

The Harvard Law School Record

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PRICE TEN CENTS

LAW REVIEW APPOINTS MEMBERS TO NEW JOBS

Four Editors And Treas. Are Chosen

President Albert M. Sacks announced this week new appointments to the Board of Editors of the *Harvard Law Review*. Those appointed to replace present officers who will graduate at the end of the term are:

Note Editors: Kingman Brewster, 5th term, Yale '41, of Cambridge, Mass., and Sheldon Olinensis, 4th term, Univ. of Penn. '43, of Philadelphia, Pa.

Articles Editor: Walter E. Oberer, 4th term, Ohio Wesleyan '42, of Highland Park, Mich.

Book Review Editor: William E. Collins, 5th term, U. of Texas '39, of Leonard, Texas.

Case Editor: David M. Amberg, 5th term, Princeton '41, of Grand Rapids, Mich., presently Book Review Editor.

Brewster succeeds Joseph R. Creighton, Olinensis succeeds Leonard Joseph, Oberer succeeds J. Lowell Oakes, Amberg succeeds Jerome E. Hyman.

John Rucker Todd III, 4th term, Emory University '43, of Kingsport, Tenn., was elected Treasurer to succeed Brewster. The office of Treasurer is the only position, besides that of President, which is filled by a Board election. The remaining officers are appointed by the President.

Mason Discusses Brandeis' Place In Variegated Liberal Pattern

The following is an extract from an address delivered before the Brandeis Lawyers' Society by Mr. Alpheus Thomas Mason, and is reprinted with the permission of that organization. Mr. Mason, McCormick Professor of Jurisprudence in Princeton University, is the author of "Brandeis: A Free Man's Life." In his introduction, the speaker stated he proposed to set Brandeis in his professional environment and define his significance in relation to other lawyers and judges of his time.)

Prior to the New Deal, our dominant creed thought of government as a necessary evil and of its role as essentially negative. The function of government, it was said, is not to create individual rights but to protect existing rights. This theory did not deny the necessity for all government regulation, but it did regard regulation with suspicion.

Some time after 1933 government in all of its branches, including the Supreme Court, accepted quite a different theory. For want of a better name, suppose we call it "positive"—positive because it holds that government action does not necessarily mean war with liberty. Government, indeed, must create and recreate the conditions requisite for freedom. Under conditions of industrialism, of highly organized group interests and self-defeating conflicts, liberty is possible only if government is the dominant power. "New conditions," Mr. Roosevelt said in a campaign speech of 1932, "impose new requirements on government and those who control government."

Of course Mr. Roosevelt did not originate this positive brand of liberalism. Aristotle observed centuries ago: "As the state was formed to make life possible, so it exists to make life good." The New Deal in fact represents in our history only the resumption and culmination of various popular movements and liberal crusades dating from the last quarter of the nineteenth century. Then for the first time the masses, recently enfranchised, began to use government, state and national, as an instrument for protecting and advancing their own social and economic welfare. It

REGISTRATION

Registration for students entering the sixth and seventh terms will take place Thursday and Friday, August 21 and 22, in the courtroom. Third term students register on Monday, August 25, fourth termers on Tuesday, August 26, and students entering the fifth term on Friday, August 29.

BEAGLES WIN LEAGUE TITLE

Victors Meet B School In Twilight Contest on Friday

The Legal Beagles are the champions of the Law School Softball League. By decisively defeating the second place Counselors 8-3, the Beagles chalked up their seventh straight win to clinch the title.

On August 22 this undefeated club will represent the Law School in a twilight contest with the Business School All-stars. The game will take place at the B School diamond starting at six o'clock and will constitute part of the entertainment at a lawn party sponsored by the Business Students' Association.

The Beagle line-up consists of the (Continued on page three)

KENT-SCOTT IS TOP AMES CLUB

Calkins' Oral, Goldston And Young's Brief Win

The third term qualifying round in the Ames Competition has been completed and the Kent-Scott Club with four victories and an average of 143 has placed first among the eight qualifying organizations. Among the counsel for the Kent-Scott Club was Hugh Calkins, Harvard '45, a member of the Law Review, who received the highest grade of the round for his oral argument. Eli Goldston, Harvard '42 and Roger Young, Notre Dame '42, both of the Roberts Club, collaborated on a brief which was considered the best in this term's competition.

The eight clubs enumerated below will not argue this fall but will meet in the quarter final round on the winter calendar of the courts of Ames. In determining the present standing of the clubs, the organizations are divided according to the number of victories which they have to their credit; within each of these win divisions, position is based on average team score.

The complete Kent-Scott pairings included Hugh Calkins and Roswell B. Perkins, James J. Higginson and Hugh Knowlton, Jr., George M. Chester and William S. Moorehead, Theodore F. Brophy and Howard E. Rice.

Runner-up for honors in this round was the Pow-Wow Marshall Club also with four wins and a score of 141.1. Representing this organization were John M. Harrington and Albert H. Swett, James H. Case and Cornelius J. Peck, Dario De Benedictis and George M. Hansen, Oliver M. Blackburn and George N. Prince.

In third place with four wins and an average of 136.8 was the Blackstone Club; Philip J. Murphy and Clarence C. Young, Walter S. Calderwood and Herbert L. Gurnee, Forrest F. Shoemaker and Harold S. Wright, and Harry T. Carter (ex parte).

Next in order with three wins and one loss were the Pitney and Gardner Clubs with scores of 140.5 and 138 respectively. Qualifying teams with two victories and two defeats were the Langdell Club with 138.1, the Madison Club with 137.7, and the Morgan Club with 136.6.

The Board announced that an informal Ames Competition is planned for students whose clubs failed to qualify.

LEGAL AID REPORTS ON WORK OF YEAR

CLUB SUPERVISORS NEEDED

The Board of Student Advisers is seeking men from the present fourth and fifth terms to serve as club supervisors for 25 new Ames clubs. These clubs are to be established next term, in order to take care of entering students for whom there is no room in existing law clubs. A prize is being offered to the supervisor of the highest ranking club at the end of the second term argument.

MARKHAM TO SPEAK AT KENDALL HOUSE

Reuben H. Markham, the *Christian Science Monitor* Balkan correspondent who was expelled by the Russians last summer for refusing to allow censorship of his material, will speak at Kendall House Tuesday, August 26th, at 3 P.M., under the sponsorship of the Harvard Law Wives. All students and members of the faculty are invited.

Markham has spent the greater part of the last 35 years of his life in the Balkans, so his speech, "The Communist Drive Toward Salonica and World Power," is solidly backed by experience and observation. He has been a foreign correspondent and staff writer for the *Monitor* since 1926, except for a two-year interval during the war when he acted as Deputy Director for the Balkans in OWI.

In his recent book, *Tito's Imperial Communism*, Mr. Markham effectively (Continued on page three)

Majority Of Cases Are Settled Without Need For Litigation

With the close of its "statistical" year, the Harvard Legal Aid Bureau has issued a report summarizing its activities during 1946-1947. Citing the report as justification for their predictions of an increase in the business of the Bureau in the future, the Bureau's officers, President George T. Morton, and Vice-President Wilfred G. Howland, have expressed the hope that soon more students will be able to participate in the work of the organization. At present, the 33 members constitute a group of appropriate size to handle the current rate of around 800 cases a year.

Howland's statistical report compares this year's activities with the last year in which the Bureau operated, 1940-1941. Although 1946-47's cases are less than 1940-41's 1003, the report claims that figures over the last decade indicate a general upward trend of business. Considering that the Bureau was inactive for five years during the war, and that, therefore, the local community has just become reacquainted with it as a source of legal assistance, the slight drop from 1940-41 totals is not considered serious. The present high wages and low unemployment provide further explanation for the slight momentary decline. (Continued on page three)

Record's Duncan Hines Directs Motoring Gourmet To Wayside Inns

With good highways, scenic countryside, and sandy ocean beaches, Massachusetts is a wonderful state to explore. In addition, as a gourmet paradise it ranks behind only New York and California in the number and variety of its high quality wayside eating places. For those RECORD readers so fortunate as to have both the time and a car, we recommend below some of the noted Massachusetts inns close enough for an after-

noon drive. Reservations are always advisable—on week-ends are essential.

Country Fare, Hingham. 20 mi. S. on Rt. 3. Offering simple but delicious meals, this quiet inn is a delightful stop after a swim at the South Shore beaches. "Battery chicken" (raised in batteries of wire coops, they never put foot to the ground) and spoon bread is their specialty. Rapidly becoming known as a must stop for travelers to the Cape. \$1.65 - \$3.50.

Toll House, Whitman. 20 mi. S. on Rt. 18. Operated by Ruth Wakefield, one of America's top authorities on good food, this huge yet charming restaurant is well worth a Sunday trip. French onion soup, charcoal-broiled steak, and lemon meringue pie with six-inch-high meringue are only a few amongst the multitude of items on their menu. An early reservation for an outdoor table is recommended. \$1.35 - \$3.00. No liquor.

Kimball's and Hugo's Lighthouse, Cohasset. 20 mi. S. on Rt. 3A. The best lobsters, clams and scallops on the South Shore are found in the rambling waterfront Kimball's Restaurant. If you wish, you can choose your victim from the tank outside the dining room. \$1.50-\$3.50. The same food available around the corner at Hugo's Lighthouse with dancing and amusement tax.

Towne Lyne House, Lynnfield. 14 mi. N. on Rt. 1. "Native pan-fried chicken" is the *piece de resistance* in the mammoth windowed terrace overlooking Lake Suntaug. Excellent salads and pecan rolls. \$1.60 - \$3.00. No liquor.

House of Seven Gables Tea Room, Salem. 18 mi. N. on Rt. 1A. Though there is some dispute as to the authenticity of its claim to the title, this House of Seven Gables makes a splendid Sunday excursion. Hidden staircase, antique furnishings, and beautiful garden overlooking the ocean. The tea room is in (Continued on page three)

Schlesinger Claims Third Party Would "Only Aid Republicans and Extreme Left Groups in 1948"

Professor Arthur M. Schlesinger expressed opposition to possible third party movements when interviewed by a RECORD reporter last week. Schlesinger, Francis Lee Higginson Professor of History at Harvard College, is the author of many books on American history and development.

"I am opposed to a third party movement in 1948," stated Schlesinger, "because it could only benefit the Republicans and the Communists, neither of whom I wish to see helped. The Republicans would be benefited directly, since a third party would probably take away votes from Truman in pivotal states such as New York and Illinois, and doubly guarantee a Republican victory. The Communists would be benefited indirectly in several ways. By joining with such a third party they could get on the ballot in many states where they have heretofore lacked sufficient numerical strength to do so. By hiding their identity, and joining with such a third party, the Communists might get on the ballot in those states in which Communists are legally barred from the ballot. Finally, the Communists would benefit from the confusion and ineffectiveness of reactionary Republican rule

in this period of crisis in our national economic life."

Pointing out that since 1854 no third party has succeeded in becoming a permanent first or second party, Schlesinger noted that it is becoming increasingly difficult to form a new party, due to the imposition of more strict and complicated qualifying requirements. Admitting that at times the two major parties appear quite similar, he recalled that the New Deal under President Roosevelt contrasted sharply with the Republican party, then or now. "There is a difference in tendency between the parties," Schlesinger emphasized, "and, generally speaking, the Democratic party is more liberal—more likely to further the liberal ideals of social and economic progress."

Professor Schlesinger predicted in 1940, in an article published in the *Yale Review*, a period of conservatism would begin in 1946, possibly lasting for fifteen years. As one example of the conservative trend now setting in, he calls attention to the constitutional amendment passed by Congress limiting future presidents to two terms. "The founding fathers, who wrote our Constitution, have been called conservative, but it remained

for the Republicans in 1947 to tell future generations of voters that no matter what the emergency or what their wishes, they could not constitutionally elect a President for a third term."

Confessing that any predictions as to what third party attempts will actually be made in 1948 is primarily guesswork, Schlesinger inclines toward the view that Wallace, in the last analysis, will be reluctant to leave the Democratic party to head a third party movement. Whatever Wallace is doing now, or is allowing to be done in his behalf, is probably for the sake of bargaining power when convention time approaches, according to Schlesinger.

"Liberals can best serve their ideals," advises Schlesinger, "by supporting Truman, if, as appears likely, he is the more liberal of the two major candidates. They should support liberal candidates for Congress without regard to their party labels. The liberal today is fighting a reactionary trend and must use what strength he has to the best advantage. It would be a serious mistake for liberals to run out and hire a hall, and proclaim the formation of a third party. This might let off steam, but would accomplish nothing."

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Editorials

The play, "Dear Judas," based on a poem by Robinson Jeffers has been banned in Boston. Acting Mayor Hynes announced that he "would strongly advise against bringing the show to Boston." This is interpreted by the *New York Times* to mean that he would refuse permission to have it performed in Boston, if permission was sought. The objection to the play, according to the *Times*, is that the character of Judas is depicted in a more favorable light than in the New Testament. Showing the play in Boston, Mr. Hynes says, would violate the beliefs of many Bostonians in God. So it is banned.

Mr. Hynes' statement raises many interesting questions. Would Shaw's "Man and Superman" be banned because, contrary to the beliefs of many Bostonians, Satan is depicted as a rather nice fellow? Would a play which violated many Bostonians' beliefs that there is no God be banned? Would a play extolling the healing powers of certain medical treatments be banned because it violated the beliefs of many Boston Christian Scientists. Or, is it possible that only plays which violate the religious beliefs of the dominant groups in Boston are to be banned.

The present case is a good illustration of the chipping away of civil liberties. The process starts with a ban on certain plays on the ground that they are obscene, the standard being that of the local grandmas, male as well as female, lay as well as clerical. Then comes a deletion of the exclamation "My God" from the play "Life With Father" on the ground that it is sacrilegious. Now a play is banned because the author dares to differ with the orthodox conception of a biblical character. What is the next step?

It is no use censuring Mayor Hynes; the politician's primary concern is with staying in office, so that, of necessity, he responds to pressures. The fault lies primarily in the apathy or fearfulness of the educated segment of the community, especially the lawyers, who know the danger inherent in the toleration of such practices. The price of liberty, we are told, is eternal vigilance. Yet when the Mayor, without having seen a play, "advises" against bringing it to Boston, the producer puts his tail between his legs and scoots for New York, the local newspapers piously bury the story on page 20 and those who read it shrug their shoulders in despair or smile in amusement.

If public officials knew that every time they resorted to such censorship they would be met by strong protests from people who were willing and able to try the issue in the courts, they would hesitate before acting. At least they would be careful to provide for a fair hearing and would seek the advice of impartial experts in the field of literature and morals, who had actually seen the play in question, as a basis for deciding whether it was so inimicable to the morals of the people who were likely to view it as to justify a ban. Civil liberties have their greatest effect at the local level, and it is there that the constant efforts to protect them must be exerted.

H. K.

Letters to the Editor

To the Editor of The RECORD:

Your survey of Harvard medical services should continue because if you thereby gain a small measure of improved services it will be of great importance to the students . . .

NORMAN E. STEPHENS, 3L

To the Editor of The RECORD:

Permit me the privilege of pointing out an error made in your RECORD dated July 30, 1947 regarding a speech on Chinese Corporation Law reportedly to have been made by "Kenneth Wang, special, who was a Standard Oil counsel in China."

I should like to state that as far as my knowledge goes, I am the only Kenneth Wang in this Law School at the present time. If that report referred to me, may I inform you that I have never made the speech mentioned above, that I was not a Standard Oil Counsel in China, and that I am not a special student in this Law School?

I should highly appreciate it if due correction would be made in the forthcoming issue of your esteemed paper.

KENNETH WANG

The gentleman who spoke to the World Law Group was Alfred Wang, a graduate student, who worked for Texaco and not Standard Oil. Our apologies to both Mr. Wangs.—Ed.

To the Editor of The RECORD:

It seems to me that your editorial in the August 6 issue concerning war with Russia rather misses the point.

If such a war comes it will not be a war between "communism" and "democracy," whatever those words may mean. It will be a war between two nations, the United States and Russia, and it will come because both of those nations have resolved to be dominant in the same area and neither will yield.

A prime source of confusion these days is the use of the word "communism" to describe two quite different ideas. The first is "communism" with a small "c," and it is a theory of economics and of government, or perhaps more properly a group of theories, which existed long before the U. S. S. R. The second is "Communism" with a capital "C"; it is the official policy of the present Russian government, and I do not know why it should wear a special name like that any more than the policy of the British government.

As to the spread of communism, the theory, what your editorial says is clearly true. If our present system of government and economics does not meet the needs of our people it will change, and nothing can stop the change. If we wish to preserve what is good in it we should strive to remove the bad—the greed, the dishonesty, the unfairness—as far as it is possible. Should the communists persuade our people that they can run things better, doubtless they will have their chance. However, it is not over this kind of communism that the war, if it comes, will be fought; I wonder, in fact, whether this communism exists today.

But as to the spread of Communism, the policy of Russia—no amount of internal social reform will avail to check it. It would be as sensible to say that putting our own affairs in order would have prevented the war with Germany and Japan. It is true that by avoiding internal discontent we can bring a stronger force to possible war—but we cannot avoid war in that way only. Introspection by this country will not cure the world's ills.

It is for us to decide as fairly as we can what is best for the world and for ourselves, considering the relative strengths of ourselves and Russia. On the basis of that decision we must enforce a policy of our own, a fair and reasonable policy, but one for which we will fight. If the last war had any lesson, it was the futility of appeasing expanding nations. Whether we will have to fight for it, no one knows; but it would seem that the best hope of peace is to stabilize Russia in her proper sphere and allow the world, Russia included, to turn to the repair of the damage already done.

But for our own safety we must not forget that Communism is not a way of life, but the policy of a foreign government and a potential enemy as well as a potential friend.

JAMES B. HENRY, 3L

The Book Shelf

REPORT FROM SPAIN, Emmet John Hughes, Henry Holt & Co., \$3.307 pp.

Report From Spain is a logically organized, painstaking study of the component elements of the Franco regime and of the political forces opposed to it. Mr. Hughes enjoyed an excellent vantage point in his post as Press Attache of the American Embassy in Madrid during World War II, and on account of military duties, during part of that time, involving contact with the Spanish underground. In addition to this, Mr. Hughes is an active Catholic, and so is uniquely situated to interpret the conflicting aspirations and loyalties of a people who are, as he observes, at once devoutly religious and in large part profoundly cynical of church institutions.

The technique of presentation which the author employs is to set his stage at the outset by locating in it his principal characters, one at a time. Thus he devotes a chapter to Francisco Franco and the Army, another to the Falange Party, and still another to the Church. The stage thus peopled, the action progresses on three planes. There is first the desperate behind-the-scenes competition among these prin-

cipals for power and prominence—a struggle which Franco has so far succeeded in skillfully exploiting for the perpetuation of his own exalted position as Caudillo. In marked contrast to this is their subjugation of the mass of the Spanish people, prosecuted with greater efficiency and ruthlessness because of the ever-present fear of Communism and the still vivid memory of civil war. In this connection, Mr. Hughes' estimate of the strength and effectiveness of active opposition to the Franco regime within Spain may be disappointing to many readers. He warns against the view that mere denunciation of the Spanish government can accomplish anything more than to give Franco a prop to bolster up his popularity on the basis of appeal to national pride.

(Continued on page three)

Gallery

MERRILL SCHNEBLY
Visiting Professor

In 1917, a young lawyer left Peoria, Illinois, to accept an invitation to teach at George Washington University. Only 29, Merrill Schnebly was full of the vigor which has stood him in such good stead ever since. After graduating from the University of Chicago Law School, he had practiced in Peoria, his birth place, for three and one-half years with time out to receive a J.D. cum laude from his alma mater in 1913. Finding private practice not altogether to his liking, he welcomed the G. W. invitation as it revived in him an earlier ambition to teach.

Assistant Professor Schnebly left G. W. in 1920 to accept a full professorship at the University of Indiana. From there, he went to the University of Missouri, and then while a teaching fellow at Yale he received the degree of J.S.D. in 1926. In 1928, he joined the faculty at the University of Illinois.

Having written numerous law review articles on property law, Professor Schnebly has achieved recognition as a real property scholar. This term he is a visiting professor at the law school, and students in the third term are learning Future Interests by the "Schnebly Method."

"It's a waste of time to have the student state the facts of cases," says Professor Schnebly with much force. "It's no good to the student who has read the case, and the student's statement is no good to those who have not read the case; and perhaps we shouldn't care about them anyhow. Furthermore, there's no benefit in having the student read a canned brief. The fluency in speech derivable by such statements may be better obtained by answering the questions put them after I state the facts."

Couching his thoughts in careful words, he continues: "One can't describe accurately his own methods. The Socratic method is best ideally. But then the problem is what means to take to carry it out. I assume the students have read the case so that they will be prepared to answer questions directed specifically to the fact situation."

His students understand what Professor Schnebly means for they learn that even though they may not be called upon to state the facts they must be thoroughly acquainted with the cases to understand his rapid and succinct statement of them and be able to answer the pointed questions which follow rapidly.

"The difficulty of the instructor is whether to talk more about less or less about more. The case method is based on the premise that the study of factual situations and of decisions on the issues raised provides the basis for a discussion in class, giving substance and content to the rules concerned and making for sounder and more interesting teaching. However, knowledge of the positive law is won under case discussion only at a heavy cost in time. The field of law is vast; the student needs a speaking acquaintance with many matters which there is not time for case discussion to bring out. This calls for the use of supplementary material. In part informational footnotes to the casebook fill the need; in part, outside reading; in part, lecturing which the instructor may indulge in at intervals in order to amplify the range of discussion.

"We want to turn out men who are equipped to practice law. In teaching property some professors attach historical significance to each set of facts. History is important, but matters of historical importance are not necessarily matters of practical importance. There is so much living law to consider that the amount of time to be devoted to matters of historical interest is limited."

On the practical aspect of real property law, this affable mid-westerner concludes that the lawyer's business comes principally from two sources: commerce and industry or property holdings. He believes that a lawyer can specialize only in a big city, but if one does not enjoy that life, he will find that in a community of 25,000 most of his work falls into the field of real property. In such a community there is not much manufacturing or commerce, and since personal injury cases are cut short by workman's compensation, transfers of real estate, matters of descent, mortgages, partitions, probate, and other property work will take most of his time.

S. E.

Sub Judice

EIGHT PIT BULLDOGS: MANSLAUGHTER . . .

The following statement is taken from *Munn v. State*, 30 So. (2d) 501 (Florida, June 4, 1947): "This appeal brings for review judgment of conviction of the offense denounced by section 782.12 Fla. Statutes 1941, same F. S. A., which reads as follows: 'Killing by Mischievous Animal'. 'If the owner of a mischievous animal, knowing its propensities, shall willfully suffer it to go at large, or shall keep it without ordinary care, and such animal while so at large or not confined kills any human being, who shall have taken all the precautions which the circumstances may permit to avoid such animal, such owner shall be deemed guilty of manslaughter.'"

"The record shows that the appellant Munn was at the time of the acts involved in this case, and had been for many years before that time, engaged in the breeding and raising of what is commonly known as pit bulldogs which were known to be vicious, powerful and dangerous animals."

"The record shows that Munn's bull dogs, either those involved in this particular incident or others of like breed and character, had viciously attacked numerous people prior to this occasion; that at the time of this incident Munn had placed his dogs in an enclosure some 100 feet wide and 200 feet long, but which enclosure was insecure and unsafe and from which the dogs could go almost at will; that on the day of this incident eight or more of the dogs were out of the enclosure and running at large; that within two hours prior to the attack and killing of Mrs. Zinke they had attacked a man and boy on horse-back, from which attack they (the dogs) were beaten off after they had bitten the horses and endeavored to reach the riders."

"The record shows that Mrs. Zinke was attacked some considerable distance from the make-shift of a pen in which the dogs were supposed to be kept and that she managed in some way to cover some little distance in retreat where she was pulled down by the dogs, stripped of all her clothing except her shoes, her scalp torn off and her body severely mutilated, from which wounds, soon after, she died."

No reversible error was disclosed by the record and the judgment of conviction of manslaughter was affirmed.

PARKCHESTER IS METROPOLITAN'S TOWN . . .

Judge Pecora, of the Supreme Court of New York, Special Term, recently ruled that the Metropolitan Life Insurance Company was within its rights as the owner of the multiple-unit housing project known as "Parkchester," in promulgating a regulation which forbade solicitation for charitable or religious purposes on the Parkchester premises. An exception to the rule permitted such solicitation on consent of the manager, or on written invitation of any tenant who desired such solicitation to take place within his apartment. As you may have guessed, the hornets' nest was stirred up by those staunch standard-bearers of religious freedom, "Jehovah's Witnesses."

Judge Pecora noted in passing that the "Witnesses" literature declared all organized governments and their agencies to be part of Satan's invisible government, remarking pleasantly on the paradox which was presented by the "Witnesses" appeal to an instrumentality for Satan for protection against the exclusionary rulings of Metropolitan. The "Witnesses" were asserting their oft-asserted Constitutional rights. (See: 303 U. S. 444; 308 U. S. 147; 310 U. S. 296; 316 U. S. 584; 318 U. S. 413; 318 U. S. 418; 319 U. S. 105; 319 U. S. 141; 319 U. S. 624; 321 U. S. 575; 326 U. S. 501; 326 U. S. 517) But the Court found nothing in those cases which was determinative of the issue, for they all involved governmental interference, generally through the offices of a municipal ordinance. There is no constitutional right to enter within an apartment house or multiple-dwelling house against the wishes of its owners or occupants. As the Supreme Court said in *Martin v. City of Struthers*, 319 U. S. 141: "Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community." *Watchtower Bible & Tract Society, Inc. v. Metropolitan Life Insurance Company*, 188 Misc. 978 (March, 1947).

NOTE TO COMMON LAW PLEADERS . . .

In *Jones v. Bell*, decided by the Court of Appeals of Kentucky on May 23, 1947, the appellee interposed the plea of *nul tiel record* to the appellant's defense based on a judgment in an old suit, which appellant said had specifically reserved title to the oil and gas involved in the litigation.

Alumni Notes

Alumni are especially invited to forward contributions to this column to the Record office, Austin Hall, Cambridge 38, Mass.

LL.B. '06—Judge Harold Putnam Williams, a member of the Massachusetts Superior Court since 1926, has been nominated to the State Supreme Court, to replace Judge Stanley E. Qua, LL.B. '04, elevated to the post of Chief Justice. (See Gallery, August 6 RECORD.)

Before being named to the Superior bench by Governor Fuller in 1926, Judge Williams had served for two years as U. S. attorney in Boston, two years as district attorney for Norfolk and Plymouth counties, and four years as an assistant district attorney for the same district. As assistant district attorney he had done much of the work of the prosecution on the Sacco-Vanzetti case.

LL.B. '07—Frank J. Sulloway of Concord, N. H., is the newly elected vice-president of the New Hampshire Bar Association.

LL.B. '14—Charles Peck Sisson, of Providence, R. I., senior member of the law firm of Sisson, Fletcher & Worrell, died August 2.

Admitted to the Rhode Island bar in 1914, Sisson served as assistant city attorney of Providence, 1916-19, and as assistant attorney-general of Rhode Island for the next three years; from 1925 to 1929 he was Attorney-General of that state. In 1929 he was appointed Assistant Attorney-General of the United States, in charge of the personnel division of the Department of Justice, for a period of three years.

Sisson's political activity included chairmanship of the Republican City Committee of Providence and the Rhode Island State Central Committee; he was a delegate to the Republican National

Conventions in 1928 and 1936, and Republican candidate for Governor of Rhode Island in 1936. In 1940 he was co-manager of Governor Dewey's campaign for the Republican Presidential nomination.

During the war, Sisson was commissioned a lieutenant-colonel in the Army Air Forces, and later took part in the Allied Military Government in Italy and Germany.

LL.B. '17—Conrad E. Snow, of Rochester, N. H., has been appointed as a member of the Personnel Security Board of the State Department, a three-man board appointed to review security and investigate records of the departmental and foreign service personnel whose cases are under consideration for discharge as security risks.

Snow began the practice of law at Rochester, N. H., in 1919, in partnership with his father. In 1921 Snow became head of the firm, and remained there for the next 20 years. The former brigadier-general is currently serving as assistant legal adviser for political affairs to the State Department.

Ex. '26—William Wirt King died July 15 at Chicago, Ill.

LL.B. '34—The engagement of Miss Mary Bernardine Maguire of New York City and John M. Murtagh, Commissioner of Investigation of the City of New York, has been announced. Murtagh served four years with the Army, was released as a lieutenant-colonel with the Air Forces.

LL.B. '42—The engagement of Miss Elisabeth Billings of Concord, Mass., and Harold B. Roitman of Winthrop, Mass., has been announced.

BOOK SHELF—(Continued)

Finally, Mr. Hughes considers the relations between Spain and the outside world during the war. On the one hand he points out that Spanish assistance to the United Nations was statistically considerable. On the other, he makes it clear that in view of both the realities and moral issues involved, that assistance was forthcoming with inexcusable ill grace, tardiness and reluctance.

At a time when there is, so to speak, a growing tendency to measure the right exclusively in terms of the Left rather than the wrong, the kind of reasoning which Mr. Hughes applies to the alleged Communist influences present in the Spanish question comes to your reviewer as a cold rain to a man lost three days in the desert without water. And Mr. Hughes has more to say, of which the following is only a sample:

"Certainly, this democracy faces no challenge so grave as that of Communism. Certainly, the Western democratic nations confront no issue as decisive as their relations with Soviet Russia. But if the democracies' preoccupation with these challenges (instead of inspiring a clean resolve to fulfill democracy's own promise for all peoples) becomes a hypnotic fascination that merely freezes them into immobility, then neither challenge can be met. If the world vision of the democratic nations becomes so narrowed that it can focus only upon that one-sixth of the globe's surface under Russian dominion, and so intense that it cannot perceive and develop clear democratic policies and practices in the rest of the world, then the remaining five-sixths of the world will be lost to the Western democracies, not by defeat, but by default."

By way of contrast, your reviewer submits the following quotation from *Time*:

"The '48 Line is Drawn
"President Truman threw the whole ball of fat into the fire. With a 5500-word message which left no doubts as to which side he had picked, he vetoed the Taft-Hartley labor bill. Harry Truman had chosen the Left side of the line. . . . On many points his vehement, sharply worded message to Congress squared exactly with the analysis of Lee Pressman, the CIO's able counsel, a Communist-line leftist."

Possibly the import of these words has struck a vague, inarticulate dismay in the minds of readers who had approached the question of labor legislation with no other predisposition than to weigh the issue on its merits. To such readers, Emmet John Hughes may have something to offer over and above an excellent critical analysis of the political situation in Spain. They may find it peculiarly refreshing that Mr. Hughes' book is marked by honesty, sympathetic perception, and the absence of subtly intruded conclusions disguised as reported fact. If so, whether they consider it a source of hope or a perversion of poetic justice that Mr. Hughes is currently a member of *Time's* staff, will be a matter of individual temperament.

ROBERT R. BATT, 2L

SOFTBALL—(Continued)

following: catcher, Cloyd LaPorte, Jr.; first base, Ray Garrett, Jr., Sam S. Fitzsimmons; second base, Robert W. Maynard; third base, Forrest F. Shoemaker, Jr.; shortstop, E. Thayer Drake; outfielders, Wade Hampton, Edwin S. McKeown, James Case, Theodore F. Brophy, Harry H. Riddick, Oliver M. Blackburn; pitchers, Al. F. Mather and Louis Paslawski.

Standing of the Clubs: Legal Beagles, won 7 lost 0, Counselors 6-2, Trover Boys 3-1, Morris 5-2, Palsgraf Polecats 4-2, Athletics 3-2, Hastings 4-3, Divinity Hallers 4-3, Sheriffs 4-4, Chancery 3-3, Perkins 2-4, Blackacres 2-6, Lincoln's Inn 1-3, Tax Dodgers 1-4, Revisers 1-6, Arsonists 0-5.

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THE COOP

MARKHAM—(Continued)

emphasizes the steam roller character of Tito's regime and also shows in what way the machinations of other powers in this area endanger the peace of the world. He is first to admit that his opinions on this issue are open to controversy, and he will welcome questions from the floor, whether from doubting Thomases, or from those who wish to have him elucidate certain points.

It is suggested that those planning to attend arrive before three o'clock so that seating arrangements can be made, as the Law Wives anticipate that a large number of students will attend.

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LEGAL AID—(Continued)

The fact that 318 of the 809 cases were those of Harvard students, as compared with 99 in 1940-41 results from the higher proportion of married students in residence, and the increase in student tenant-landlord difficulties. The categories of fully employed persons, unemployed, and housewives each contributed over 100 clients to the Bureau. The Bureau indicates a desire to have the proportion of community clients greater than at present, and points out that students can only qualify for assistance if their sole source of income is the subsistence allowance under the GI Bill of Rights. The Bureau counts on local clergymen and welfare agencies, as their familiarity with the Bureau's program widens, to aid in increasing the number of local "needy" seeking assistance.

As to the source of cases, the report indicates that lawyers and public officials have referred only 4 and 22 cases respectively. The great body of clients learn of the Bureau through having been there before (50), referred by other individuals (130), from newspapers and radio (79), or through their "general knowledge" (214).

The largest single category of case, by type, has been landlord and tenant (177), while marital matters follows a close second with 145. It is not surprising that installment contract problems has dwindled considerably from 1940-41, owing to federal regulations of installment buying. However, with controls off, a new spurt in this field is expected. Well over a hundred cases involved contract problems. Somewhat less involved torts, where eight libel and slander cases are reported. Three cases concerned racial discrimination. The remaining cases cover a wide range of legal problems, from deceased's estates to patents and copyrights.

In regard to the disposition of the Bureau's 809 cases, the largest number were taken care of by advice and investigation (311); 152 were refused because applicants could not qualify for free legal assistance, while 70 were referred elsewhere; 16 cases were won in court, only two lost. The report explains the comparative lightness of court work by its policy of settling without litigation wherever feasible and because cases usually take over a year to get through the courts. The fact that 98 cases have litigation pending indicates that the next report will show a substantial increase in court dispositions.

GOURMET—(Continued)

a quaint old building on the grounds. \$1.50 - \$3.00.

Hartwell Farm, Lincoln. 15 mi. W. on Rt. 2A. There are seven fireplaces always lighted on cool days in this ancient farmhouse. Their best-known dish is boneless fried chicken with heaps of freshly picked vegetables. \$1.25-\$3.00.

Wright Tavern, Concord. 18 mi. W. on Rt. 2A. One of the best inns in New England, this building already housed a tavern in 1747. The dining room faces the historic Church Green, and on week days you can browse through an old-fashioned country store across the way. The food is tasty New England fare and the service is prompt. Both antiques and gourmets will treasure memories of this spot. \$1.25 - \$3.00.

Abner Wheeler House, Framingham Center. 18 mi. W. on Rt. 9. This old mansion dates back to six years before "at Newtowne was founded Harvard College." Operated by the same management as the Towne Lyne House, it offers the same delicious food. \$1.60-\$3.00. No liquor.

1812 House, Framingham Center. 20 mi. W. on Rts. 9 and 20. A lovely old house in a framework of green lawns and trees, this is a calm, quiet restaurant for leisurely dining. Their clam chowder has no peer. \$1.75 - \$4.00.

Longfellow's Wayside Inn, South Sudbury. 25 mi. W. on Rt. 20. Still offering the traveler lodging and food as it did prior to the American Revolution, this inn was famous even before Longfellow's "Tales." Lafayette and George Washington ate here. Amidst gently rolling farmlands, it is a remembrance of times long past. Henry Ford, who purchased the Inn, moved "Mary's Little Lamb Schoolhouse" and an operating blacksmith shop and gristmill nearby. \$2.00 - \$3.00.

Putnam and Thurston's, Worcester. 42 mi. W. on Rt. 9. "Put's" is a distinguished city restaurant with table, counter, and booth service. Excellent liquor and especially good steaks and frogs' legs. \$1.50 - \$3.00.

Public House, Sturbridge. 60 mi. W. on Rt. 20. Under the same management as the Wright Tavern, this air-conditioned dining room offers such New England favorites as boiled dinners, roasts, and stuffed baked lobster. The old 1771 inn with its hand-hewn beams and massive fireplaces was built into the modern structure. \$2.00 - \$4.00.

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Calendar

THE LEGAL WORLD

Registration

Registration for the September 1947 term will be held on the following days in the Court Room: Students entering the sixth and seventh terms—Thursday and Friday, August 21, 22; students entering the third term—Monday, August 25; students entering the fourth term—Tuesday, August 26; students entering the fifth term—Friday, August 29; graduate and special students may register on August 21 or 22.

Harvard Law Wives

Law wives and their husbands are invited to play progressive bridge to-night at 8 P.M. at Kendall House.

Next Wednesday, August 26, at 3 P.M., Mr. Reuben Markham, Balkan correspondent of the *Christian Science Monitor*, who has just been "required to come home" by the Russians, will discuss the set-up and problems in the Balkans.

King's Bench

All members are requested to attend the Election Luncheon to take place August 22 at 1 P.M. at the Hotel Continental.

Softball

On Friday, August 22, at 6 p.m., the Legal Beagles will represent the Law School against the top team in the Business School League. The game is to be played on the Business School diamond behind Cowie Hall. An umpire is being sought for this game. Applicants should call E. T. Drake, ELI. 7293.

THE UNIVERSITY WORLD

Sunday Evening Club

The Sunday Evening Club, which is sponsored by the United Ministry to Students in Cambridge, presents Rabbi Albert A. Goldman of the Temple Israel of Boston, who will speak August 24 at 8 P.M. at Phillips Brooks House. The subject will be announced.

THE OUTER WORLD

Summer Theatres

Boston Summer Theatre: James Dunn, popular stage and screen star, continues a week's engagement ending Saturday, August 23, in the Damon Runyon-Howard Lindsay comedy, *A Slight Case of Murder*.

Colonial Theatre: Harry Blackstone and his large company will have a two weeks' engagement commencing Monday, August 25, in a diversified program of magic. Some of the illusions are "A Visit to Spiritland," "The Story of Santa Claus," "The Girl Without a Middle," and "A Chinese Fantasy."

Art Exhibition

The paintings, drawings and memorabilia of Washington Allston, 1779-1843, foremost early American artist, are on exhibition at the Boston Fine Arts Museum. The exhibition will continue until August 24.

Sightseeing

Two worthwhile objectives for short sightseeing trips in Boston are Bunker Hill Monument and the Custom House.

The Monument is a granite obelisk, 221 feet high, with a winding stairway of 294 steps, and commemorates the historic battle of that name. To reach it by subway from Harvard Square go to Park Street, transferring from there to a North Station or Lechmere car, getting off at Haymarket Square, from there transfer to a Bunker Hill-Sullivan car and get off at Monument St.

The Custom House, a granite building designed in the form of a Greek cross, with an exterior featured by a massive fluted series of 32 columns constructed in one piece, was authorized in the Jackson administration and is one of the landmarks of Boston. To reach it go to Park St., and change for a North Station or Lechmere car to Adams Square.

Dance

The Carlton Club presents a mid-summer dance to the strains of Al Donehey and his orchestra at the Commander Hotel, Saturday, August 23, at 8:30 P.M. All students are invited.

Baseball

Major League Games in Boston: The schedule for the Braves is as follows:

August 20—Braves vs. Pittsburgh.
August 21, 22, 23—Braves vs. Chicago.
August 24, 25*, 26—Braves vs. St. Louis.

(* Denotes night game.)

Brandeis' Place As Liberal Is Told

(Continued from page 1)

when men act in bodies is power."

It was popular power, emancipated and organized—a truly liberal force in the minds of its leaders—which Herbert Spencer in England and his followers in America rose to combat—all in the name of liberalism. Conspicuous among those invoking their "genuine" liberalism against that "spurious" liberalism, born of popular power, were lawyers and judges. I can mention only a few but these are typical.

In 1893, Justice David J. Brewer, of the United States Supreme Court, heeding the call, interrupted his judicial labors to discuss before the New York State Bar Association "Movements of Coercion" i.e., organized-labor and recent state legislative efforts to regulate public utilities. Justice Brewer, taking account of the exigency, and of the popular clamor against judicial control, came out strongly for judicial intervention, and here is what he had to say:

"The great bodies of judges are as well versed in the affairs of life as any, and they who unravel all the mysteries of accounting between partners, settle the business of the largest corporations and extract all the truth from the mass of sciolistic verbiage that falls from the lips of expert witnesses in patent cases, will find no difficulty in determining what is right and wrong between employer and employees, and whether proposed rates of freight and fare are reasonable as between the public and the owners; while as for speed, is there anything quicker than a writ of injunction?"

A year later (1894) William Howard Taft, then a Superior Court judge of Ohio, suggested the use of force against labor. Commenting on the Pullman strike of 1894, he said:

"The situation in Chicago is very alarming and distressing and until they have had much bloodletting, it will not be better. The situation is complicated by demagogues and populists. Word comes tonight that thirty men have been killed by the federal troops. Though it is bloody business, everybody hopes it is true."

Next day, however, the future President of the United States and future Chief Justice was discouraged:

"The Chicago situation is not much improved. They have only killed six of the mob as yet. This is hardly enough to make an impression."

Holmes' Views

Still another kind of liberalism was the calm sophistication implicit in the thought and work of Mr. Justice Holmes. Holmes was sensitively aware of all the pressures and drives of industrialism—the political turmoil, the cultural crudeness, the rise of corporate power, the emergence of trade unionism, the threat of communism. He contemplated it all with cool equanimity. For him neither the growth of business combinations, nor of labor unions, were unmitigated evils; both must be accepted as the outcome of the natural, inevitable working of the laws of social development. He was about equally distrustful of reformers who believed that by "tinkering with property we could have women free and a piano for everyone," and of lawyers and judges who thought they could put society into a constitutional strait-jacket. The Brewers on the Court he called "naive, simple-minded men," needing to become civilized, needing "education in the obvious," education that would enable them to "transcend their own convictions" and thus allow that which "we hold dear to be done away with short of revolution by the orderly processes of law."

Having no certain measure of truth, Holmes could not have joined social movements nor enlisted in public causes, even if judicial office had not precluded such activity. Not being God, as he was accustomed to say, he could neither aid those whose passion for reform was greater than his, nor agree with colleagues who believed they could prevent change and maintain the status quo. "To rest upon a formula," he said, "is a slumber that, prolonged, means death."

Holmes' liberalism was therefore a kind of by-product of an ingrained skepticism: "I am so skeptical as to my knowledge about the goodness and bad-

ness of laws that I have no practical criterion except what the crowd wants. Personally I'd bet the crowd, if it knew more, wouldn't want what it does; but that is immaterial."

In sharp contrast with his "naive, simple-minded" colleagues, Holmes recognized that legislatures rather than courts represented "the actual equilibrium of forces in the community." "What proximate test of excellence," he asked, "can be found except correspondence . . . that is, conformity to the wishes of the dominant power?"

"Such conformity," Holmes admitted, "may lead to destruction, and it is desirable that the dominant power should be wise. But wise or not . . . the test of a good government is that the dominant power has its way." Herein lies the clue to Holmes' widely heralded liberalism. Basically it meant that the might of the majority, for all practical purposes, spells right.

Place of Brandeis

How does Brandeis fit into this variegated liberal pattern? What set him apart? What is the secret of his great power and influence?

Brandeis was usually on the popular, progressive, or reformist side, on the side of labor and the consumer. But he cannot be considered a blind champion of the underdog. As long as it was a matter of defending one corporation against another, where the lawyers on both sides were equally well balanced, he was content to practice law in the conventional way. But when a corporation achieved enough power to end competition or hold labor or the consumer or the public helplessly within its grip, "a very different question presents itself." Under these circumstances one could not fairly assume that the "two sides are reasonably well matched," or that a decision will be reached such "as justice demands."

Brandeis frankly thought of himself as a reformer, a category that does not necessarily exclude conservatives, if this much-abused word be properly defined. "I cannot conceive," he wrote in 1905, "of anyone being really sensible who was not a reformer, as well as earnest and progressive." But Brandeis must be distinguished from the conventional saviors of society. He did not fare forth with fire and sword to win Utopia. Taking men for what they are and can be, not for what they ought to be, he dealt with particular evils at given times and places as they came to light in the natural course of his law practice. Unlike the raucous muckrakers, he was never content merely to expose and deplore. For known wrongs he proposed a remedy and worked systematically and tenaciously toward its achievement.

Rise of Popular Power

Brandeis sympathized with the rise of popular power and was much impressed by the quality of thinking then being done, in 1905, by working men. Many of them, he said, talked about the labor question "far more intelligently than some of the most educated men in the community." Social unrest could not therefore be safely or effectively brushed aside as the outcropping of mass iniquity; nor should social legislation be summarily declared unconstitutional, nor labor activities put down harshly by bloodletting or a writ of injunction.

Nevertheless Brandeis, like other "corporation lawyers," frankly recognized the explosive nature of popular power, and the danger implicit in it for men of wealth like himself. He foresaw as early as 1905 that "immense wealth would in time develop a hostility from which much trouble will come to us unless the excesses of capital are curbed." "Our country," he warned, "is, after all, not a country of dollars but of ballots; the working men must in a comparatively short time realize the power which lies in them."

And Brandeis, like Judson, Tucker and Brewer, pointedly reminded the bar of its peculiar responsibility in this situation. All these lawyers, including Brandeis, were cognizant of the socialist peril. But whereas the conventional "corporation lawyers" traced this danger straight to agitators, muckrakers and labor leaders, Brandeis saw industrial magnates themselves unwittingly aiding the socialism they deplored: "The greatest factors making for communism, so-

cialism and anarchy among a free people are the excesses of capital. The talk of the agitator does not advance socialism a step. The great captains of industry . . . are the chief makers of socialism."

In short Brandeis saw the rise of popular power and trade unionism as the natural outcome of a changing social order. Power was moving from the few to the many. And lawyers and judges, if wise, would not try to freeze privilege and indiscriminately thwart change; nor was it prudent or even safe to stand aloof from the struggle, as Holmes was inclined to do. Here, he thought, was a signal opportunity for lawyers—"the richest field," as Brandeis put it, "for those who wish to serve the people." He said it lay within their power to determine the course of political and social action, "to determine whether it is to be expressed temperately or wildly; whether it is to be expressed in lines of evolution or in lines of revolution." Believing this, Brandeis left the beaten track of trust-belt lawyers, abjured the Olympian detachment so characteristic of Holmes, not to battle solely for "the people" (in the sense of the underdog) not to undermine our time-honored institutions. On the contrary, he interpreted his function as truly conservative, as safeguarding society against blind change as well as blind opposition to change. His was the constructive task of canalizing natural human aspirations for freedom along the lines of law and orderly progress.

"Man of Statistics"

Brandeis could not find ease in Holmes' citadel of "enlightened skepticism." Being Holmes' man of statistics and master of economics, he could measure the consequences of inaction in terms of freedom. Knowledge moved him to constructive social action against economic privilege and greed when most lawyers were either smug and complacent or eager only to preserve the status quo. Conservative impulse, I suggest, not radicalism, drove him to find remedies for human suffering and exploitation. Can any of us today doubt that Brandeis' masterful command of industrial complexities generated in him that moral voltage, that militant urgency unknown to the liberal Holmes or to the reactionary Taft? A profound sense of that urgency guided his action. Moral stature, righteous intensity, a well-nigh unequalled capacity for moral indignation, firmly rooted in certain knowledge—these qualities more than anything else mark his statesmanship.

Brandeis' mood was militant because he knew at the turn of the century what none of us can fail to see today, that

public apathy ("the greatest peril of freedom") in the face of unresolved social and economic conflicts is an open invitation to authoritarian rule, that failure to solve today's problems complicates tomorrow's issues—worse still, that failure perilously narrows the range in which man is free to shape his own destiny.

Justice Holmes is widely heralded as our greatest liberal. He believed, as he said, that truth is the power of thought to get itself accepted in the competition of the market of ideas. And yet no marked inclination, no sensitiveness to this danger of inaction appears in Holmes' writings—no marked inclination to shape economic forces appears in his opinions. His liberalism must therefore be measured in terms of rare open-mindedness where most lawyers and judges were singularly obtuse. Holmes clearly discerned the stubborn negativism so characteristic of privilege, the attitude of mind, as de Tocqueville once expressed it, that makes men "refuse to move altogether for fear of being moved too far." Holmes also understood the blinding zeal that so often afflicts the reformers—the "upward-and-onward-fellows," he called them. These surely are no small achievements measured by any standard in any age.

But Brandeis met these essentially negative tests of liberalism and added a positive, constructive element. His statesmanship must therefore be measured in terms of stands taken, things done. Believing that nothing is inevitable—neither democracy nor freedom, neither exploitation nor war—Brandeis joined movements, enlisted in specific public causes, and took the consequences. In his youthful notebook he had written Bacon's words: "In the theatre of human life it is only for God and the angels to be spectators." Even as a Supreme Court justice, he was still the fiery crusader, the "moral teacher," demonstrating his belief that man does have considerable control over his own destiny, proving to the very end that given leadership, participation and persistence, man can lay the foundations for a nearer approach than was ever thought possible to an enlarging liberty through a living law.

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