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TEN CENTS

Smith Act Protest Group Addressed by Prof. Howe

A thorough reconsideration of our legislative policies toward internal security threats is very much in need if we are to eliminate the glaring inconsistencies and abuses which are undermining many safeguards of liberty as well as repressing the radical or dissident tradition in America.

This was the central point driven home by Professor Mark DeWolfe Howe before an intense gathering at the Community Church Center in Copley Square Friday night. The meeting, called the Anti-Smith Act Protest Meeting, was sponsored by the Massachusetts Civil Rights Defense Committee.

Mr. Howe's talk illustrated in excellent fashion the contribution which a lucid legal analysis can make to popular, political or even strongly partisan views of legislation. He emphasized that in an assessment of such laws as the Smith Act, the Internal Security Act of 1950 and the Communist Control Act of 1954, the safeguards which are available to the accused in an enforcement proceeding are as important a consideration as the substantive aspects of the bill.

Audience Unreceptive

Though always polite, the audience did not appear to be very receptive to an exposition of vital distinctions between the various bills discussed. Most of the audience appeared emotionally and morally convinced of the basic wrongness of the Smith Act. A few of them had been personally affected by the Act in legal proceedings. However, neither the speakers preceding Professor Howe nor the questions later asked from the floor revealed a clear articulation of their antipathy to the Act. It was simply held bad, violative of the precious cornerstone of American freedom and a diversion from the true issues of the global conflict.

It was apparently expected that Professor Howe would give the rationale for the unconstitutionality of

the Smith Act. This was the "loaded" manner by which he was introduced. The talk clearly did not meet the more sanguine expectations of his listeners. This was evidenced by the "do you or don't you believe" questions afterwards, as well as by the perceptible impatience of the otherwise polite crowd.

(See HOWE on page six)



Mark DeWolfe Howe

Greek Archbishop Attacks British Position on Cyprus

Archbishop Makarios, head of the Greek Orthodox Church and leader of the Greek nationalist movement on the island of Cyprus, Friday night charged the British authorities on Cyprus with suppressing the independence movement there by using "medieval methods of systematic torture."

His Beatitude, the featured speaker at the year's first Law School Forum program, held Friday evening at Sanders Theater, told his audience that in May of this year he proposed to the British government a resumption of negotiations about the future of Cyprus in accordance with the Resolutions of the General Assembly of the United Nations. He was met with a refusal and charged that "the Colonial Government continued undiminished its suppressive policy with

concentration camps, arrests and detentions without trials, curfews, and in addition by the practice of medieval methods of systematic torture."

The Archbishop addressed to his listeners an impassioned plea on behalf of the peoples of Cyprus for freedom from British rule, which he termed "colonial," and immediate self-determination for the island. The

(See MAKARIOS on page six)

Forum

Aneurin Bevan, outspoken Labor member of Parliament and foreign minister in the "shadow" cabinet of the British Labor Party, will be the featured speaker at the second Law School Forum of the season. The program will begin Friday evening, November 1, at 8:00 p.m. in the New Lecture Hall.

Mr. Bevan will be introduced by Professor Arthur Schlesinger, Jr., author of *The Age of Jackson* and the currently best-selling *Age of Roosevelt*, Vol. 1: *The Crisis of the Old Order*.

Williston Drafting Schedule Revealed

The semi-final round of the Williston Competition will take place this month, Karl Berolzheimer, 3L of Chicago, chairman of the Competition, has announced. Four problems will be issued on October 25 to the twelve competing teams. Each problem will receive the attention of three teams.

The teams will have one week to work on their problems, which will arise in the jurisdictions of Illinois, New York, Massachusetts and Delaware. The results will be judged by attorneys from the appropriate state.

Problems in drafting statutes, contracts, wills, and trust instruments are used in the qualifying round of the Competition. Problems in the semi-final round will involve deciding upon and pursuing a course of action embodied in the drafting of a legal memorandum and some other document.

A plaque has been placed in the Langdell reading room, with the names of the Williston Competition winners. The names begin with 1956-'57, the first year of completion of the Competition in its present form and under its new name in honor of Professor Williston.

The qualifying round of the Williston Competition will take place next semester. It is open to all second-year men except members of the Law Review, Board of Student Advisers and Ames quarterfinalists.



John A. King, Jr.

Ceylon, China, Colombia, Cuba, El Salvador, France, Germany, Great Britain, Greece, India, Indonesia, Israel, Italy, Japan, Korea, Liberia, Mexico, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Switzerland, Thailand, Turkey, and Vietnam.

Of these, 13 are registered in the LL.B. program, 51 in the regular graduate program, 20 in the International Program in Taxation, and 5 in special programs. Of the 51 in the Graduate Program, 33 are being assisted by scholarships from the restricted and unrestricted funds of the Law School. A number of the 89 also

(See STUDENTS on page six)

Casner, Griswold Slated To Argue Model Trial

First-year students are studying the record of *Sanders v. Bennett* in preparation for the appeal filed by Professor Richard H. Field. Professor Field is counsel for Mrs. Myra Rubin Sanders, whose prayer for relief in the wrongful death of her husband was denied by the jury's verdict at the Model Trial held last week in the James Barr Ames Court Room.

Professor A. James Casner has been retained to represent the defendant, Ira Bennett, at the appeal in the Supreme Court of Ames. Dean Erwin N. Griswold will speak for the appellant before the high court. This is the first Model Trial case Professor Casner has argued in the Ames court during the series of cases connected with the first year group work. Dean Griswold has argued before the Court in several previous years.

Wrongful Death Action

The jury trial, which lasted five hours and forty-five minutes, centered around the claim of Mrs. Sanders that Ira Bennett is liable for the killing of her husband committed by a companion. She claimed that Mr. Bennett and the unknown gunman were engaged in a conspiracy to rob a jewelry store. But Mr. Bennett convinced the jury that he was present against his will under threats of violence by the same gunman who shot the plaintiff's husband. Mr. Bennett was represented by Arthur E. Sutherland, Bussey Professor of Law.

The first year class is divided into two camps, serving as junior associates for each side of the case.

A transcription of the jury deliberations was played twice Monday in the James Barr Ames Courtroom. The jury deliberated for an hour and a half before returning their verdict at 1:30 a.m. last Friday.

The witnesses in the Model Trial were played by people associated with the Law School.

The plaintiff, Mrs. Myra Rubin Sanders was Mrs. Esther Cushman, secretary to the Legal Aid Bureau. The defendant, Ira Bennett, was portrayed



A. James Casner

by Milton Bordwin, Faculty Assistant in Charge of the Ames Competition.

Marcia Mather was played by Mrs. Elaine Alexander, wife of Miles J. Alexander, teaching fellow. Jimmy Adams, the newsboy, was Mike Magruder, a Harvard freshman and son of Calvert Magruder, Lecturer of Law and Chief Judge of the United States Court of Appeals for the First Circuit. Sgt. Daniel R. Huggins was Joseph Kenny of the Harvard Police Force.

The jury was composed of local citizens coming from a wide variety of walks of life.

Third Volume of Tax Series Lists Data on Mexican Laws

The third volume in the World Tax Series, *Taxation in Mexico* (Boston, Little Brown, Oct. 15, 1957, 460 pp. \$12.50) has been prepared by Henry J. Gumpel, Research Associate in Law, of the Law School's International Program in Taxation with the cooperation of Hugo B. Margain, Director-General of the Income Tax Department in the Mexican Ministry of Finance.

The first two studies in a series designed ultimately to cover systems of taxation of thirty or more countries were published earlier this year under the titles, *Taxation in the United Kingdom* and *Taxation in Brazil*.

The present volume on Mexico was written for a purpose common to the World Tax Series as a whole: that of providing authoritative information in the English language on one of the most important aspects of laws affecting economic development.

Mexico's rapid industrial and economic growth in the past decade has made it a country of prime interest to the foreign investor. Among the factors which have stimulated this development and promoted the investment of domestic and foreign capital on an ever-increasing scale, taxation has been of great importance. Up to this time, no complete and authoritative presentation of the Mexican tax system has existed in any language. The present study is designed to satisfy this need.

Standard Arrangement

Following the uniform pattern of the Series, the text of the book is arranged in a way which combines a general description of the system and its historical and economic background with a detailed analysis of the major Mexican taxes. The approach is one of compilation and systemization with no evaluation of policy.

Taxation in Mexico may thus be used to equal advantage by government officials, economists and scholars interested in the system as a whole and in its comparative aspects, and by the business executive or lawyer who wants the answer to a specific problem or a quick orientation so that he can communicate intelligently with his Mexican counterpart.

The World Tax Series was undertaken by the Law School's International Program in Taxation as a response to a resolution in 1951 by the Economic and Social Council of the United Nations requesting the publication of a world-wide service of information on national tax laws and administration. The Series has the encouragement of corporate tax executives and the financial support of sixty-six corporations. Manuscripts are prepared in cooperation with foreign correspondents and in consultation with officials of the UN Secretariat.

The World Tax Series consists of reports seeking to achieve two basic goals: (1) to describe each country's tax system in its own legal and administrative terms, and (2) to present each system in such a way that

(See TAXES on page six)

Bull & Bear

Franklin Moon will speak before the Bull & Bear Club in the large meeting room in Harkness, at 1:40 p.m. on Friday, October 5. He is the vice-president and secretary as well as General Counsel of W. R. Grace & Co., which engages in South American trade and manufacturing, domestic chemical manufacturing, foreign oil exploration, and has its own national bank.

Some of its other interests are an airline, a ship line (it builds its own ships), outdoor advertising, and paper manufacturing. It started over 100 years ago as a South American trading concern.

Sutherland Defines Convention Issues

The criteria for interpreting and criticizing any state constitution differ from those which might be appropriate for evaluating either the Federal Constitution or a civil code, declared Bussey Professor of Law Arthur E. Sutherland in an interview with the RECORD Monday. Professor Sutherland was a delegate from an upstate county to the 1938 New York Constitutional Convention, which prepared a substantial number of amendments to the constitution now in force. He explained that while the Federal Constitution was designed to divide the governmental power of the United States between the central government and the states, the constitution of a state is peculiarly designed for dealing with the local problems of its people.

Professor Sutherland suggests that reform proposals which complain of the detail and complexity of the constitutional provisions of New York State seem unrealistic (Sutherland, "Lawmaking by Popular Vote — Some Reflections on the New York Constitution of 1938," 24 *Cornell L.Q.* 1 (1938)). For example, he states, the requirement that juries pass on both law and facts in criminal libel cases safeguards the liberty of publication which John Peter Zenger won in 1735 in one of the state's famous struggles over free criticism of public officials.

The 1938 Convention, which dropped the provisions then in the

(See SUTHERLAND on page five)

Gallery

Among the foreign graduate students attending the Law School this year is the first Polish law student to come to an American law school to undertake regular studies since pre-World War II days. Krzysztof J. Skubiszewski gained the honor of being the first such student, but only because red tape delayed the arrival of Jan Kosik, the second Polish graduate student at the Law School.

A holder of the *Magister Juris* (1949) and *Doctor Juris* (1950) degrees from Poznan University, Dr. Skubiszewski joined the teaching staff of that university as an Assistant Teacher of Law immediately after receiving his doctorate. Since December 1,



Krzysztof J. Skubiszewski

1956, he has been an Assistant Professor, which more accurately translated is equivalent to Lecturer.

Dr. Skubiszewski's main interest has been in the field of public international law. He has done research work on international organizations, and also on the international law aspects of post-war German problem. On this latter subject he has worked in collaboration with the Western Institute in Poznan.

In 1956 Dr. Skubiszewski visited The Hague Academy of International Law. There he met Professor Philip C. Jessup of Columbia Law School, with whom he discussed the possibility of attending an American law school. He was informed in detail about the Harvard Law School by Jacob Austin, LL.M. '57, one of the graduate students from Can-

ada here last year, who was also at The Hague Academy at this time.

Last February, he applied for admission at the Law School, and was accepted. A financial grant from the Law School and financial help from the Ministry of Higher Education in Warsaw made the trip to the U. S. possible.

Contact with American universities has been made easier by the Gomulka regime. Dr. Skubiszewski asserted, especially since the Ford and Rockefeller Foundations have recently made large grants to Polish universities. Hence many more Polish students may be expected to attend American universities.

Although he has been here only six weeks, Dr. Skubiszewski is thoroughly sold on the case method of instruction. He characterized it as "more stimulating, provided the student prepares himself systematically. The student's presence in the classroom without everyday preparation," he added, "is quite useless."

European Methods Differ

In Continental Europe, Dr. Skubiszewski continued, the student may be physically present at the lectures, but mentally he is often far removed from the speaker. Discussions led by assistant teachers come the closest to Law School classes, but these are merely complementary to the lectures.

On the other hand, Dr. Skubiszewski pointed out that the fact that students in Continental Europe attend the university immediately upon graduation from the *gymnasium*, or secondary school makes it impossible to begin discussing problems right away, and hence at least in the beginning some lecturing is unavoidable.

During World War II, Dr. Skubiszewski was expelled from Poznan and lived in Warsaw, where he attended a secret *gymnasium* (the Nazis did not allow secondary education at this time). An element of personal risk was omnipresent during these sessions, and those who were caught lost either their liberty or their lives.

Fortunately he left Warsaw several days before the uprisings which began on August 1, 1944, when the Russian front closed in on the Polish capital. However the Soviets were halted along the Vistula River, and the 40-50,000 Poles armed with Sten guns and "Molotov Cocktails" were annihilated before the tanks and dive-bombers of the Nazis. The Poles held parts of the city for 63 days, but the end result was complete destruction of Warsaw. It was a "dead city" when the Rus-

Book Review

A NOTEBOOK OF EDMUND BURKE, Edited by H. V. F. Somerset; Cambridge University Press (1957); 120 pp., \$3.50.

The floundering experiences of a student who enters the legal way of life are legendary. This little book unveils, for the first time, the years when Edmund Burke was in London's Middle Temple to read for the bar, 1750-1756.

The twenty-one-year-old graduate of Dublin's Trinity College had sought a career in letters, but was sidetracked by the glamour of the law and a substantial allowance from his father. The writer's life, for which he was prepared by both natural talents and cultivated interest, kept tugging him from the law. The first item in the *Note Book* is a poem written to his kinsman and constant associate, William Burke, in which the future statesman expresses his passion to write which causes him to "neglect the spoils and trophies of the Bar."

The second item is a poetic response with William Burke's sage counsel that Edmund ought not to divorce himself from his "Muse," but ought to retain it along with the law:

"Thy Muse's Voice shall Gladden every Guest, Your heart be hers, in her be all your joy; But let the law your Graver thoughts employ. . . . Preserve your Pen for good, but private Ends; T' amuse yourself, Instruct and Charm your friends."

New Direction

During these years, Edmund struggles to pursue the law, but his travels, his literature, and his ill health all conspire to preclude his becoming a lawyer. Disappointed at Edmund's failure to be called to the bar, his father stops the attractive allowance. This forces young Edmund to turn to literature for support.

Little has been written of this period between Burke's college days and his rise to literary fame in 1756. This notebook was collecting dust among Burke's papers for years. Now Mr. Somerset has published

sians arrived. Dr. Skubiszewski lost all of his school friends during the uprising.

Dr. Skubiszewski also witnessed the Poznan riots of June, 1956. He accompanied several Western observers to the trials of the rioters, where opportunity was afforded to talk with both prosecution and defense counsel. When Gomulka came to power in October of 1956, the trials were discontinued and some of those convicted were released.

Burke's own account of the unknown days of legal study. The volume contains contributions from both William and Edmund Burke.

Not a very useful book, except to scholars who wish to uncover details of eighteenth century life, it is, however, a source of entertainment during odd moments when a Harvard Law student might be curious to know what a law student who failed was thinking two hundred years ago. If one must draw a lesson from his experience with the law, it is:

"Yet sure he happy is — or happy none — Whose choice and Interest in one Channel run."

But the book is not designed to teach a lesson. Rather, it shows the seeds contained in a young mind that blossomed for a career in statesmanship.

Various Entries

With the vigor and foolish self-conviction of youth, he attacks a London writer of scandalous letters to the public prints, discusses techniques of argumentation, and jokes about a London miser all in a few short papers. Then the *Note Book* presents the famous and tender tribute to Jane Nugent, the girl he marries. With a different, but equally genuine admiration, he writes a characterization of William Burke. These and other items constitute the first half of the book, whence one gleams a very personal awareness that the Right Honorable Edmund Burke was actually a flesh-and-blood, impassioned human being, like the rest of men.

In the second half of the book (item 13 onward), though the editor makes no such division, Burke's well known middleman approach to professional and public life is uncovered, a piece at a time, and presented in context in the nineteenth entry, "Philosophy and Learning." In the discrete entries, he shows his keen interest for philosophic, psychological, political, religious, and esthetic theories.

He demands a broad outlook and has disdain for "the narrow views of a Mechanic. . . ." Burke also expresses scorn for the life of a professional scholar whom he compares to the man who builds a boat and then refuses to sail it. Instead, he says, "Man is made for Speculation and action; and when he pursues his nature he succeeds best in both."

This, of course, shows that his "intellectual middleman" approach to professional life was chosen and planned while he was still young. This book shows the early development of the sensible approach of a man who could hold his own among either thinkers or doers, but chose instead to translate the work of the former into formulae for application by the latter.

—Manley

New York State Weighs 1957 Revision of Its Law: Constitutional Convention or Legislative Referenda?

Present Conditions: A General Look

By Robert L. Hoguet

Section 2 of Article XIX of the Constitution of the State of New York provides that at the general election to be held in 1957, the question

"Shall there be a convention to revise the Constitution and amend the same?"

shall be submitted to and decided by the voters. The Constitution goes on to provide that in the event of an affirmative majority vote, the electors shall in November 1958 elect three delegates in every Senate district, and fifteen delegates at large, to a convention to be held in 1959.

The constitutional history of the State of New York is a long, but interesting one, highlighted by several conventions of great importance. There have been eight constitutional conventions but only four new Constitutions.

Initial Effort

In 1777 a first convention of delegates brought forth a brief constitution established by the convention itself without a referendum, containing few restrictions on the power of the Legislature, but incorporating the essential element of a veto power, over all bills passed by the Legislature, vested in a so-called Council of Revision, composed of the Governor, the Chancellor and the judges of the Supreme Court. The Constitution also provided for a Council of Appointment consisting of the Governor and four Senators elected by the Assembly, in which was vested the power of appointment of State officers (except the Governor and the State Treasurer) and many local government officers.

The first Constitution to be submitted to the electorate for its approval was that of 1821. This Constitution contained a Bill of Rights and provisions for amending the Con-

stitution, and abolished the Councils of Revision and Appointment. It may properly be regarded as the second Constitution of the State.

The major provisions of the present State Constitution, the third in number, sprang from a Constitution adopted by the people in 1846. Important changes were adopted in 1867 and in 1872.

A new Constitution, generally regarded as the fourth, was adopted by a convention in 1894, which was presided over by Joseph H. Choate.

Root Presided

In 1914 a convention presided over by Elihu Root, presented to the people an extensive plan of reorganization, which the people, in 1915, refused to accept.

The latest constitutional convention was that of 1938. Its presiding officer was Frederick E. Crane, then Chief Judge of the Court of Appeals. This convention submitted nine proposed amendments to the electorate, the first of which was an omnibus amendment comprising 50 proposed changes. The omnibus amendment and five other amendments were adopted by the people. Three proposed amendments were defeated, involving (1) a judicial review of administrative action, (2) a ban on proportional representation, and (3) a scheme for reapportionment. Since 1938, 50 amendments have been added to the already frequently amended Constitution of 1894. Since its adoption in 1894, the Constitution has been amended 127 times. Since 1789 the Federal Constitution has been amended 20 times.

The present New York Constitution occupies 165 pages in the New York Legislative Manual as contrasted with 36 taken up by the Constitution of the United States. State Constitutions are perhaps necessarily

Reprints

Reprints of the text of the articles on the New York Constitutional Convention may be obtained from the Record at the following prices:

- 1 — 99 copies at 10c each;
- 100 — 249 copies at 9c each;
- 250 — 499 copies at 8c each;
- 500 or more copies at 7c each.

longer than the Federal Constitution for the reason that the State Constitutions must cover all of the powers generally associated with Government, whereas the Federal Constitution deals only with the relatively very much smaller number of powers delegated to the Federal Government, and specifically forbidden to be exercised by the States. Nevertheless, State Constitutions admittedly tend to excessive prolixity, and indulge in detailed provisions which would seem to belong more strictly to statute rather than to declarations of the fundamental law. The Constitution of the State of New York in this respect is neither better nor worse than the average of State Constitutions. The shortest of these is that of the State of Vermont with 5,759 words, while the longest is that of the State of Louisiana with 201,423 words. The present Constitution of the State of New York contains 19,036 words.

Whatever may have been the nature of the amendatory process in the early history of the State of New York, there is no question but what the New York State Constitution can now be amended only by the people in a vote expressed at a popular election. While the final step in any amendatory process must be the voice of the people, the approach to that election may be either (1) directly through the Legislature, or (2) indirectly by a process which begins with the Legislature, and reaches the people in the form of a constitution which

has been favorably acted on by a convention.

The first method requires an affirmative vote of a majority of the Legislature in favor of an amendment, followed by another such affirmative vote at a subsequent session of the Legislature held after an intervening general election of members of the Assembly. This is the so-called piecemeal, or patchwork, method of amending the Constitution. The presence on the ballot at any one election of several constitutional amendments complicates the electoral process. It has been suggested that the Constitution

itself should be amended so as to forbid the presentation at any election of more than one, or possibly two, amendments.



—Blackstone Studios, N. Y.

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The other method of amendment requires the election once in every 20 years, or at other times if the Leg-

Haste Undesirable

As a general principle, any change in the fundamental law of a sovereign body must be regarded as a matter of supreme importance, demanding the considered, unbiased judgment of those entrusted with the task of revision. It is an undertaking which should be entirely divorced from partisan politics, to be approached from the point of view solely of the greatest good of all of the citizens of the State over a protracted period of time. A convention, it is argued, is better adapted to meet the needs of the situation than is any session of the Legislature where partisan politics necessarily and properly hold sway. A convention is a unicameral body. Experience shows that delegates to a convention are men of greater attainment and capability than is usually found in a State Legislature. The roll call of delegates to state conventions in New York includes the names of many of its most distinguished citizens, whose influence in the deliberations of the convention has been potent. It is certainly significant that each of the eight conventions held in New York State has been presided over by a distinguished, indeed, by a celebrated lawyer. Again the sessions of a convention afford better opportunity for the holding of hearings, presentation of different points of view, and a more careful consideration of

(See HOGUET on page three)

Bobcats, Rattlesnakes, Porcupines and Municipal Home Rule

By W. Bernard Richland



W. Bernard Richland, Assistant Corporation Counsel for the City of New York, has published articles on constitutional subjects in the Columbia Law Review and the New York Bar Journal.

The New York Constitution is a conglomerate of un-ordered and in some instances conflicting and mutually - cancelling provisions, with rather more color and less design than a crazy quilt. It contains matter which one would expect to find in statute books or local ordinances rather than in a Constitution, and archaic and outmoded provisions designed to correct situations which have long passed into history. In the Constitution one finds, for example, a provision making jurors the triers of both "the law and the facts" in criminal libel suits (Art. I, §8); another provision that "the testimony in equity cases shall be taken in like manner as in cases at law" (Art. VI, §19), a prohibition against the adoption of special laws relating to the "draining of swamps" (Art. III, §17), and a provision under which a New York cop who gets a free ride on the Fifth Avenue bus is technically guilty of a misdemeanor and subject to removal from office (Art. XIII, §5). In short, the Constitution is badly in need of a thorough overhauling.

Distribution of Power

The subject of this discussion is limited to the one area of the Constitution which the overwhelming majority of informed opinion agrees is in sore need of change: The distribution of governmental power between the State and the municipalities. Recently, a Temporary State Commission on the Constitutional Convention, which was created for the purpose of preparing the ground work for a con-

vention if one should be held in 1959, conducted public hearings at which interested persons and organizations presented their views as to the areas in which reform of the Constitution is needed. In its recent Second Interim Report the Commission noted,

"More attention was given by spokesmen at the hearings to constitutional issues relating to local government and state-local relations than to any other subject."

This observation reflects not only current feeling but an attitude which has been characteristic of every New York Constitutional Convention for the past century.

Principal Target

There are two basic reasons for this circumstance. In the first place, there has always been a strong desire by the governments and the people of municipalities to deal with their own problems free of State legislative interference. Municipal government is a highly practical operation. The day-to-day problems of municipalities require quick action. Municipal officials in New York State are constantly frustrated in their efforts to do their jobs by limitations upon their authority. At the same time, they bitterly resent interference by rural-dominated state legislative bodies, the majority of whose members have neither understanding of nor responsibility for the government of municipalities.

New York City, while not the only victim of State interference, has been the principal target of rural-

dominated State Legislatures. Expressions of resentment by its officials over the past Century has run from the temperate statement of controlled outrage by Mayor Westervelt in 1854 and by Mayor Wagner in 1954 to an open threat of rebellion and secession by Mayor Fernando Wood in 1861 on the eve of the Civil War. New York's municipalities have struggled towards home rule for a hundred years and

occasionally have been able to obtain an apparent measure of home rule through constitutional amendment.

Unfortunately, however, the courts of most states — and New York is a particularly striking example in this connection — have manifested what cannot be characterized other than as determined hostility to the very concept of municipal home rule. This is easily demonstrated. Since early in the 19th Century there have been provisions in various state constitutions, including that of New York, prohibiting the enactment of "local" laws, that is, laws affecting single municipalities, in regard to particular subjects.

However, the courts have interpreted such provisions as being subject to frustration by the simplest of semantic devices. Thus, say the courts, a law is not local if, instead of naming a specific municipality it describes a municipality with such particularity that it can be applicable to only one. A law which on its face names only New York City, say the courts, is a "local" law, but a law which applies only to a city "with a population of one million or more" is not local at all even though New York City happens to be the only municipality with a population of more than a million and no other city in the State has a population even approaching that in size.

In 1924, the New York Constitution was amended to provide cities with a protection against the enactment by the State Legislature of

"local" laws relating to the "property, affairs or government" of individual cities, whether such laws were special "in terms" or, although not special in their terms were nonetheless special "in effect." This, it was thought, would end for all times the typographical device which, with court approval, had frustrated constitutional provisions against "local" laws prior to that time.

Illusory Victory

For a couple of years it looked as though the cities of New York State had actually achieved home rule. However, less than five years after the 1924 Home Rule Amendment, the courts discovered that the term "property, affairs or government" had a very special meaning.

There is a healthy doctrine which has been repeatedly announced by the New York courts that provisions of the state constitution having been adopted by the people should be given the meaning "which the words convey to an intelligent, careful voter" (Matter of Kuhn v. Curran, 294 N.Y. 207, 61 N.E. 2d 513, (1945)). Ignoring this rule, the courts decided that the words "property, affairs or government" in the Constitution meant neither property, nor affairs, nor government in their ordinary sense. The New York Court of Appeals flatly stated that those words were not to be read in their "Webster dictionary sense" at all but must be regarded as

(See RICHLAND on page four)

HOGUET

(Continued from page two)

the questions involved. Legislatures, at least in the State of New York, are in session only for a brief time, during which there is almost continuous pressure.

Nearly 20 years have elapsed since the convention of 1938, during which much has happened to the world in general, to New York State, and to the City of New York. A World War has been fought and won. The United States has become one of the two great powers of the world. The City of New York has been selected as the seat of the United Nations, and if there is such a thing as a world capital, such capital is the metropolis of the Empire State. The burden of proof would certainly seem to rest on those who maintain the affirmative of the proposition that an instrument in all respects fitted to the needs of 1938 would be equally appropriate to the needs of 1958.

No doubt there are many difficulties in the way of a complete revision of the present Constitution. In the first place, there exists the element of political pressure. Special sections of the state, or special interests, which have been able to secure a tactical position in the present Constitution will naturally look askance at the holding of a convention which might conceivably work out an impairment of a valuable status quo. Again many portions of the present Constitution have been judicially interpreted and have acquired a settled meaning. A

recasting or revision of such provisions might entail extensive litigation, and might imperil vested interests.

On the other hand, if the Federal Constitution be regarded as a model, the present Constitution of the State of New York is in need of considerable simplification. It is larded with statutory material and details which the late Governor Smith properly called "Liquid law", and which require frequent change from time to time. Many items in the Constitution were, in fact, once part of the statutory law of the State, but were written into the Constitution because of the successful pressure of special interests who would not be satisfied with a statute but insisted on a constitutional provision affording a much greater guarantee against possible repeal.

Recurrent Problem

Even if the task of complete revision, simplification and reduction to fundamentals were regarded as too formidable, there are nevertheless certain aspects of the Constitution which, for the last fifty years, have been perennially in question, and certain portions of the document which would seem to require thoroughgoing re-examination and reformulation.

1. There is the question of Home Rule. It is at least questionable whether the cities need to be protected against their own weaknesses as stringently as has been the case. The revenue of the State has assumed an increasing importance in its effect on city budgets. Regional considerations have put a new look on the Home Rule question. Airplanes, thruways and water derived from sources 150 miles from the point of consumption, have forced upon us a new concept of geographical boundaries, and require a realization of the interdependence of all the parts of the State.

2. What about taxation and the right of cities to be relieved of any constitutional limitation upon their power to tax their citizens? Is the debt limit provision a wise one, and if it is a wise one, should it not be protected against infringement by the frequent exclusion from time to time of debt created for the purpose of financing so-called self-liquidating improvements? If cities are to secure an enlargement of their taxing power, should not the citizen be protected against a multiplicity and an overlapping of taxing jurisdictions?

3. Looked at from the point of view of a lawyer as distinguished from the point of view of a citizen, a very important matter to be considered by a convention would be a reform of the article on the Judiciary. The Temporary Commission on the Courts created by the Legislature in 1953, so ably headed by Mr. Harrison Tweed, LL.B. '10, has brought forth a report which greatly simplifies, streamlines and improves the organization of the State Judiciary. Although the Bar,

Chambers of Commerce and civic bodies generally approved the report, the Legislature rejected the proposals. Even though the adoption of a large part of the Tweed proposals might be achieved by legislative amendment, a convention affords a medium of securing the reforms in their entirety, as well as a better chance of their adoption.

Inequitable Representation

4. A situation exists in the State of New York which is, it is believed, without parallel elsewhere in the United States. More than 50% of the State's population is contained in the City of New York. The present constitutional apportionment formula favors the up-state area at the expense of the City, so that while New York City contains more than 50% of the State's population, it has less than 50% of the seats in either house of the Legislature. This is surely not adequate representation.

5. Many believe that constitutional provisions relating to the organization procedures and sessions of the Legislature should be reviewed and changed in order to provide for more adequate consideration of Bills, and to encourage more widespread public interest in Legislative matters.

6. Finally, the language of the Constitution is in need of simplification. Having been frequently and extensively amended, it is long, unwieldy and verbose. Pressure groups have succeeded in imposing upon it provisions of excessive severity and rigor, to which exceptions have from time to time become necessary.

In April, 1956, the New York State Legislature created a body known as the Temporary State Commission, to consist of 15 citizens to be appointed five by the Governor, five by the President of the Senate, and five by the Speaker of the Assembly,

"to study and report on proposals for changes in and simplification of the Constitution, and to collect and compile such information and data as it may deem useful for the delegates."

Composition of Committee

The Committee so created was appointed and organized, Mr. Nelson A. Rockefeller becoming Chairman thereof, and Mr. Charles Poletti, LL.B. '28, a former Governor of the State, Vice-Chairman. It has provided itself with a highly qualified staff, and has been at work in the discharge of its mandate since August 1956. It has presented a preliminary report, and continues its studies. Its term of office under the statute to which it owes its creation is limited to February, 1958, in the event that the electorate should, in November, determine that there should be a convention in the year 1959. It is the opinion of many that the Temporary State Commission can be of great service to the delegates in convention assembled if it has a reasonable oppor-

tunity to complete its studies and to put them in serviceable form. It is claimed, not without reason, that there is not enough time between November 1957 and February 1958 to enable the Commission to finish its work. Therefore, many persons sincerely interested in an improvement of the fundamental law of the State of New York, feel that the electorate would be well advised to vote negatively in November on the referendum question as to whether there should be a constitutional convention in the year 1959, and thereby extend the time of the Temporary State Commission within which its studies could be adequately pursued and completed, leaving the way open for a resubmission to the electorate in November, 1958, of the question as to whether there should or should not be a convention in the calendar year 1960.

What are the arguments of those who contend that there should be no convention either in 1959, or at any time, and who feel either that the Constitution, as it stands, is a perfect document in need of no amendment, or, at any rate, that such amendment as might become necessary can be enacted via the Legislative as distinguished from the conventional route?

Might Have Been Better

It is said that New York State has not failed to prosper under the present Constitution. No one, of course, will deny the magnitude of the achievements that have been wrought in New York State over the years, or minimize the importance of the State in and to the nation. Is it not, however, possible that even greater results might have been achieved and

greater felicity enjoyed under an improved version of the fundamental law? The history of constitutional amendment in the State would certainly indicate that none of the State's Constitutions have succeeded in embodying a fundamental law satisfactory to the majority of the State citizens for any great length of time. Amendment seems to be inevitable. It is only a question of how amendment is to be made.

Again it is pointed out that a convention cannot be held without an expenditure of some \$3,000,000, — surely not a very impressive sum in these days of billion dollar budgets. Moreover, a happy revision of the Constitution might easily bring about an economy in administration of more than that amount.

Finally, the claim is made that the present Constitution has been judicially interpreted. Can we not, however, trust our courts with the task of proper interpretation of a reconsidered, revised and reformulated instrument, — a task which, incidentally, the courts have been performing ever since the State became a sovereign body?

The pros and cons of the question have been argued by various groups, and there is a not inconsiderable amount of literature on the subject. After familiarizing oneself with it, and considering all of the arguments advanced on either side, one is inclined to reach the following conclusions:

1. The more desirable method of enacting a fundamental law is via a convention rather than by the adop-

(See HOGUET on page five)

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RICHLAND

(Continued from page three)

having been used "with a Court of Appeals definition." *Adler v. Deegan*, 251 N.Y. 467, 473, 167 N.E. 705, 707 (1929). The courts then went on to carve out of the term "property, affairs or government" of cities an area which they designated that of "state concern." As to matters of "state concern," said the courts, special and discriminatory laws relating to particular cities could be adopted without compliance with the protection against special laws which the Home Rule Amendment had provided (that is, a two-thirds vote in each House of the Legislature and, originally a governor's emergency message, and currently the request of the municipality involved).

Under the "state concern" doctrine, a city-owned transit system can be dealt with by the Legislature at its will. So can a city's water supply system. The Legislature can similarly interfere with a city's taxation power and its power to become indebted, the twin powers upon which the very existence of a municipality depends. Since, under the curious system of rural-favored disproportionate representation fixed in the Constitution, the Assembly districts vary in population from 14,000 to 160,000 and Senate districts from 146,000 to 344,000, farmers in upstate New York have from two to eleven times as much say in regard to New York City local taxes as has a resident of Manhattan.

Any matter which involves "health" or "welfare" or "education" is similarly one of "state concern." In all these areas the most detailed regulation, regardless of how much it touches on a city's affairs and how slight the connection with really vital state matters is within the orbit of complete legislative control. Thus, the courts have held the creation of a city Plumbers' Licensing Board is a matter of state concern because plumbing is related to health. Similarly, since people from all over the state go to New York City theatres, the fees charged by ticket brokers was also held a "matter of state concern."

Outworn Concepts

The origin of this niggardly judicial attitude towards municipal home rule is not hard to find. As Professor Harvey Walker pointed out recently ("Towards a New Theory of Municipal Home Rule," 50 N.W.L.Rev. 571, 1955), it is based upon concepts of state "sovereignty" which are inbred in lawyers from the very outset of their education. Municipalities, we are taught, are creatures of the sovereign state and cannot be regarded as little states in themselves. Consequently, grants of home rule must be narrowly construed to preserve the sovereignty of the sovereign state.

It may be doubted that anyone but a lawyer would be so bemused by the term "state sovereignty" and so frightened by the notion "imperio in imperium" as to conclude that since a city-owned mass transportation system affects large numbers of people, residents as well as non-residents, therefore it is a matter of "state concern"; that the transit system itself, although owned local, stock and barrel by the City, is not its "property," its operation is not one of the City's "affairs" and the selection of an official agency to administer the City's transit system has nothing to do with its "government," within the meaning of the Home Rule provisions of the Constitution.

The doctrine of "state concern" has so shot through the law that no city can with any degree of assurance determine which subjects are outside the domain of the State Legislature and which are within the City's competence to deal with. Municipal officers have become so baffled and scared by court decisions in this area that they decline to enact necessary municipal measures for fear that they may be proceeding beyond their powers and might involve their municipality in unauthorized activities which the courts will invalidate. This brings us to the second basis for the expressed desire for constitutional reform in relation to municipal self-government.

Legislative Hodge-Podge

A careful municipal official who needs authority to carry out his functions runs to the State Legislature as soon as it opens with a bill to grant him the specific power he needs. Special interest groups desiring to impose obligations on municipalities similarly go to the State Legislature. The legislators themselves, acting as though they are Aldermen, Supervisors, Selectmen and Trustees for every city, county, town and village in the state, toss literally thousands of bills into the hopper at each legislative session relating to the specific problems of particular municipalities.

It is one of the interesting facts of present-day life in New York that its State Legislature manifests an almost morbid preoccupation with the detailed internal affairs of local governments, in which they are least competent to deal. Almost fifty per cent of the 7,000 plus bills introduced at each session of the State Legislature deal with particular matters of named municipalities.

The 1957 session of the State Legislature, for example, considered 230 bills dealing with the New York City Employees' Retirement Law, 30 bills proposing amendments to the New York City Charter, and 500 bills proposing amendments to the New York City Administrative Code. A total of more than 1,000 bills related expressly to New York City and probably another thousand related to New York City alone, but avoided express mention of it by name. Not only is New York City affected, but so is every other city, county, town and village in the state.

Typical Session

The 1957 session of the Legislature was more or less typical, except that it probably enacted fewer bills actively interfering with municipalities than other recent sessions. The Legislature adopted literally hundreds of laws, local in their terms or local in their effect, or local both in their terms and in their effect. They dealt with a variety of matters upon which the State Legislature was obviously neither as informed nor as competent to act as were the municipalities themselves. Thus, for example, among the New York Laws of 1957, we find the following examples, typical of scores upon scores of others:

Chapter 91 which authorizes the Town of Woodstock to pay a \$404.88 gasoline bill out of its snow removal and miscellaneous items fund; Chapter 134 which authorizes towns to increase their petty cash funds from \$200 to \$500 in certain limited cases; Chapter 738 which authorizes the City of Buffalo to build one of its own schools on a portion of one of its own parks; Chapter 402 which authorizes Hamilton County to pay bounties for the destruction of bobcats, porcupines and rattlesnakes; Chapter 400 which authorizes Erie County to pay its employees every two weeks instead of once a month; Chapter 577 which authorizes the Town of Harrison to pay a contractor for putting a fence around a municipal parking lot; and Chapter 431 which authorizes New York City to demolish the Fulton Street El. in Brooklyn.

In 1956, Governor Harriman's Committee on Home Rule tabulated scores of 1955 laws dealing in great detail with the special problems of named cities, counties, towns and villages, ranging from one dealing with the disposal of duck waste in Suffolk County to one authorizing New York City to take care of a run-down little cemetery in the Bronx.

Now, it is absurd to expect a State Assemblyman from Brooklyn to have any understanding of the need for Hamilton County to pay bounties for the destruction of bobcats and rattlesnakes, even as it is absurd to expect a State Assemblyman from Hamilton County to understand the need for the demolition of the Fulton Street El. in Brooklyn. Moreover, an Assemblyman from Hamilton County who, contrary to the desires of the people of Brooklyn, refuses to authorize the destruction of the Fulton Street El., cannot be called to account and an indignant citizen of Hamilton County who does not want his money spent for the destruction of bobcats or who has an affectionate regard for porcupines cannot call to account the Assemblyman from Brooklyn who approved a measure dealing with that subject.

Quick Action

But, even more serious is another factor which is often overlooked in this regard: The State Legislature meets for a three-month period each year. An average of 7,500 bills are placed before it. During the first two and one-half months of the session, practically nothing other than the introduction of bills takes place. Suddenly, in the last ten days of the session, all the bills are quickly passed, defeated or killed in Committee, and after a final frantic spurt of energy, the Legislature adjourns, leaving the deluge of bills it had adopted on the Governor's desk for his action over the next thirty days. Few bills are debated and fewer are subjected to public hearings. The Legislature simply hasn't the time or energy to deal adequately with the multitude of local bills which effectively clog its processes and keep it from addressing itself to real State problems.

In short, the present division of legislative power between municipalities and the state, promotes irresponsibility and inefficiency. It is contrary to sensible representative government, costly and wasteful of the time and energies of the State Legislature. There is great need for an unambiguous constitutional provision assigning state and local governments to their proper spheres.

Moreover, the present New York Constitution is unfitted to deal adequately with the problems generated by the new phenomenon of the rapidly expanding metropolitan areas. Constitutional debt and tax limits; provisions which permit legislative hobbling of municipal enterprise; provisions in regard to the appointment of public officers and many other Constitutional limitations stand in the way of appropriate joint efforts by municipalities to deal with inter-local problems.

Deep Study Needed

These matters require deep study and careful consideration by a Convention whose sole purpose it will be to bring the Constitution up-to-date. The subject obviously requires the kind of public airing which such a body can provide. Traditionally, delegates to the New York Constitutional Convention have been the leaders of the community. They have been far less susceptible to party pressures and better equipped to cope with large-scale problems than have members of the State Legislature. Piecemeal amendments to the Constitution hurriedly adopted in the closing hours of hectic legislative sessions for submission to the people are no substitute for the kind of deliberate, comprehensive and studied review which a Convention provides.

The problems of local government cannot be adequately dealt with without a complete overhauling of the State Constitution. Even if there did not exist other areas in which state constitutional reform was necessary, the needs of municipal government reform alone would warrant the calling of a Constitutional Convention.

The Case for Reapportionment

By Carmine DeSapio

Secretary of State of New York

Like many other states, New York historically has apportioned its seats in the Legislature by formulae in which acreage was more important than population. What a Convention would do about it, no one can forecast. Speaking for myself, I think the present formula is so outmoded and outrageous, that I would support a Convention even if I knew as a certainty that the Republican Party (which benefits from this formula) would control it. I simply cannot believe that any fair-minded delegate, regardless of politics, would defend the present apportionment in the light of the following considerations.

First, at present a minority of the people can elect majorities in both houses of our State legislature. Control of the State Senate can be achieved by 40% of the electorate; control of the Assembly by 39%. The whole set-up does violence to the principle of majority rule.

Second, citizens of our most populous counties are actually second-class citizens in legislative representation. Their votes have about one-fourth the weight in electing members of the Assembly as do the votes of the 10 smallest counties.

Increase

What is more this disproportionate weight has been getting worse since 1894 when the formula was first devised. Subsequent modifications have not helped much. This is the evidence. Each 100 voters in the ten smallest counties in the State had in 1894, and have today, the same weight in electing an Assemblyman as the following number of citizens in the principal counties:

	1894	1957
Erie (Buffalo)	150	446
Monroe (Rochester)	177	388
Onondaga (Syracuse)	139	470
Kings (Brooklyn)	163	467
Westchester	169	435
New York (Manhattan including the Bronx)	159	457
Nassau (1917, since part of Queens in '94)	193	462
Queens (including Nassau)	169	472
Suffolk	116	465
Bronx (1917, since part of NY county in '94)	239	444
Richmond	183	367

In other words, three to four-and-a-half individual citizens in the largest, fastest growing counties carry as much weight in electing Assemblymen as each citizen in our ten smallest counties.

The pattern for the State Senate is similar. In 1894, 103 citizens in the major urban counties (those which then had 3 or more Senate seats) had the same weight as 100 citizens in the remaining counties. Today, there are six counties which have 6% or more of the State's citizen population — four in New York City and two outside. It takes 182 citizens per Senate seat in these Counties to equal 100 in the rest of the State.

What is worst of all, there is every prospect that this disproportionate, undemocratic weighting will get worse rather than better. The formula for apportionment increases the gap between citizens in the fastest-growing counties and those whose populations do not change.

Certainly minimal representation must continue to be given to traditional units of government. But we must get much closer to our basic ideal of one vote for each citizen with the same weight, regardless of who you are or where you live.

One proposal that has been made is to increase the size of our lower cham-

ber from 150 to 200. Without taking any seats from any of the smallest counties, we could thereby equalize the weight of votes cast everywhere.

Third, we have the word of President Eisenhower's own Commission on Intergovernmental Relations as to the profound damage which misapportionment does to the Federal system. This Commission, headed by Meyer Kestnbaum, found that improved apportionment was one answer to the growth of Federal government power at the expense of the States. It was their conclusion that urban centers could not get adequate attention in the State legislatures be-



Carmine DeSapio

cause of under-representation. As a result, they gravitated to Washington for solutions. In our State, this is as true for our great suburban counties and our upstate cities as it is for New York City.

Fourth, there is no use looking to a legislature which is itself elected on this dubious basis for a cure for it. Members particularly in the Party which has the whip hand, cannot be relied upon to be detached or objective about the formulae on which they themselves are elected. Yet without a Convention, they alone have the power to do anything about it.

So much for apportionment. All else aside, we are still left with the questions — "Who has the temerity to say to the people that they shall not exercise their right to run their own affairs? Without the initiative, who

(See DeSAPIO on page five)

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Law Revision and the New York Convention

By Daniel Gutman
Counsel to the Governor, State of New York

It is my considered opinion that the kind of reorganization which is essential for the courts of New York State can be achieved only at a Constitutional Convention.

It is my further opinion that any reorganization initiated through legislative process will not accomplish all of the results desired by those who are concerned about our court structure and desire to bring about more than token improvement.

I anticipate that these statements will be challenged by the majority party leaders of the State Legislature. I believe, however, that it is their duty to announce their support of the Court Reorganization Program, and to indicate the proposals which they will accept and those which they will oppose.

In the alternative, the majority leaders who are primarily responsible for bringing legislation to a vote may prefer to go on record as saying that Court Reorganization is unnecessary and that the bi-partisan promptings of the Temporary Commission on the Courts, of Governor Harriman, of the press, and of the leading Bar Associations are unwarranted.

If they agree, however, that the need for revising the procedures, consolidation of courts and the establishing of a more practical system of administrative control is necessary, they should, in all fairness, make their commitments now. Inasmuch as the leaders referred to have each gone on record as opposing the holding of a Constitutional Convention in 1959, it is important that their opinions be made known on Court Reorganization and the extent to which they are ready to support it.

Commission Appointed

Here are the facts:

In 1953, the Temporary State Commission on the Courts was created. The Committee consists of eleven members of whom seven are appointed by the Governor, two by the Temporary President of the Senate and two by the Speaker of the Assembly. The Chairman of the Committee, Harrison Tweed, LL.B., '10, and all the other members are attorneys and legislators of high standing at the Bar. The appropriations to the Commission, to date, approximate some \$700,000. The Commission has engaged in extensive studies, held public hearings throughout the State and made recommendations which have been revised from time to time.

The final plan submitted by the Commission provided "for a simplified

statewide court system, financed by a single budget, administered by the Judicial Conference and Appellate Division, operating in a different manner in New York City than in other parts of the State."

It calls for a continuation of the Court of Appeals and of the Appellate Division in their present form. The Supreme Court would have its jurisdiction extended in New York City to include felony and surrogate matters. The County Court would be a trial court of "broad jurisdiction in all counties outside New York City, to include the work now being done in the present County, Children's and Surrogate Courts and part of the work of the City Courts in each of these counties." There would be a General Court of the City of New York to do the work now being done in the Court of Special Sessions, the City Magistrates Court, City Court and Municipal Court. The Justices of the Domestic Relations would be absorbed into the General Court of the City of New York.

Outside New York City, Magistrates Courts or District Courts would be organized where needed to do the work now being done in Justice of the Peace Courts and other local inferior courts. The Magistrates Court would be given full power to try cases under its jurisdiction without these prerequisite of consent by both parties.

It was also recommended that the jurisdiction of the Court of Claims be merged with the Supreme Court. In some areas, the plan was widely applauded; in others, it was criticized. The important fact is that the Legislature received it with indifference.

The Legislature has the sole power in the State of New York to initiate Constitutional amendments. The Court Reorganization Plan requires substantial amendments of the State Constitution.

Some of the objectives that have been raised to the Plan of the "Tweed Commission" require serious consideration and discussions. Some of the objections appear to be specious. But the entire Plan, as such, and all of the supporting and opposing opinions, clearly call for public consideration and an opportunity for approval by the people.

Legislature Lags

I have stated above that the Commission was organized and started to function in 1953. It is now 1957, and the 1958 session of the Legislature is two months away. The Legislature which created this body has yet to thoroughly consider, debate and vote upon either the proposals of the Commission or any other alternative plan which it may consider more worthy.

In the 1957 session of the Legislature, an intensive effort was made by the members of the Commission to obtain legislative action. The answer, which echoed through the corridors of the Capitol, was — "Give us more judges!"

The inadequacy of the present judicial system in the State of New York reflects itself primarily in congestion and delay.

The Legislature passed a number of measures providing for additional judges and Justices of the Peace.

In view of the opposition that has been expressed by most of the Judiciary to the Commission's plans — and some of it may have been well justified, — Governor Harriman wisely concluded that were he to grant all of the local requests for increases in the number of judges, Court Reorganization, insofar as the Legislature was concerned, would be out of the question for a long time to come. Governor Harriman's veto message, filed with a half-dozen such measures, is interesting. He said:

"For a number of years, the Temporary State Commission on the Courts has toiled with great expenditure of the time and energy of its

members and great cost to the State, to devise a plan for court reorganization which would adequately serve the needs of the people of the entire State. It has enjoyed substantial public support in the metropolitan area, and a good deal of opposition in the remainder of the State. This opposition has been based primarily upon the contention that the needs of both parts of the State, in relation to the Courts, are different and that a uniform approach for the State's court system is impractical.

"For the most part, the members of the Legislature and of the Judiciary have, for one reason or another, intensely opposed the Commission's proposal.

"Granted that there may be flaws in the measures recommended by the Commission, it is apparent that none of the objections that have been raised are insurmountable; much obduracy has been evident, however, as a result of which the Commission's efforts have resulted, at this Session of the Legislature, in a stalemate. The bills which it recommended were killed, and its existence was continued for another year.

"I now have before me the above bills, all of which deal with requests for increases in the number of judges in various counties or Judicial Districts.

Responsibility of Courts

"Except in cases where a really critical need is manifested, patchwork methods for improving court conditions should not be employed. The entire Judiciary of the State is represented in the Judicial Conference. I look to the Judges of the State to support a sound and necessary reorganization of the Courts, — one that will eliminate red tape and archaic methods, relieve congestion and make it cheaper and faster for citizens to obtain simple justice.

"Certainly with the wealth of talent and experience that exists among the members of the Judiciary and of the Bar, it should be possible to formulate proposals that will achieve these objectives, and to obtain the support of public opinion and of the Legislature. I have repeatedly stated that I will approve any sound Court reform program that is passed by the Legislature. It is intolerable to permit the judicial structure to continue to be burdened with practices and processes that create a toilsome and expensive road for the litigant who finds himself involved in court procedures.

"The addition of judges is not a panacea for the court problems and for all court congestion. Each time I have asked for court reorganization, the cry arises for 'More judges.' There are times when additional judges are needed, but before I permit the taxpayers of this State or of any County or locality to be burdened with the additional expenses that would be entailed, it is my responsibility to satisfy myself by facts and records that the judges in any given area are unable reasonably to cope with the volume of court business."

There is no reason to believe that plans for reorganization will be more seriously dealt with at the coming session of the Legislature than they have been in the past. It is now a certainty that the Tweed Commission will be obliged to make certain concessions and compromises before there is any likelihood of action on its plans. For one thing, it is common knowledge that the system of

Dance

An informal dance will be held in the North section of Harkness Commons, second floor, this Saturday evening. It will be the third in a series of dances sponsored by the Law School Dormitory Association. The time will be from nine until midnight.

SUTHERLAND

(Continued from page one)

New York Bill of Rights regarding rents and feudal tenures, did so over the protest of those who recalled the anti-rent riots which plagued New York down to the middle of the nineteenth century (Sutherland, "The Tenantry on the New York Manors — A Chapter of Legal History," 41 Cornell L.Q. 620 (1956)). As one delegate remarked, "We are a people in a hurry. . . . Have we no space for four lines on one page reminding us that we are a people with a history." (See N. Y. State Const. Convention, Revised Record 1161 (1938). Professor Sutherland contends that such re-



Arthur E. Sutherland

mindings are as appropriate to the written constitution of a state as any other public monument commemorating a heroic past is appropriate to a state capital.

In speaking of the characteristic New York constitutional struggle between upstate Republicans and New York City Democrats, he remarks that the central issue, legislative representation taking account of land areas against representation strictly by population, has been a national issue since the days of the Great Compromise at the Federal Convention of 1787. He suggests, however, that the City is as economically dependent on the upstate areas for access to the rest of the country as the upstate regions are dependent upon it as a great port.

Mr. Sutherland believes that no Democrat seriously considers making

Justices of the Peace will be continued. Many of these so-called "Justices" are not lawyers and are completely untrained for the performance of any judicial function, and yet, their jurisdiction extends over many thousands of people each year, and they have been established as a part of the system of justice in New York State.

Backroom deals and compromises which are not made in the light of day should not be tolerated in relation to court reorganization. They are unworthy of the Legislature of a great State. Any discussions in relation to court organization, any changes, any compromises should be worked out openly and in full view and under the scrutiny of the public for whose benefits the Courts of the State must function.

For these reasons, I am of the opinion stated in my first paragraph, that sound court reorganization can presently be achieved only through the medium of a Constitutional Convention.

HOGUET

(Continued from page three)

tion by the Legislature of piecemeal amendments submitted from time to time for ratification by the people.

2. The present deficiencies in the Constitution, although numerous and important, are not intolerable, and can await correction by a well advised instrumentality and enlightened consideration by the people. The Temporary Commission is well qualified to make an unbiased, non-partisan and intelligent consideration of the question. It should be allowed to complete its studies and to present its considered judgment on desirable changes, and specifically, to recommend whether and when there should be a convention.

DeSAPIO

(Continued from page four)

has the temerity to say that the people must, for another 20 years, leave the whole process of Constitutional amendment to the patchwork, disorderly process of random legislative amendment?"

The answer is "Only those with an indefensible special interest or power position, only those who fear the judgment of the people and their Convention."

New York City a separate state, or believes that the City would be better off without the rest of the state, regardless of its politics. In his opinion, the political history of the City has not always been exemplary, and the state as a whole would gain little benefit from strictly popular representation in the Legislature. He believes that the problems of great cities, foreseen a hundred and thirty years ago by Chancellor James Kent (1 Lincoln, *Constitutional History of New York* 198 (1906)), which include the danger that men too crowded together may feel a diminished individual sense of their governmental responsibilities, still constitute good reasons for preserving some territorial representation in New York.

But Professor Sutherland recognized that "in any democratic government, men must not be disenfranchised. The checks and balances in the Federal Constitution include not only the separation of powers and the division of functions between nation and state, but also the balance between urban and rural areas. This same division obtains to a limited degree in New York; the practical result has not been a perfect state, but New Yorkers (and ex-New Yorkers) are apt to ask where a better one can be found."

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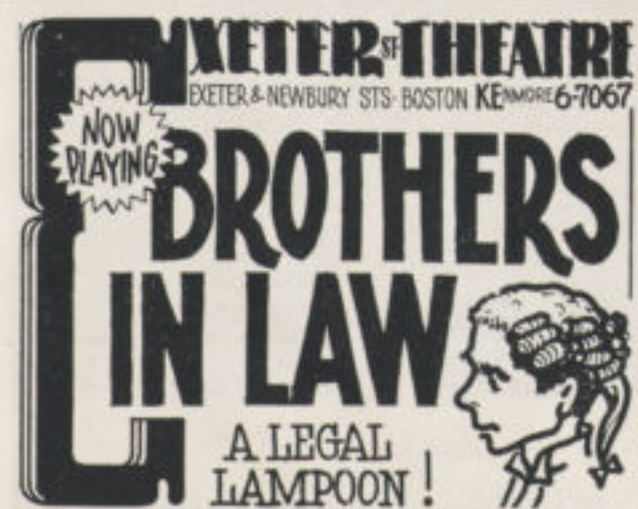
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Alumni Notes

LL.B. '41 — *Arnold D. Roseman* is a Democratic candidate for Supervisor, City of New Rochelle, New York. He was a Captain in the United States Air Force after graduation, and since last July has been a member of the firm of Kennedy, Roseman & Gardner in New Rochelle.

LL.B. '47 — Following graduation from the Law School *Charles O'Gara* spent two years on the Regional Council's Staff with Tidewater Oil Company at San Francisco. From 1950 to 1952 he was an Assistant United States Attorney at San Francisco handling trial assignments. From 1953 to 1957 Mr. O'Gara was in private practice in San Francisco and has recently established his office with the firm of Hudson, Martin, Ferrante & Street, with offices at 490 Calle Principal, Monterey, California. Mr. O'Gara's principal assignment with the firm is trial work and general civil practice in corporate and probate matters.

LL.B. '49 — *Cecil B. Highland, Jr.*, in addition to practicing law with Highland, Knowles & Morgan in Clarksburg, West Virginia, is president of The Empire National Bank of Clarksburg and president and general manager of Clarksburg Publishing Company. While at the Law School, Mr. Highland served on the *Law Review*.

LL.B. '50 — *Morton Koppel* has been appointed Special Village Counsel of Massapequa Park, for the purpose of revising, codifying and publishing the Village Ordinances of Massapequa Park, Long Island, New York.

LL.B. '51 — *Clarence Clyde Ferguson, Jr.*, has announced the birth of his second daughter, Hope Elizabeth, and the publication of his second book, *Desegregation and the Law* (with Professor Albert Blaustein of Rutgers Law School) on October 28th by Rutgers University Press. Mr. Ferguson, formerly an Assistant United States Attorney for the Southern District of New York, is now an Assistant Professor of Law at Rutgers University.

HOWE

(Continued from page one)

Professor Howe spoke not of ready panaceas, lofty platitudes nor of Ingersoll type rebuttals. Rather he concentrated his remarks on three principal acts:

1. The Smith Act which provides criminal penalties for those convicted of advocating or conspiring to advocate the violent overthrow of the government;

2. The Internal Security Act of 1950 requiring the Communist Party to register, label its propaganda and disclose its membership;

3. The Communist Control Act of 1954 which makes it a crime to be a member of the Communist Party.

Professor Howe described the Smith Act as unnecessary, in that its objective could have been achieved as well if not better by the old Civil War statutes, and extreme in that it gave the state power to act "two steps removed," that is, behind action to the preliminaries of action. Nevertheless, he considered it consistent with the tradition of dealing with conspiracy by the processes of the criminal law and not by bills of attainder, administrative boards and loyalty oaths.

Effect of Act

The Internal Security Act, on the other hand, subjected the Party to supervision by administrative controls and added a 'preventative' restraint to the already existing criminal law, he stated. Furthermore, it was like carrying over the unsavory practice of prior restraint into the field of political association.

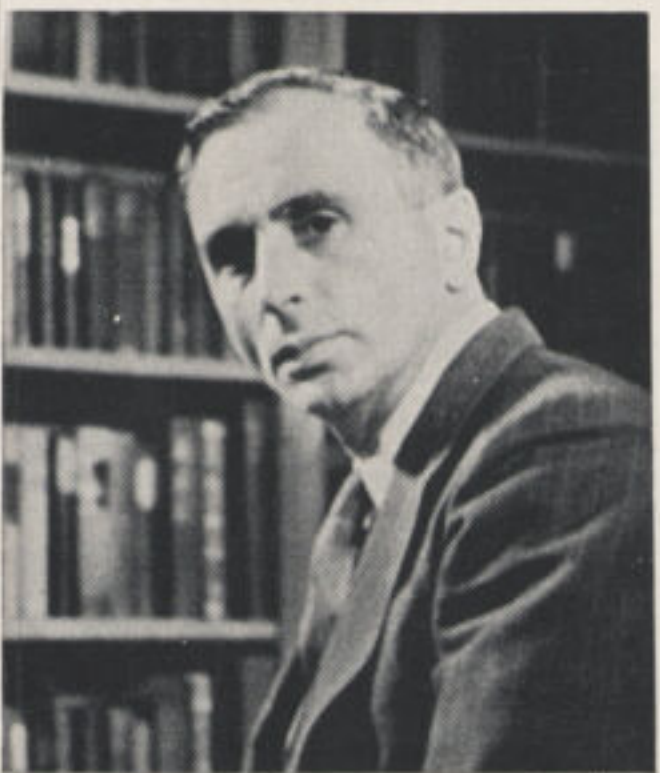
Then came the Communist Control Act which, without changing past laws, outlawed the Communist Party which was not outlawed under the operative Internal Security Act requiring registration, disclosure and labelling. Here, Professor Howe said, is an example of how these acts work at cross purposes with one another. He termed the Communist Control

MAKARIOS

(Continued from page one)

Greek prelate stated that he found it hard to believe that in this enlightened 20th Century the people of Cyprus should be yet denied their God-given right to independence and self-rule. The situation illustrates, he said, how far behind the scientific progress of the world its moral progress lags.

The Archbishop stated that Turkey (whose people comprise between 17 and 20% of the island's population) has no right in Cyprus, and had no interest in the island until about four



Milton Katz

years ago. In the last four years, he charged, this interest has been systematically "worked up" by the British Government.

Rejecting Turkey's claim to a voice in the ultimate solution to the Cyprian issue, the Archbishop declared that Cyprus is not a question for a tripartite settlement. It is a question to be worked out between the people of Cyprus and the British Government.

Professor George Kirk, visiting Professor of Government at Harvard,

Act as "essentially a bill of attainder," and analogous to the legal war on the National Association for the Advancement of Colored People by Southern legislatures.

"If we are to commit ourselves to the control of radicalism," he asserted, "we ought to think out our judgment and then make a considered legislative policy based on that judgment. . . ." When we are dealing with radical thought, a civilized people should say so frankly and not try to have it both ways." Mr. Howe was referring to treating all radicals alike under one law and then having other laws saying although we are treating all radicals alike we have special treatments for some.

Comparing the 1950 and 1954 Acts to Congressional Investigating Committees in that there are none of the traditional safeguards of the judicial process, he cited the serious injury to individuals coming from power without accountability.

He expressed his belief that, despite the unfortunate aspects of the Smith Act, especially the danger, in times of political hysteria, of excessively broad application to non-Communist radicals, the Smith Act is a better statute than the other alternatives we have sought to follow recently. The Smith Act, he continued, allows the defendant a chance to be heard according to the traditional proceedings of the criminal law.

Recent Trend Praised

Praising trends of recent cases in the federal courts to look at the specific charge in each case and the evidence on which the charges are based, Professor Howe stated that the courts, by the extension of procedural safeguards of due process to Smith Act prosecutions, have rendered the enforcement of the Act not quite as damaging as some think it is.

Professor Howe concluded by urging a reexamination of our whole policy toward radicalism so that whatever policy judgments we decide upon be based on systematic, rational and fair legislation. There must be an end, he stated, to permitting hit-or-miss legislation to deal with these problems on a day to day basis.

defended the British position on Cyprus. Self-determination is easy to apply when the population is homogeneous, he declared, but not when a plural society is involved. He cited the situations in Kashmir and Palestine to illustrate his point.

At the climax of his speech, Professor Kirk pointed to and accused Archbishop Makarios of arming young terrorists on the island. Cries and shouts of "Traitor" echoed from the crowd, a good part of which was composed of people of Greek extraction from the local community, and Moderator Milton Katz had to step to the podium to quiet the offended throng.

Decline Foreseen

Professor A. J. Meyer, Associate Director of the Center for Middle Eastern Studies at Harvard, analyzed the economic position of Cyprus and predicted a long-run decline for the Cyprus economy with its nadir to be reached in five to seven years. Professor Meyer predicted eventual union of the island with Greece, but proposed NATO trusteeship for Cyprus for the present.

Carlyle Morgan, editorial writer for the *Christian Science Monitor* who has recently returned from the Near East, proposed a solution to the Cyprian issue whereby Cyprus would be granted independence without Enosis (union with Greece) and would accept a five-year membership

in the British Commonwealth of Nations. Morgan expressed the belief that both the Greek government and the Cyprian population would accept this solution.

Professor Milton Katz, Director of International Studies at the Law School, served as moderator of the program. — Amadeo

TAXES

(Continued from page one)

it can be compared, point by point, with others. Each report presents a description of the tax system of a country, a detailed analysis, under uniform topic headings, of its income tax, and a treatment of other important taxes. In addition, there are uniform paragraph numbering and cross reference systems.

Other features of each report in the Series are a reproduction of the country's most recent available individual and corporation income tax return forms, an index, bibliography and table of statutes, and a provision for supplements when new developments make them necessary.

Other volumes to be published in 1958, according to William S. Barnes, Director of the Series, are *Taxation in Australia*, *Taxation in Colombia*, and *Taxation in Sweden* with reports on Germany, India, Turkey, Venezuela and France soon to follow.

STUDENTS

(Continued from page one)

are studying under grants from their own governments or under exchange programs.

Mr. King noted two distinct tendencies among foreign students now: 1) a growing tendency to take some first year courses, the feeling being that first year courses are likely to give a more representative picture of the common law and the thought processes of lawyers working under that system than would more advanced courses; 2) an increasing number of foreign students now appear to be interested in international economic development and the legal problems of doing business abroad, the reasons for which are self-evident.

When asked whether there was any special program to aid students from abroad in adjusting to American life, especially on the academic side, Mr. King replied that it was the philosophy of the Law School that they would best adjust if placed in the academic milieu on the same footing as American students. — Duke

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