



THE LAW LIBRARY
THE UNIVERSITY
OF TEXAS

Harvard Law Record

America's Oldest Law School Newspaper

(Copyright, 1956, The Harvard Law School Record, Inc.)

VOL. 23, NO. 12

CAMBRIDGE, MASS., THURSDAY, DECEMBER 13, 1956

TEN CENTS

Bull & Bear Hears Speakers Discuss Shareholders' Role

The function of shareholders in the national economy was the topic of the Bull and Bear Club's meeting last Friday evening, when Professor Louis Loss moderated a discussion between Lewis D. Gilbert and Wilma Soss in the James Barr Ames Courtroom.

Mr. Gilbert, who writes a monthly column for *The Investor* magazine and whose book, *Dividends and Democracy*, was published last year, told an audience of five hundred that America is going to have a people's capitalism, whether she likes it or not. He declared that there are now three forces in the economy outside of government: management, labor, and shareholders. He said that shareholders must be recognized as important by management, and must also recognize themselves as such.

Corporate Reports

Mr. Gilbert dealt also with annual corporate reports. Among the features which they should contain, he listed the number of stockholders, the number of employees, the book value of the stock, the year's advertising expenses, and the salaries of top executives. He scored those corporations which are still bogged down in "murky feudalism" as far as annual reports go, and declared that the consolidated balance sheet is used chiefly to conceal the mistakes of American business.

Mrs. Soss, introduced by Professor Loss as "the Susan B. Anthony of corporate democracy," said that the way to save American economy from the trend toward eventual socialism is to encourage the movement toward corporate democracy. The president of the Federation of Women Shareholders in American Business, Inc., called for televising of annual stockholders' meetings, cessation of subtle maneuvering on the part of managements, and the inclusion of qualified women on the boards of directors of more corporations.

Royal Little, chairman of the board of Textron, Inc., was frequently referred to by both speakers as a "practitioner of model corporation-shareholder relationship."

The club's next meeting on January 25 will feature George Alpert, president of the New York, New Haven and Hartford Railroad. Mr. Alpert will discuss the business of railroading from the financial, legal, and career points of view.

Views Exchanged On Modern Music

The Law School Forum last week presented a discussion of modern music by Aaron Copland, composer; Otto Luening, professor of music at Columbia University; and Irving Fine, critic and professor of music at Brandeis University.

Mr. Fine deplored the lack of audience-composer relations brought about, he said, by the introduction of the long-playing record. He continued by stating that while it is true that musical literacy is increasing, the orientation is toward the past, with consequent slighting of modern music.

Mr. Copland emphasized the "uniqueness" of every composer. "He may not be a Beethoven, or even a Sibelius," he declared, "but every composer has something to say, and a contribution to make."

Mr. Luening commented on the new ways of making music, describing many of the new electronic instruments used to produce sound. Despite Mr. Copland's characterization of such instruments as "a menace on the horizon," Mr. Luening urged open-mindedness toward them.

The program was the last which the Forum will present until after the Christmas vacation.



A. James Casner

Casner to Advise Tax Subcommittee

Professor A. James Casner has been selected as a member of an advisory group to assist the Subcommittee on Internal Revenue Taxation of the House Ways and Means Committee, Representative Wilbur D. Mills (D., Ark.), chairman of the subcommittee, announced last week.

Three advisory groups have been established, Mr. Mills said, to assist the subcommittee in studying the substantive sufficiency and technical adequacy of three parts of the Internal Revenue Code of 1954. The parts are subchapter C (corporate distributions and adjustments), subchapter J (estates, trusts, beneficiaries and decedents) and subchapter K (partners and partnerships).

In announcing the identity of the individuals who have expressed willingness to participate on the three advisory groups, Representative Mills stated that the subcommittee had been honored by the acceptance of appointments to the groups by outstanding citizens of varying professional backgrounds who have demonstrated competence in the field of federal taxation.

The groups met in Washington, D. C., last week for organization and orientation. Professor Casner is a member of the group which will advise the subcommittee on subchapter J.

Vacation

Classes at the Law School meet for the last time in 1956 on Wednesday, December 19, and resume on Thursday, January 3. In keeping with the holiday spirit as well as impending examinations, the RECORD concludes Volume 23 with this issue. The first number of Volume 24 is scheduled to appear on Thursday, January 31.

Defenders Choose Second Year Men

Fourteen second year men were elected last week to membership in the Harvard Voluntary Defenders. The elections were announced by Charles J. Keever, 3L of Hutchinson, Kans., president.

The Voluntary Defenders, a group devoted to giving legal assistance to indigent persons accused of crime, selected Paul H. Baris of New York City; David F. Cavers, Jr., of Lexington; Ralph S. Cunningham, Jr., of Atlanta, Ga.; Sheldon H. Elsen of Pittsburgh; and Aaron Karp and Richard C. Kohls, both of Cambridge.

Other newly elected Defenders are William O'Neil, Jr. of Chagrin Falls, Ohio; Norman Pacun and Norman S. Poser, both of New York City; Bruce M. Ramer of Hackensack, N.J.; Parker D. Thompson of Princeton, N.J.; V. John Tilly of Cambridge; and William L. Craig, 3L of Cross River, N.Y.

The group was selected from among seventy-four applicants after a lengthy screening process, Mr. Keever said.

1955 Conference Report Published

Government Under Law, a collection of the papers, addresses and discussions presented at the Marshall Bicentennial Conference in September, 1955, at the Harvard Law School, has been published by the Harvard University Press. The book, which has a foreword by Dean Erwin N. Griswold, is priced at \$7.50.

Copies have already been mailed to 847 alumni who have placed orders for the volume.

Eight Ames Courts Survive Qualifying Round Competition

A margin of one-half point separated the eighth and ninth clubs in the Ames qualifying round that ended last week. Eight clubs won places in next spring's quarter-final round. One of the eight will become the Ames Competition winner for 1958.

The leading club in the qualifying round was Casner Law, which won all four of its arguments with an average score of 146. In last year's qualifying round, the Casner Law club was the only group that did not lose an argument.

Twelve clubs finished with 3-1 records, and of these the top seven on the basis of point scores were chosen to complete the quarter-final round. The qualifying clubs were Casner Equity (143.875), Gardner (143.75), Chayes (143), Griswold Law (141.25), Langdell (140.625), Griswold Equity (140.375), and Story Equity (139.75).

Semi-formal

The Dormitory Council will hold its first semi-formal dance of the year on Saturday evening in Harkness Commons. The affair will start at 8:45 p.m. and continue until midnight.

Bob Norris' orchestra, a five-piece group, will play downstairs, while a three-piece combo will perform on the upper level. Tickets may be obtained at the door or from members of the Dormitory Council.

Method of Scoring

Scores are calculated for each argument by adding the grade given for the brief to the average grade on the oral of the two team members. The grades given are based on the Harvard Law School grading system. Arguments are judged by three-man courts, which consist of a local attorney, a faculty member and a high ranking third year student. Generally, the student judge has done the most preparation of the case and assumes a leading role in questioning counsel and evaluating their briefs.

Armed Forces 'Squabbles' Are Criticized by Leach

Speaking on Armed Forces unification at the Coffee Hour last week, Professor W. Barton Leach termed the "constant jurisdictional squabbles of the three services" as "unhealthy and unfruitful controversy of the worst sort." When one of an audience of a hundred and fifty students asked about the utility of controversy over weapons, Professor Leach said that contention over weapons and strategy was necessary and fruitful. It is bickering over which service is to use the weapons or wage a particular type of war which courts national disaster, he declared.

Professor Leach, who is a brigadier general in the Air Force Reserve, called the recent decision by Secretary of Defense Charles E. Wilson to leave the army with all weapons and missiles with a range of less than two hundred miles while the Air Force controls longer range missiles, "a time-wasting, face-saving expedient."

Result of Specialization

The military problem, he said, is that men tie their careers to a particular weapons system in a given service, and later find themselves no longer needed when the weapons are transferred to another branch. When battleships were replaced by carriers in World War II, battleship admirals went back to school for a few months and became carrier admirals, all within the same service. But the Army personnel who have acquired irreplaceable skills on missiles with ranges of 200 miles will not be



W. Barton Leach

transferred to the Air Force, he explained. "Our national defense should be organized by functions; as President James T. Killian of the Massachusetts Institute of Technology put it, 'not by the kind of device a man rides in.'"

One uniform, one service, one promotion list for all officers and men will not ignore specialized skills, he stated. A man cannot be a "jack of all trades," and no one expects a warship captain to be able to know the more intimate details of piloting a six-engine intercontinental bomber.

Asked about the service academies, Mr. Leach declared that one of the worst examples of what he was talking about is the Army-Navy football game. He said this should cease, and a combined services team should play Oklahoma. Continuing in a more serious vein, the speaker said that the nation needs three academies with cadets at each receiving the same three-year basic training in all types of warfare followed by two years of specialized training in a particular weapons system.

24 Exams Slated For Mid-January

Although other examinations for second and third year courses have been scheduled for the third week in January, students enrolled in Professor Lon L. Fuller's section of Jurisprudence will be tested on January 9. The examination will consist of a "take-home" essay question, for which forty-eight hours will be allotted.

More conventional examinations begin on Monday, January 14 and run through Saturday, January 19. Twenty-three finals will be administered according to the following schedule:

Monday, January 14, 9 a.m., Conflict of Laws. 2 p.m., Taxation (advanced).

Tuesday, January 15, 9 a.m., Collective Bargaining Law.

Wednesday, January 16, 9 a.m., Corporations II-A. 2 p.m., Domestic Relations A, Introduction to American Law.

Thursday, January 17, 9 a.m., Insurance, Creditors' Rights. 2 p.m., Antitrust Law, Accounting.

Friday, January 18, 2 p.m., Copyright, Legal Problems of Doing Business Abroad, American Legal System (a) (b), Civil Law System.

Saturday, January 19, 9 a.m., Evidence, American Legal History, English Legal History. 2 p.m., Securities Regulation, Jurisprudence (b) (c), Legislation, World Organization.

Committee Studies Alien Injury Code

The advisory committee for the Law School's project to codify the law of responsibility of states for injuries to aliens met here recently to consider a revised draft prepared by Professors Louis B. Sohn and Richard R. Baxter, reporters for the project. The new draft incorporates a number of suggestions made by members of the committee at its meeting last March.

Members of the advisory committee who attended the meeting were Professor Herbert W. Briggs of Cornell University; Professor Clyde Eagleton of New York University; Roger Fisher, LL.B. '48, of the Office of the Solicitor General; Alwyn V. Freeman, LL.B. '33, a consultant of the Senate Foreign Relations Committee; and Quincy Wright, Professor Emeritus at the University of Chicago.

Other Participants

Others who participated were Dr. Yuen-li Liang, sp. '30-'31, Director of the Codification Division of the United Nations Secretariat; D. H. N. Johnson, a member of the Codification Division; and Julius Stone, Visiting Bemis Professor of International Law. Milton Katz, Stimson Professor of Law and Director of International Legal Studies, presided at the meeting.

The preparation of a draft convention on the law of responsibility of states has been undertaken by the Law School to assist the International Law Commission of the United Nations, which is now preparing a codification of this area of the law.

Illinois Law Group To Hold Luncheon

The Harvard Law Society of Illinois will hold a luncheon meeting in Chicago on Friday, December 28, according to George E. Hale, LL.B. '38, president of the society. The meeting, to be held at noon at the LaSalle Hotel, will be attended by members of the faculty who will be in Chicago at that time for the annual meeting of the Association of American Law Schools.

Mr. Hale has invited all students of the Law School to attend the luncheon. There will be a charge of \$3.50 per person, he said.

Puerto Rican Court Organization Model for State Judicial Reform

By A. CECIL SNYDER

Chief Justice, Supreme Court of Puerto Rico

"The several states of the United States are coming to reorganize their courts along lines similar to Puerto Rico. Notably, such a proposal is now being urged by the State Bar Association in Illinois, and a like movement is beginning in Iowa. The complete success of the organization in 1947 speaks for itself. Puerto Rico is to be congratulated on being among the leaders."

—Roscoe Pound, 1956

When Puerto Rico became a Commonwealth in 1952, its new Constitution made sweeping changes in the judicial system. A striking feature of the Constitution is a simple provision: "The courts of Puerto Rico shall constitute a unified judicial system for purposes of jurisdiction, operation and administration."

The Legislature thereupon created a single General Court of Justice. The statute provided that a case is tried where filed, unless one of the parties or the sitting judge objects. If one of the parties or the judge objects, the case is not heard where filed if it was brought in the wrong part or division of the General Court. However, instead of being dismissed as formerly, the case is transferred to the appropriate part or division.

We thus abolished the concept of jurisdiction over subject matter. One result is that years later a party cannot collaterally attack a judgment on jurisdictional grounds. In addition, the simple provision for transfer whenever timely request is made avoids the delay, expense and possible statute of limitations difficulties involved in the former requirement of a new suit under such circumstances.

The Legislature created within the General Court of Justice a trial court known as the Court of First Instance consisting of two divisions, the District Court and the Superior Court. The District Court has the power to try misdemeanors, including traffic cases, and civil cases up to \$2,500. The Superior Court tries felonies, civil cases involving more than \$2,500, and all domestic relations, juvenile, tax, and condemnation cases and probate matters. Parts of the two divisions of the Court of First Instance are located throughout Puerto Rico.

This distribution of trial work was not designed to reinstate all the horrors of problems of jurisdiction. Indeed, to revive them would be to violate the constitutional mandate for integration of the courts. Its only purpose was to lay down some general standards for the orderly disposition of judicial business by indicating what types of cases are usually cognizable in what places and by what judges.

No Juries in Civil Cases

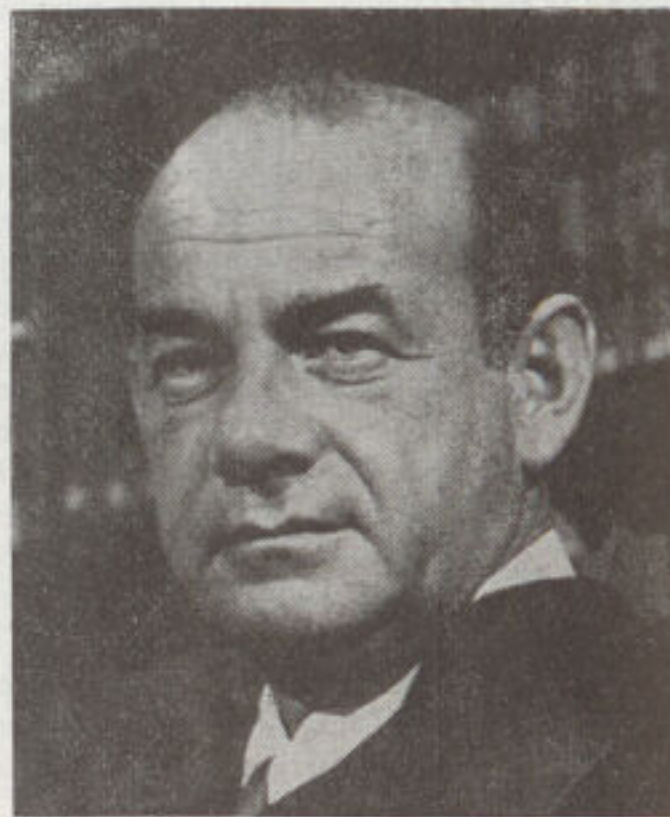
All our civil cases are tried by a judge without a jury. (We have juries only in criminal cases involving felonies.) Also, recently the Legislature established the rule of comparative negligence. Justice David W. Peck of New York and others contend that abolition of trial by jury, combined with the doctrine of comparative negligence, would eliminate congestion in the courts. Our experience confirms this prediction, as our trial courts are abreast of their dockets.

Our Supreme Court consists of seven Justices. It reviews judgments of the thirty Superior Court

judges, including income tax cases. The court also reviews directly decisions of the Industrial Commission, Planning Board, Labor Relations Board, Minimum Wage Board, Sugar Board, Superintendent of Insurance, and Registrars of Property. The decisions of the Public Service Commission and a number of other administrative agencies come to it after review by the Superior Court. The Supreme Court also hears disbarment cases and proceedings to remove trial judges, and has original jurisdiction in mandamus, prohibition and habeas corpus.

The Chief Justice is President of the Judicial Council and individually hears appeals from the Board of Elections. Under the Constitution he presides over the Senate in impeachment proceedings of the Governor and is chairman of a board to revise the senatorial and representative districts after each decennial census.

The President of the United States is empowered to designate a Justice of the Supreme Court to sit in the United States District Court for Puerto Rico if the regular judge is absent, ill or dis-



A. Cecil Snyder

qualified, or if a vacancy exists. Such designations are made regularly. Puerto Rico is thus the only place under the American flag where "state" judges serve occasionally on the Federal bench.

Corollary to a unified judicial system for purposes of jurisdiction is an integrated system of administration of the courts. Here we borrowed freely from New Jersey. Under our Constitution the Supreme Court writes the rules of administration and the Chief Justice is the administrative head of the entire judicial system. He is aided by an administrative director whom he appoints and who serves at his pleasure.

The Chief Justice has the power of assignment and reassignment of trial judges. Reassignment may be upward, downward, or "sideways." This enables the Chief Justice to give relief to overworked judges; underworked judges have their calendars filled out or help to eliminate backlogs in other places. However, our trial judges do not ride circuit. Basically, they stay in their own communities and are moved only temporarily to help out. While we have eliminated specialized courts with all their jurisdictional problems, we still have specialized judges for such matters as tax, juvenile, condemnation and family cases.

Each trial judge is required to make a weekly report of time spent on the bench and cases pending more than 45 days. Together with reports from the clerks of courts, these are tabulated and classified at the Office of Court Administration in a matter of minutes by business machines. The reports combat ergasiophobia and stimulate the judges to avoid delay. Equally important, they furnish the Chief Justice with the information he needs for assignments and reassignments.

The Office of Court Administration assists the Chief Justice in handling all questions of budgeting, personnel, procurement, accounting, space, etc., on a state-wide basis for the judicial system. These functions were formerly performed by the Attorney General. A social service division performs a wide range of services in domestic relations, support and probation. The Chief Justice appoints all clerks of court, deputy marshals, probation officers and the supporting personnel of the courts. The Chief Justice is president of the Legal Aid Society, which is supported by public funds, and renders services in both criminal and civil cases.

The Supreme Court has the rule-making power for criminal and civil procedure. In addition, the Constitution contains a unique provision giving our Court the same power for rules of evidence, which have been drafted with the assistance of Professor Edmund M. Morgan.

Records of Trial

One of our reforms was to abolish the trial de novo on appeal from the District Court to the Superior Court. We had neither the money nor manpower to supply court reporters for the fifty-five District Courts. The Legislature therefore provided that the judge's notes shall be the record on appeal, but mechanical recorders were to be used to take the testimony. The recording is sent to the Superior Court where if necessary it may be used to challenge or supplement the judge's notes.

We know of no other place where the law provides for use of a mechanical recorder in this way. As a practical matter it is waived more than 90 per cent of the time, especially in traffic cases. Since litigation in the district courts seldom involves intricate questions of law, elimination of trial de novo has reduced the volume of appeals more than 60 per cent.

The trial judges are appointed by the Governor subject to confirmation by the Senate for terms provided by law. The Supreme Court Justices, who were formerly appointed by the President, are now appointed by the Governor for life, but they cannot serve until confirmed by the Senate. This contrasts with the recent recess appointments of Chief Justice Earl Warren and Justice William J. Brennan, Jr.

The Constitution contains two unusual provisions. One is that no law shall be held unconstitutional except by a majority of the total number of Justices of which the Court is composed. The second is that the number of Supreme Court Justices may be changed only by law upon request of the Court. This prevents the packing—or unpacking—of the Court.

Retirement of our judges is compulsory at 70, optional at 60, on three-quarters pay toward which the judges contribute 7½ per cent of their salaries. No judge may contribute to a political party, engage in a political campaign or run for a political office unless he resigns his judicial post six months prior to nomination. If a trial court is abolished, the judge serves out his term in functions assigned by the Chief Justice.

Harvard Law Record

RALPH NADER President
ROBERT W. OLIVER Editorial Manager
WILLIAM A. DAY, JR. Business Manager
HENRY J. STERN Associate Editor
WILLIAM L. BLAINE News Editor
JOSEPH A. PAGE Copy Editor
JAMES C. PARAS Advertising Manager
STAFF: Bruce L. Balch, David Benkin, Tim Bornstein, David F. Binder, Frederick H. Condon, John E. Corcoran, Jr., William F. Cottrell, Jerrold K. Footlick, Daniel M. Hall, Bennett B. Harvey, Jr., Jay M. Hollander, William J. Lawlor, III, Edward M. Levin, Jr., Sander M. Levin, James B. Moran, John J. Moss, Michael Mulroney, David Shayne, Howard L. Siegel, Robert M. Spevack, Herbert L. Spira, Berton B. Subrin, Tom Tavenner, Philip Wells, Frederick J. Wethly.

Published weekly on Thursday for twelve weeks of each term by The Harvard Law School Record Corporation, 23 Everett St., Cambridge 38, Massachusetts. Subscription price: \$2.00 per term, \$4.00 per year (24 issues) mailed; student subscription \$1.50 per term mailed, \$1.00 per term distributed at the Law School. Individual copies 10c each at the Law School, 20c each mailed. Business and Editorial Offices, 23 Everett St., Cambridge 38, Massachusetts. Telephone, KIRKland 7-7600, extension 447.

Entered as second-class matter November 19, 1946, at the post office in Boston, Massachusetts, under the Act of March 3, 1879.

Our trial judges receive progressive increases in salaries based on length of service. This novel provision encourages judges to remain on the bench. It also recognizes the principle that an experienced judge does a better job and deserves a little more pay than a new judge.

A word about the body of our substantive law may be appropriate. Our public, penal, labor, tax and corporate laws are drawn largely from state-side sources. Our property, family and contract law have their origin in Spanish civil law. Due to the general nature of the few sections of the Civil Code relating to torts, the Supreme Court has drawn extensively on the common law in spelling out detailed rules.

The civil lawyer takes the position that theoretically the answers to all legal questions are found in the various Codes and statutes. In practice, as in other civil law jurisdictions, our Court fills in the details when questions arise which are not specifically answered in the Codes. Our techniques of writing opinions are much closer to those of common law countries than to the method used in most places where civil law prevails. However, we do not adhere as strictly to stare decisis, particularly where no property or contract question is involved, as do civil law courts.

Opinions are Bilingual

As Spanish and English are official languages in Puerto Rico, our opinions are issued in both languages. Our lawyers and judges are therefore required to be familiar with two languages and the civil and common law.

A new Supreme Court building was dedicated last February. We were proud to have with us on that occasion, as symbols of the streams of history which bring two systems of law together in Puerto Rico, the Chief Justices of the United States and of Spain. Other distinguished guests included Dean Erwin N. Griswold.

The far-reaching changes wrought in the intellectual structure of our judicial system now have their counterpart in this new physical structure. Both are in keeping with our effort to create and operate in Puerto Rico a judicial system which will make the administration of justice rapid, impartial and efficient without impairing the sense of personal freedom and dignity which above all else the courts in a democracy must uphold.

The Commonwealth Status Of Puerto Rico

By RALPH NADER

"History suggests a great diversity of relationships between a central government and dependent territory. . . . One of the great demands upon inventive statesmanship is to help evolve new kinds of relationship so as to combine the advantages of local self-government with those of a confederated union. Luckily, our Constitution has left this field of invention open."

—Felix Frankfurter, 1914

Not until 1950 did Congress consider the challenge explicit in this farseeing statement. At that time Puerto Rico attempted to fashion a political relationship which would satisfy the desire for self-rule and yet provide for an association with the United States which would avoid the serious economic and social repercussions of independence. The Commonwealth status appeared to be an unprecedented development within the constitutional structure of the United States as well as within the history of western constitutionalism. A new dimension of the federal principle was envisioned so as to place the old principle of "unity with diversity" on a new basis—one that could conceivably be a model for dependent areas confronted with the practical penalties of nationalism.

It is significant to examine this new status in the light of its being the first attempt to depart from a territorial policy which has denied Alaska and Hawaii any substantial right of political self-expression. The Puerto Rican experiment may also possess eventual consequences for the statehood aspirations of these two territories. The general question to be discussed, therefore, is whether our policy makers displayed the "inventiveness" referred to by Justice Frankfurter.

From the discovery of the island in 1493

until it was granted autonomy by Spain in 1897, Puerto Rico lay dormant under the absolute and tyrannical rule of military governors responsible only to distant and indifferent rulers of the Spanish regime.

As the ugly duckling of Spain's colonies, Puerto Rico was valued chiefly as a fortification against Caribbean pirates. The island was treated accordingly.

Repercussions of the Liberal revolutions

against Spain in Latin America early in the nineteenth century did more than transform Puerto Rico into an asylum for the fleeing elements of reaction. A consciousness of their common plight and interest quickened among educated Puerto Ricans. A non-violent political ferment, composed mainly of the indigenous elite, resulted in the Autonomic Charter of 1897,¹ which conferred a status similar to that of Canada at that time.

Autonomy and the optimism it generated came just close enough to the Spanish-American war to prevent the exposure of some restrictive political realities unexpressed by the written charter. It rendered the arrival of the Americans less of a political salvation than appeared to the jingoist press of the mainland.

Under the terms of the Treaty of Paris, 30 STAT. 1754 (1899), Spain ceded its sovereignty over the island and recognized the plenary authority of Congress over Puerto Rico. Two years later, the Supreme Court in *De Lima v. Bidwell*, 182 U.S. 1 (1901) held in part that while Puerto Rico was not incorporated into the United States, it was subject to United States sovereignty as a possession.

The legal status accorded the island differed from territories acquired by the United States before 1898. Previously, the sparsely populated and potentially wealthy acquisitions had been organized and gov-

erned for the purpose of eventual statehood. This policy was expressed in all the treaties of annexation. See, e.g., the purchase of Louisiana, 8 STAT. 202 (1808).

However, the islands acquired by virtue of the Spanish war were considered too distant, too densely populated by alien societies lacking experience in self-government, to be subject to the same territorial policy. In order to justify governing these areas differently and thereby satisfy the demands of practical politics developing out of our first major imperialistic venture, the United States Supreme Court, commencing with the famous *Insular Cases*, developed a fine distinction between territories "incorporated" into the United States as an integral part thereof (Alaska and Hawaii) and "unincorporated" territories (Puerto Rico and the Philippines). *Downes v. Bidwell*, 182 U.S. 244 (1901) first recognized "unincorporation" as a judicial concept.

Concepts Distinguished

Incorporated territories have "the potentialities of statehood like unto continental territories," and the United States Constitution fully applies to them. In contrast, unincorporated territories are "not thought of as future states" and "only some essentials, withal undefined, of the Constitution" extend to them. *Granville-Smith v. Granville-Smith*, 349 U.S. 1, 5 (1955).²

A definite determination of what provi-

sions of the Constitution are or are not applicable to unincorporated territories cannot be found in the decided cases. Art. IV § 3, cl. 2 of the Constitution which empowers Congress "to dispose of and make all needful Rules and Regulations respecting the Territory . . . belonging to the United States . . ." was not much help to the courts in this matter.

Precision in judicial terminology never improved on the terms "fundamental" or "essential." This situation opened the door for numerous test cases deciding that the rights to trial by jury given in the Sixth Amendment, *Balzac v. Puerto Rico*, 258 U.S. 298 (1922); indictment by grand jury, *Ocampo v. U.S.*, 234 U.S. 91 (1913); and the uniformity provision of Art. I, § 8 (*Downes v. Bidwell*, supra) are not among the "fundamental" rights.³ The residual area unaffected by these cases was exposed to an uneasy speculation.

The lack of judicial clarification amounted to a substantial suspension of the Constitution as applied to Puerto Rico and the freeing of Congress to exercise its plenary governing power according to the dictates of discretion with the admonition that there were certain limits beyond which Congressional power could not transgress.

Thus, Puerto Rico, an unincorporated territory at least until 1952, had to swallow the bitter pill of judicial inconclusiveness

(Continued on page three)

(Continued from page two)
and, in some eyes, judicial kowtowing to the pressures of political expediency.

The history of Congressional legislation for the island displayed a steady but agonizing relinquishment of power over local matters to the Puerto Rican government.⁴ Congress never assumed the initiative in the devolution of political power. On the contrary, such action as was taken represented overdue responses to the prodings and well formulated demands for increased self-government by organized insular parties.

A Political Irony

That there was a great deal of power to be transferred was made certain by the first organic act, commonly known as the Foraker Act, 31 STAT. 77 (1900). This colonial style enactment transformed into despair the enthusiasm nurtured by the promises of complete self-government under liberal and democratic institutions which were made by responsible Americans. It quickly became uncomfortably clear that Congress had assumed the role of an absolute sovereign and had established a political system without consultation with the people of Puerto Rico. The island was given less freedom and political initiative under democratic America than under autocratic Spain.

The Act did provide for the election of the lower house of the insular legislature by a limited electorate. That was all, however. The Governor (with strong executive powers), the upper house, the Justices of the Supreme Court and other important officials were all Presidential appointees responsible to federal authority. Very few Puerto Ricans held these positions at first and not until 1946 was a Puerto Rican appointed Governor. Congress reserved the right to annul all laws of the legislature. The island was ruled by officials admittedly ignorant of local custom, speech and opinion.

In line with the classification of the Territory as "unincorporated" Puerto Ricans were denied United States citizenship, though their Puerto Rican citizenship entitled them to federal protection. A popularly elected Resident Commissioner having a non-voting seat in the United States House of Representatives provided only a narrow escape valve for the island's political frustration.

The economic portions of the Act, enlarged somewhat by later legislation, continue to the present time. Puerto Rico was placed within the tariff wall, but this advantageous inclusion was limited considerably by quota restrictions on the production and refining of sugar, an industry which has dominated the island's economy.

All federal customs duties collected on imports from foreign countries as well as federal excise taxes collected on insular goods were paid back into the Puerto Rican treasury. United States Internal Revenue laws have not been applicable to Puerto Rico.

This fiscal and economic relationship, justified partly on the lack of Congressional representation, proved a boon mainly to the native economic elite and absentee owners; the populace had to wait nearly half a century before sharing in the benefits. The latent potential which these passive advantages held for economic development continued to await the stimulus of government action.

Federal Policy: The Long Wait

Executive and legislative pronouncements made it plain that autonomous or representative government could not be instituted until Puerto Ricans become educated in the process of democracy.

Informed islanders, although recognizing in part the truth of these statements, resented the repeated Congressional ignorance, indifference, condescension and authoritarianism from which proceeded our Puerto Rican policy. They wondered about the inconsistency between awareness of democratic immaturity and the withholding of a graduated system of self-government without which the people could not receive education in democratic government.

Nevertheless, both Presidents William Howard Taft and Theodore Roosevelt expressed their disapproval of any change in the Foraker Act because, as Mr. Roosevelt put it, "Puerto Ricans do not know enough about democracy." Insular aversion to this paternalism was typically expressed by Luis Munoz Rivera in a memorial to the House of Representatives in

1910: "this doctrine of 'political incapacity' may be properly used by the Romanoffs, Hohenzollerns, Bourbons or Braganzas." 45 CONG. REC. 5087 (1910).

Justly proud of their cultural heritage, they questioned the consistent effort (albeit not openly expressed) at Americanization, especially through the control of the public school system.⁵ Disillusioned, many turned away from the desire for political affiliation with the United States to a romantic separatism or independence sentiment saturated in an inflated love of *patria* with its manifold manifestations.

Influence on Local Parties

Lacking any definite promise as to Puerto Rico's future political development, the impact of the Foraker Act set a pattern for indigenous political behavior which was to prevail until 1940. Several political parties sprang up, each having as its *raison d'être* the achievement of a permanent status for the island, be it independence, autonomy or statehood.

There was an intensified pre-occupation with the status issue to the detriment of any adequate formulations for the much needed economic and social programs for treating the gaping distress of the vast majority of Puerto Ricans. Insular polemics concentrated on launching bitter attacks against cultural dilution and absorption and their subordinate colonial status in general.

It took seventeen years of continuous protest and elaborately drawn memorials

insular legislation and to alter unilaterally the Organic Act. Puerto Ricans still had no voting representation in Congress and no voice in the election of the President, despite the fact that many federal laws and their administration directly or indirectly affected the island.

Practically, the Puerto Rican government exercised power over local affairs comparable roughly to state governments. With a popularly elected Governor, the continuation of Congressional tradition never to revoke an act of the legislature became more meaningful.

A Festering Status

Despite the steady progression toward self-government, Puerto Ricans of all shades of political outlook were dissatisfied. Their dignity was punctured by an inferior legal status which also did not reflect well on the reputation of the United States. They desired to grasp more firmly the reins of political action necessary to cope with the serious social and economic conditions gnawing at human initiative and creativity.

Turning from the traditional emphasis on the status issue, the Popular Democratic Party (PPD), founded by Governor Munoz, began to concern itself with the island's economic problem: the landless plantation worker, the poverty-ridden *jibaros* and the crowded slum dwellers.

To these people the status question was remote and somewhat sterile. More urgent was the submerged but real clamor

amended only through mutual consent rather than unilaterally.⁷ These suggestions were substantially adopted in the PPD's platform in 1948.

Handily winning the insular election by an absolute majority over the combined votes of the Independence and Statehood Parties, the PPD interpreted their victory as a direct mandate in support of the Compact idea. Encouraged by what they considered would be a favorable Congressional response, the Resident Commissioner was instructed to introduce an appropriate bill in Congress.

Provisions of P.L. 600

The result was Public Law 600, enacted by the 81st Congress and approved by President Truman on July 3, 1950. 64 STAT. 319 (1950), 48 U.S.C.A. § 731(b)-731(e) (1952). Recognizing the principle of government by consent, Public Law 600 declared that it was "adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption."

It was provided that the Act was to be submitted to the voters of Puerto Rico for acceptance or rejection and that upon approval the insular legislature was authorized to call a constitutional convention. The proposed constitution was required to have a republican form of government and include a bill of rights.

The Act also provided for the repeal of numerous sections of the Organic Act relating to matters of local government.

necessary to continue requiring information about Puerto Rico as a non-self-governing area under Article 73e of the U.N. Charter.¹⁰

Legislative History Of Public Law 600

What is the meaning of the "compact" created by Public Law 600? This poses a problem of legislative intent. As Judge Calvert Magruder commented: "Something new and important has taken place in Puerto Rico. It is not easy to characterize it in terms that would be accepted as accurate by a political scientist or by an expert in constitutional or international law."¹¹

Some of the general and overlapping questions which Public Law 600 presents are: (1) Can the Federal Relations Statute be amended exclusively by Congress or bilaterally in consultation with the Commonwealth Government, taking into account the island's lack of voting representation in Congress; (2) Does the plenary power of Congress under the so-called territorial clause of Art. IV, § 3 of the Federal Constitution still apply to Puerto Rico; and (3) How much and in what manner was power given up by Congress?

The position of the insular government was that Congress vested in the people of Puerto Rico an irrevocable power of internal government. To this view, the compact implies that relations between Puerto Rico and the United States are no longer matters to be determined unilaterally by Congress but have become subject to consultation between Congress and the insular government.¹²

Search for Meaning

In the absence of any clear statutory expression regarding what was actually relinquished by Congress in Public Law 600, it is necessary to examine briefly the legislative history of the bill to determine the intent of Congress.

In a search for legislative intent we must remember Judge Learned Hand's advice in *U.S. v. Klinger*, 199 F.2d 645, 648 (2d Cir. 1952). He wrote "when we ask what Congress 'intended' usually there can be no answer, if what we mean is what any person or group of persons actually had in mind. Flinch as we may, what we do, and must do, is to project ourselves, as best we can, into the position of those who uttered the words. . . . He who supposes that he can be certain of the result, is the least fitted for the attempt."

It should be stated at the outset that executive and legislative response was overwhelmingly sympathetic to an increase in Puerto Rican self-government. Prompted by the beneficial consequences which the proposed constitution would have on Latin American and world opinion, and mindful of this country's obligations under the United Nations Charter to foster self-government in the Territories, all witnesses from executive agencies gave full support to the bill. Their approval was stated, however, in vague terms.

Members of the Senate and House committees, obviously impressed by Governor Munoz' persuasive powers, repeatedly indicated their sympathy with the proposed legislation and its beneficial impact on insular morale. Further signs of Congressional sympathy are revealed in the selection of witnesses and the fact that the committees did not deem it advisable to conduct hearings in Puerto Rico to elicit all views, as they had done often with respect to Alaskan statehood bills. More self-government was the objective but nothing more specific can be discovered in view of the often admitted ignorance displayed by Congressmen.

No Basic Change Seen

At the hearings, witnesses were in substantial accord as to what would be Puerto Rico's status. Secretary of the Interior Oscar L. Chapman in a letter to the House Committee Chairman said that H.R. 7674 "would not change Puerto Rico's political, social and economic relationship to the United States."¹³ This view was concurred in by the Puerto Rican Resident Commissioner who stated that the bill "would not alter the powers of sovereignty acquired by the United States over Puerto Rico under the terms of the Treaty of Paris."¹⁴ No witness challenged this view.

Both House and Senate Committee
(Continued on page four)



Supreme Court Building, San Juan

to obtain the moderate concessions of the Jones Act, 39 STAT. 951 (1917), 48 U.S.C.A. § 741 (1928). Delay, apathy, the decisive influence of pressure groups and the disposition to compromise for the sake of expediency marked Congressional behavior during the period 1900-1917.

Loosening of the Reins

In this second Organic Act, Congress granted United States citizenship to Puerto Ricans, made both legislative houses popularly elective, and authorized the Governor to appoint all department heads except the Attorney General and the Commissioner of Education. The grant of citizenship which, in *Rasmussen v. U.S.*, 197 U.S. 516 (1905), was relied on by the Court to infer Congressional intent to incorporate the Territory of Alaska, was not deemed sufficient to give Puerto Rico that status.

Section 2 of the Act contained a Bill of Rights for the island which included substantially all the guarantees of the Federal Constitution except a right to trial by jury and to indictment by grand jury. Puerto Rico remained a territory subject to Congress' plenary power.

The Jones Act governmental scheme, with a Washington controlled executive branch unaccountable to and uncoordinated with the elected representatives in the legislature, set the stage for a contest of power between the insular legislative and executive branches. This struggle became a salient feature of the new organization until the era of cooperation ushered in by the appointment of Rexford Tugwell as Governor in 1941.

Federal-insular relations changed little between 1917 and 1947 when Congress amended the Jones Act to permit the popular election of the Governor, who in turn was authorized to appoint all executive officers (subject to approval by the insular Senate) except the Auditor and Justices of the Supreme Court. 61 STAT. 710 (1947), 48 U.S.C.A. § 771 (1952). This right was exercised in the general election of 1948 when Luis Munoz Marin was elected Governor.

However, the President still had the power to give finality to gubernatorial vetoes of bills passed by the legislature. Congress retained the authority to revoke

for something more than survival. Thoroughly campaigning across the island, Munoz and his followers instilled among the people an "awareness of remedy" and elicited sufficient mass support to give the PPD in 1940 control of the legislature which it has never lost.

The experience of the PPD's economic programs made the party view the question of status in functional and realistic terms. The economic disadvantages of the traditional alternatives of statehood or independence had hitherto not been given the considered weight they deserved.

Freedom in the abstract, freedom from freedom to had become a consuming motivation in political circles. What, after all, is the end process of political behavior—the well-being of the populace—was neglected. This emphasis was explicable in terms of the domination of insular parties by members of the small middle and upper classes. Their frame of reference was limited to that unsavory aspect most closely affecting them—namely, a subordinate political status.

The PPD stressed the hollowness of freedom for a people "smothered in a kind of pervading hopelessness." They sought for a new form of association which would give reality to full self-government without sacrificing the existing fiscal and economic advantages so vital to the island's welfare.

The Compact Is Conceived

Thus, in the years 1946-1948, there developed the idea of the "compact" or more generally the commonwealth system—a concept as unique as it has been undefinable. Its theoretical aspects were most completely outlined by Resident Commissioner Antonio Fernos-Isern.⁶

He listed the basic changes needed in the federal-insular relationship, urging that the government of Puerto Rico "be founded on a constitution adopted by the people and that they alone be empowered to amend it; that the federal legislative branch should be confined to action in matters exclusively reserved to the Federal Government as it is in instances involving the states; that the Congress cease in the exercise of its plenary powers; that all these conditions form the basis for a new and bilateral organic pact which could be

After the effective date of the constitution, the remaining sections, which dealt, among other matters, with Puerto Rico's economic relationship with the United States, the extension of applicable federal laws to Puerto Rico, the relationship between the federal and insular judicial systems, and continued non-voting representation in Congress, were to be known as the Puerto Rican Federal Relations Act. 64 STAT. 319 (1950), 48 U.S.C.A. § 731(e) (1952).

The Vote and the Leader

On June 4, 1951 the voters approved the relationship offered by Congress by a vote of 387,016 (76.5% of those voting and 49.8% of the total number of qualified voters) to 119,169 (23.5% of those voting and 15.3% of the total legally qualified voters).⁸

The significance of this election is more difficult to ascertain than a compilation of the figures would indicate. It was clear that the alternatives of statehood and independence were not offered to the voters and thus the election cannot be strictly taken as a repudiation of these alternatives, especially since the PPD took the position that while the Act clearly entailed neither statehood nor independence, it did not necessarily close the door to either one.

In addition, what understanding there was of the impending status among the electorate was derived heavily from the PPD's optimistic explanation of the proposed legislation—an interpretation, as will be discussed presently, which did not accord with Congress' conception or with the statements of the PPD before the Congressional committees.

Finally, it appeared clear that the people voted to some extent for the legislation because of the great popular prestige of its principal exponent, Governor Munoz.

The constitutional convention drafted a constitution which was ratified by the electorate on March 3, 1952, by a vote of 373,594 to 82,877.⁹ The President then submitted it with his approval to Congress which, with some important alterations, approved it in H.J. Res. 430, 66 STAT. 327, on July 3, 1952. Early in 1953 the United Nations, after notification by the United States of the enacted legislation, considered it no longer

(Continued from page three)

reports explaining and recommending the passage of the bill adopted similar positions. The Senate report stated: "It is important that the nature and general scope of S. 3336 be made absolutely clear. The bill under consideration would not change Puerto Rico's fundamental political, social and economic relationship to the United States."¹⁵

Debate on the bill was restricted to the House—the Senate approving without debate. Although ambiguity and misunderstanding characterized some Representatives' statements, the consensus was that Congress was not altering the fundamental status of the island. The bill passed.

Impact of Witnesses

Congressmen in both Houses leaned heavily on the judgement of the members of the committees conducting the hearings. These members in turn received the most thorough explanation of the proposed bills from Governor Munoz and the Resident Commissioner, Fernos-Isern. It was this derivative nature of legislative formulation that impeded the committee members from arriving at an independently considered and clear judgement of the true import of what they were doing.

At this point, the action of Congress could be taken to mean that that body would respect and not interfere with local governmental authority but that the power of intervention should the occasion arise still remained in Congress. The statements of persons interested in and responsible for the Act strongly indicate that they did not think Puerto Rico was being changed from a territory to some other political entity despite the addition of the word "Commonwealth" to Puerto Rico's official name.

After the insular approval of Public Law 600 and the drafting of the constitution with its subsequent endorsement by referendum, President Truman recommended its early affirmation by Congress. During this phase of Congressional deliberation, three episodes emerge as most significant to our general inquiry.

Basic Questioning

First, the portion of the Senate hearings centering around the searching questions of a skeptical Senator, George W. Malone of Nevada. The Senator wished to know whether Congress was about to relinquish its unilateral power over the federal-insular relationship should the constitution be approved. He drew the following reply from Irvin W. Silverman, Chief Counsel for the Office of Territories in the Department of the Interior:

"We now solemnly enter into a compact with the people of Puerto Rico. It would be in the nature of contractual obligations. It is our hope and it is the hope of the Government, I think, not to interfere with that relationship; but nevertheless the basic power inherent in the Congress of the United States, which no one can take away, is in the Congress as provided for in Article IV, Section 3 of the Constitution of the United States."¹⁶

Senator Russell B. Long of Louisiana then asked Mr. Silverman if Congress would still be able to annul laws passed by the Puerto Rican legislature. His reply again was quite clear: "I would say basically that there would be the

power. There is nothing that can remove any bit of the power that is in the Congress of the United States."¹⁷ Chairman Joseph C. O'Mahoney of Wyoming reiterated his position stated previously in the hearings: "Congress has the right to make all needful rules and regulations governing the Territories. Nothing that we can do can take that power away."¹⁸

Subsequent ambiguous statements during the hearings could reasonably be attributed, within the context of the above statements, to a confused mixture of the moral and legal commitments of Congress not to interfere with the proposed relationship. In expressing the moral viewpoint, the chairman and witnesses were reflecting a Congressional tradition: Congress in the past had never once annulled an act of the insular legislature.

Treatment of Constitution

The second significant occurrence was the fate dealt Sections 20 and 5 of the constitution's bill of rights. Section 20 recognized the existence of numerous human rights similar to those contained in the Universal Declaration of Human Rights, such as the right of every person to receive free elementary and secondary education, to obtain work and an adequate standard of living. These rights were not meant to be legally enforceable but were intended merely as an expression of aspirations which the people and insular government were pledged to promote.

The Senate report recommended deletion, employing the argument that it was "unrealistic, confusing and misleading" to assert such unenforceable rights in a constitution. This rationale only clothed the real reason for rejection which was the prevailing Senatorial belief that these rights were "socialistic."¹⁹

Also recommended was an amendment to section 5 which provided for free compulsory instruction in public elementary and secondary schools. In substance, the amendment safeguarded the free operation of private schools, and was based on groundless apprehensions only explicable in terms of an overweening paternalism.

The Senate Report's view of sections 20 and 5 was subsequently adopted by both Houses of Congress. These alterations in the insular constitution resulted in the imposition of further conditions for Puerto Rican acceptance before Congressional approval. This actually meant that a second "compact" was offered, even though Puerto Rico had fully conformed to its part of the first compact.

In view of this development how can the principles of consent and self-government recognized by the report be reconciled with the obvious exercise of a plenary reviewing power by the Committee which resulted in the treatment accorded sections 20 and 5? A harmonizing of these seemingly opposing views is possible only if Congressional approval required by Public Law 600 is taken to mean full authority to modify or alter the Puerto Rican constitution.

Such an interpretation would require the assumption that the Puerto Rican people consented to an unlimited Congressional review of their constitution. Insular officials deny this, of course, and maintain that they merely agreed to these additional conditions, thus imply-

ing that they could have rejected these conditions as evidenced by their vigorous dissent against the Johnston amendment requiring Congressional approval of insular amendments to their constitution.²⁰

Further Parting of Views

Be that as it may, it does not touch the issue of Congressional intent. The Senate Committee report stated that federal authority was not to be reduced by amendment to the constitution. In the absence of any direct reference in the report to the power of Congress to annul insular legislation or unilaterally to modify Public Law 600 and the constitution, the maintenance of that authority can be implied strongly from the fate of sections 20 and 5. The shift from the 81st Congress' view that the constitution be treated as unitary whole to the 82nd Congress' broader conception of its reviewing power resulted in a further divergence from the Puerto Rican government's understanding of the compact.

Debates Evidential

The third major reflection of Congressional attitude is contained in the House and Senate debates which even-



Calvert Magruder

tually resulted in the approval of the constitution subject to the alterations proposed by the committee reports.

The House record was replete with confusion, misunderstanding and meandering. However, what definite statements were made consisted of the following: (1) that Congress had power to strike out or amend sections of the constitution. This power was not challenged though its desirability was.²¹ Even Resident Commissioner Fernos-Isern accepted the existence of Congressional power when he agreed to the proposed amendments of the House Committee; (2) that the constitution had to operate within the framework of the Federal Relations Act, the Federal Constitution and federal laws.

Whether Congress retained power to annul amendments to the insular constitution was not decisively answered. The issue was answered on a more

general level, however. There was not a single endorsement in the entire debate of the view that Congress was granting an irrevocable delegation of authority to Puerto Rico similar to a grant of statehood or independence. A general mood against this permanent abdication of power can be culled from the remarks and inquiries of the Congressmen.

The Meader amendment to the House Resolution approving the constitution, stipulating that Congress was not indulging in an irrevocable delegation of power granted by the territorial clause, was rejected, but not on the grounds that the opposite was true. The presence of a strong paternalistic strain throughout the debate tends to militate against a House intent irrevocably to release its power over Puerto Rican internal affairs. Praise by Congressmen of the traditional non-intervention by Congress only had relevance to future prediction of that body's ethical behavior toward Puerto Rico.

The Senate debate considered the same amendments proposed and accepted by the House.²² Three amendments were offered of which two were rejected. The other was the aforementioned Johnston amendment, which was accepted along with the House amendments by the Senate.²³

Senate debate on these amendments points strongly to the conclusion that the Senate conceived Public Law 600 as granting it an unlimited reviewing authority to modify or alter the constitution at will. Also, no speaker explicitly recognized an irrevocable grant of authority, while there were several distinct assertions to the contrary.²⁴ Again the prevailing mood was paternalistic.

On Whom the Burden?

The burden of proof would seem to rest on those who assert Congress permanently abdicated its Constitutional authority. It is not necessary to declare revocability. In none of the debates was this burden met either by specific expression of intent or overall general mood.

A weighing of Senate attitudes indicates that in instances which seriously run counter to Senatorial conception of political propriety, paternalism and not respect for self-government would have dominated its decision.

The Senate's adoption of the Johnston amendment necessitated a joint conference to resolve the differences between the enactments of the two bodies. The compromise which was achieved resulted in the rejection of the amendment in favor of a requirement that Puerto Rico respect perpetually the Congressional decision on sections 20 and 5. To section 3 of Art. VII of the insular constitution was added: "Any amendment or revision of this Constitution shall be consistent with the resolution enacted by the Congress of the United States approving this Constitution, with the applicable provisions of the Constitution of the United States, with the Puerto Rican Federal Relations Act, and

with Public Law 600, Eighty-first Congress, adopted in the nature of a compact."

But the scope of Puerto Rico's power to amend the constitution within these limitations was not directly answered. If the distinction is made between what is ethically desirable and what is legally operative, the treatment accorded Public Law 600 in Congressional deliberations point to an ethical recognition of Congressional restraint.

Restrictive Retentions

Indicatively, the Federal Relations Act preserves some provisions of the old Organic Act which are contrary to principles of local self-government. Retained, for example, was the limitation on public indebtedness of Puerto Rico and municipalities to fixed percentages of the aggregate tax valuation of total property, 64 STAT. 319 (1950), 48 U.S.C.A. § 745 (1952). There also remained the qualifications for Puerto Rican citizenship, 64 STAT. 319, 48 U.S.C.A. § 733(a) (1952).

The practice of Justices of the insular Supreme Court to substitute for absent District Court Judges together with the appellate jurisdiction of the United States Court of Appeals for the First Circuit over the Puerto Rican Supreme Court, imply that the insular court is still part of the federal system. These provisions may be described as anachronisms and legislative oversights which will soon be corrected. Nevertheless, their retention suggest that Congress was far from thinking that it had granted irrevocable power to Puerto Rico.

Professor David M. Helfeld in his study of Public Law 600 came up with the following conclusion regarding the constitutional status of Puerto Rico:

"Though the formal title has been changed, in constitutional theory Puerto Rico remains a territory. This means that Congress continues to possess plenary but unexercised authority over Puerto Rico. Constitutionally, Congress may repeal Public Law 600, annul the Constitution of Puerto Rico and veto any insular legislation which it deems unwise or improper. From the perspective of Constitutional law the compact between Puerto Rico and Congress may be unilaterally altered by the Congress. The compact is not a contract in a commercial sense. It expresses a method Congress chose to use in place of direct legislation. Through Public Law 600 Congress delegated a part of its legislative power to the people of Puerto Rico. That delegation involved filling in the details of a framework created by Congress. . . . Constitutionally, the most meaningful view of the Puerto Rican Constitution is that it is a statute of the Congress which involves a partial and non-permanent abdication of Congress' territorial power. . . . There appears to be neither evidence of intent nor a Constitutional basis for arguing the permanence or the bilateral character of the compact."²⁵

A careful scrutiny of the hearings, re-

(Continued on page five)

TONIGHT AT 7 P. M.!

the harvard dramatic club's one-hundredth production

HAMLET

In The Arena At Sanders Theatre

Running tonight and Dec. 14 through Dec. 19.

tickets at the Coop, Phillips Brooks House, or call KI 7-3734

Duncan Mac andrew
SINCE 1888

Merchant Tailor
and
Importer

HARVARD SQUARE

Mainland Ties Are Key to Expanding Island Economy

To place the existing political relationship between Puerto Rico and the United States in a broader and more meaningful perspective it is appropriate to examine briefly the economic and social changes on the island. For if the welfare of the populace is the test of a political system, then it is in this context that our evaluation of Puerto Rican development should be viewed.

During the period of Spanish rule and for the first forty years of United States sovereignty, Puerto Rico was in the throes of the vicious circle of poverty. Present were all the characteristics of a subsistence economy—chronic unemployment and underemployment, a high death rate, disease, malnutrition, illiteracy and miserable housing.

Adding to this distressing situation is a niggardly natural endowment. About two-thirds the size of Connecticut, the island is without coal, iron, oil and other raw materials necessary for industry. The fact that less than half the land area is arable has severely limited the productivity of agriculture in an economy heavily dependent on that industry. Sugar was the life blood of the economy, and Puerto Ricans ate or went hungry in proportion to the ups and downs of that crop.

With such a sick and stagnant economy, living conditions were further depressed by a rapid population growth. Population density erupted from 280 per square mile in 1900 to 653 by 1954—one of the highest densities in the world. The tiny island teems with over two and a quarter million people, a figure given fuller significance when related to the low productivity of the economy. A similar density in the United States would equal three-fourths of the world's population.

Pivotal Year

The year 1940 marked the turning point in Puerto Rico's economic fortunes. An active program of economic development was started under the leadership of the present Governor Munoz Marin and his Popular Democratic Party. Since that time marked improvements have occurred in practically every socio-economic field. The Government's program of health education and the application of modern sanitation methods were instrumental in producing a decline in the death rate from 18.4 per thousand in 1940 to 7.7 per thousand (lower than the United States) in 1954. At the same time, life expectancy rose from 46 years to 61 years.

Enrollment in improved and expanded educational institutions increased from less than 300,000 in 1940 to almost 600,000 in 1954. During the same period insular Government expenditure for education rose from \$7 million to \$38 million annually and today constitutes about one-third of the total budget.

Much progress has been made in housing through large-scale slum clearance and some of the largest public housing projects in the world. Electric power facilities have been greatly enlarged with

production rising from 174 million kilowatt hours in 1940 to 735 million in 1952. Transportation, communications, water supply and sewerage have also been continually expanded and improved.

Broad Government Approach

The insular Government's attitude toward economic development reflects a remarkable breadth and foresight unhampered by a rigid economic ideology. This approach has enabled the fashioning of programs to meet the challenges and needs posed with a maximum of rationality and flexibility.

Implicit in government policy is a sensitive awareness of the meaning of "total welfare." It is realized that while economic welfare constitutes an important index of total welfare, the concepts are by no means synonymous. Consequently, insular officials, as well as many citizens, are acutely aware of the social repercussions of economic development and the manner in which material changes are modifying, destroying or creating values and patterns of living. Summed up, there is the feeling that material gain often entails a loss in the realm of the intangible which comprises so much of the total happiness of a society.

The dilemma is a very serious one though it is difficult for Americans to appreciate, not having experienced such a severe jolt from the old to the new. The dilemma has also been exaggerated and over generalized. Nostalgic expression for the past is often the swan song of the old elite and their articulators who mourn for the days when hierarchy was virtually frozen.

For if one specifically analyzes many of the values now giving way, there would probably appear among them the autocratic and repressive traditions of a Hispanic society.

It may be suggested that much of the frustration which psychologists find prevalent among the populace is more a reflection of not having adjusted to new conditions rather than a longing for the receding past. As an optimum, cultural traits should be evaluated in relation to their contribution to the development of individual and collective potential rather than be rejected or accepted on the criterion of their being "Spanish" or "American." Such an approach, however, is easier to talk about than to follow and therein reigns the problem of cultural adjustment.

The question remains crucial not in the sense of two calcified alternatives but rather as a challenge of developing remedies to cushion the inevitable shock of rapid social transition.

Welfare Orientation

The second characteristic which can be drawn from insular economic programs is a recognition of the distinction between mere economic growth and economic progress. To insular officials, economic progress implies not only an increase in productivity and aggregate income but also an economic system that promotes a

more suitable and stable distribution of this production. The assignment then becomes one of striking a balance between social welfare and encouragement of economic investment.

With this conception of its responsibilities, the government has developed its program from a comprehensive back-



Luis Munoz Marin

ground of expert knowledge and practical research. Administration organization has succeeded measurably in transforming administrative theory into practice best expressed in the oft-repeated phrase—"things get done in Puerto Rico." The highly centralized nature of the government, enhanced by severe party discipline and a strong, prestigious Governor, has made efficiency the rule and quick implementation of programs the norm, though at the expense of not encouraging local initiative.

The quality, enthusiasm and prestige of the emergent administrative corps is high and draws the best talent of university graduates. Most government workers exhibit the characteristics of the ideal public servant: competence, incorruptibility and a readiness to embrace innovation with a real passion for perfection.

Planning has been the signpost of insular activity. Planning, but not control, for the government has functioned as the economic midwife to the birth of new industry rather than as the chief owner or financier. The Government, clearly committed to guided change, does not wait for the compulsive force of urgency but actively seeks out the ills of pervasive poverty.

The Problem in Outline

The economic development program of the Commonwealth is based on a recognition of the following simple facts. Agriculture, while deserving of more attention than it has received, can offer productive and remunerative work for only a small portion of the labor force. Expansion of the agrarian population has necessitated the cultivation of submarginal land. To reduce this mass disguised rural unemployment, industrialization is need-

ed. The shift of labor from agrarian to industrial pursuits will in turn pave the way for a more efficient agricultural industry with a higher per capita output.

Such objectives required the energetic hand of the government. Insular entrepreneurship was inactive; the wealthy preferred to invest in land or in the United States. Production had to rise quickly so as not to be outpaced by population growth. Sweatshop industrialization was to be avoided. For a poorly endowed economy to cover centuries in years, waiting upon local initiative would have meant indulgence in a disastrous luxury.

Tax Exemption Spearheads Drive

The challenge was assessed and met by a program colorfully called "Operation Bootstrap," designed to promote and aid industry. Toward this end the Government has offered various inducements to stimulate expanding mainland industries to locate on the island. These incentives have included tax exemption, industrial services, provision of factory buildings, vocational training and other forms of assistance. Runaway industry is strongly discouraged and does not qualify for tax-exemption. Puerto Rico wants only to receive its share of the nation's industrial growth.

Results have been impressive and encouraging. Since 1947, some 450 plants have been established. They have diversified the island's economy and have created direct and indirect employment for about 70,000 workers who provide support for 250,000 persons or 11% of the population.

A significant trend recently has been the arrival of heavily capitalized and more stable industries possessing a potential for lasting benefit to the island. This shift should allow the government to be more selective in its industrial promotion thereby reducing the number of "fly-by-nights" bent on a quick ten year tax-exempt killing.

Success Breeds More Success

Another promising prospect is the multiplier effect of the program. As new firms become firmly established, there is greater attraction for additional investment stemming from a greater confidence among mainland entrepreneurs in the industrial possibilities of the island. In addition, some industries have been attracting satellite or ancillary plants. In general the investment climate in Puerto Rico from the viewpoint of profit, abundant labor and official assistance and incentives is excellent.

Aided by a recent drop in the birth rate plus a large migration rate to the mainland, the population has remained fairly constant, thus preventing dissipation of economic gains.

All major groups of the community have shared in these advances although some critics believe that the government has been forced to compromise somewhat its welfare program and labor's share of insular income in order to maintain in-

ducements for mainland industry.

However, per capita net income has increased from \$122 in 1940 to \$480 in 1955 with an 80% rise in purchasing power. This level is higher than most Latin American countries but is only half of the per capita income of Mississippi—the poorest state in the Union. Another impressive indicator is the five-fold increase since 1940 in the two-way trade between the mainland and Puerto Rico.

Sobering Facts

Much of the groundwork has been laid. But optimism about the future should be tempered by a realistic consideration of the obstacles. A singularly important fact is that long neglected agriculture still contributes nearly as much to the insular income as does manufacturing. Evidences of poverty in urban slums and rural areas are all too prevalent.

The distribution of income points to a society largely polarized into opposite extremes. The average family income in 1950 was \$958 but 70% of the families had an income of less than \$1000 and 46% received less than \$500. Only 2% of the families had an income of over \$5000.

As of mid-1956 there were over 80,000 unemployed out of a labor force of 650,000 with many more workers underemployed. The pressure of people thus far alleviated by migration requires the treatment of an organized and adequately financed birth control program.

A high propensity to consume and conversely a disinclination to invest in productive enterprises is widespread. Recently, however, the government has increased import duties on luxury items in an effort to divert some local capital from consumption to investment.

Finally the continued success of industrial development is extremely dependent on a prosperous mainland economy from which flows the capital and entrepreneurship and to which migrate thousands of Puerto Ricans.

Spirit Supreme

The insular Government, which is usually more aware that its critics of deficiencies in its policies, is alert to these obstacles. The magnitude of the task before the Puerto Rican people underlines the importance of a continued close relationship with the United States. Puerto Rico compensates for its lack of natural assets by the quality of its political leadership, the energy of its people and the crucial economic ties to the mainland. The Puerto Rican operation is rapidly becoming a laboratory for thousands of foreign observers and students from underdeveloped countries, to inspect and learn how a democracy can work and work fast to transform a once poverty-stricken land to one of promise and performance.

Most important, what is the dynamic key to progress—the will to develop—is possessed by the commonwealth community. Hope has conclusively and rampantly replaced despair.

(Continued from page four)
ports and debates which formed the raw materials for his study compel agreement with these findings.

Wrong Approach

Had Congress intended to grant a perpetual abdication of its power under Art. IV, § 3, it is difficult to justify the method chosen to attain this objective since one Congress cannot bind a future Congress in matters of domestic exercise of power. There are only two Constitutionally sound approaches to a perpetual abdication—the granting of independence to Puerto Rico followed by a bi-national treaty or by Constitutional amendment.

The tests of intent or Constitutional validity are not the only perspectives for viewing the allocation of power between the United States and Puerto Rico. The legal right to exert such power is to be distinguished from the probability of its exercise. Two pertinent questions arise in this context: (1) what the actual allocation is, and (2) what impact Constitutional status has on this actual division of power?

Public Law 600 as the most current manifestation of the steady increase in local self-government, did have some important practical consequences. Puerto Ricans now possess a constitution of their own creation and are governed by locally appointed or elected officials responsible to the people.

Some additional local authority was assumed when Congress repealed numerous sections of the old Organic Act.

Despite some limitations contradictory to self-government left in the Federal Relations Act, the insular government has authority over local affairs roughly comparable to a state of the Union.

Policy Factors

The sound ethical, economic, military and diplomatic considerations which formed the basis for past Congressional restraint are even more pertinent today. How nations view our treatment of dependent areas obviously has attained great importance in terms of cold war psychology. Puerto Rico annually purchases about a half billion dollars in goods from the mainland and thus contributes in some measure to a high level of employment in this country. The island, an important military base, contributes its share of manpower for our armed forces.

Furthermore, recent economic advances in Puerto Rico are being heralded as vibrant examples of progress in an underdeveloped area which faces problems similar to those afflicting over half the world. This is in contrast to previous periods when all that was attempted was to ensure that the Puerto Rican situation would not smudge us with imperialistic accusations.

These factors taken together show that Puerto Rico is serving our policy objec-

tives, our national ideals and our strategic and economic interests too well to render likely any interference in local affairs. Capricious, regressive action by Congress would undoubtedly jeopardize these national interests and produce a violent reaction in Puerto Rico, probably taking the form of a petition for complete independence.

In summary, within the inner limits on local authority the insular government has real leeway. The social and economic legislation of the past two decades could not all have met with Congressional approval as national legislation, yet there has been no interference from Congress.

Twilight Zone

At the frontiers of local authority, however, somewhat less than speculative grounds for federal involvement are the insular enactments or constitutional amendments which, although adaptable to local conditions and philosophy, may not be treated favorably by a conservative Congress.

The division of power between federal and insular governments is likely to breed conflict; for example, whether the Mann Act applies internally to Puerto Rico or the co-existence of local labor regulations with certain provisions of the Taft-Hartley Act. Neither the courts nor Congress has answered the question whether acts of Congress have ceased to have greater ap-

plication to Puerto Rico than to the states of the Union because of Public Law 600.²⁶

Puerto Ricans are not rendered any more secure by their lack of voting representation in the enactment of federal laws applicable to the island. The federal sugar quota, one example of discriminatory treatment of Puerto Rico, is a serious enough economic matter to be a principal argument for statehood proponents.²⁷ Federal policies can seriously hinder as well as aid or neutralize insular policies, especially in the economic sphere.

Referring to this situation, Professor Carl Friedrich writes: "Such limitations constitute . . . a very serious infringement of the principles of 'government by consent' unless the idea of 'generic consent' is extended to include all past and future legislation of Congress. This kind of 'generic consent' . . . is usually considered by students of constitutional law as precisely the opposite of 'government by consent.'" (my tr.)²⁸

Second Phase of Development

It is not surprising, therefore, that the Commonwealth government (as well as opposing parties) is dissatisfied with the present status and envisions a second phase of the Commonwealth's development. This discontent is reflected in recent messages of the Governor to the Legislature.²⁹

Representing the dominant PPD, the

Governor interprets the Commonwealth status as constituting a change in the basis of the federal-insular relationship which is no longer the product of unilateral decision but of common consent. Believing the best way to achieve the permanence of a political status is to avoid making it immutable, he favors an evaluation of the terms of the relationship which would consist of a revision of the Federal Relations Act.

Only Essential Functions

In an address at the University of Kansas City in April, 1955, Governor Munoz defined his position this way: "All that restricts the authority of Puerto Rico in Puerto Rico without any appreciable advantage to the Union and without being essential to the principle of association through common citizenship, should be in some proper manner at some proper time removed from the compact."

Those functions deemed essential to permanent association on the basis of common citizenship are a common market, quota arrangements, wage standards, defense, currency, the formulation of foreign political affairs and treaties, a common postal system, and tariff and immigration policy (the latter two with some exceptions).

Referring to the lack of participation by Puerto Rico in enacting federal legislation (Continued on page six)

(Continued from page five)

affecting the island, he envisages the enlargement of the exercise of "specific consent" to supplant the present "generic consent" implied in the referendum approving Public Law 600. Thus "Puerto Rico would not influence legislation to be applied to the citizens of all the states, but its duly elected representatives would locally participate effectively in all [federal] legislation that their constituents must comply with . . . Since participation in the making of all applicable laws is a principle that cannot be ignored, it seems that the seeking of an appropriate formula clearly belongs on the agenda of the future."

The Governor favors a listing of each federal function essential to association by *ad hoc* drafting of the Federal Relations Act. The remaining federal functions and legislation not essential to association would be extended to Puerto Rico at the Commonwealth's request or with its own specific consent in each instance. Such a law, in his view, should contain an explicit acknowledgement that the compact can be changed only by mutual consent, a recognition of the island's right to freedom from interference in the management of its internal affairs as well as a recognition of Puerto Rico's right to amend the Constitution unilaterally. The political mechanism by which insular consent is to be expressed presents formidable problems and has not yet been clearly conceptualized.

Unlike the irrevocable nature of statehood or independence, the Commonwealth concept is a dynamic status capable of growth to adapt to present and future realities. It can lead to independence or statehood, though the PPD clearly desires none of these alternatives mainly because (and this is frankly admitted) commonwealth status holds more potential for freedom than statehood, and more meaningful freedom than independence with its economic liabilities.

Some of the changes advocated are of an external nature. For example the insular government wishes to establish procedures whereby it could share in the negotiation of commercial treaties affecting the island when such treaties, designed to serve mainland conditions, would work hardships in their application to the island. This would allow Puerto Rico to depart from those regulations in certain specific areas and work out her own tariff arrangements without jeopardizing mainland interests.

Justification for Change

The rationale underlying this development was well stated by the Governor when he wrote ". . . that where important cultural differences exist, such as language and historical background, the smaller unit should not participate in the government of the larger one, nor the latter wish its laws to rule in the former unless agreeable locally in each case, or contained in the basic instrument of Association as essential to its nature. Thus there would be not only 'no taxation without representation' (as now), but also no legislation without representation—and without disturbing the composition of Congress. Taxation, after all, is not the only thing in the world that may require representation for legitimacy."⁸⁰

What the PPD-controlled insular government means is that it does not wish a portion of the legislative philosophy of Congress, operating and reacting to a different historical and socio-economic base, to apply indiscriminately to Puerto Rico. The economic problems of the Commonwealth demand more drastic legislation in type and scope than those of the mainland. Democratic systems must react differently to dissimilar situations within their jurisdictions.

Implicit in their position is a strong awareness of traditional Congressional delay, indifference and absorption in problems of greater moment. An additional spur are developments among British and Dutch possessions in the Caribbean who are on the verge of achieving broad autonomous powers. Finally the desire to attain the second phase of Commonwealth development reflects a submerged uneasiness as to the meaning of Public Law 600 despite official proclamations to the contrary.

The political changes suggested by the PPD may appear to constitute a status which receives all the advantages of the federal-insular relationship without a commensurate sharing of the responsibilities, a more enviable position than any of the 48 states. But comparing Puerto Rico with the states is not quite accurate if we re-

cognize the totally unique and unprecedented political structure envisioned. It is a challenge to the most traditional and hallowed tenets of Constitutional law. To achieve an equitable balance, insular officials consider that should these proposals materialize, Puerto Rico will contribute a fixed sum to the Federal Treasury proportionate to the growth of insular income.

Division Remains On Status Issue

As shown by the voting support of the other two major parties—the Independence Party and the Statehood Party—a substantial minority of the population is dissatisfied with any form of the Commonwealth status. (In the recent elections, the PPD polled roughly 440,000 votes to 170,000 for the Statehood Party and 91,000 for the Independence Party, a result similar to the 1952 elections as far as the PPD's absolute majority is concerned). Even within the PPD there is strong independent sentiment held in bounds only by the overpowering leadership of Governor Munoz.

It is not accurate to say that all those voting for the PPD are in favor of the present status. Many Puerto Ricans, especially in the rural areas vote for the man rather than the platform. Munoz Marin's personal pull and influence over the people borders on charisma.

In view of this substantial division of opinion, it is worth examining the alternative political solutions of independence and statehood.

Independence

Congress has repeatedly expressed its willingness to grant independence if the people of Puerto Rico should so desire.⁸¹ Largely insensitive to the possibilities for new forms of political association, Americans tend to regard independence as the only free alternative to a semi-colonial status. There is also the belief in some quarters that independence would prove to world opinion the anti-colonial policy of the United States.

Congressmen who dislike the flow of Puerto Ricans to the mainland and deplore federal expenditures on the island can be counted on to support independence if the occasion should arise. In this circle also are labor leaders from depressed areas, who fear runaway industry, and domestic sugar producers competing with Puerto Rican sugar. Finally, the terroristic activities of the tiny Nationalist Party have had a disproportionately large adverse impact on public opinion.

In Puerto Rico, the Independence Party maintains that ties of an economic and cooperative nature can be continued for a while with the United States as in the case of the Philippines. Their main argument, however, is not of a material character. Rather they place the free preservation of their culture and the establishment of their national political identity higher in the hierarchy of values than economic considerations.

Their critics stress the hollowness of a freedom to be poverty-stricken, the unreality of independence for any small nation, especially in the Caribbean, the fact that Hispanic culture can be preserved without going to the extreme of independence and finally that the majority of the people do not wish it.

In contrast to the 1952 election results, the Independence Party's electoral support was nearly halved to 91,000 in 1956 or less than one-seventh of the total votes cast.

Statehood

Statehood for Puerto Rico faces a strong obstacle in Congress and probably among important segments of the public. Judging by the resurgent opposition to Alaskan and Hawaiian statehood by some important Congressional leaders despite the implied promise of statehood to incorporated territories, Puerto Rico, with its greater cultural distinctiveness, possesses in more extreme form many of the conditions hindering Alaska and Hawaii in their quest. From the mainland viewpoint, the chances for Puerto Rican statehood are remote.

The Statehood Party bases its arguments on political and economic grounds. Statehood, they maintain, is the only way to give permanence to that association with the United States which the people want and which is necessary for the island's welfare. Most important, it will provide a voice in Congress.

Although appreciating the transitory disadvantages in statehood, the economic objections to that status are denied. It is believed that while statehood would entail the payment of federal income and excise taxes, this loss would be more than offset

by larger social security benefits, grants-in-aid and the end of sugar quotas.

They are, furthermore, fearful of a change in Congressional attitude once Puerto Rico reaches an economic level comparable with the mainland without sharing in the financial burdens of the nation. Interpreting Public Law 600 as not changing basically their territorial status, they are uneasy at what seems to them to be a nebulous status.

A thorough analysis of the economic implications of statehood has yet to be undertaken.⁸² Any conclusions in such a study would be limited by their dependence on the assumed passage of legislation and on variables incapable of precise measurement such as the effect on the flow of mainland capital. It is reasonable to conclude, however, that with each passing year of economic growth the economic case for statehood will become stronger. Even now the arguments have much to be said for them.

Criticism of Governor

Opponents accuse the Governor and the PPD of continually misrepresenting the meaning of the Commonwealth status. They charge that he deliberately and continuously confuses the moral and legal commitments of Congress and has succeeded in giving Puerto Ricans a distorted and untrue picture of what Public Law 600 achieved.

Indeed, the ambiguous and evasive nature of the testimony of the Governor and his associates before the Congressional committees has considerable significance. Why did he not make clear in his testimony what he desired and expected Public

Law 600 to produce, namely, an irrevocable abdication of plenary power and the end of unilateral Congressional action with respect to insular affairs? This was his position both before and after passage of the legislation.

There are at least two possible explanations of this behavior. First the Governor could have felt that candid testimony would have appeared too radical to the Congressmen and would thereby have endangered the entire legislation. If such a position was to be taken it was best that the statements come directly from the committee members themselves. This apprehension of upsetting the apple cart still prevails and will probably delay for some time the introduction of the "second phase" of Commonwealth development discussed previously. The Governor implied this postponement in a post-election speech last month.

There are numerous instances in English constitutional history where changes have come about through custom and usage rather than by enactment. Rather than hazard a legislative redefinition and clarification of the Commonwealth relationship presently, the Governor probably feels that the Act and its history contain sufficiently vague, confusing and sympathetic statements which, together with the passage of time and a promising judicial interpretation of some issues, might come to constitute a *fait accompli* like statehood or independence.

It may be contended that since there are instances which amount to a *fait accompli* pursuant to legislation, the "com-

plaint" with the people of Puerto Rico may be just that. The argument runs that Congress could not repeal the grant of independence to the Philippines, nor an act admitting a Territory to statehood. See *Coyle v. Smith*, 221 U.S. 559 (1911). And likewise a subsequent Congress could not recall a grant of private title to public lands under the homestead laws. *Reichert v. Felps*, 6 Wall. 160 (1867).

These analogies are not quite in point. The grant of independence concerns foreign affairs rather than an exercise of domestic power. Second, once a Territory has entered the Union as a State, it has achieved a permanent status—an attribute not possessed by the Commonwealth of Puerto Rico. Third, the *Reichert* case involves a property right protected by the Fifth Amendment. The "compact" is scarcely a property right.

In addition, when Congress grants independence or statehood, there is no ambiguity as to what comprises the Act or its aftermath. In regard to Puerto Rico, it is difficult to ascertain just what is the *fait accompli* in decree or in fact since the scope of self-government was not radically enlarged by Public Law 600 and its sequels.

In terms of political reality, however, the Commonwealth status may well be a *fait accompli*, for should there be serious Congressional interference, Puerto Rico could take its independence.

Decisions Affect Fringe Issues

The courts which have had occasion since 1952 to adjudicate disputes touching indirectly on the effect of the Common-

(Continued on page seven)

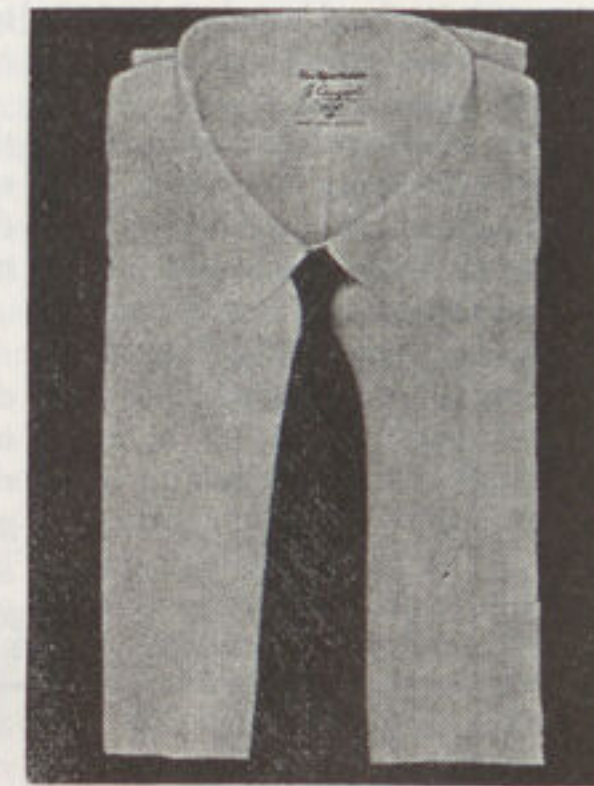
Another Tremendous OxfordShirtSale

FIRST TIME EVER ON SALE
NEW!!!
BRITISH TAB COLLAR
STYLE SHIRTS

BUTTON-DOWN SHIRT
STRIPES



BUTTON-DOWN SHIRT
SOLID COLORS



3.90 each 3 for 11.00

REGULAR VALUE to 6.95

Oxford shirts are always correct, always fresh looking. In colors and stripes they're a Harvard tradition. And at J. August's bottom price they're one of the top shirt buys anywhere. Each shirt is made of the finest combed mercerized yarns — SANFORIZED to shrink less than one percent. And all the colors are yarn dyed. All shirts guaranteed for one year. Please add 45c for mail orders.

COLLAR STYLES

Solid colors — Button-down collar — Oxford cloth
Stripes — Button-down collar — Oxford cloth
Stripes — British tab collar — Oxford or broadcloth

J. August Co.

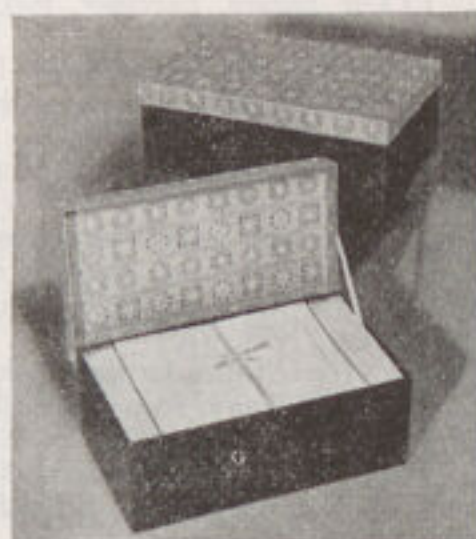
Harvard Square Since 1898

Even if you plan no immediate purchase—Come in anyway. We offer Check Cashing Service for Harvard Students.

You're always welcome at J. August

GIFT SELECTIONS

THE COOP



Boxed Stationery . . . by Eaton, in an exciting array of colors, styles, sizes and textures. \$1.19 to \$7.50.



Perfumes and Cosmetics . . . by Mary Chess, a name standing for fine quality and good taste. \$1.50 up, plus tax.



Harvard Calendar . . . with twelve famous scenes of Harvard splendidly reproduced, suitable for framing. \$1.50.



Lady Schick . . . a razor specially designed for the ladies in shaving legs and under arms. Choice of colors. \$14.95.



Attache Case and Brief Bag . . . both in top grain cowhide. Wonderful gifts for the busy executive. Case has five file pockets and measures 17 1/2" x 12" x 3 1/2". \$23.65 tax included. Brief Bag has steel frame, brass feet. 16" size \$19.75. 18" size \$21.95 tax included.



Harvard Glee Club . . . a first time recording of favorite Harvard songs. 10" lp, 33 1/3 r.p.m. \$4.95.

Patronage Refund Too



This Hallowed Ground . . . by Bruce Catton. A brilliant and stirring book on the Union side of the Civil War. \$5.95.



Pen and Pencil Set . . . Sheaffer's Snorkel pen and pencil set with mirror finished metal caps ornamented by gold-filled trim and modern chasing. Here is a lifetime gift . . . practical and useful. Set \$30.00. Other Snorkel sets are priced from \$12.95 up.



Sweaters . . . imported and domestic, in a large and fine choice of cashmere, shetland and lamb's wool. \$10.00 up.



Casual Bag . . . made by Rolfs, it's a beautiful, casual accessory in supple Calvette. Stays on the arm and holds all the what-have-yous that the ladies love to collect. Because of the smart color choices this bag complements the daytime duds perfectly. \$10.95 plus tax.



Portable Television . . . by G. E. 17 inch screen, weighs 32 pounds. If manufacturers agree and the Fair Trade Laws permit, we are quoting competitive prices on major electrical appliances, TV sets, radios and record players.



Table Lighters . . . by Ronson. Pictured is the Queen Ann. Its design is both modern and traditional to lend decorative hospitality to every room in the home . . . always a convenience to the smoking owner or guest. \$11.50 plus tax. Other models, including pocket lighters \$5.50 up.

(Continued from page six)

wealth status have not clarified the issue much.

In *Mora v. Mejias*, 206 F.2d 377 (1st Cir. 1953), the question presented was whether Puerto Rico was to be considered a 'state' within a statute (28 U.S.C. § 2281) requiring the convening of a three judge court whenever a suit is brought to restrain the "enforcement, operation, or execution of any State statute. . . upon the ground of the unconstitutionality of such statute."

In affirming the lower court's denial of preliminary relief, Magruder, C. J., concluded that while § 2281 would not have applied to Puerto Rico prior to the adoption of its Constitution in conformity with *Stain-Back v. Mo Hock Ke Lok Po*, 336 U.S. 368 (1949), the Commonwealth of Puerto Rico now might well be considered a state for purposes of this section.

In admitted dictum, Judge Snyder in *Consentino v. International Longshoremen's Association*, 126 F. Supp. 420, 422 (D.P.R. 1954) said that Puerto Rico is no longer a Territory as that term is used in the Constitution and cases and if Congress proposes in the future to make a statute applicable to Puerto Rico it would have to make it so, other than by use of the term "Territory."

The Supreme Court of Puerto Rico in *People v. Figueroa*, —P.R.R.— (Nov. 4, 1954) held that "our Constitution is a local constitution and not a federal statute" and that the meaning of the Constitution of the Commonwealth of Puerto Rico is fixed by this court.

In *Rosello Hnos., Inc. v. Figueroa*, 233

F.2d 248 (1st Cir. 1955), Magruder, C. J., held that the construction placed on a local law of Puerto Rico (Sec. 12-A of the Reasonable Rents Act) by the Supreme Court of Puerto Rico is binding upon the court of appeals in the absence of patent error. This was merely a recognition of the criterion of appellate review over Puerto Rican courts laid down by the United States Supreme Court in *Bonet v. Texas Co.*, 308 U.S. 463, 471 (1940).

The Puerto Rican Labor Relations Board in determining its own jurisdiction concluded that "... The application of the Taft-Hartley Act to purely internal or local matters in our Commonwealth is in open conflict with the full measure of self-government recognized for Puerto Rico by virtue of its new status" and that therefore the Taft-Hartley Act "is no longer applicable in our jurisdiction at the local level." In the Matter of: *Hilton Hotels International, Inc. and Union de Trabajadores de la Industria Gastronómica y Ramas Anexas de Puerto Rico*, mimeo. Eng. tr. pp. 24-25, (Nov. 9, 1955).

Against the Tide

The one opinion which is contrary to the trend of judicial interpretation summarized above was put forth in *Detres v. Lions Building Corporation*, 234 F.2d 596 (7th Cir. 1956). Reversing the lower

(Continued on page eight)

SQUASH RACKETS

Largest Variety in New England

Tennis & Squash Shop
67A Mt. AUBURN ST. CAMBRIDGE
Opp. Lowell House — TR 6-5417

RECORDS

The Ideal Christmas Gift

FREE GIFT WRAPPING

Minute Man Radio Co.
INC.

28 BOYLSTON STREET, HARVARD SQUARE
EL 4-2183—TR 6-1573

WILLIAM'S
ON THE SQUARE
20th ANNIVERSARY SALE
20% off
ON OUR ENTIRE STOCK
OF THIS SEASONS

	Regular Price	Sale Price
SUITS and OUTER COATS	\$55.00	\$44.00
	60.00	48.00
	65.00	52.00
	70.00	56.00
SPORT COATS	34.50	27.60
	39.50	31.60
	44.50	35.60

FOR ONE WEEK ONLY — COME EARLY
FOR BEST SELECTION

William's
Clothing, Haberdashery and Shoes
24 Boylston Street at Harvard Square
Cambridge, Massachusetts

(Continued from page seven)

court's decision (136 F. Supp. 699) that it did not have jurisdiction in a diversity suit between citizens of Puerto Rico and citizens of Illinois on the grounds that the new Commonwealth status excluded Puerto Rico from the term "territory" in Section 1332 (b) of the Judicial Code (28 U.S.C.A. § 1332), providing for diversity jurisdiction, the Court held that Puerto Rico, both before and after adoption of its Constitution, was a Territory of the United States within the meaning of the diversity section of the Federal Code of Civil Procedure.

Limited Importance of Cases

The local cases reflect an almost overwhelming judicial sympathy with the insular government's interpretation of their status as being irrevocable and bilateral. Similar though less sanguine and direct allusions are evident in the First Circuit decisions. This is their chief significance however. None of these cases was faced squarely with the status issue which was tangential to the main disputes in the cases.

Interpretation of the meaning of "Commonwealth" in the context of various statutes as being different from "Territory" is only the latest addition to a long series of cases construing the semantic significance of "Territory" as a state for certain purposes. See, e.g., *Texas v. White*, 7 Wall. 700, 721 (1868) and *Andres v. U.S.*, 333 U.S. 740, 745 (1948).

The specific points decided have a bearing on the meaning of the status but are by no means determinative either from the viewpoint of authority or the actual holding of each case.

But federal and local decisions in Puerto Rico have dwelt far and deep in the area of dicta. The excursions of these opinions are quickly taken up and quoted in future cases and political speeches but without the reservation that these statements are technically of little legal significance. Dicta is indiscriminately (often deliberately) confused with holding to give the appearance that the courts are a legitimate bastion of the official PPD interpretation.

The interpretation given to Congressional intent in these local federal and insular decisions is open to serious questioning. There is evidence of a great deal of straining, an almost incredibly slanted selection of evidence from legislative, executive and other sources to fit preconceived notions.³⁴ Opposing evidence is shrugged off or not even considered. And most important, there is little care that the relevance, competence and probative value of the evidence be weighed.

The judicial aftermath of Public Law 600 would afford a fine case study of the

impact on the judicial process when legal reality clashes with political reality and the all pervading (insular) government position.

There are those in Puerto Rico who hope that the United States Supreme Court will give sanction to the insular interpretation. Comparing the Court's reconciliation of practical politics with the fundamental postulates of American constitutionalism and democracy in the Insular cases of 1901, Dean Munoz Amato opines that similarly adaptive judicial conclusions may be reached in the present situation.³⁵

Will U. S. Supreme Court Decide?

Any decision affecting the Commonwealth status by the Supreme Court would depend, of course, on the nature of the case at bar. The following are possibilities:

(1) The issue whether a federal law should apply with greater scope to Puerto Rico than to a state is unlikely to reach the Supreme Court. Recent Congressional actions which specifically refer to the Commonwealth of Puerto Rico in certain statutes so as to obviate semantic disputes as in the *Detres* case, *supra*, imply that Puerto Rico will be treated as a state for this purpose. The one outstanding extant exception is the sugar quota.

(2) A case could arise should Puerto Rico legislate concerning a matter within the scope of federal authority. But such action is highly unlikely without the permission of Congress for the insular government would be unwilling to subject the present status to such a risk.

(3) If the Supreme Court should hold, for example, that the NLRB has no authority to refuse jurisdiction on policy grounds, local retail business would be affected in Puerto Rico. This might give rise to ordinary conflict situations between federal and commonwealth jurisdiction. Such cases, however, need not decide the status issue.

In conclusion, a test case is not likely to arise beyond such peripheral issues as in the *Mora* case (*supra*). The drastic possibility of Congress repealing Public Law 600 would only constitute the superseding of a previous statute by subsequent legislation. Such action would not present a case or controversy for the Supreme Court even assuming there would be a plaintiff having the right or standing to sue. It is doubtful that the Supreme Court would break new ground and directly defy Congress.

The territorial clause of Art. IV, § 3 involves the domestic exercise of power like the commerce power. Within Constitutional limitations both can be expanded or contracted at the will of Congress. Histor-

ically, certain exercises of Congressional power have never been contracted, such as the power granted to the ICC or social security provisions. But in terms of legal power, Congress could repeal both statutes. The same holds true for the Puerto Rican Federal Relations Act (assuming no basic civil liberties are violated), though the likelihood that this will occur is very slight. The insular government and its sympathizers are simply confusing legal capacity and power with political morality and what is perhaps more relevant, political predictability.

Strain of Present Status

The history of the insular government's attitudes since 1952 indicates its policy to develop, by custom and usage, a political system from one resting precariously on a legal void into a constitutional *fait accompli*. To them this approach seems to be their only practical choice. Their uneasiness about an indulgence in a necessary "bluff" is only a repercussion of Congressional incompetence and/or conservatism in not making clear the meaning of Public Law 600. It is small wonder that insular officials wish to take some of their destiny outside the ambit of an indifferent and other-directed Congress.

The tension likely to develop between constitutional and political reality in addition to insular concern about their lack of voting power in Congress will certainly grow as Puerto Rico improves its social and economic position. For while maintenance of the present relationship may be justified because of the need to better the island's living conditions, it will appeal less and less as living standards rise. That such dissatisfaction already prevails has been shown by the Governor's desire for change within the present status.

Political realities resting on a weak legal foundation could provide the seeds for a disastrous disillusionment should Congress ever act unwisely or capriciously. Also, under the present ambiguous status, the insular government may well hesitate before enacting certain legislation because of the many unresolved issues.

It is to be hoped that Congress will create a clearer arrangement that will square legal form with political substance and also provide for some form of representation for Puerto Rico in that body. For once in its Puerto Rican policy, Congress must take the initiative of sponsoring legislation rather than leave the task to the realistically reluctant insular government. Only then will the Puerto Rican people be given that feeling of freedom that is so intimately associated with the basic impulses of man.

³⁴ See OFFICE OF PUERTO RICO, DOCUMENTS ON THE CONSTITUTIONAL HISTORY OF PUERTO RICO 22-46 (1948).

³⁵ See, generally, Coudert, *The Evolution of the Doctrine of Territorial Incorporation*, 26 COLUM. L. REV. 828 (1926).

³⁶ Black, *Tax Uniformity and the Incorporated Territories*, 26 GEO. L.J. 343 (1938).

³⁷ Munoz Amato, *Major Trends in the Constitutional History of Puerto Rico*, 12 REVISTA DE DERECHO, LEGISLACION Y JURISPRUDENCIA DEL COLEGIO DE ABOGADOS DE PUERTO RICO 242 (1949) and Helfeld, *The Historical Prelude to the Constitution of the Commonwealth of Puerto Rico*, 21 REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO 125 (1952).

³⁸ REPORT OF THE COMMISSIONER OF EDUCATION 361 (1901) and CEBULLERO, LA POLITICA LINGÜISTICO-ESCOLAR DE PUERTO RICO.

³⁹ FERNOS-LEARN, THE SIGNIFICANCE OF THE REFORM (1948).

⁴⁰ Id. at 9.

⁴¹ CONSTITUTIONAL CONVENTION, NOTES AND COMMENTS ON THE CONSTITUTION OF THE COMMONWEALTH OF PUERTO RICO 20-21 (1952).

⁴² Id. at 30.

⁴³ U.N. GENERAL ASSEMBLY OFF. REC., 8th Sess., Supp. No. 15 (1953).

⁴⁴ Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. PITT. L. REV. 1 at 13 (1953).

⁴⁵ Governor Munoz' statement in 28 DEP'T STATE BULL. 589. (1953). To the same effect, Res. 23 of the Constitutional Convention in LA NUEVA CONSTITUCION DE PUERTO RICO 566.

⁴⁶ Hearing Before the House Committee on Public Lands, 81st Cong., 2d Sess., ser. 35 at 50 (1950).

⁴⁷ Id. at 63.

⁴⁸ 2 U.S. CODE CONG. SERV. 2682 (1950).

⁴⁹ Hearings Before the Senate Committee on Interior and Insular Affairs, 82d Cong., 2d Sess., 43-44 (1952).

⁵⁰ Id. at 44.

⁵¹ Id. at 45.

⁵² See discussion by Friedrich in LA NUEVA

CONSTITUCION DE PUERTO RICO 23-24.

⁵³ See 98 CONG. REC. 7831-7851 (1952).

⁵⁴ Id., 6166-6186.

⁵⁵ Id., 7831-7851.

⁵⁶ Ibid.

⁵⁷ Id., 7846-7847.

⁵⁸ Helfeld, *Congressional Intent and Attitude Toward Public Law 600 and the Constitution of the Commonwealth of Puerto Rico*, 21 REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO 255, 307-308 (1952).

⁵⁹ One potential source of conflict is unlikely to be litigated. The NLRB has decided to assume no greater jurisdiction in Puerto Rico and the Virgin Islands than in the continental United States. *Virgin Isles Hotel, Inc. and St. Thomas Labor Union*, 110 N.L.R.B. 558 (1954).

⁶⁰ Several years ago the Puerto Rican legislature estimated the loss in net income at \$40,000,000 annually.

⁶¹ LA NUEVA CONSTITUCION DE PUERTO RICO 17.

⁶² See Messages delivered Feb. 17, 1954, pp. 12-21; March 7, 1956, pp. 12-16. (In Spanish).

⁶³ Munoz, *Puerto Rico and the United States, Their Future Together*, FOREIGN AFFAIRS 549 (1954).

⁶⁴ N. Y. Times, Nov. 28, 1953, p. 1, col. 5. President Eisenhower stated that he would back full independence if Puerto Rico asks for it. President Truman had previously expressed the same sentiment.

⁶⁵ Of some use is DE JESUS TORO, THE ECONOMIC COSTS AND BENEFITS OF STATEHOOD FOR PUERTO RICO (master's thesis, Syracuse University, 1954, u.p.).

⁶⁶ Here, Chief Justice Snyder of the Supreme Court of Puerto Rico crossed over to the Federal court (pursuant to 48 U.S.C.A. § 863) and decided this case as a federal district judge.

⁶⁷ A classic example is the *Hilton Hotels* case, *supra*.

⁶⁸ Munoz Amato, *Congressional Conservatism and the Commonwealth Relationship*, 285 ANNALS 23, 28-29. However, he is doubtful that the Supreme Court will take the initiative.

J. PRESS CASH SALE NOW IN PROGRESS*

A clearance sale of J. PRESS is generally planned to take place soon after the peak of the selling season rather than at the close—when purchases can be made to advantage from assortments which are still varied and when size scales have not yet become fragmentary.

The effectiveness of this policy lies in a minimum of inventory carry-over and helps to account for the full replenishment of fresh stocks for which J. PRESS is noted each new season.

*Invariably a heavily patronized J. PRESS event. For best deliveries, early attendance is suggested.



Gentlemen's Tailors Furnishers

82 MT. AUBURN STREET, CAMBRIDGE

Rackets Restrung

One Day Service
TENNIS & SQUASH SHOP
67a Mt. Auburn St. Cambridge
Opp. Lowell House — TR 6-5417

Second Hand Lawbooks Law School Aids

HARVARD BOOK STORE
1248 Mass. Ave. Cambridge
Opp. Lamont Library TR 6-9069

CHERCHEZ LA FLAMME

BARBER SHOP
• EIGHT EXPERT BARBERS
21 DUNSTER ST. EST. 1898

Ski Equipment

Everything for the Skier

TENNIS & SQUASH SHOP
67A Mt. Auburn St. TR 6-5417

Seasons Greetings

SIMEONE'S

21 Brookline St.
EL 4-9569

Open 11 a.m. to Midnight

THE MISSES LITTLEFIELD

HARVARD SQUARE

PROFESSIONAL TYPISTS

4 BRATTLE STREET TR 6-7495

USED AND NEW Law Textbooks and Casebooks for Harvard Law School Students

- Outlines • Dictionaries • Quizzers •
- Supplementary Readings • Review Books

Sell Us Your Discarded Books

Yes, even those discontinued at Harvard

Barnes & Noble — Books
AT HARVARD SQUARE — 28 BOYLSTON STREET

CRONIN'S

30 DUNSTER ST.

Famous for Steaks
Chops & Sea Food

Porter House Steak for Two
\$4.45

— SAMPLE DAILY SPECIALS —

Soup or Juice
Chicken Salad Sandwich
Pot. Chips — Chefs Salad 75c
Grilled Sirloin Flank Steak
Baked Pot. — Tossed Salad 95c
Rolls & Butter — Beverage
Dessert

BEERS — WINES — LIQUORS

Tel. EL 4-1366 Jim Cronin, Mgr.

Seasons Greetings

from

The Management and Staff

RITE-WAY

DRY CLEANERS, INC.

63 Church Street
Harvard Sq. UN 4-7996

4 Hudson Street
(off 1672 Mass. Ave.)
KI 7-8008

JOSEPH KEEZER

Oldest 'Old Clothes Man' at Harvard — 57 Years

USED Clothes, Jewelry, Bric-a-Brac, Antiques, Luggage
Gold and Silver BOUGHT & SOLD

A Large Assortment of Tweed Sport Jackets, Blazers, Suits,
Chesterfield overcoats and Topcoats in excellent condition.

HARVARD COMMUNITY EXCHANGE
1094 MASS. AVE. KI 7-2455

The COOP OPTICAL

DEPARTMENT

Offers you accurate and prompt service
on all prescriptions. Broken lenses and
frames replaced.



New Location
Third Floor
Take Elevator

Harvard Cooperative Society
1400 Mass. Ave., Cambridge TR 6-3000