 23, a second lieutenant in the Marine Corps, Hugh, 20, and Nancy, 7.

He is a member of the American Judicature Society, the New Jersey State Bar Association, the Holy Name Society and the American Bar Association.

mented recommendations ignored, time after time, by the Executive or ineptly handled by the Justice Department. The classic example is Harry Dexter White. Another is Fort Monmouth where the FBI warned the Army more than ten times without result.

Conservatives will agree that where there is a conflict between security and civil liberty we should choose liberty. But that is not the point the Dean has made. He could not make it because in our fight against Communism there is no such conflict. Getting spies and traitors out of the government violates no civil liberty and the Dean has given us no example of any one who has been deprived of any legal right or immunity in that fight. It may involve the use of evidence from an informer or a report from an undercover agent or an immunity bath for a co-conspirator. These are admittedly legal methods violating no civil liberty but the Dean thinks that however reasonable our fears and however legal our methods we should be self-restrained and not fight as hard as we can.

In his discussion Dean Griswold has brought in old irrelevancies about academic freedom, the Fifth Amendment and civil liberties generally. This follows the line that has been used before by liberals and the not uncommon method of making serious charges without specifications.

Civil liberties in this country are having a hard time of it, but not as a result of a fight against Communist infiltration, but because we have not resisted the march of international Socialism and the destruction of our Constitution.

Academic freedom has also been seriously interfered with by the judicial fiat making it illegal for our states to teach religion, or permit it to be taught in the public schools, or to determine where and in what company our children shall be educated. This was not a part of the fight against Communism but the reverse.

The liberal has not sprung to the defense of liberties but has assisted in destroying them. He has not even protested the Status of Forces Treaty which took them away from our soldiers. Conservatives are more consistent. If Dean Griswold will specify any civil liberty that has been lost in the fight against spies and traitors, he will find conservatives at his side fighting for its restoration.

In return, perhaps Dean Griswold will approve the use of every lawful means to root out the spies and traitors who would destroy all our liberties.

—ROBERT H. MONTGOMERY, LL.B. '12

Legal Problems of International Order: Some Lines of Inquiry

By H. C. L. Merillat

(Mr. Merillat is associated with the Ford Foundation.)

In international affairs, perhaps more than in most matters, we find ourselves tending to swing to one of the extreme positions—to seek after vague shapes and grand schemes that, in the cold light of day, are seen to bear little relation to things as they are, or on the other hand, to become so absorbed in our daily concerns and urgent problems that we lose sight of the larger movements and emerging patterns around us. . . .

The lawyer—or perhaps we should call him the law man, since I do not mean only the lawyer in a professional sense—should be peculiarly able to deal with the tension between what has been and what ought to be. The law man is concerned with the interplay between these two, with making more precise restraining and empowering rules that embody the wisdom of experience and foresight, and applying these rules to specific historical situations. He accepts neither the way people including the rulers of states *do* behave as the standard of the way they *ought* to behave, nor judgments as to the way they *ought* to behave as descriptive of the way they *do* behave, or even necessarily as practicable rules of conduct. . . .

Let us look at some of the problems in the present world situation, problems that are likely to become increasingly acute in the near future, and consider whether we can identify areas where there are the rudiments of uniform practice and some possibility that more definite rules of conduct, sanctioned in varying degrees of effectiveness, may be articulated.

Two areas come to mind. One is the control of atomic energy, whether for military or non-military purposes. Another is in the international organizations, formed for specific military and economic aims, that have emerged in the free world since World War II. Both clearly involve policy problems of the most difficult kind. It is not our business to discuss in detail such problems. And yet, we must keep a close watch on the actual forces at work and the probabilities of policy development if our "legal" formulations are to have some chance of being effective.

Atomic Energy Control

First, let's look at atomic energy developments. In the military field, the danger of an atomic war between the two atomic colossi has dominated our thoughts almost to the exclusion of other military problems. When we think and speak of control of the military uses of atomic materials, it is almost always in the context of the U. S.—Soviet Union problem. It has been apparent from the beginning of the atomic age that the world faced a problem involving far more than the two present atomic giants, that many states would be able soon to develop atomic capabilities. Even states that disavow any military interest in atomic materials want them for other uses—for electrical power and for industrial and scientific application.

Other states may look to domestic production or to imports for their materials. For non-military uses, the United States has committed itself to two ways of providing nuclear materials and technical equipment and knowledge for their use to other countries: first, on a relatively modest and manageable scale, by a series of bilateral arrangements with foreign countries, already in effect and being further developed; secondly, by participation in an international agency under United Nations auspices, a machinery still to be adopted. A third important system for

international cooperation in the development of atomic energy for non-military uses is being considered in Europe in two forms, sometimes regarded as competing alternatives, sometimes as interlocking and mutually supporting—a loose arrangement among the seventeen European members of the OEEC or a tighter community of six nations, analogous and related to the Coal and Steel Community, with some or all of the supra-national features of that organization.

Limited Communication

All these international plans for the non-military uses of atomic energy involve controls that bear directly on the military uses of the atom. Our national legislation forbids exchanges of information or materials with other countries for military uses and our bilateral agreements on non-military uses provide for security controls to prevent the diversion of nuclear materials to military use.

An international agency under United Nations' auspices, if established, would have to provide similar controls, under which the United States presumably would be only one of several nations supervising the materials it supplies. The proposals for Euratom likewise provide for security controls. Thus, there are several developing schemes that will provide for bilateral or multilateral control of some nuclear materials that might otherwise become available for military use, though the contemplated controls are far, of course, from a satisfactory solution of the problems of military use.

With regard to international restraints on military uses, the pledge of the present government of the Federal Republic of Germany to abstain from the development of atomic weapons is, so far as I am aware, the only formal restraint on a nation's freedom to develop such weapons. Without at all reflecting on the sincerity of this assurance, we may wonder how long a vigorous and dynamic nation will be content to stop at some half-way house once it has decided upon a course of rearmament. Germany, like other industrial nations, has plans for intensive atomic research and the development of atomic energy for non-military uses.

Restraints on Use

Other formal restraints, hardly recognized as such, exist on the use of atomic weapons, quite apart from the policy restraints on the possessor. Thus plans to use foreign bases for carriers of atomic weapons, whether aircraft or missiles, must involve some agreements or understanding with the governments in whose territories the bases are located as to the conditions under which those bases could be used. The "host" government is bound to have a certain *de facto*, if not legally formalized, control. Similarly, the military plans of an alliance such as NATO for the use of atomic weapons in certain circumstances must involve some understandings that restrain negatively, as well as authorize positively, their use.

These understandings as to the use of foreign bases and as to allied war plans, so clearly involving questions of military security, are presumably not available in full to the researcher, but form an important part of the whole complex of developing international controls concerning atomic materials. All of the measures I have mentioned, with the exception of the projected United Nations agency, concern arrangements *within* the free world for bringing some order to the use of nuclear materials.

This thumbnail sketch does not fully

take into account the forces at work that will call for early decisions on the extension of restraints over the production and uses of atomic materials within the free world, quite apart from the overriding and absorbing questions of world-wide controls. There are pressures on the government of any nation having the resources to do so to develop an independent atomic capability, whether for military or non-military uses—and clearly it is hard to draw a sharp dividing line.

Under bilateral agreements with the United States, the recipient of atomic materials for non-military use agrees to return materials for reprocessing; the recipient is limited as to the amount of materials it will have on hand and accepts a degree of foreign inspection and policing. Nations with a serious interest in developing atomic energy will be impatient of the cumbersome procedures and degree of foreign control over their atomic programs. Several countries not now producers of fissionable materials, have plans to become producers.

Need For Atomic Weapons

On the military side, the decisive military importance of atomic weapons must mean that any nation aspiring to substantial military power will, if it physically can, seek to produce atomic weapons of its own or procure them from a producing nation. However often a government or the leaders of a people may say that they find atomic weapons abhorrent, we may reasonably expect that they will get them, one way or another, as soon as they can.

This has been evident from the beginning of the atomic age. If the reverse were true, if the rest of the world had decided to abstain from all time from building up significant military power and to leave the field to the three present atomic Powers, this would in itself be an unprecedented development in international affairs that should excite our liveliest interest.

Only recently have we seen or heard much public discussion of the prospect that many nations, beside the three that now have them, will be armed with atomic weapons. Comforted by our original national monopoly and our current superiority in such weapons and absorbed in the problem of relative Soviet-United States military strength, we have been strangely neglectful of what the British refer to as "the fourth country problem"—a phrase, incidentally, reminding us that in a few short years the number of significant atomic Powers has grown from one to three.

From what information has been made public, it appears that several other countries, within a few more years, will be able to produce atomic weapons—among them Canada and France, perhaps Germany, Norway, India, Australia, and Brazil. In its recent actions concerning French participation in the planning of Euratom, one of the French Assembly's main concerns was to preserve freedom for France to continue to develop atomic weapons.

Sweden Shows Interest

For some years Swedish authorities, interested in planning the use of atomic weapons in Sweden's national defense, have been considering ways of getting them from one of the present producers. With the development of atomic weapons for air defense, we may expect even more insistent demands from military planners in other countries that their governments somehow provide them with such weapons.

The questions for the policy maker will

center around the advantages and disadvantages of each nation's, including the United States', keeping its freedom of action as long as possible as against the advantages and disadvantages of accepting some restraints on that freedom. The practical policy choice will lie somewhere on the spectrum between atomic anarchy and all-inclusive international controls. Are we to expect that every nation will have the unrestrained ability and recognized legal right to achieve an atomic capability of its own, limited only by the problems of accumulating the necessary technical knowledge and skills, raw materials, and physical plant (which are for most nations serious limiting factors)? Or shall we expect an extension of restrictions on independent development, custody and use of atomic materials, which in practical terms must probably involve some sharing of physical materials, for military as well as nonmilitary uses, and of responsibility for deciding on their uses?

All Nations Seek Atoms

The pressures for extension of the present rudimentary controls and a planned and restricted sharing of atomic weapons, as among the free nations, are likely to become great. The question for Americans is not whether they would like to retain a monopoly or near-monopoly on the production and possession of atomic weapons in the free world and a free hand to use them as they see fit.

The facts that we have to deal with are that our free-world monopoly has already been cracked and will sooner or later be shattered, that other peoples whose military support we want and need will become more and more insistent on the one hand to share in the power conferred by the possession of atomic weapons and on the other to have a voice in the decisions as to how and when they may be used and that any program for wide dispersal of air bases and missile launching sites or for coordinating defense plans with allied forces involves the consent of other nations.

Beyond these thoroughly practical considerations are the more elusive, but perhaps as important, problems of fostering a more widely shared feeling of responsibility for the uses of this frightening power and of demonstrating a determination to get on with the problem of ruling the atom regardless of Soviet and other obstructions. Indeed, a free-world approach to problems of control might constitute one of the pressures on the Soviet Union to consider seriously plans for world-wide controls and acceptable disarmament.

We must ask ourselves if we think that a situation of general nuclear anarchy can be better brought under control after, rather than before, it comes into being. Since the problems lie in the middle distance, rather than the immediate foreground, they are quite likely to be neglected. The common ground must eventually be sought, however, somewhere between independence and monopoly of use for the United States and a crippling set of international agreements on the use of atomic weapons that might nullify American power.

Solutions Needed

These are problems for the policy-maker, of the most difficult kind. What is the possible role of the law man in their consideration? He can explore more thoroughly and systematically the interrelated complex of emerging controls, whether in the name of military or non-military uses, that was sketched earlier in these remarks.

Assuming decisions to share on a greater scale military and non-military materials,

he can suggest the forms in which rudimentary controls might be further developed and administered. For example, to what extent is the custody of atomic materials shared by two or more nations? What seem to be the most practicable means for further sharing of custody and control? What requirements for joint international control are imposed by the use by one country of bases in another? By joint military planning in general? What are the most practicable means by which bilateral agreements for control, custody, and inspection may be developed into multilateral controls? These are some of the questions to which the law man might usefully direct his attention.

It should perhaps be emphasized again that we are not considering here a world-wide pattern of atomic controls, though the problems and needs in developing that pattern have a great bearing on the more limited approach we are discussing. Rather we are considering what might be done among nations whose common interests and mutual confidence are strong enough to permit some limitation on independent policy-making and a cooperative constructive effort within an agreed legal framework.

(In next week's issue of the RECORD, Mr. Merillat will discuss emerging patterns of order of international organizations formed for specific defense and economic purposes.)

PARKING

(Continued from page one)

No overnight parking is permitted on University property except in the lots, and Cambridge restrictions ban on-street parking overnight.

University police are ticketing cars parked illegally, whether overnight or during the day. The first violation brings a warning, the second a two dollar fine, and subsequent ones fines of five dollars each.

Survey in Progress

A step toward long-range solution of the problem has been taken with a survey conducted through the office of Edward Reynolds, Administrative Vice President of the University. Questionnaires have been sent to all students who have automobiles registered.

The school has engaged a firm of professional parking consultants which is now attempting to fix the exact size and location of the demand for parking. The current survey is supplementing a summer of study.

Questions are in three categories, for students living in dormitories, for those living off campus within one-half mile of the school, and for those living further away. In addition to direct questions, suggestions are solicited.

Although this questionnaire and the entire long-range planning program are expected to lead to more adequate parking facilities, there is little hope of improvement in the near future. The situation, as Sgt. Ikels put it, will stay "rough" for awhile.

—Footlick

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Glueck Deplores Sentencing, Asks Crime Prediction Tables

(Continued from page one)

said, "for the judge has no way of knowing how closely related such criteria as the Law Institute Code provides are to various types of post-sentencing behavior."

The question presented is whether there is available, for the purpose of scientific differentiation of treatment, an instrument that can aid the judge in determining which factors have been shown, by systematic analysis of past experience, to be timely relevant to the expectable behavior of various offenders, and how much weight to give such factors in the particular case before the judge for sentence.

"Since scientific individualization of justice promises to reduce recidivism, it is desirable. But cannot it be more efficiently brought about than by merely supplying the judge with a set of criteria which he should more or less take into account without knowing their relative weights in terms of expectable behavior, and which most dedicated and intelligent judges nowadays actually do take into account anyhow?"

Use of Table Suggested

One way to meet this problem, according to Professor Glueck, is in the prognostic instrument known as the prediction table. His study of life histories of former inmates at the Massachusetts Reformatory for young-adult felons tried to show the degree of relationship between numerous biologic and social factors and the post-parole behavior of the men. For example, what relation to recidivism or reform has the factor of economic responsibility preceding sentence to the Reformatory.

By referring to these correlations, a judge who is considering whether or not to sentence any particular offender to a Reformatory can, with reasonable accuracy, determine the advisability of such disposition of the case before him, provided he has reliable information as to that offender's status in respect to the six simple predictive factors upon which this prognostic instrument is based.

Encouraged by the constant refinement and improvement of these prognostic instruments, Professor Glueck believes that there is sufficient promise in the method to justify its cautious experimental use at the sentence and paroling stages. Predictive devices have been used for several years by the Illinois Parole Board.

Individual Sentencing

Professor Glueck goes on to say that "prediction tables, founded on the thorough and systematic interrelationship between relevant factors and subsequent behavior, give a promising answer to the question of individualization. Such tables, being based upon an analysis of results, would induce judges to individualize in terms of objectified, systematized and relevant experience, instead of attempting to arrive at decisions from a mere reading of a pre-sentence report covering a great deal of information without knowing which parts of it are really relevant to subsequent behavior, or from checking on a list of unevaluated criteria presented in a code. . .

"Clearly, the judge would have very pertinent organized data in the light of which to individualize; that is, to discriminate scientifically among several alter-

natives, and to choose the one most suited to the particular offender in question with an eye to the basic target—recidivism or reform. . . .

"True, in the use of such a device the judge cannot totally ignore public opinion; but at the same time the strong judge educates public opinion. The judge cannot totally ignore the possible but unmeasurable deterrent effect of a certain type or length of punishment in some special class of cases; but at the same time the major aim of the entire process is so to deal with the offender as to protect the public fundamentally by reducing his chances of recidivism from within. Punishment *per se*, or with the chief aim of frightening men into law-abiding behavior, is not adequate to our purpose. What we are all seeking is permanent good behavior, not transient, superficial conformity dependent on 'the presence of the cop on the beat' . . ."

Prognostic tables, Dr. Glueck remarked, by reflecting the behavioral results of various forms of institutional therapy, probation and parole would be valuable in basing policy, for both the deterrent sentence, on a systematized check-up of considerations relevant to predictable behavior.

"In recommending the use of prognostic devices, the aim is, of course, not to substitute statistical tables for judicial experience in the sentencing of offenders. It is rather to supply the judge with an instrument of prime importance in his work of individualizing justice."

Due Process Question?

"A judge should not follow these tables blindly. Indeed, proof of a mechanical use of the tables might even raise an issue of denial of due process. The tables are designed to help the judge to see the individual convict in the perspective of organized experience with hundreds of other offenders who in many crucial respects resemble the person before him for sentence."

According to Dr. Glueck, the tables should help in diminishing the exclusive reliance on the judge's unorganized experience or on a check-through of statutory criteria which, though listed, must still be weighed and assessed in each case and which have not been evaluated in regard to their relevancy in terms of their relationship to recidivism or reform.

"The use of prediction tables should not be lightly embarked upon. During the immediate future it is perhaps preferable for the judge to continue to make his sentencing decision in each case as he does at present; then to consult prediction tables and set down the predictive indications. After a few years, a thorough follow-up investigation can be made, to compare outcomes on the basis of the existing *ad hoc* method with outcomes as predicted by the tables.

"However, the prediction table is but one added instrument in aid of the individualizer of justice. A basic integration of the judge's sentencing role with the work of classification, treatment and parole should improve the entire picture. If a clinical reception and classification center were established for each Circuit or other administrative area, and convicted persons

Touch Football

Touch football games on Soldiers Field inaugurated the Intramural Athletics Program this week. Six teams of twelve players each are competing, with each entry playing at least five games over the next six weeks.

The program is sponsored by the Dormitory Council, with Fred Paulsen, 3L of Belmont, in charge of arrangements for the games. Men who feel the need of a weekly break from the casebooks can form their own teams or join existing squads by calling Mr. Paulsen at UN 4-0033.

were sent to such a regional center for a few weeks, observation and study, and the District Court judges were then furnished a comprehensive report on each offender, in which the relevant predictive factors were included, they would be in better position than they are today to tailor the sentence to the individual case.

System Suggested

"Indeed, even greater integration seems desirable. I would favor a system which would permit of District Court judges taking turns . . . in serving as Chairman of a regional classification and parole board for a year's period. Under such a scheme the sentencing judge would fix the minimum sentence, to take account of community reaction and the claims of general deterrence; and the judicial arm . . . would participate in fixing the maximum limit of the sentence and in determining the place of incarceration, the corrective-therapeutic treatment program, and the time and conditions of parole.

"The suggested arrangement would have several values: It would, first and foremost, have a tendency to integrate sentencing practices with treatment and releasing policies; it would give the legally trained judge a realistic education in the relevancy of the behavioral disciplines to the carrying out of the mandates of justice; it would furnish the necessary trained legal discipline and concern with a climate of due process in the treating, releasing and supervisory stages."

"In brief, it would give both practical and symbolic reality to the policy that in the administration of justice the non-legal expert—psychiatric, psychologic, sociologic, educational, religious or other—should be 'on tap and not on top'."

—Nader

Bull & Bear Hears Market Analysis

In addressing the first meeting of the Bull and Bear Club last Friday, Gerald M. Loeb, noted stock market analyst, declared that a fundamental part of the lawyer's task is that of advising clients on investment decisions. "Many lawyers," Mr. Loeb said, "lack a sufficient background in the technical side of investing to meet the needs of their clients in a competent manner. This is especially important in the handling of estate and corporation work."

Mr. Loeb urged investors to avoid "the umbrella of diversification among the 'Favorite Fifty' . . . the fifty 'blue-chip' securities held most widely by the investment trusts. Success in the next ten years, he warned, may well depend upon setting aside the 'shopworn' rules which prevailed through the last decade. Emphasis should be placed instead on 'selectivity and timing.'"

TRUMAN

(Continued from page one)

The six important functions of the President were enumerated by Mr. Truman as executor of the laws, commander-in-chief of the armed forces, foreign policy maker, proposer of legislation, political party leader, and social head of the nation.

Mr. Truman received a standing ovation at the conclusion of his speech, after saying that he was "highly pleased with the Democratic candidates for President and Vice president."

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Profs. Chayes, Howe & Sacks Speak at Rally for Stevenson

Political activity by Law School Democrats moved into high gear last week as the Students for Stevenson and the Young Democrats joined forces Thursday afternoon at a rally in Harkness Commons. An audience of four hundred Law and Graduate students heard brief addresses by Professors Abram J. Chayes, Mark De Wolfe Howe, and Albert M. Sacks of the Law School; Samuel H. Beer, Professor of Government at Harvard College; and Adlai E. Stevenson III, 3L of Libertyville, Ill.

Students for Stevenson, larger of the groups, claims a membership of eight hundred in the University. Organized in November, 1955, to promote the nomination and election of Adlai E. Stevenson '55 the group began work in April. Its efforts in the Massachusetts Preferential Primary helped Mr. Stevenson carry the city of Cambridge against Representative John W. McCormack.

Theodore Kesselman, 3L of Youngstown, Ohio, is president of the group. Franz S. Leichter, 3L of New York City, chairman of the Political Action Committee, characterizes its goal as "doing whatever is possible to bring about the election of Governor Stevenson." Mr. Leichter plans to concentrate the committee's efforts on Ward 7 of Cambridge. The Students for Stevenson will canvass the area to remind voters to register, and on election day will provide carpools and babysitters to get out a heavy vote. An information desk was established in Harkness Commons last week to inform students of absentee voting regulations.

The Young Democrats, representing the Law School and the Graduate School of Arts and Sciences, have been in existence for several years. According to their president, Herbert P. Gleason, 2L of Cohasset, the club's activities "will parallel but not duplicate those of the Students for Stevenson."

"They are interested in a victory for Mr. Stevenson," Mr. Gleason stated; "we are interested in a Democratic victory." The Young Democrats will work on state and local elections in addition to promoting the candidacy of Mr. Stevenson. They hope to assist in electing Foster Furcolo as Governor and James L. O'Dea, LL.B. '48 as District Attorney. A meeting will be scheduled later this month at which these two candidates will speak.

SCOTT

(Continued from page one)

Spalding, LL.B. '23, Associate Justice of the Massachusetts high court; and Professors Ralph J. Baker and A. James Casner of the Law School.

Looking back on his many years as an authority on Trusts, one of Professor Scott's long standing regrets is that his specialty is often pictured in the layman's mind with visions of monstrous corporations.

Professor of Monopolies

He recalls with amusement a newspaper account several years ago which referred to him as "Professor of Monopolies at the Harvard Law School." But he admits that this is forgivable, since another instructor here who offered courses in Trusts and Government Regulation of Business was often rebuked by some Faculty members for teaching Trusts in the morning and Anti-Trusts in the afternoon.

—Oliver

Catholic Student Group To Meet Tonight at 8

The Saint Thomas More Society, an organization of the Law School's Catholic students, will hold its first meeting of the year in Harkness Commons this evening at eight. George McCormack, 3L of New York City, president of the organization, will outline preliminary plans for the Society's fall program. Communion breakfasts, discussion groups and social affairs will be scheduled.

Harkness Commons will also be the scene of the Society's annual Fall Mixer next Wednesday.

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