

The Harvard Law School Record

VOL. 3 NO. 5

CAMBRIDGE, MASS., WEDNESDAY, MARCH 19, 1947

PRICE TEN CENTS

LAW REVIEW, BOARD ADD NEW MEMBERS

Law Review Appoints Two Upperclassmen, Board Takes Three

As a consequence of their high scholastic standing, two upperclassmen have been invited to work as editors of the *Harvard Law Review*, and three have joined the Board of Student Advisers, the heads of the organizations have announced.

The selection of upperclassmen to serve with the Legal Aid Bureau had to be postponed until after the naming of men by the *Review* and Board, which have the first and second choices respectively of the high rankers, and consequently were not made in time to be announced in this issue of the *Record*. The men named to Legal Aid will be announced next week.

The majority of vacancies in the three honor organizations are customarily filled from among the men completing their first year. However, upperclassmen who achieve the required scholastic standing in their second and third years can still earn the distinction of serving with one of these groups.

The men named to the *Law Review*, according to Elliot L. Richardson, President, are Calvin P. Sawyer (University of Chicago '42) of Chicago, now in his sixth term, and William F. Spalding (Notre Dame '41) of Memphis, now in his fifth term. Both men are former members of the Legal Aid Bureau.

The three men who joined the Board of Student Advisers, as announced by President Henry J. Smith, are all in their fifth term. They are Charles Duane Aldrich (Harvard '40) of Quincy, Mass.; Irving Constant (Harvard '44) of Winthrop, Mass.; and Samuel O. Pruitt, Jr. (Washington and Lee '41) of Anderson, S. C.

Aldrich and Constant are both former members of the *Record* staff. Aldrich was Articles Editor last term, and Constant served with the Editorial and Circulation departments.

In addition to the appointments listed above, the *Law Review* has also named Hubert J. Delynn, a present member of the Editorial Board, to fill the newly-created position of Article Editor. His function in his new post will be to plan for and edit articles for the *Review*.

Delynn, who is now in his last term at the law school is a graduate of West Virginia University (1941) and lives at 1963 Commonwealth Ave., Boston.



PRUITT



CONSTANT



SPALDING



ALDRICH

Above are shown the pictures of the new upperclassmen appointed to the *Law Review* and the Board of Student Advisers. A picture of Sawyer was unavailable.

LAW ACADEMY MEETS IN CUBA

Lectures On Comparative, International Law Given

The Inter-American Academy of Comparative and International Law met in its second annual session in Havana, Cuba during the last three weeks in February. The Academy was formed by the Inter-American Bar Association in 1944 for the purpose of organizing courses for students from the American countries. During this meeting the exchange of legal knowledge was not limited to formal lectures but extended to informal conversations between participants.

Among the students attending the Academy from the United States were two men from Harvard Law School, William Barnes, sixth term, and David Stearns, fourth term. Stearns prepared a description of the various Common Law estates in land which was presented as a supplement to the lectures by Mr. Phanor J. Eder of the New York Bar on the Principles of the Common Law.

(Continued on page three)

Government Intervention In Radio, Films Subject Of Chafee Speech

Professor Chafee has been nominated to be a member of the sub-committee on freedom of information which is a subsidiary of the United Nations committee on human rights.

Primarily concerned with the government's duty in regard to the problem of raising the quality of material now produced by our radio, movie, and film industries, Professor Zechariah Chafee, Jr., in concluding his series of six lectures presented for the Walgreen Foundation at the University of Chicago last month, declared that duty to be one of enlightened persuasion and not that of legislative coercion. Professor Chafee, recognized as one of America's foremost proponents of free speech, based his lectures on information he had collected and evaluated in his work with the Commission of Freedom of the Press, sponsored by Time, Inc. The Commission has been investigating for the past three years the forces which might tend to curtail the freedom of the press in this country today. Its report, *A Free and Responsible Press*, will be published on March 27.

In this lecture, entitled "New Conceptions of the Relationship Between the Government and the Press," Professor Chafee outlined the way in which the government may act with relation to the communications industries, listed the present day needs of those industries, and discussed the advisability of the government's intervention in attempting to satisfy those needs. The Commission has found that governmental activity in keeping open the avenues of communications so as to allow maximum traffic with a minimum of obstruction in its free flow to the consumer has in general been successful. But in the field of promoting the quality of this traffic the government has been less active, and with two notable exceptions, i.e., the public school system and the maintenance of public libraries and museums, has acted mostly in the purely negative manner of censoring obscenities and allowing damage actions for libel. The popular reaction to a realization of a certain need is, "There ought to be a law," and Professor Chafee first considered the advisability of enacting new legislation purporting to solve the problem of quality and then came to the conclusion that such a plan is basically unsatisfactory.

"We cannot legislate literature and enact art," said Professor Chafee. "We shall not get anywhere, by trying to determine the quality of mass media by political bickering rather than commercial competition." The principal function of law is to establish the conditions under which men can live fruit-

ful lives if they have the will to do so, but law cannot supply that will. For example, if great art, music, scholarship . . . are really absent now from the media in this country . . . then the organization we call government can do very little about it."

Professor Chafee does not believe the situation is as hopeless as it might seem, however, and thinks that there is a chance for the government to help our instrumentalities of communications to realize their full possibilities, but by means of existing agencies and not through the devices of new legislation. Mr. Chafee reported that one of his colleagues on the Commission advocated an arrangement whereby a conference of persons representing both consumer and producer interests would determine what sort of entertainment would be presented to the public. But since this plan would involve the creation of a semi-judicial body with coercive power it naturally finds disapproval with Mr. Chafee. On this matter he says: "Any plan for setting up elaborate new organizations bothers me. I am impressed by descriptions of the tendency of such bodies to shrink, for practical purposes, into a single executive secretary who has his own fish to fry. Also I remember the history of the semi-official arbiters of taste like the French Academy and Salon. They became self-perpetuating vehicles of outworn traditions."

"Yet I do believe that the attitude of pluralism, which this member of the Commission set forth, indicates the proper solution of the problem of quality."

"However, we shall not solve the problem of quality by vesting coercive powers in private groups rather than in government officials. The tyranny of irresponsible organizations may be as deleterious to the life of the spirit as the tyranny of the state, and perhaps more so. . . . The solution of the problem of quality does not lie in changing the source of coercion."

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218 MEN PASS SECOND YEAR

Middle Man in Class Averages Sixty-five

The men who completed their second year in February managed, as a whole, to maintain the marks they achieved at the end of their first year, an analysis of the rank list recently released by Mrs. Marion Tomlinson, Assistant Secretary, reveals.

The average of the man in the middle of the class remained the same at the end of both years—a solid 65. To remain in the upper one-fourth of his class, a student had to increase his average from 67.5 at the end of the first year to 69 at the end of the second year. To keep out of the lower one-fourth at the end of the second year, a man had to jump his average from 60 to 63.

Although the number of failures understandably fell off at the end of the second year, the number of men who passed the examinations remained about the same. At the end of the first year, 225 men out of 278 passed the examinations and 53 failed; at the end of the second year, 218 men out of 223 passed and five failed.

A comparison of the 225 men who passed the first year and the 218 men who passed the second year shows that the number of men who achieved an A average dropped from five at the end of the first year to two at the end of the second year. The number of B's increased from 30 to 42, the number of C's increased from 136 to 144, and the number of D's dropped from 54 to 30.

Out of the five men failing at the end of the second year, two failed for the reason that they failed one course and had an average below the required 58. Three men failed because they received two or more E's.

Rank lists for men completing terms other than the second and fourth have not been compiled. However, it has been disclosed that three men out of the fifth and sixth terms made A averages, and 17 men out of the same group made B's.

LABOR CONTROL BY GOV'T URGED NOW



DONALD RICHBERG

ASK ON JOB PAY FOR LAWYERS

ABA Suggests Benefits Continue After Bar Exam

The House of Delegates of the American Bar Association has recommended by a recent unanimous vote that the present provisions of the Veterans Administration Act be amended in order to permit lawyer-veterans to obtain the benefits of on-the-job training allowances. The present rule restricts allowances to the period between graduation from a law school and successful completion of the required bar exam. The justification for this ruling is that admission to the bar through successful completion of the required examinations entitles a man to practice law in a given jurisdiction. The sole test of his competency is his ability to pass the examination. The Veterans Administration has taken the position that passage of the bar examination must be considered as the deadline for completion of training, arguing that any other ruling would indicate clearly that something in the nature of a fraud was being perpetrated on the public in that these allegedly "untrained" men were held out as competent lawyers.

The recommendation by the House of Delegates of the American Bar Association stems from a realization of the realities of the legal profession and from a desire to see to it that lawyer-veterans obtain all possible assistance in the difficult period between their achieving competence in answering legal problems on examinations and their attaining reasonable competence in meeting the requirements of the practice of law.

Liquor Plays Role In Providing Stimulation For Judge's Decisions

This is the first of two articles by Frank W. Grinnell, LL.B. '98.

Lord Northington was the first of a line of port-wine-drinking judges that may at the present time be fairly said to have come to an end. But, before he died, the jovial Chancellor paid the penalty which port exacts from all her fervent worshippers, and he suffered the acutest pangs of gout. It is recorded that as he limped from the woolstack to the bar of the House of Lords, he once muttered to a young peer who watched his distress with evident sympathy—"Ah my young friend, if I had known that these legs would one day carry a Chancellor, I would have taken better care of them when I was at your age." Unto this had come the handsome legs of young Counsellor Henley, who, in his dancing days, stepped minuets to the enthusiastic admiration of the belles of Bath.

From the many stories told of Lord Thurlow and ebriosity, one may be here

Richberg Calls For Compulsory Settling Of Labor Disputes

The advisability of legislation requiring compulsory arbitration in major labor disputes was discussed by Donald Richberg, co-author of the Ball-Burton-Hatch Bill, and Jesse Freidin, former counsellor to the War Labor Board, at the Harvard Law School Forum last Friday night in Sanders Theater.

Moderator Lon L. Fuller, Harvard Professor of Law, introduced the topic "How Can We Mitigate Industrial Strikes?" by asking whether legal reform is necessary and if so, what type of legislation is in order.

Mr. Richberg urged that compulsory arbitration be required as a means of settling major disputes which are not resolved through normal collective bargaining procedures, and which are dangerous to the public health or safety. Mr. Freidin, on the other hand, asserted that compulsory arbitration, with the government making the ultimate decisions, is bound to impair the effectiveness of collective bargaining even though an attempt is made to limit such procedure to major disputes.

Contending that existing federal legislation is responsible for Labor's present powerful position, and that abuse of this power is "today's menace to freedom," Mr. Richberg recommended immediate remedial legislation as the best means of protecting the interest of the general public. He ridiculed the idea that education and time alone will solve the problem. "Civilization cannot wait on the slow education of mental mules." He argued that it is silly to endure abuses of power on the theory that freedom is being preserved, and pointed out that in the past, legislation has often been necessary to prevent abuses of power by groups which achieved privileged positions: business monopolies, utilities, financiers, and employers have all been guilty of abuses and in each case the public interest has required regulatory legislation. Reactionaries who oppose such laws as unnecessary restrictions on freedom, he said, fail to realize that no true freedom is possible unless powerful minority groups are effectively prevented from furthering their own interests at the expense of the rest of society. "Unrestrained freedom is simply anarchy."

Mr. Freidin, declaring that there is too much willingness to sell collective bargaining short, cautioned against basing permanent legislation on the abnormal 1945-46 period. He pointed out that when the Wagner Act was passed in 1935 only two and a half million workers were organized, and that between 1937, when the act was held constitutional, and 1940 the first real organization of the mass production industries took place. Then came war. Today with fifteen million organized workers, most of them in the mass production

(Continued on page four)

Hastings Hall Nursery For Legal Eaglets Operating At Full Blast

The newly organized nursery school for the children of Harvard Law School students, sponsored by the Kendall House Law Wives organization, recently received nationwide publicity when Dean Erwin N. Griswold reported to Harvard Law Alumni groups during his trip to the west coast that he was probably the only man in the country who was both dean of a law school and dean of a nursery school. In a year or two, newly enrolled youngsters of the first grade in public schools may claim to have had their previous training at Harvard Law School—Nursery Branch, that is.

The nursery school is held every week-day morning in the basement of Hastings Hall where a special room has been prepared for the children with all furniture and equipment built on a miniature scale. The tables are about a foot high, and the little individual wooden benches look like small footstools. The room also has low shelving along the walls for the storage of toys, games, dolls, and other miscellaneous nursery equipment. A thermometer is placed near the floor so that it will indicate the room temperature at child-level.

At nine o'clock these small students are brought to school, often by fathers bound for Langdell, and are stripped of snowsuits, mufflers, and mittens, and turned over to the charge of Mrs. Philip Ewing, a Business School wife who has a degree in child psychology and who worked in a large nursery school in New York City for almost a year while

her husband was stationed there during the war. While their fathers are wrestling with the problems of "proximate causes" and "vested remainders," the children "study" a curriculum of Story Telling, Piano and Phonograph Music, Jig Saw Puzzles, Playing Train, and Piling Up Blocks. Shortly after ten o'clock operation bathroom is executed by all hands, followed by a morning lunch of fruit juice and cookies. At eleven o'clock, when father is grabbing a quick smoke in the halls of Langdell, the nursery school also takes a ten minute break for the morning nap. From nap until noon games are played and picture puzzles are worked, the general routine being highlighted from time to time by individual performances of seeing how many benches may be stacked on top of one another and how far a small "choo-choo" may be heaved across the room. Particularly dangerous or belligerent activities are skillfully diverted into more constructive channels by Marion Ewing who seems to be able to watch all her extremely active charges at once.

The school has an enrollment of twelve youngsters and this is all that can be taken care of for the time being. Any law school parents who are interested in sending their child should see Mrs. Ewing, or Mrs. Richard H. Wolford, who supervises the school, and be placed on the waiting list. Children from the ages of two to four are eligible, and no transcript of previous record or entrance examination is required.

(Continued on page three)

BOARD ANNOUNCES QUALIFYING RULES

Because there apparently exists some misunderstanding concerning the qualifications for continued participation in the Ames Competition, John Delaney and John Shea, chairmen of the second and first year committees respectively of the Board of Student Advisers, wish to call the attention of first and second year men to the rules for the competition.

No second term man is qualified to compete unless he has completed a first term argument, and no third term man can qualify to compete unless he has completed both a second and first term argument. In cases where a man has an excuse for not participating in the first or second term arguments (such as lack of time because he is working his way through school), the requirements of prior participation will be waived upon application to the Board.

The rules announced above have their most important application in the case of third term men who are members of clubs participating in the qualifying round. When the winners of the qualifying round have been determined, the winning clubs will be checked to determine if all members have complied with the rules of prior participation. A club which contains unqualified members will be barred from advancing in the competition even though it has won the qualifying round, and the next highest club will advance. According to Delaney, therefore, it is advisable that all the clubs in the qualifying round police their membership now before the qualifying round begins.

The Harvard Law School Record

Published weekly on Wednesdays for twelve weeks of each term by The Harvard Law School Record Corporation, Austin Hall, Cambridge 38, Massachusetts. Subscription price: \$2.00 per term mailed, \$6.00 per year mailed; student subscription, \$1.50 per term mailed, \$4.00 per year mailed; distributed at the Law School. Business and Editorial Offices, Austin Hall, Cambridge 38, Massachusetts. Telephone KILKland 7000, extension 133.

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"Entered as second class matter November 18, 1946, at the post office at Boston, Massachusetts, under the Act of March 3, 1879."

Editorials

A glance at the casualty rate among first year students gives ample evidence that the task of men entering upon the study of the law is not an easy one. Even when the caliber of entrants is phenomenally high, as at present, over ten per cent fail at the end of the second term. It is difficult to believe that among such a carefully selected group so many men lack the ability to master the law.

Granted that some special aptitude is needed to insure success at Harvard Law School, the process of selecting only one out of every five applicants should itself eliminate the bulk of the potential misfits. The men who are finally admitted certainly must have demonstrated enough scholastic ability in their college work to give solid promise of achieving at least a passing grade here.

But the examination results do not satisfy reasonable expectancy. This outcome is not the product of the ruthless application of a grade curve; changes in the grade pattern during the past several terms clearly show that there is no rigid allocation of A's, B's, etc. Nor can the standard of instruction, which is almost uniformly high, explain the appreciable number of failures.

There is, however, an indication of the underlying cause in the commonly related experience of receiving one's lowest grades in the courses in which one felt best prepared, which can result only from having misapprehended what it was that the examiner intended to elicit. This confusion as to the scope and end of the examiner's inquiry is particularly prevalent among first year men, and, indeed, it sometimes permeates all aspects of their work.

Methods of dispelling the fog which surrounds first year law study have been pioneered by Professors Leach and Casner. Among the humane services they extend to their student are samples of note-taking and outlining, and the review of answers to the most recent examinations. By these devices the students may orient their own course of study.

The demand for this type of assistance is great. Numerous requests have been received by the Record to publish a sample "A" answer to any law examination. There is a point at which these educational aids may become indefensible consumers of faculty time and effort. But certainly the past history of first year failures gives ample warrant for more determined efforts to let neophytes know what they should look for in their long hours of study. Perhaps an analysis could be made of the causes of failure which could serve as the basis for an intelligent orientation program. In this way the high standards of admission might come to be reflected in a minute ratio of failures.

T. J. O.

Letters to the Editor

To the Editor of the Record:

Because his first-term days have faded into the past, *Publius* was no doubt ignorant of the potential consequences of his ill-considered and ungentlemanly attack on the flower of our sister institution. The Record reports that 81% of our newest class, or about 254 young men, are unmarried. Unquestionably, many of these have brought with them the prejudice, acquired in undergraduate or military days, that women are a necessary phase in man's existence. To these hapless souls, many of whom will require many weeks before coming to the realization that a juicy case of promissory estoppel is infinitely to be preferred to the company of a young lady, the older members of the School owe a duty to guide them carefully through this difficult transitional phase.

It will be, admittedly, impossible at first to bring our nascent law students to a realization of the superior virtues of the printed page to the wanton woman. Hence, that duty aforementioned reduces itself to the judicious offering of sound advice on the selection of female companions in the Boston area.

Radcliffe, as many readers will be surprised to learn, is located a mere five minutes' walk from Langdell Hall. Wellesley cannot be reached in under twenty-five—even in an automobile driven by a carefree young man who has not yet read his Torts cases. Thus, every senior law student who has guided a first-term man to our neighbor institution may have the deep satisfaction of knowing that he has saved that man at least forty minutes every day that that man pursues his folly—forty minutes that may well be devoted to pondering the Case of the Casual Ejector, or some other equally intriguing phase of the law.

May I, therefore, use your columns to set the record straight, and save 254 worthy young men from following the primrose path to Wellesley? The Cliffe-Dweller has many and most surprising virtues. In no other institution of female learning will the law student find a companion who, at midnight of a Saturday eve, to the soft accompaniment of tinkling ice and creaking springs, stands ready to explain the unique digestive system of the tape worm. If alone and unmourning, you find yourself under the piano at the height of a brilliant party, the Radcliffe woman will seek you out—perhaps only to secure your signature on a

petition for a Free Outer Mongolia, but she will seek you out. She is forceful, dynamic, laden with information on many Good Causes. She is sound in her exposition, clear in her enunciation. Bring a Cliffe-Dweller to the Graduate Dining Hall, and whispers of admiration will follow you to your table. "Now where on earth," your companions will inquire, "could Jones have found so keen an intellect?"

The Radcliffe woman has, be it confessed, also some compensating faults. But never, dear *Publius*, never "Slacks, Lumberjack Shirt, Pigtailed and Acne." Has *Publius* been there?

ROBERT A. FELTNER, II.

Off the Record

A LEGAL PRIMER

The Chairman of the Board

See the Chairman of the Board of Directors. Is he not imposing? He is imposing on the Shareholders. He has just looted the Corporation of \$10,000,000, of which he will give .0000001% to Charity, thus saving his Conscience and establishing a Reputation for Good Works. Now he will go to his Office and write a Report to the Shareholders about Free Enterprise, Initiative and The American Way. Oh, Children, what a Pity we cannot vote for Warren G. Harding again.

—PUBLIUS.

To Harvard Law School Students
from a Radcliffe Belle
(in re: those uncomplimentary remarks in Legal Primer)
With their heads in their bags
And their books on their necks,
The Harvard Law students
Might look less like wrecks.
M. C. C.

Our man Livingstone has arranged his schedule so that he emerges from his last class of the week at dusk on Wednesdays. This leaves him ample time for an occasional trip to the fleshpots of B'Way to forget it all. But flight seems to be futile. At a matinee of *"Finians Rainbow,"* he swears he heard the hit tune sung as:

"How are things with Glueck and Morgan."

The Book Shelf

THE BRITISH PEOPLE 1746-1946, G. D. Cole and Raymond Postgate, Knopf, \$5.00, 600pp.

Current events have converted the academic weakness of the Cole and Postgate historical study into a timely virtue. For this book is British modern history with such a heavy economic interpretation as to be nothing more than an account of the sources and development of the national economy as viewed by the working class. In the face of Britain's present plight such a story cannot fail to be illuminating.

The period embraced in this study covers the entire span of modern industrial growth. The transformation which has been wrought during the last two centuries could not be more vividly or engrossingly depicted than in the panorama of the English counties as of 1746 offered in the early chapter of this book. England was then largely an agricultural and trading nation. Only two of her cities exceeded 50,000 population. Most of her present mining areas were undeveloped, and manufacturing was conducted on a home or village basis. The standard of living was at a bare subsistence level.

Within a century Britain had been transformed into the "workshop of the world" and had become dependent upon other nations for a large part of her foodstuffs. This change was accompanied by a social revolution marked by such disturbances that Macaulay feared a reenactment of the history of the Stuart period. It is in these disturbances which expressed "the turbid hopes of those who have everything to gain" that Cole and Postgate find the significant movements in history. To the authors the heroes are not Peel and Gladstone but Wilkes and Cobbett.

The main thread in this book is the course of trade union organization and of working class agitation. Mr. Cole's adherence to guild socialism reveals itself in a general skepticism as to the efficacy of political action in improving the position of the "common people." The authors appear to take the view that government serves labor only by preventing interference with the organization and activities of trade unions. This rather negative view of the role of the state may explain the lack of enthusiasm over the Labor Party victory in the post-war election.

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—Harris B. Steinberg, '35

"And so, my friends, according to the facts in this case . . ."

Gallery

MANLEY O. HUDSON



Judge of the Permanent Court of International Justice at the Hague from 1936 to 1946.

Judge Hudson's interest in International Law was first aroused through his interest in furthering world peace. In 1918 he was appointed to the American Commission to Negotiate Peace which went to Paris and at Paris was a member of various other committees, including the Commission on the Protection of Minorities. For several years after the formation of the League of Nations he was a member of its Secretariat. He was legal advisor to the International Labor Conferences in 1919, 1920 and 1924 and a member of the American delegation to the Conference of Codification of International Law held at the Hague in 1930. In 1933 and again in 1939 he was appointed American member of the Permanent Court of Arbitration. In 1946 he was a member of the United Nations Commission on an International Tribunal. He is now an associate of the Institute de Droit Internationale.

In Seminar Room 2 where he teaches the class in International Law on Wednesday and Thursday afternoons, Judge Hudson sits at the head of a massive round table with the students seated around the table facing him. This year the class is so large that a large conference table at the back of the room is also occupied and several students sit in seats lined up against the windows. The Professor sets the tone of informality by smoking numerous cigarettes while he directs the discussion; students are permitted to smoke anything from cigarettes to corn-cob pipes.

Judge Hudson insists on very accurate wording of answers and definitions. Often he waves his hands and shouts "I won't have that. Won't have it at all. Won't have it in the room," when a word is inaccurately used. His head bobs and his white hair waves on his head. He covers a great deal of material in a relatively short time, moving rapidly from case to case.

More than is possible in most classes, the students in International Law participate in the discussion. The class is relatively small so that almost everyone gets a chance to comment during each two hour period. In addition, if a point cannot be cleared up immediately it is assigned to a student for research. He is expected to announce his findings during the next period. Hudson invites students to write notes to the material in the casebook for possible publication in a future edition. An interesting feature of the class is that students are invited at the beginning of each class period to ask questions or make comments on any current problems in International Law as they are reported in the daily papers. These discussions are cleared up before the class begins to work on the assigned cases.

Judge Hudson was born in St. Peters, Missouri in 1886. He was married in 1930 and has two sons, Manley O., Jr., 15 and Peter, 9.

His writings have been considerable. He has been editor of the American Journal of International Law since 1924, has edited the casebook on International Law used in his class, International Legislation (7 vol) and World Court Reports (1935, 1938, 1943) and is co-editor with Fournoy of "Collection of Nationality Laws," among others. He has written a series of twenty-five annual articles on the Permanent Court of International Justice and is the author of the standard treatise on that court. He was Director of the Harvard Research in International Law and of a group of two hundred which prepared "The International Law of the Future," published in 1944. He is now serving as Reporter for the American and Canadian Bar Associations on "Development of International Law." His research has carried him over most of the world.

To men who are wondering about opportunities in International Law, Professor Hudson says: "International Law may present unusual opportunities in the next twenty-five years to men with general legal experience and practical background. There is also a growing demand for teachers who are qualified in International Law. However, few men can be taken on by the International Organizations themselves."

Sub Judice

WAR AND A PLACE TO LIVE****

Somewhere in the Philippine Islands Japanese forces are reported still holding out against American troops. That fact may have a great effect on leases in Mississippi for a considerable period of time. A recent case revealed the following situation: In January 1943 a lease was drawn containing the clause, "This lease contract shall be and remain in full force and effect until four (4) months after all acts of warfare between the United States of America and the countries with whom she is now at war (Germany, Italy, Japan) shall have ceased." The landlord was of the opinion that the lease would expire December 14, 1945—four months after the Jap armistice. The tenant was given notice according to the landlord's view and answered denying the landlord's contention and giving notice that he intended to remain in possession. The landlord instituted statutory proceedings to evict the tenant as a hold-over, filing his petition on December 18, 1945. The circuit court dismissed the suit and the landlord appealed. The Supreme Court of Mississippi held in its opinion that the words of the lease had no technical meaning and therefore would be given their normal and popularly accepted meaning. That meant the physical acts of war must cease and did not refer to the political ending of the war. The court further stated that it may take judicial notice of important

historical facts relating to war, such as the end of the war between Italy and the U. S. and Germany and the U. S. and that armed conflict in the legal sense of warfare had ended and any further resistance would not be warfare but acts of outlaws and criminals.

With Japan it was a different story though. The Court took notice of the armistice of August 14, 1945 and the surrender of September 2, 1945 but stated it must also take judicial notice of the fact that all acts of warfare did not cease as of the Armistice and that the Japanese were in scattered positions where it was difficult to communicate the end of hostilities to them. The court therefore reasoned that the "physical" acts of warfare were not yet ended in that situation and therefore the landlord's bill was brought prematurely and was rightfully dismissed but that the dismissal should have been without prejudice since there still existed a right to bring the bill when the four-month period after the actual ending of war had occurred. *Miller v. Fowler*, 28 So. (2d) 837, (Miss., 1947).

A COLOSSAL, STUPENDOUS CECIL B. DEMILLE SPECTACLE****

Plaintiff joined the American Federation of Radio Artists, Los Angeles, (AFRA) in order to produce a radio show. The union levied a one dollar assessment on all members to fight an initiative measure on the ballot which proposed to outlaw closed shops in California. Plaintiff refused to pay his dollar and after notice from the union that he would be suspended if it was not paid by a certain date he was in fact suspended upon further refusal and as a result was unable to remain on the air. A restraining order was then sought to prevent his suspension but the complaint was dismissed. On appeal the court held that when the National Union at its convention approved the levy it amounted to a ratification making it valid; that there was no denial to the Plaintiff of his rights of suffrage, freedom of speech or tampering with his freedom of expression of thought and right of assembly as claimed. When he joined the union he bound himself by its constitution, by-laws and the will of the majority of the members when lawfully exercised and as a member he was contractually bound to submit to disciplinary action of the union. Judgment was affirmed. *DeMille v. American Federation of Radio Artists, Los Angeles*, 175 Pac. (2d) 851 (1946).

Cecil may well be expected to carry this to a higher court. This is undoubtedly one of his biggest extravaganzas to date.

A LESSON IN NEGOTIABLE INSTRUMENTS****

Claims were filed against a decedent estate in the sum of \$1250, represented by three items.

The first was a note payable to "Marie H. Garrett in person or estate"; held, it was good only in the hands of Marie H. Garrett and not a negotiable instrument under section 20 of the Negotiable Instruments Law. That, being non-negotiable consideration must be alleged and proved and since that was not done the claim must be disallowed.

The second item was a check payable to "Mrs. A. H. Knauss" who was the testator's wife and had predeceased him. The check bore no indorsements and therefore its negotiability was destroyed when transferred without indorsement. Here too consideration had to be alleged and proved and since it wasn't the claim was disallowed.

The final item was a check drawn by the testator payable to "Marie Knauss." Claimant showed that she was Marie Knauss. The court held that a check in its usual form is a negotiable instrument but since the administrator had raised the question of delivery it was necessary for the court to elaborate further and cite section 35 of the NIL, which states that delivery is presumed if the instrument is negotiable unless the contrary is proved and section 50 of the NIL, which likewise presumes consideration in such instances. This claim was allowed. *In re Knauss Estate*, 63 N.Y. S. (2d) 828 (1946).

A CLOAK OF INNOCENCE****

Ernest Eaddy, a colored soldier was convicted of first degree murder and appealed citing certain prejudicial error. Among the errors cited was the fact that the defendant was brought into court, at the trial, wearing striped coveralls with the words, "COUNTY JAIL" written in large block letters across the back. His counsel objected to the court and requested permission for the defendant to change his clothing. The court refused the request and that is cited as prejudicial. The Colorado Supreme Court held that the court had discretion as to the defendant's garb and just as it might have been prejudicial to allow the defendant to appear in court in uniform, since he was still in the armed forces, so it was an abuse of the court's discretion to allow the appearance in this outfit. The court stated that although no precedent was cited to it, "The presumption of innocence requires the garb of innocence, and regardless of the ultimate outcome . . . every defendant is entitled to be brought before the court with the appearance, dignity and self respect of a free and innocent man . . ." *Eaddy v. People*, 174 P. (2d) 717 (Colo. 1946).

MUSHROOMS & MOOTNESS****Destruction of adulterated goods per court order leaves no issue for appellate court to decide between the parties.

The federal government filed a libel against some bags of mushrooms shipped in interstate commerce claiming that they were adulterated within the meaning of the pure food laws. A claimant brought the issue of adulteration to trial which resulted in a finding that the mushrooms were adulterated. The mushrooms were ordered forfeited and destroyed. Motion for new trial was denied and notice of appeal given. No stay of execution was entered, so the marshal destroyed the mushrooms. At this point the subject matter of the libel and of this action was no longer in existence. Appeal dismissed. *United States v. 3 Unlabeled 25-Pound Bags of Dried Mushrooms*, 157 F. (2d) 722 (C. C. A. 7th, 1946).

This being an action in rem the proceedings can be maintained only during the existence of the subject matter. Both the government and the claimant, the latter reluctantly, admit the matter has become moot, but both parties seek a decision on the merits. This the court refused to do. The court said: "If we were to affirm the judgment, the District Court could not destroy the mushrooms. They have already been destroyed. If we reversed the judgment, there would be no mushrooms to restore to the claimant."

Nothing is said about the state of the proceedings if, after a stay of execution, the mushrooms rotted in the hands of the government from natural causes.

The Witness Stand

Question: To prevent further bribery scandals in sports, should each sport administer its own "clean-up" and preventive campaign, or is legislation, either state or federal, the preferred solution?

1. **Jim Olinensis**, Philadelphia, Pa., 3rd Term.

It's axiomatic that you can't legislate honesty into existence. We already have punitive laws covering bribery in sports and passing more, whether state or federal, won't eliminate tossed fights or ball games. The enforcement job would be a next to impossible task and, if left to local agencies, might be more likely to end in the pay-off of the inspectors than the clean-up of the bribers.

Baseball recovered from the biggest black eye in the history of sports, the Black Sox scandal, by appointing a Czar, and while the Czar system has its failures (like the recent football scandal), sports so administered stand up better than the sports, such as boxing and racing, which are under some degree of government control. Leave it to the sport—those that are well-organized know that their continued popularity depends on their being well run honestly; they can be counted on to administer self-imposed rules stringently.

2. **Graham Matthews**, San Diego, California—2nd Term.

To clean the Augean stables of professional and, to a lesser extent, of amateur sports of the accumulated stench of bribery and corruption is indeed a task worthy of a modern Hercules. But this is a job which will only be done when the promoters of the individual sports feel that continued bribery scandals will deprive them of their public support. New legislation of whatever nature, however, will not, I believe, prove to be the force which will prevent recurrences of attempts to fix football games or tamper with horses. The existing laws provide stringent enough penalties for the guilty once they are discovered, but neither present laws nor possible modifications of them in the future will provide the needed deterrent effect: prevention rather than punishment is the real need if the other sports are not to degenerate into something akin to professional wrestling. For this reason, perhaps a Czar or dictator with vigorous and determined powers and an aroused public, will be able to squelch bribers and fixers before they get started. In this connection, I think the success of the miniature FBI recently established to clean up horse racing is an encouraging sign that such a plan will work.

3. **David S. Carlton**, New York, N. Y., 2nd Term.

I don't believe it's necessary or desirable for the legislatures to step into a province which is peculiarly one for individual initiative. When sports can no longer control themselves, they should give up being sports, as such, and will be given up by the public. Of course, the great example of what a private enterprise can do in its own interests is the baseball industry, which quite successfully recovered from its shattering scandal with the "Black Sox" in 1919 or thereabouts. There is no reason why this should be impossible for every other sport, especially football, which is suffering from growing pains right now. As an industry it can and must protect itself if it is to survive. The problems are not so fearsome that honest administration, by a powerful and impartial sports commissioner in each field, cannot overcome them. The sporting magnates themselves should be willing to submit to this, for they are the ones who suffer most from scandals. To tax the people with the cost of any more investigating committees, would be to tax all for the benefit of a few, would be to impose governmental interference in the rights of private property without real necessity, and would be to reduce the functions of government to those of a sports manager.

4. **David A. DeWahl**, Minneapolis, Minn.—2nd Term.

I see no reason for governmental intervention in the matter. If the object would be to guarantee the consumer full value for his admission dollar, he is not cheated unless he knows of the fixing of the sporting events, and if he knows, his protest at the box-office will settle the matter. If the object is the clean-up of gambling, there are plenty of laws on the books already; enforcement of law is not aided by passing more laws to be enforced.

Alumni Notes

Information has been received from 45 of the 86 students who received LL.B. or LL.M. degrees in November, 1946

advising of their present activity. Believing that the present undergraduate body may be interested in tracing their friends, and that the nature of the first post-graduation employment of this group may be indicative of the shape of things to come for those now in the Law School, this tabulation is presented. (The business association and business address follows the name of each individual.) It may be significant that almost one-third of this group has located in New York City, one-ninth each in Boston and in Chicago, three individuals in Los Angeles, two in Washington, and the balance scattered primarily in the large eastern metropolitan centers. Excluding Los Angeles, only three of this group appear to have located west of the Mississippi River and only two have established themselves in the south.

Frederick M. Adams: Morgan R. Seiffert, National Bank Bldg., 390 George St., New Brunswick, N. J.; **David S. Bate**: Stryker Tams & Horner, 744 Broad St., Newark, N. J.; **Bennett I. Berman**: Brown Fox & Blumberg, 231 So. LaSalle St., Chicago, Ill.; **Edward C. Brewer, Jr.**: Brewer & Brewer, Planters Bank Bldg., Clarksdale, Miss.; **Thomas W. Caffey**: International Air Transport Assn., Central Station Bldg., Montreal 3, Canada.

Joseph J. Cardamone, Jr.: Ferris Burgess Hughes & Dorrance, First National Bank Bldg., Utica, N. Y.; **Charles W. Cobb, Jr.**: Richardson Wolcott Tyler & Fassett, 89 State St., Boston, Mass.; **Charles E. Corker**: School of Law, Stanford Univ., Calif.; **Thomas C. Cravens, Jr.**: Chambers of Judge Sherman Minton (C.C.A. 7th), Chicago, Ill.; **James C. Daubenspeck**: McDermott, Will & Emery, 111 W. Monroe St., Chicago, Ill.

Charles E. DeLong: Securities & Exchange Commission, 18th and Locust Sts., Philadelphia 3, Pa.; **Fred Doppelt**: Booth & Baron, 20 Broad St., New York, N. Y.; **Hector G. Dowd**: Leon Weill & Mahoney, 15 E. 26th St., New York, N. Y.; **Clarence I. Dayton, Jr.**: Herrick Smith Donald Farley & Ketchum, 1 Fed-

eral St., Boston, Mass.; **Chester E. Finn**: Estabrook Finn & McKee, Mutual Home Bldg., Dayton, Ohio.

Edward J. Flynn: National Labor Relations Board, New York, N. Y.; **George H. Fraser**: Hart Spencer McCulloch & Rockwood, 1410 Yeon Bldg., Portland, Oregon; **Carl E. Glock, Jr.**: Reed Smith Shaw & McClay, 747 Union Trust Bldg., Pittsburgh, Pa.; **Ernest L. Godshalk**: Sullivan & Cromwell, 48 Wall St., New York, N. Y.; **William C. Hurr**: Kauheimer Alt & Likert, 1313 Wells Bldg., Milwaukee, Wis.

Ward M. Hussey: House Legislative Counsel, Washington, D. C.; **Joshua Jacobs**: House Grossman Vorhaus & Henley 521 5th Ave., New York, N. Y.; **Robert Klonsky**: Schulnick & Siegel, 21 E. 40th St., New York, N. Y.; **Charles L. Kramer**: Milton Broadman, 283 Madison Ave., New York, N. Y.; **Daniel A. Kramer**: Sullivan & Cromwell, 48 Wall St., New York, N. Y.

George N. Leighton: Temple & Wimbish, 3456 So. State St., Chicago, Ill.; **Walter L. M. Lorimer**: Chambers of Judge Ben Harrison, Federal District Court, Los Angeles, Calif.; **Irwin A. Lowenfeld**: House Grossman Vorhaus & Henley, 521 5th Ave., New York, N. Y.; **John C. Marble, Jr.**: Deland & Rockwood, 22 Beacon St., Boston, Mass.; **Richard G. Martens**: Price Waterhouse & Company, 56 Pine St., New York, N. Y.

August R. Meyer: Rackemann Sawyer & Brewster, 53 State St., Boston, Mass.; **Peter K. Morse**: Cahill Gordon Zachry & Reindell, 63 Wall St., New York, N. Y.; **Stephen F. Mullen**: Letts & Quinn, 32 Custom House St., Providence, R. I.; **David M. Olds**: Duane Morris & Hecksher, 1617 Land Title Bldg., Philadelphia, Pa.; **Donald B. Prouty**: Rackemann Sawyer & Brewster, 53 State St., Boston, Mass.

Frederick V. Rogers: Warren & MacGready, 39 Broadway, New York, N. Y.; **Richard L. Rykoff**: Oliver B. Schwab, 9700 Wilshire Blvd., Beverly Hills, Calif.; **Alan N. Schneider**: Seligman & Greenbaum, Kentucky Home Life Bldg., Louisville 2, Ky.; **Eugene Schuster**: Julius Weiss, 51 E. 42nd St., New York, N. Y.; **Robert Shulman**: Department of the Interior, Washington, D. C.

John L. Simonds: Roberts Cushman & Grover, 31 Milk St., Boston, Mass.; **Edmund J. Skorupski**: De Forest Pitt, Classic St., Hoois Falls, N. Y.; **Dudley R. Sullivan**: Lawlor & Walsh, 134 So. La Salle St., Chicago, Ill.; **Allen E. Sussman**: Loeb & Loeb, 610 Pacific Mutual Bldg., Los Angeles, Calif.; **Harry Treinin**: independent practice, Wayland, N. Y.

ACADEMY—(Continued)

Of the eighty persons attending this conference only eight were from the United States.

The first week was the busiest with lectures by Dr. Alfaro, Foreign Minister of Panama, on the comparative law of Trusts, in the morning. The topics for the round table meetings were under the general heads of public law, where Diplomatic Protection and the international defense of the Rights of Man were considered, and private law, where such subjects as conditional sales and the validity of foreign divorce decrees were discussed. At each meeting a paper was read by the "chairman," which was followed by questions and discussion of this subject.

During the second week Dr. George A. Finch, President of the Academy gave a course of lectures on Sources of International Law, and Mr. Eder gave his lectures on the Anglo-American Common Law. Mr. Eder has published a comprehensive bibliography on our legal system for the benefit of the Spanish-speaking students. Dr. Del Costello gave ten lectures on Banking Law and

Dr. De Belaunde of Lima, Peru gave his course on the formation of American nationalities.

The outstanding lectures from the point of view of the students from the United States were those of Dr. Machado of Cuba, who speaks excellent English and introduced the civil law principles of Latin America. This course and that of Dr. Ulloa of Peru on continental solidarity completed the conference.

Outside of the formal lectures and discussions, there were several functions given by the Academy. The official opening on Saturday, February 8 was an impressive ceremony held in the House of Representatives chamber of the magnificent Capitol Building. There were many speeches in both English and Spanish, describing the purpose of the Academy and encouraging such inter-American meetings. The next day a large reception was held at the Hotel Nacional de Cuba where Dr. Ernesto Dibiago, director of the Academy, was the host.

Much of the activity of the Academy took place outside of the formal lecture hall, in the exchange of legal ideas between Americans and Cubans who were brought together by the Academy. The classes were held between three and six each afternoon. Much of the balance of the time was spent in the company of various Cuban lawyers, informally comparing notes and getting to know the important differences between the two countries. The city of Havana was most hospitable and the University welcomed the Americans at its classes.

The Academy taught its students more than a few principles of comparative law in the Americas. It gave them an insight into the problems and possibilities of international legal harmony. Two major obstacles were apparent throughout: (1) the difference in language, both in communication and definition, which influences the extent to which each nation can attempt to explain the details of its legal system and (2) the divergent philosophies upon which the law is based in North and Latin America.

In the training of lawyers in Latin America, the emphasis is on jurisprudence and a scientific approach to the theory of law. The course takes five years and begins immediately after secondary school. The law courts are not as flexible as ours and the strictness of the legal system is sometimes the cause of the revolutions which are more usual in Latin America than anywhere else in the world.

The possibilities for legal cooperation, however, cannot be overlooked. The spirit of eagerness to learn more about each other's law, the common understanding between lawyers as such and the obvious fact that all law is attempting to achieve the same end are some of the encouraging factors. The desire to improve our law is the motive for learning more about other systems and the comparison is the source of new ideas which can be of value to the practicing lawyer as well as to the student of jurisprudence.

W. B.

DANCE TICKETS

No tickets will be sold at the door for the law school spring formal Friday night at the Hotel Somerset, the committee has announced. Those desiring to attend but failing to procure tickets prior to the time all are sold this week, may check for cancellations at 17 Hastings Hall.

Bar and waiter facilities will be provided by the hotel, and guests are therefore requested not to bring their own refreshments.

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BOOK SHELF—(Continued)

Although no definite comments were made on Britain's current economic problems, the discussion of the sources of pre-war prosperity were revealing. Even before the war Britain had a deficit of about 50 million pounds annually and had to meet this by consuming portions of her foreign investment capital. The income from this vast capital, together with the earnings of British shipping and insurance interests, accounted for 400 million pounds of invisible exports annually.

The British people were fairly prosperous during the thirties, but this was in part due to the very low price of farm products which formed the bulk of her imports. The sources of invisible exports have been either expended or destroyed during the war, and the present high price of food products is now preventing Britain from using her loan credits for the machinery which will modernize her mines and factories and thus increase her production of goods for export.

There appears to be little hope for rehabilitating the sources of invisible income which were so vital to Britain's pre-war position. Certainly the export of new capital is not possible with the present grossly unfavorable trade balance. Efforts will surely be made to restore her merchant marine position, and England's policy on international air routes and rates reveals a determination to fight for a slice of new transport revenues. But in the long run only production increases can effect a trade balance. Cole and Postgate express the opinion that government ownership of the coal mines will itself eliminate any power difficulties. This view may prove to be excessively optimistic.

After reading of the growth of trade unionism during the past two centuries, and of the many objectives which it set for itself and gradually achieved, one might speculate as to how the labor movement will fare under the government which bears its name. In 1939 the main platform of British trade unions was a demand for the forty hour work week. How long will the workers keep this aim in the background? Can the government afford to make any concessions on the work week? It is such an issue as this which the Labor Party can face only with danger of a possibly disastrous internal split.

Whatever the future may hold for the British people certainly their past record of achievement will forever be impressive. And the record is as striking in this history where progress is assumed to be a function of the relation between the general wage level and the price of wheat, as it is when the historian measures progress by legal development, the growth of liberty, the flowering of literary genius, or the increase of scientific knowledge.

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LIQUOR—(Continued)

at their backs. Happily, he did no injury.

Throughout their long lives the brothers Scott were steady, and, according to the rules of the present day, inordinate drinkers of port wine. As a young barrister John Scott could carry more port with decorum than any other man of his inn; and in the days when he is generally supposed to have lived on sprats and table-beer, he seldom passed twenty-four hours without a bottle of his favourite wine. Prudence, however, made him careful to avoid intoxication, and when he found that a friendship often betrayed him into what he thought excessive drinking, he withdrew from the dangerous connection.

Bringing from Oxford to London that fine sense of the merits of port wine which characterized the thorough Oxonian of a century ago, William Scott made it for some years a rule to dine with his brother John on the first day of term at a tavern hard by the Temple; and on these occasions the brothers used to make away with bottle after bottle not less to the astonishment than the approval of the waiters who served them.

It is on record, and is moreover supported by unexceptionable evidence, that in his extreme old age, whilst he was completely laid upon the shelf, and almost down to the day of his death, which occurred in his eighty-seventh year, Lord Eldon never drank less than three pints of port daily with or after dinner.

Of eminent lawyers who were steady port-wine drinkers, Baron Platt—the amiable and popular judge who died in 1862, aged seventy-two years—may be regarded as one of the last. Of him it is recorded that in early manhood he was so completely prostrated by severe illness that beholders judged him to be actually dead. Standing over his silent body shortly before the arrival of the undertaker two of his friends concurred in giving utterance to the sentiment "Ah, poor dear fellow, we shall never drink a glass of wine with him again," when, to their momentary alarm and subsequent delight, the dead interposed with a faint assumption of jocularity "But you will though, and a good many too, I hope." When the undertaker called he was sent away a genuinely sorrowful man; and the young lawyer, who was "not dead yet" lived to old age and good purpose.

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Calendar

THE LEGAL WORLD All Terms

To adjust for the two holidays on Saturday this term, on Monday, April 21, and on Monday, April 28, in the mornings only, classes ordinarily held on Monday will be omitted, and Saturday classes will be substituted. These Saturday classes will meet on these two Monday mornings at the same time and in the same rooms as on Saturdays. This substitution does not apply to classes held on Monday afternoons which will meet, as scheduled, on these two days.

Labor Law

The class in labor law scheduled for today will not meet. It will be held instead on Friday, March 21, in LS at 4 p. m.

Class of September 1947

Mr. Toepfer of the Placement Office invites all candidates for a degree in September, 1947, to stop in for an interview at their earliest convenience. His office is in the west wing of Langdell Hall on the basement floor, and hours are from 9 a. m. to 5 p. m.

Placement

Mr. Dimmitt is planning to visit several cities during April on placement matters. The Placement Office would like to see during the next two weeks all members of the school who are interested in practicing in those cities. They are Pittsburgh, Columbus, Cincinnati, Louisville, Indianapolis, Springfield, Illinois, St. Louis and Kansas City.

Law Wives

On Tuesday, March 25, Mrs. John Maguire will review Chiang Kai-Shek's new book *China's Destiny*, in Kendall House at 3 p. m.

Lecture

Professor Leach's talk on Oral Advocacy, originally scheduled for Monday, March 17, will be given instead on Thursday, March 20, in Langdell Court Room at 4 p. m.

Lectures

Professor W. E. Hocking's next lecture in his series on *Issues in Contemporary Philosophy of Law*, with special reference to the foundations of International Law will be on *A System of Rights: Rights to Have; Property*. It is scheduled for Monday, March 24, in Room D, Emerson Hall, at 4 p. m.

In the last of a series of talks on *Hebrew-Christian Ethics in the Professions* Dean Pound will discuss the problem from the viewpoint of the legal profession on Tuesday, March 25, in Phillips Brooks House, at 7:15 p. m.

Law School Formal

The formal spring dance is this Friday, March 21, 9 p. m. to 1 a. m., in the Hotel Somerset, Boston.

THE UNIVERSITY WORLD

Lectures

The next in a series of discussions on the works of E. M. Forster is to be by Professor Reuben Brower, Amherst College, who will discuss *The Longest Journey*, in the Kirkland Common Room, on Thursday, March 20, at 7:30 p. m.

Dr. Bernard Drzewiecki, director of the Reconstruction and Rehabilitation Section of Unesco, will speak on *Educational Reconstruction as a Project of Unesco*, on Thursday, March 20, in Large Lecture Hall, Fogg Art Museum, at 8 p. m.

On Monday evening, March 24, the John Reed Society presents Dr. Paul Sweezy in a talk on *Marxism and Modern Thought in Economics*.

University Boxing Matches

On Tuesday, March 25, preliminary bouts for the university boxing championships will take place in the Indoor Athletic Building at 3 p. m. The finals will be on Thursday, March 27, at 7:45 p. m.

Concert

The Department of Music presents this evening a free concert of *Music for Flute and Piano* in Paine Hall, Music Building, at 8:30 p. m. Lois Schaefer will play the flute, and Walter Piston, the piano.

International Student Center

Every Sunday: Open House and tea from 4 p. m. to 5 Phillips Place, Cambridge. Buffet supper (40c) at 6:30; special program at 8. On March 23, Mr. Mahoney of the Massachusetts Committee for World Federation will be the speaker.

A house dance is to be held on Saturday, March 22, at 8 p. m.

THE OUTER WORLD

Ford Hall Forum

Senator Wayne Lyman Morse, of Oregon, will speak on *Politics: In Theory and Practice*, on Sunday, March 23, in Jordan Hall, at 8 p. m.

Concert

Gardner Museum Concerts: Thursday, March 20, Joseph Baughard—bass, Delores Rodriguez—accompanist; Saturday, March 22, Marilyn Shott, soprano, and George Zilzer, pianist, Sunday, March 23, Gordon Dikworth, baritone. Week-day concerts begin at 2:45 p. m.; the Sunday concert begins at 2 p. m. Admission is free.

Bilbo Should Be Seated

This is the concluding half of an article on "the Bilbo problem."

Among the arguments in favor of allowing the Senate unlimited discretion in judging the qualifications of its members are two that will be mentioned here. First it is said that the paragraph of the Constitution which makes the Senate the judge of its own membership contains no limiting words. Secondly it is said that since the language concerning qualifications in Sect. 3 is phrased in the negative, the intent of the framers was that the so-called "qualifications" in reality be "disqualifications", and that the Senate be free to impose necessary qualifications as the myriad unforeseeable circumstances should require.

The statement of Senator Taft during the debate on the Langer case provides a powerful rebuttal of the arguments outlined in the preceding paragraph. Taft's statement is basically in accord with the views expressed by James Madison, by Judge Story in his work on the Constitution, and by Professor Chafee in his book, "Free Speech in the U. S." Furthermore, the post-Civil War Congress was so uncertain of its powers to exclude ex-Confederate officials that it demanded a clause in the 14th Amendment barring anyone who, once having taken an oath to support the Constitution, thereafter engaged in "insurrection or rebellion".

In his book, Professor Chafee describes how important a bearing the question of qualifications may have on freedom of speech. As a concrete example he reports the case of Victor Berger, a duly elected Socialist from Wisconsin, who was excluded from the House because of his opinions regarding our entry into World War I. The right of the voters to be represented by a man of their choice is best protected by limiting the eligibility requirements of an elected official to those expressly stated in the Constitution. Such limits on eligibility qualifications, Chafee points out, give Congress a definite and objective standard to follow; and a definite and objective standard is about the best safeguard against infringement of the rights of elected and electors alike. A loose, subjective standard permits such things as the exclusion of an elected representative, like Berger, whose opinions, though shared and supported by his constituents, are unpopular with the majority party.

The Procedural Question

The second question, the procedural question whether a duly accredited Senator-elect may be barred at the door or whether he should be permitted to take his seat and have any questions as to his qualifications decided later, should be kept distinct from the question as to what qualifications the Senate, by its interpretation of Sect. 3, Art. I, should require of a Senator. But each question is as important as the other as to the effect it may have on the rights of minority voters and minority Senators. Whether a Senator-elect is held to be totally incapable of holding a seat because he lacks a qualification imposed at the whim of the majority, or whether he is merely barred at the door while his right to a seat is examined, his constituents and his party are deprived of his vote. And the majority is as free by the one means as by the other to maintain itself in power and act in disregard of minority rights. It is little consolation to realize that one had a good case but lost on a point of procedure.

The danger of majority high-handedness in barring an unpopular or minority Senator-elect at the door was apparent to Senator George Hoar, Republican Senator from Massachusetts during the early 1900's. In 1903 the right of Senator Smoot of Utah to a seat was questioned because Smoot, as an apostle of the Mormon church, allegedly had taken a secret oath inconsistent with his constitutional oath and because Smoot allegedly favored polygamy. Senator Hoar remarked:

"The orderly and constitutional procedure in regard to administering the oath to newly elected Senators [is] that when any gentleman . . . presents . . . a certificate of his election from the executive of his state, he is entitled to be sworn in, and all questions relating to his qualifications shall be postponed and acted upon by the Senate afterwards. . . . If there were any other procedure, the result would be that a third of the senators might be kept out of their seats for an indefinite time on the presenting of [an irresponsible] objection . . . [and] a change of political power . . . which the people desired would be indefinitely postponed."

According to George H. Haynes, author of "The Senate of the United States", Hoar's view was supported by the precedents as they then existed.

Haynes goes on to say that, "In many later contests these words of Hoar have been cited as the most weighty exposition of the orderly and constitutional procedure". Senator Lodge, Sr., relied on Hoar's words when the right of Senator-elect Moses of New Hampshire to a seat was challenged in 1918. Another important instance (also in 1918) where Senator Hoar's view was followed was the case of Senator Newberry, who was seated although his opponent, Henry Ford, contended Newberry had unduly influenced the electorate by heavy expenditures. The ensuing investigation revealed that Newberry and his supporters had spent at least \$195,000 for campaign purposes. The resolution confirming Newberry in his seat contained a concession to Newberry's detractors by inclusion of a clause stating that the Senate thereby affirmed its belief that the expenditure of such a sum was against sound public policy. (Newberry subsequently resigned his seat. Senatorial aspirants who had campaigned against "Newberryism" were so successful that Newberry became convinced that the following session of the Senate would expel him). Some recent Senatorial contests handled in accord with the Hoar view are those of Schall of Minnesota (1925), Gould of Maine (1927), Bankhead of Alabama (1931), Bailey of North Carolina (1931), Overton of Louisiana (1933), and Langer of North Dakota (1941).

The most notable example where a Senator was barred at the door was the twin case (mentioned earlier in connection with the discussion on "Qualifications") of Smith of Illinois and Vare of Pennsylvania, both of whom were elected in 1926, and both of whom were rejected at the door by resolutions sponsored by Senator Norris of Nebraska. As in the Bilbo case, irregularities during the respective primaries had been reported in the newspapers and investigated by a senate committee before the Senator-elect appeared to claim his seat. Evidence gathered by the committee showed that Smith and Vare had spent more lavishly than had Newberry. In arguing that Senators-elect Smith and Vare be barred, Senator Norris took cognizance of the Senate practice as laid down by Hoar, but contended that the investigation by the committee had overcome such prima facie right as Smith and Vare possessed by virtue of their credentials. In view of the expenditure standard impliedly adopted by the Senate in the Newberry case, there is something to be said for Norris' contention. Moreover, in the case of Vare, the credentials sent by the Governor, Gifford Pinchot, were not in due form, but stated: ". . . I do not believe that Mr. Vare has been duly chosen. On the contrary, I am convinced his nomination was partly bought and partly stolen."

In the seating of a Senator-elect, the precedent of the Smoot case has been uniformly followed except in the cases of Smith and Vare, which are distinguishable. The soundness of Hoar's view in the normal case of a Senator-elect who is challenged is clear when one considers the possibilities for unchecked partisanship opened up by the contrary position. Consider, for example, the events in Rhode Island in 1935, which paralleled in some respects the Nazi seizure of power in Germany in 1933. In a letter to the editor of the *Boston Herald*, printed on January 6, 1947, Professor Chafee describes the scene thus:

"On January 1, 1935, [Rhode Island Democrats] barred two duly certified Republican State Senators at the door (like Bilbo), thus getting a bare Democratic majority of the Senate, which was immediately used to throw almost everybody in reach out of office, including the whole Supreme Court of Rhode Island."

To minimize the possibility of events such as the action of the Rhode Island Senate, we would do well to support a policy of having duly certified Senators-elect seated. As we have seen, if a Senator, though having been seated, is found to have gained his seat by fraud or intimidation, or is found to lack a constitutional qualification, he may be removed by a majority vote declaring his seat vacant. As a matter of fact, in almost every case where the question of seating a Senator-elect who is facing serious challenge has arisen (and this is true of the Bilbo case) the resolution proposed for the seating of the questioned member has expressly provided that the seating was to be "without prejudice" to the Senate to decide all issues regarding such member's right to a seat.

Conclusion: Seat Bilbo

If we follow the views contended for above, what will be the result in the Bilbo case? Although it is a close case in some respects, the result should be, I believe, that Bilbo be seated. This should be the result because Bilbo has

been duly certified and meets the eligibility requirements set forth in the Constitution. Should Bilbo be seated, the two main charges against him should be considered separately, each forming the basis of a separate proceeding against him.

Bilbo's behavior in accepting "gifts" from war contractors should not be treated as disqualifying him *ab initio*, any more than the alleged turpitude of Smoot or Langer was considered as disqualifying them. Rather, Bilbo's war contract dealings are a proper basis for proceedings to expel him (assuming him to have been seated) by a two-thirds vote, and also good grounds for criminal prosecution.

As to the more serious charge of intimidation of Negro voters, proof of the charge would vitiate Bilbo's nomination, thus invalidating his credentials. But in the present state of the proof it is arguable whether the charge has been sustained. Though it is clear that Bilbo made many statements tending to incite intimidation, proof of the connection between his statements and the intimidation, or proof of a conspiracy to intimidate plus an overt act is not so clear. More evidence on this charge should be adduced by the Rules and Administration Committee, and recommendations then submitted. At that time, the Senate can properly decide—by majority vote—whether Bilbo's credentials are invalid and his seat therefore vacant.

Although the Bilbo election, like the elections of Smith of Illinois and Vare of Pennsylvania, was investigated before the claimant appeared to claim his seat, there are various reasons for not following the precedent of the Smith and Vare cases in barring Bilbo at the door. First of all, those two cases were themselves somewhat of a departure from longstanding and well-considered Senate practice. Secondly, those cases are distinguishable from the Bilbo case in two important respects. Whereas Smith and Vare admittedly had greatly exceeded the "maximum expenditure" standard which the Senate had adopted in the Newberry case, in the Bilbo case the proof for violating the election has not been so clearly established. Furthermore, the Smith and Vare campaigns were investigated by a temporary select committee authorized for the single purpose of reporting on the use and effect of money in those two elections. The Bilbo investigations on the other hand were conducted by committees whose duties and jurisdiction are more in the nature of fact finding and recommending remedial legislation.

It is often said by those who favor barring Bilbo at the door that it is really the Senate itself which is on trial, not Bilbo. True enough, and all the more reason that the Bilbo case be handled with a scrupulous regard for Bilbo's rights and the interests of minority parties in general. There is no reason why action regarding Bilbo by the Committee on Rules and Administration should not be accomplished without undue delay. No one in a controlling position in the present Senate would have any purpose in delaying, by committee-room skulduggery, a prompt review and report. The temper of public opinion is such that there is no danger of a filibuster on the Senate floor to force a weary Senate to keep Bilbo.

And the final reason for urging that Bilbo be seated rests on a belief that ultimate success in attaining decency in elections would be better served by such a step. To follow the procedure so persuasively contended for by Hoar in the Smoot case, would help to reduce much of the sectional chauvinism already stirred up by the somewhat hastily taken Republican caucus vote to bar Bilbo from a seat. If Bilbo is barred at the door, he will have a strong case for appearing before Mississippi voters as a martyr and likely would be unbeatable in the campaign for the unexpired term, two years hence. There is strong opposition to Bilbo within Mississippi, and its chances of permanent success in keeping Bilbo a private citizen would be much better if Bilbo is dealt with according to the "orderly and constitutional procedure."

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CHAFEE—(Continued)

"Outsiders can further the fruitful internal life of the enterprise by welcoming its best work, by suggesting new opportunities for achievement by raising the level of consumer desires and presenting those desires to the producers of the enterprise. . . .

"Persuasion is possible, too, on the part of the government, the greatest of all outside organizations. We are not now concerned with the mechanism of traffic regulation and the prevention of unfairness and monopoly, where the compulsions of the law may be necessary. Our present question is about encouraging well written books and newspapers, thoughtful radio commentators, satisfying films. Those are jobs which the government cannot take over and should not coerce. Backseat driving officials will not get us to our destination. They themselves cannot make up a good newspaper or produce a good movie."

GOVERNMENT CAN HELP

Professor Chafee concluded his lecture with assurances that the government can help in this problem by providing the means for education of the consumer so that he will demand a higher quality of entertainment, and by making available to newspapers and radio commentators facts which will enable them to be more accurate. But above all government should offer encouragement rather than issue orders.

"The government should be like an uncle who gives an occasional birthday present, not like a father who pays a regular allowance for his son's support. Official advice and coordination of producers will be more important than public money spent."

"Or to use a different analogy, the government might help the purveyors of views and opinion in the way the department of agriculture helps farmers by issuing bulletins about new agricultural ideas; but it must not be like that department when it subsidizes particular crops and dictates the acreage to be planted (space on the editorial page)."

"I question whether law can impose more than a low minimum of fairness and decency upon the instrumentalities and frame reasonable regulations for the orderly flow of their output through the channels of communication to citizens. Compulsion cannot stop any tendency toward meaninglessness and vulgarity and it will do more harm than good as a remedy for the uncertainty that truth will prevail over error. The only direct cure for these evils lies in the internal ideals of the enterprises. Organized outsiders can improve these ideals by persuasion and approval, but not by force or extensive financial support."

Professor Chafee then visualized a society in which this persuasion did exist and there was a minimum of coercion, and described what the ideal communication industry would then be like.

"A communications enterprise, then . . . may be analogous to the best type of endowed university. . . . In the case of the university, organizations and the government advise it and occasionally give it financial aid of one sort or another, but the institution lives its own life. The outsiders facilitate achievement without compelling its content."

J. P. L.

FORUM—(Continued)

industries, the possibilities of collective bargaining remain unexplored, he said. The post V-J Day period, with its drop in worker income, sharp cost of living rise, and managerial problems, declared Mr. Freidin, provides no fair test for the efficacy of collective bargaining and yet it is the events of this extreme period which have caused the current demand for curbs on Labor's power. Much of the power which Labor has had since the war, he maintained, is not necessarily inherent in the mere size or nation wide character of unions, but has been primarily due to the existence of an economy of scarcity, characterized by a shortage of labor and a demand for uninterrupted production. The fact that during such a period peaceful agreement was reached in a large majority of disputes indicates that a collective bargaining system cannot be too bad.

Mr. Freidin stressed the fact that the resourcefulness and imaginativeness of management, labor and government in the field of labor relations have not been sufficiently explored, and attributed the success of the New York Board of Mediation to its use of techniques adapted to each particular case. He suggested that the potentialities of such devices as profit sharing and annual guaranteed wage plans need further investigation, and summed up his position by concluding, "What we ought to look for is more light and less heat."

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