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TEN CENTS

Murder Case To Open Ames

The case of *The Commonwealth of Ames v. Jerome Bates* will be argued by the Kent and Sacks Clubs in the first semi-final contest of the Ames Competition next Tuesday at 8 p.m. in the James Barr Ames Courtroom. Oralists for the Kent Club (representing the defendant-appellant, Jerome Bates) will be Edward S. Davis of Brookfield Center, Conn., and Charles C. Humpstone of New York City. Attorneys for the Sacks Club (representing the Commonwealth of Ames) will be Ansel B. Chaplin of Truro, Mass., and Joseph L. Steinberg of Passaic, N. J.

Judges sitting in the Supreme Court of Ames will be Donald W. Webber, LL.B. '31, of the Supreme Judicial Court of Maine; Gerald A. Berlin, Boston Attorney; and Brooks Potter, LL.B. '27, of the Boston firm of Choate, Hall & Stewart.

Jerome Bates was convicted of first degree murder for stabbing his mistress to death with a bread knife. The jury did not recommend life imprisonment, and the court sentenced him to death.

On appeal Bates is contending that the charge to the jury using the M'Naghten test for sanity was wrong, and that either the Durham rule or the A.L.I. Model Penal Code formulation should have been used, preferably the Durham rule.

Bates is also contending that the trial judge committed reversible error by answering the jury's question concerning what would happen to the defendant if they found him not guilty.

(See AMES on page four)

War Amendment Passes in Calif.

A state constitutional amendment to provide for the continuation of state and local government in the event of a war-caused disaster was overwhelmingly supported by California voters at the polls last week.

The amendment authorizes the state legislature to adopt wartime disaster laws to provide for replacement of legislators or of the governor in the



Vernon Kilpatrick

event of death or disabling injury in war, without the necessity of a popular poll. It also authorizes the legislature to designate a temporary capital and county seats.

This is one of several proposals made by the California Assembly's Subcommittee on Impact of Enemy Attack on Economy and Constitutional Government of the State of California, under the chairmanship of Vernon Kilpatrick, (D) of Lynwood, Cal. In addition to the amendment, nine bills proposed by the subcommittee have been enacted by the California Legislature. (See the RECORD, March 27, 1958.) These authorize city, county and state governments to provide for continuation of their po-

(See AMENDMENT on page three)



Anthony Lewis
Supreme Court Reporter
'New York Times'

Anthony Lewis To Address SBA

Anthony J. Lewis, Pulitzer Prize winning reporter, will speak at 8 p.m., Thursday, Nov. 20, in the Ames Courtroom, under the sponsorship of the Student Bar Association. Mr. Lewis address, "Inside the Supreme Court," will be introduced by Paul A. Freund, Carl M. Loeb University Professor.

Mr. Lewis reports the Supreme Court news for the *New York Times*, and his byline appearing on penetrating articles about the Court is familiar to most law students. Though only 31, Mr. Lewis has had a distinguished career in journalism, highlighted by the award in 1955 of the Pulitzer Prize for national reporting. In that year the American Newspaper Guild also conferred on Lewis the Heywood Brown Award for outstanding journalistic achievement.

A 1948 graduate of Harvard College, Mr. Lewis was employed by the *New York Times*, 1948-52, and by the *Washington Daily News*, 1952-55. He joined the Washington bureau of the *Times* in 1955.

In 1956 Mr. Lewis came to the Harvard Law School as a Nieman Fellow, and took courses in Civil Procedure, Constitutional Law, Federal Courts, and Professor Freund's Constitutional Litigation Seminar. His seminar paper, "Legislative Apportionment and the Federal Courts," was published last April in 71 *Harvard Law Review* 1057.

Socialist Legality and Government Under Law

Milton Katz, Henry L. Stimson Professor of Law and Director of International Legal Studies, was chairman of the United States delegation to a conference on "Socialist Legality," held in Warsaw, Poland, last September. The following special article by Professor Katz is based upon what took place at that conference.

by
MILTON KATZ

At Warsaw, during the week of September 10-16, 1958, the Polish Academy of Sciences acted as host to a conference of the International Association of Legal Science and the International Committee of Comparative Law which serves as the Executive Committee of the Association. The substantive concern of the conference was "The Concept of Legality in Socialist Countries." More than a hundred lawyers, drawn from the universities, bench and bar of some twenty-one countries, took part. Eight of the participating national groups were described by the Polish hosts as representing "socialist countries" — Albania, Bulgaria, Czechoslovakia, Eastern Germany, Hungary, Poland, Rumania and the Soviet Union. Eleven were from countries whose



Milton Katz

legal systems and doctrine are rooted in or derived from the Western tradition — Canada, Denmark, Federal Republic of Germany, Finland, France, Italy, Spain, Sweden, United Kingdom, United States and Turkey. One came from Asia — Japan. The remaining delegation was from Yugoslavia, Communist to the West and in its own eyes, but apparently denied

Bull & Bear

Carlton P. Fuller, vice-president and treasurer of The Polaroid Corporation, will address the Bull and Bear Club tomorrow at 1:40 p.m. in the Harkness Commons Meeting Room. He will discuss the amazing growth record of Polaroid in the past and the Company's plans for continued growth in the future.

'Playboy' Foils Postal Officials

An effort by alert United States Post Office officials to prevent distribution through the mails of the November issue of *Playboy* magazine was defeated last week when David A. Pine, United States District Judge for the District of Columbia, issued a temporary restraining order halting any action by the Post Office Department.

The Post Office had ordered all copies of the November issue withheld from the mails until the department could hold a hearing to determine whether the issue was obscene or not. The restraining order nullified this, and all copies of the November issue have now been distributed.

The Post Office had not, at last reports, specified just what in particular it objected to in the November issue. It may be speculated, however, that a number of pictures of Brigitte Bardot, not over modestly clad, may have lifted a few eyebrows within the Department.

Playboy argued, in the hearing which resulted in the restraining order by Judge Pine, that the Post Office should have no right to refuse delivery of a publication with second-class mailing privileges before giving the publication the benefit of a hearing.

The United States Court of Appeals refused to issue a stay of Judge Pine's order.

Lecture

Walter H. Gilday, Register of Probate of Plymouth County, will deliver the first in a series of three lectures on Probate Practice and Procedure in Massachusetts tomorrow afternoon at 4 p.m. in Langdell North Middle. The lecture is open to all students.

Leach, Meserve Argue Model Trial Today

Months of exacting work by faculty members and teaching fellows will bear fruition when the case of *Marsh v. Fitch* comes to trial at 5 p.m. this afternoon in the James Barr Ames courtroom, location of the Superior Court of the Commonwealth of Ames.

Frank J. Murray, Judge of the Superior Court of the Commonwealth of Massachusetts, will preside as opposing counsel W. Barton Leach, Story

Professor of Law, and Robert W. Meserve, Lecturer on Law, come to the bar to represent their clients' interests in a case involving tort claims in libel and interference with an advantageous relationship.

The case had its beginnings on a country road near Austin, in the Commonwealth of Ames, when a car driven by the plaintiff, Marsh, struck a man walking along the road. Colonel Fitch, the defendant in the action and a relative of the man who had been struck, was unconvinced that the local district attorney's investigation absolving Marsh of blame was morally supportable.

When Marsh later was offered a position as Headmaster of the Chase School in Ames, Colonel Fitch, one of the active alumni of the school, charged in a letter to the school's president that he had witnessed "a hit and run accident in which Mr. Marsh struck a young boy with his automobile and then tried to escape..."

After receiving the letter from Colonel Fitch, the Chase School withdrew its offer. Marsh discovered that the Colonel had written the letter and filed suit against Fitch on two counts, asking damages for libel and interference with an advantageous relationship.

Counsel for the parties have spent many hours interviewing witnesses and preparing their case, according to Professor Donald Trautman, Faculty Adviser to the Teaching Fellows. One of the most lissome of the witnesses who may take the stand will be Miss Alice Hooper, a dark-haired,

(See TRIAL on page three)

Underwriting firms need capital and reputation, Mr. Howard E. Buhse, partner in Hornblower and Weeks, told the Bull and Bear Club last week.

The capital is necessary to help buy in the new issue which the underwriter has agreed to distribute at a certain price, Mr. Buhse said.

The firm needs reputation to aid its enlistment of sometimes as many as 120 other underwriting firms to help share the risk and distribute the issues, Mr. Buhse continued. The group of firms formed to distribute the issue is known as an "underwriters' group."

Underwriting involves risk, the speaker pointed out. The spread between the price paid the company issuing the securities and the price at which the underwriters' group offers the securities to the public is relatively small — and regulated by the Securities and Exchange Commission.

(See BUHSE on page three)

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(See SOCIALISM on page four)

Socialist Sweezy Addresses Group

Paul M. Sweezy, one of America's leading socialists, center of controversy in the celebrated case of *Sweezy v. New Hampshire*, 354 U.S. 234, 77 S.Ct 1203, (1957), and a former assistant professor of Economics at Harvard College, will address the Harvard Socialist Club on the subject of "Marxism Today." He will speak next Tuesday, November 18, at 8:30 p.m. at an on campus address to be announced later.

Mr. Sweezy is the author of two books in the field of political economics: *The Theory of Capital Development* (1942) and *Socialism* (1948). He is a graduate of Harvard College, was president of the *Harvard Crimson* (1930-31), and is currently editor of the *Monthly Review*.

In 1953 a joint resolution of the state legislature of New Hampshire constituted state Attorney General Louis C. Wyman, LL.B. '41 c.J., a one-man legislative committee and authorized him to conduct investigations with respect to violations of the New Hampshire Subversive Activities Act of 1951.

Sweezy refused to answer Attorney General Wyman's questions about a lecture he delivered at the University of New Hampshire in March of 1954 and questions concerning the Progressive Party. When he again refused to answer these questions before a State Superior Court, he was adjudged in contempt. The Supreme Court of New Hampshire affirmed this decision.

But the Supreme Court of the United States reversed the conviction in a 6-2 decision (Clark and Burton dissenting; Justice Whittaker did not take part), holding that Sweezy had been deprived of "due process" under the 14th Amendment.

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Justice and the Court

We are under a Constitution, but the Constitution is what the judges say it is.
— Charles Evans Hughes

On August 23, 1958, the Conference of Chief Justices of the States, meeting at Pasadena, California, by a vote of 36 to 8, passed a resolution which approved a report of the Committee on Federal-State Relationships as Affected by Judicial Decisions. This unprecedented report criticized the Supreme Court of the United States for disregarding the Constitutional allocation of powers between the federal and state governments, and for unduly limiting the powers of the states.

The report expressed "grave concern as to whether individual views of the members of the court as from time to time constituted, or of a majority thereof, as to what is wise or desirable do not unconsciously override a more dispassionate consideration of what is or is not constitutionally warranted."

Clause 5 of the resolution passed by the Chief Justices, in part, urges the Supreme Court to "exercise . . . the power of judicial self-restraint — by recognizing and giving effect to the difference between that which, on the one hand, the Constitution may prescribe or permit, and that which, on the other, a majority of the Supreme Court, as from time to time constituted, may deem desirable or undesirable. . . ."

Much of the criticism of the State Chief Justices appears justified, for the Supreme Court of the United States seems, indeed, to be neglecting, at times, the philosophy of government set out in the Constitution, and the individual views of the members of the Court as to what is right or desirable appear to be the real foundations for some Supreme Court decisions ostensibly based upon Constitutional provisions. This is particularly true in cases decided under the "due process" and "equal protection" clauses of the 14th Amendment.

Good or Bad?

But what the report of the Chief Justices fails to do is to make a convincing argument showing just how and why this is particularly bad. For it may be well and good that the Constitution is sometimes neglected when the Supreme Court resolves Constitutional questions, and that cases are decided on the basis of what a majority of the Court deems just and desirable.

The decision of the Supreme Court in any particular case must be based upon (1) the sense of justice of the present members of the Court, or (2) the sense of justice of others (i.e., the framers of the Constitution, when Constitutional issues are involved), or (3) some consideration other than justice.

Assuming that justice is the goal of our judicial system, then alternative (3) will not be satisfactory. As between alternatives (1) and (2), why should the original drafters of the Constitution or of any of its Amendments be better qualified to determine the just solutions for problems which face the Supreme Court in 1958 than its present members? Not only could these drafters rarely have foreseen the concrete problems which the Court now faces, but often they could not have anticipated even the types of problems presented.

Product of Bygone Age

The United States Constitution, formulated in the 1780's, with 11 short Amendments added since the 18th century, is a product of the philosophy of an age long gone, an age of individualism, when the fear of strong central government dominated political thought, and laissez faire economic theory, an age when the republic was young and expanding and the troubles and cares of the Old World

were far removed and of comparatively small concern, an age of the pioneer and the open west, of the farmer and the small merchant.

But the United States, in the mid-20th century, is a great World Power, an industrial giant, the protector and benefactor of a large sector of the planet, and the enemy of another large sector. The day of the simple economy in America has been superseded by the age of giant corporations and powerful labor unions, of state economic regulation and supervision. Big government and many facets of the welfare state are no longer feared, but are generally accepted, and a simple society and economy have been replaced by the most complex.

The Constitution is today, in many ways, a legal anachronism. Much of the thought it embodies, the principles it expounds, are no longer in vogue. Written in an era of great dread of strong central government, it was adopted as a pact between independent and sovereign states who surrendered a part, and a part only, of their sovereignty to the federal government. The Constitution, it is quite evident, was fashioned as an extremely strong "states' rights" document. But a great Civil War has come and gone and almost another century has passed and the case for the priority of "states' rights" has long since been lost.

Enumerated Powers

The United States government was established as one of enumerated powers only, and "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." (10th Amendment). But the concept of "enumerated powers" and the 10th Amendment are no longer taken so seriously by the nation's judiciary.

Charles Austin Beard, indeed, has written that "The Constitution was essentially an economic document based upon the concept that the fundamental private rights of property are anterior to government and morally beyond the reach of popular minorities." (Beard, *An Economic Interpretation of the Constitution of the United States*, page 324).

Is it reasonable to expect the United States in the second half of the 20th century to remain fettered by, and be successfully governed by, rules laid down in a document written in the latter 18th century by men whose political and economic philosophy has so long been abandoned?

Criticism

If the Supreme Court, then, when resolving Constitutional issues, sometimes relies more upon its own judgment as to what a just decision should be, rather than on the provisions of the Constitution itself, it should not be unduly criticized. But it may well be criticized for the opinions it renders in explanation of these decisions.

For the decisions of the Court of late do not appear to be as well written, as carefully worded, as clear and concise, as professional as they might be. Dean Griswold has suggested that the quality of the Supreme Court's opinions may suffer because the Court is overburdened with work, and cannot spend enough time on each individual case.

This may be true, but trouble also may stem from the fact that while many of the Court's decisions are based upon what the individual members feel is just and desirable, the Court often, in its opinions, sees fit to declare that the results are reached because specific imperative provisions of the Constitution require that result. The Court is fond of declaring that "due process" demands that this case be decided this way, or that "equal protection" demands that that case be decided that way. But it never informs us that it reaches a particular result just because it feels that it is the only just result.

Seek and Ye Shall Find

Dr. Albert Schweitzer has observed that modern Christian theologians tend to pride themselves on their ability to look into the Bible and find there just what they want to find, and to interpret away anything that appears to be out of harmony with it. May it not be that the members of the Supreme Court, like the theologians that Dr. Schweitzer complains of, sometimes determine what they want to find in the Constitution before they go looking? And that they unconsciously become oblivious to or brush aside any inappropriate or unharmonious ideas or phraseology encountered in their path?

For the Constitution, like the Bible, is much more a product of its time than it is generally treated as, and a lot of modern 20th Century philosophy and thought and moral principle are interpreted into it, rather than actually found residing there.

Constitutional lawyers today, when seeking to determine the constitutionality of a particular action, habitually look not to the Constitution itself, but to decisional law, to past expressions of opinion by members of the

Current Cases

The highest courts in two states located in diametrically opposite corners of the nation recently handed down significant decisions concerning adequate grounds for the disbarment of lawyers.

In the State of Florida, membership in or allegiance to the Communist party is now a legally sufficient ground for disbarment from the practice of law.

In *In Re the Integration Rule of the Florida Bar*, 103 So. 2d 873 (1958), the Supreme Court of Florida, by a unanimous decision, in an opinion written by Justice Terrell, stated that "lawyers in Florida are officers of the court . . . We do not think they can consistently become members of the Communist party or lend their sympathy or allegiance to any communist front, cell or other communist sympathizer known to be operating in this country without forfeiting their membership in the bar."

Two Petitions

The Florida Supreme Court was ruling on two separate petitions, one by 27 members of the Miami Bar and one by the Board of Governors of the Florida Bar, to amend the Integration Rule of the Florida Bar.

The petition by the Board of Governors would have made the invocation of the 5th Amendment by an attorney under investigation in any official proceeding "prima facie evidence that he is unfit to continue to exercise the privilege of practicing law."

But the Florida Supreme Court, citing *Slochower v. Board of Higher Education of City of New York*, 350 U. S. 551, 76 S. Ct. 637 (1956), held that it would be a violation of "due process" to punish an attorney for asserting his 5th Amendment privilege. It defended the right of a lawyer "to decline to give evidence that will incriminate him as contemplated by the Fifth Amendment."

The court commented that although a proceeding to disbar an attorney is disciplinary rather than criminal, "the seriousness of it entitles the accused to due process."

The Supreme Court of Florida then approved the following amendment to the Disciplinary Rule of the Florida Bar:

Any member of the bar of this state, who joins the Communist party, allies himself with or in any way lends his allegiance to the

Supreme Court. And since these opinions change with the membership of the Court, the lawyer turns, especially in the field of federal-state relations, to fairly recent decisions, for the older cases, by and large, cannot be relied upon.

But even recent decisions of the Court cannot always be depended upon as authority. Judge Learned Hand, when delivering the Oliver Wendell Holmes Lectures at the Law School last March, on the subject of "The Bill of Rights," observed that the Court has been assuming and exercising what are primarily legislative powers. But he expressed inability to "frame any definition that will explain when the Court will assume the role of a third legislative chamber."

Segregation Decision

The decision in *Brown v. Board of Education* has been termed by Chief Justice Charles Alvin Jones of Pennsylvania "the principal cause of the present-day criticism of the Supreme Court." The report of the State Chief Justices, it is true, fails to mention the case, but it is all the more conspicuous because of this fact.

In *Brown v. Board of Education*, reargument was largely devoted to the circumstances surrounding the adoption of the 14th Amendment in 1868. Yet it does not seem that the Court was inordinately interested in the history of the 14th Amendment. It seems, on the contrary, that the Supreme Court decided the case the way that it did primarily because the members of the Court believed that segregated schools are wrong and undesirable and unjust to the Negro. The Court utilized sociological, not Constitutional data, to substantiate its decision. But the opinion of the Court rests the decision firmly on the ground of Constitutional necessity, upon the uncompromising dictates of the phraseology of the 14th Amendment.

If it be true, however, that the Supreme Court decides many cases on the basis of subjective standards of justice, while feeling compelled to tell the world at large that it is deciding them on the basis of objective commands contained in an infrequently amended 18th century document, this may explain why the Court's opinions sometimes appear to be shadowy and ambiguous, not quite candid, and even, on occasion, misleading. This may explain why some of the Court's opinions seem to shelter a little tongue-in-cheek reasoning, and do not radiate quite the professional flavor that they might.

This may be the reason that the Court's decisions are being subject to so much criticism today, even by those who, generally, have no real complaint with the results being reached.

—Binder

Communist party or any subsidiary of said party . . . and refuses or neglects to resign from the bar shall subject himself to disciplinary action and the Board of Governors of the Florida Bar is hereby authorized to institute proceedings against him for that purpose. Such proceedings . . . may be instituted on complaint of the state attorney, the complaint of any reputable lawyer or lawyers, or it may be predicated on any investigation made as to the accused's communist activities by any court of which he is an officer or by other recognized governmental agency, state or national. The evidence taken by such court or agency may be introduced and accorded such weight as the Board of Governors may deem proper to give it and the punishment may be disbarment, suspension from the practice for a definite time or such lesser punishment as the Board of Governors may see fit to impose. An action by the Board of Governors is subject to review by this court in the same manner that other disciplinary orders are reviewed.

Honest Tax Evasion

Meanwhile, in the great Northwest, the Supreme Court of Washington has ruled that an attorney who refused to pay Federal income taxes, but who was honest about it, should not be disbarred.

In *In Re Molthan*, 327 P. 2d 427 (1958), the Board of Governors of the Washington State Bar Association had recommended that attorney James J. Molthan be disbarred from the practice of law in the State of Washington. It listed two reasons for its recommendation:

(1) Attorney Molthan had pleaded *nolo contendere* in the United States District Court for the Western District of Washington to charges of willfully and knowingly failing to file a federal income tax return for the year 1951, a violation of section 145 (a) of the Internal Revenue Code, which makes such conduct a misdemeanor. Molthan was accordingly fined \$500 and sentenced to six months imprisonment at the United States penal camp on McNeil Island, Washington.

(2) Attorney Molthan willfully and knowingly refused to file Federal income tax returns for the years 1949, 1950 and 1951, "and has failed and refused to pay income taxes for the said years and subsequent years in violation of the revenue laws of the United States."

Trial Committee

In a disciplinary proceeding instituted against Molthan, a trial committee had found these facts:

(a) In 1950, James J. Molthan notified the United States Treasury Department by letter that he did not intend to file an income tax return nor pay any tax. In 1951, he again notified the Treasury Department by letter of his intentions and invited prosecution.

(b) Attorney Molthan filed a United States Treasury form No. 1099, disclosing \$21,000 in income in 1951, but he refused to make or file an income tax return or pay any tax thereon.

(c) Molthan filed income tax returns for the years 1952, 1953, and 1954, but refused to pay taxes thereon.

(d) Molthan's reason for these actions: "he maintained he was a second class citizen of the United States by virtue of the fact that he had been, without trial, denominated a security risk, and that such a finding denied to him his usual employment as an attorney."

Reprimand

The Supreme Court of Washington agreed with the recommendation of the trial committee that Attorney Molthan be reprimanded for his conduct, but not disbarred. It utilized the familiar criterion of "moral turpitude" to guide its decision.

An opinion by Justice Weaver, speaking for a unanimous court, said that "The record is devoid of anything which indicates that Mr. Molthan entertained a corrupt or criminal motive. There is nothing to indicate that he intended to defraud or deceive the government. On the contrary, he notified the tax authorities of his intention; he kept adequate records; there is no complaint of lack of co-operation. Fraud or deceit are not inherent in his conduct, which the trial committee aptly described as evidencing 'a lack of good judgment and a puerile adolescent attitude.' We agree with the conclusion of the trial committee that Mr. Molthan's conduct did not involve moral turpitude."

The Washington Supreme Court distinguished Molthan's conduct from that of an attorney who submits a fraudulent return, in violation of section 145 (b) of the Internal Revenue Code, and which is a felony. Fraud, the opinion said, does involve moral turpitude.

Motives

The court emphasized that it was not so much concerned with Molthan's actions, as with the motives that inspired them.

The opinion cited, in support of its decision, *Kentucky Bar Association v. McAfee*, 201 S.W. 2d 899 (1957), a similar case, in which the defendant attorney had been convicted of willfully and knowingly failing to file an income tax return under section 145 (a) of the Internal Revenue Code. He was there, too, reprimanded, but not disbarred.

—Binder

Jurist Seeks to Solve Nationalization Problem

"In the world-wide movement to help underdeveloped countries attain sufficient development and economic stability the establishment of adequate safeguards for foreign investments against nationalization, along with the promise of adequate pecuniary returns, becomes one of primary significance," Dr. Seidl Hohenfeldern, professor of International Law at the University of Saarbrücken, Germany, declared, as he addressed the International Law Club recently.

Agreement Necessary

Pointing out the need which underdeveloped countries have for outside capital and its continuous employment to accelerate their economic programs, Dr. Hohenfeldern emphasized the increasing necessity for agreement on procedures or measures to safeguard foreign investments in the wake of nationalization movements taking place in different parts of the world. The noted German professor said that nationalization as a national expedient which results in the taking by a state of assets or properties belonging to foreign nationals and the corresponding deprivation by that state of certain rights heretofore enjoyed by foreigners increases tension, for the state of the national whose properties have been nationalized naturally takes up the case of its citizens and exerts its influence to bring about an equitable solution to the abrupt transfer of possession and ownership brought about by the unilateral action of the expropriating state.

To prevent this sad state of affairs, Dr. Hohenfeldern foresees the necessity for the adoption of rules or regulations, bilateral or multilateral, which (1) would forbid nationalization of foreign investments altogether, or (2) forbid the home state of the investor from intervening in behalf of its nationals or citizens, leaving it to the nationalizing state to settle the question directly with the investors concerned, or (3) set up concrete provisions for the payment of indemnity in the event that any country takes over the properties of foreigners by nationalizing them.

Indemnity

The first proposal, he explained, is untenable for reasons political in nature. This is borne out by recent events, especially in the Middle East. Difficulty is encountered in the second proposition because citizens or nationals residing or investing in foreign states naturally look to their respective governments to protect them and speak for their interests in the event of nationalization. The third proposal, he said, offers the most feasible approach because it does not impede the free flow of capital investments to foreign countries which need them and at the same time does away with a substantial portion of the fears and adverse effects associated with nationalization of foreign properties. But while concrete provisions for the payment of indemnity by a nationalizing state may be most feasible, a series of other problems must be faced. To serve its purpose, the indemnity must be "prompt, full, and

effective". But countries differ in their interpretation of what is "full, prompt, and effective" indemnity.

It is now a generally accepted view, Dr. Hohenfeldern stated, that to be effective, the indemnity must be paid promptly. It is prompt when the payment schedule fixes the time and the manner of payment. Even if, as usually happens, it is to be liquidated in installments, it may still be considered prompt so long as there are provisions for payment of definite sums on definite dates, as well as a proviso for interest charges on balances outstanding.

As to whether the indemnity is full, what is the basis for determining its value? Is the basis the replacement value of the properties, or the historical value, or the book value, or what? Where there are many individuals involved, how are their respective individual claims to be satisfied? Is the "lump sum" idea, whereby the total aggregate indemnity is determined and paid by the nationalizing country to the state of the national whose properties have been taken over, the latter to distribute the sum to its nationals in the manner it sees fit, to be followed exclusively?

Balance of Interests

Dr. Hohenfeldern stated that it is important to balance the interests of the nationalizing country and its need for foreign capital with the interests of the foreign investor, who needs protection for his investment. One aid to solution often suggested is for other states to refuse to enforce the decrees of a nationalizing state in places outside of the sphere of the local laws of the nationalizing state. Another way would be to effect some kind of insurance, not prohibitively expensive, on these investments to protect the investors from losses which may arise as a result of nationalization. Finally, he suggested, treaty provisions between states could provide for obligatory arbitration where conflicting interests are involved. The last alternative would recognize the equality among states but raises the problem of the necessity of sanctions to enforce arbitration awards, for the charter of the United Nations expressly forbids the use of force as a means to enforce a judgment. "On the whole," Dr. Hohenfeldern concluded, "substantial progress has been achieved in clarifying the diverse questions that arise as a result of nationalization. Much remains to be done for the greater safety of foreign private investments, which in spite of government aid from East and West, remain necessary for the promotion and accomplishment of one of the big tasks of our country — the development of underdeveloped countries and the promotion of international peace."

—Punay

New Officers...

New members of the International Law Club executive committee are Woonsang Choi (second vice chairman), graduate student who is formerly of the South Korean foreign office; Ramon R. Prieto, graduate student and Assistant Professor of International Law at the University of Oviedo, Spain; George M. Abi-Saab, graduate student of Cairo, Egypt; Zoltan Mihaly, 2L of Hungary; Robert Platt, 2L of Columbus, Ohio, and William Gray, 2L of New York City.

Other officers of the Club, elected last spring are: Joseph E. Leininger, 3L of Cleveland, chairman; William A. Schaffer, 3L of West Hartford, Conn., vice chairman; Robert D. Crane, 3L of Chicago, secretary; Stephen C. Schott, 3L of Brooklyn, treasurer; and Stuart W. Robinson, Jr., 2L of Springfield, Ill., placement chairman (appointed).

TRIAL

(Continued from page one)

bucolic apple picker who lives not far from the scene of the accident.

The Eleventh Annual Model Trial is an annual joint project of the Teaching Fellows and the faculty of the Law School, designed to portray in the most vivid fashion possible the actual workings of the courtroom.

The fact situation, according to Professor Trautman, is developed either "out of the air" or else by analogy to a reported case. Much thought-



Donald Trautman

ful research on the part of the Teaching Fellows, the prime movers of the production, and the faculty's suggestions are incorporated in an effort to present relatively simple legal propositions against the panorama of the courtroom.

The law, facts and procedure are aimed at the first year students' level of understanding of the law in order to present for them a vivid illustration of the materials with which they are working.

At the same time, reflecting as it does the combined efforts and suggestions of many of the members of the faculty and argued by two law professors before a noted member of the Massachusetts judiciary, the trial may be expected to appeal to even the most jaded of third-year students.

The character and spontaneity of the participants at the model trials is one of the elements that tends to lend a high degree of realism to them. When asked whether actors, amateur or professional, were used to take the parts of the witnesses, Professor Trautman stated that this was seldom done.

"They are all real people," he said, and went on to explain that the participants are chosen, usually from personal acquaintances of the Teaching Fellows or faculty, for personal mannerisms which most closely approximate those of the characters which they portray. "They have to have only two things," Professor Trautman said, "time and willingness." He indicated that at the early stages of the preparation, which begin in the spring, there is a tendency to consider the case rather lightly. But as time — and work — goes by, it becomes as real to all concerned as a normal case, and by the time of the trial the adversary positions are well established.

The Model Trial is a community project, Professor Trautman explained. In addition to the Teaching Fellows' and faculty help, the entire first year class, through the media of their group work program over a period of some weeks, participates in preparation of drawing the pleadings, taking depositions and drafting instructions. Even the outside world is brought into the project. The jury is chosen as representatively as possible from Harvard's environs, and includes businessmen, tradespeople and housewives, as would a jury in the normal situation.

A number of problems must be overcome before the trial can be presented. Some are relatively anomalous. Professor Trautman explains that counsel are chosen for the trial by the buttonhole technique. Faculty members are cornered until two agree to do it. Neither Professor Leach nor Mr. Meserve has ever argued in this jurisdiction before.

The presentation of a fact situation which will present an appealable issue regardless of the findings below is also a complicating factor. (Marsh v.

Even Lord Coke Had Food Trouble

W. J. Dennis, manager of Harkness Commons, thinks he has troubles in his effort to produce a satisfactory cuisine for law students, but an inspection of the current display in the Treasure Room of the Law Library reveals that his problems are centuries old. When Sir Edward Coke, Lord Chief Justice of England, was in his final year as a reader in Inner Temple in 1578, he is reported to have argued "The Cook's Case of Temple" which grew from complaints of students about dining facilities. This is one of many events in the legal career of Lord Coke depicted in the current exhibit.

AMES

(Continued from page one)

by reason of insanity. He also charges the judge with reversible error for answering the jury's question about the defendant's chances for parole if they should recommend life imprisonment.

Counsel on the brief for the Kent Club include: Spencer Ervin, Jr. of Bala-Cynwyd, Pa.; Harrison Gardner, Jr. of Wenham, Mass.; Martin A. Heckscher of Fort Washington, Pa.; Constantine Hutchins, Jr. of Needham, Mass.; William B. Warren of Cambridge; and Hiller B. Zobel of San Anselmo, Cal.

Counsel on the brief for the Sacks Club are: John H. Demmler of Pittsburgh, Pa.; E. H. Geoffrey Gowen of Port Blakely, Wash.; Richard R. G. Hobson of Alexandria, Va.; John C. Keene of Wynnewood, Pa.; Gordon A. Millsbaugh, Jr. of Cambridge; and Walter M. Noel, Jr. of Nashville, Tenn.

Alumni Notes

LL.B. '31 — J. Oscar Rocheleau has moved his office to the Commerce Building, 340 Main Street, Worcester 8, Mass.

LL.B. '35 — Lee Epstein has been elected to the National Academy of Arbitrators.

LL.B. '39 c.l. — William P. Gray was appointed Special Assistant to the Attorney General of the United States to act as Chief Trial Counsel in the government's action against 400 oil companies involving the subsidence of Terminal Island, Cal., with its \$40,000,000 Naval installation into the Pacific Ocean.

LL.B. '48 — Albert N. Danoff has moved his offices to 21 South Franklin Street, Wilkes-Barre, Pennsylvania.

LL.M. '48 — William H. Dorsey, Jr., has been appointed legal counsel for the System Development Laboratories.

LL.B. '48 c.l. — Walker Winter has become a member of the firm of Ross, McGowan & O'Keefe, 122 South Michigan Avenue, Chicago. Before moving to Chicago he was a member of the Staff of the Joint Committee on Internal Revenue Taxation in Washington, D. C.

LL.B. '50 — Robert N. Zarick has moved his law office to Suite 714, Crocker-Anglo Bank Building, Sacramento 14, Cal.

LL.B. '52 — Bruce Bowen has become a partner with LL.B. '52 — Edward C. Reed, Jr., and Robert Taylor Adams under the firm name of Adams, Reed & Bowen, 319 Gazette Building, P. O. Box 187, Reno, Nev. Mr. Bowen recently returned from the Army with the rank of Captain, after serving a number of years in the Judge Advocate General's Corps.

LL.B. '52 — Howard S. Dorris has opened offices for the practice of law at 40-22 Main Street, Flushing, N. Y.

LL.B. '52 — Lloyd W. Herrold has formed a partnership with Robert A. Tillman and Joseph E. Kennedy for the practice of public accounting under the firm name of Tillman, Kennedy & Herrold, 125 East Wells Street, Milwaukee 2, Wis.

Fitch has been docketed to be heard on appeal on Wednesday evening, December 10).

Professor Trautman appears relatively unworried about the outcome of the case itself. But there is one complication to his position, he says, because "there seems to be some question about my violation of Canon 28 of the ABA Canons of Professional Ethics as far as my work in this trial is concerned."

—Mulroney

BUHSE

(Continued from page one)

curities Exchange Commission. But there is no limit on the loss which the underwriter may suffer if the securities cannot be sold for the price at which they initially are offered to the public. Risk is minimized by underwriting only issues with a sound financial basis, and by careful market analysis before setting prices.

The underwriters' group is an unusual feature in a competitive economy. After competing with many other firms for an underwriting contract, the successful firm brings many of its competitors into the underwriters' group to help achieve a nationwide pattern of distributive outlets. Soft spots in the pattern are filled by firms which do not share in the risk but sell the securities for a straight commission. They are members of the "selling group."

Legal problems are "many and complex" in floating a large issue, Mr. Buhse said. SEC and Blue Sky law requirements must be met. Reincorporation in another state by the issuing company may be necessary to come under more favorable statutory provisions. A special meeting of stockholders usually must be arranged to approve the issue. Amendment of the corporate charter and bylaws is frequently necessary. Contracts must be drawn up between the issuing corporation and the major underwriter, and between the underwriter and the other members of the underwriters' group.

Mr. Buhse is a 1929 graduate of the University of Minnesota Law School. He never entered practice, instead joining Hornblower & Weeks. He is a past president of the National Association of Security Dealers.

—Cover

Revenue Service Inverts Labels

The Internal Revenue Service, long immune to tax collector jokes, has revealed that it isn't standing on its head. It announced that about one and one-half million taxpayers will receive their 1958 tax returns with upside down address labels.

The reason? It's a trial to see if the upside down address label makes it any easier for mail carriers to deliver the 1958 Form 1040 package to taxpayers. With the label reversed, the mail carrier can remove the package from his bag, read the address, and stuff it in the proper mail box all in one motion, according to a Post Office proposal.

The Internal Revenue Service said that the results of this trial will be utilized to aid in the design of future forms packages.

AMENDMENT

(Continued from page one)

litical functions in the event of a nuclear attack. Some of the acts had the novel provision that they should take effect when the amendment approved last Tuesday by a vote of 2,642, 806 to 766,900 becomes effective.

California has led other states in making provision for the continuation of government in the event of war. Similar legislation and a constitutional amendment will be introduced in 44 state legislatures next January.

Assemblyman Kilpatrick, 71 year-old Michigan born journalist who is entering his eleventh term in the Assembly, has conducted what has been described as a "one-man campaign" for these legislative provisions.

His subcommittee is currently studying legislation which would give special powers to the judiciary in the event of a war-caused disaster. All measures passed thus far have dealt with the continuity of executive and legislative branches of state and local governments.

—Manley

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MILITARY

(Continued from page one)

prove that induction would work exceptional hardship on persons who are wholly dependent on them. This list of exemptions or deferments does not pretend to be exhaustive.

Each of these exemptions and deferments can find some justification in apparent military necessity or social policy. That is why they exist. But when their total impact is to excuse more than half of all men in the eligible age group from any form of military service, the whole becomes more than the sum of its parts. Is it enough to justify an exemption or deferment merely on the ground that it seems rather more desirable not to require military service of a given group? If so, the conscription laws must forfeit all claim to universal and non-discriminatory coverage, and if that default is generally recognized they cannot long continue in their present form. No compulsory system which is not universal and non-discriminatory can long survive in a free society.

Necessary?

Even if there were compelling need for the present exemptions, a system which visits such enormous disabilities as substantial loss of earning power, separation from home and family, and sacrifice of personal liberty on only a portion of a peer group, with no compensating disabilities for the remainder, would be suspect. In addition, uncertainties about the draft make it impossible for young men to plan ahead and as a result discourage them from getting the advance training in the sciences or professions that the country is needing increasingly. The truth is that there is not enough reason for the open-handed policy of exemptions now in effect, other than that a liberal exemption policy is an effective way to control the size of the manpower pool while preserving the illusion of universality.

In the case of disability exemptions dramatic cases of professional athletes who were classified as 4-F but could perform in their vocations far beyond the physical capacity of the average inductee have highlighted the unrealistic physical standards applied now and in the past. The justification offered by the military is that a man with a trick knee, for example, would be a great liability if his leg buckled in a combat situation and that men with punctured ear drums are particularly vulnerable to gas (which was not used in World War II or Korea). The theory implicit in the establishment of these physical standards is that every soldier must be competent to perform a combat function. The idea pervades military thinking and it is a costly, dangerous, and antediluvian idea. The ratio of support troops to troops actively in combat ranged as high as 20 to 1 in World War II. The technology of modern warfare, combined with the obsolescence of massed combat forces, will do nothing to decrease this ratio, even if many support functions are delivered over to civilians.

The fact of the matter is that the military is society in microcosm; it is so immense that any person who can be productive in civilian life can be equally so in uniform. Yet, to prepare for another Stalingrad situation when the cooks and typists were sent out to fight, every man in staff, intelligence, and supply missions must be physically qualified for combat. The result is uneconomic, since costly combat training is given every entrant into the armed forces; inefficient, since soldiers are transferred back and forth from combat to support units; and highly discriminatory, since men are excused from the draft solely because they are unsuited for only one of the countless military duties.

Fathers

Draft exemption for fathers has no firmer foundation in social policy than the 4-F exemption has in military necessity. Induction might work a greater hardship on men with children, especially since the lower ranks

cannot take their families with them overseas. Moreover, induction of fathers is more expensive because of the family allowance they receive. But men who become fathers after they are inducted are not protected from assignment overseas (although such a measure might well be implemented). And if inequality of liability for compulsory military service can be rationalized solely on the basis of a minor saving in defense costs, democratic principles are being denied for a handful of silver. It has been known ever since the 1951 act that military service would be universal and continuing. When men choose to ignore the dislocating effects which their military service would have on a family, and marry and have children just the same, they should not be rewarded with a draft exemption. It is unfair to those who recognized the obligation and postponed marriage and children until they had completed their military service. Inherent in the exemption, moreover, is economic discrimination, because husbands who can afford to have children young see no military service, while those who cannot are drafted and, often, must further postpone starting a family after their separation in order to save some money, an impossibility at the pay scales for entrants into the armed forces. Finally, the exemption favors those who marry while deferred on scholastic or other grounds, and then have children before their draft call comes up.

26 Year Olds

The administrative provision which practically terminated the draft liability of men 26 or over (by shifting them from the top to the bottom of the manpower pool) was the result of military concern with the rising age of the average inductee. This reform may have been a military necessity, but it presents a particularly fertile opportunity for draft evasion through continuance in a draft-deferred status, such as post-graduate education, until the age of 26. Again, economic discrimination is potentially present, because those who can afford advanced education (or those whose parents can afford it for them) are excused from the draft, whereas those who must take time away from school in order to work and save money for further education are drafted. The termination of the GI bill, along with other veterans' benefits such as life insurance, home loans, mustering-out pay, etc., in January of 1956 compounded the inequity.

Similar arguments can be made against every other exemption. The point is not that there are, or are not, sound reasons for exempting a given group. The significant fact is that the cumulative effect of these exemptions, regardless of their individual merits, is to undermine completely the universal basis of the draft. And once it is frankly recognized that the incidence of compulsory military service does not approach substantial universality, the inequities of the present system must be ameliorated, if the system is to be retained at all.

Alternatives

THE 1955 ACT, as previously stated, established two separate ways of discharging the military obligation for those not fortunate enough to qualify for a total exemption, either at the moment or prospectively. Adolescents (up to 250,000 per year) under draft age (18½) could enlist directly in the reserve, serve six months on active duty, and another seven and a half years in drilling units. Draftees were to be inducted for two years and then required to serve three more years in the Ready (drilling) Reserve, plus a final year in the Standby Reserve. Enlistment for more than two years of active duty carried with it the same six-year total obligation. Ready Reserve men were subject to Executive recall in the event of emergency; the Standby Reserve could only be activated by Congress. The older group was thus subjected to at least four times the active duty obligation of the younger, although decreasing active-duty time would seem more

important for those old enough to become productive and settled in a civilian capacity. In addition, the draftees and Regular Army enlistees were saddled with an active reserve obligation on completion of active service which had not been exacted of their predecessors under the 1951 act, and they were denied all the veterans' benefits which had existed previously. Nonetheless, if nothing further had been done to alter the situation, the legislatively declared necessity for effective reserve forces might have been enough to justify the provisions of the act.

Unfortunately, the six-month provision of the 1955 act soon proved an utter failure. In order to guard against completely drying up the source of manpower supply, Congress had placed an annual ceiling of 250,000 on enlistments for the six-month program. Its concern proved misguided. Despite an intensive recruiting campaign (principally by the Army, although all the other services except the Navy offered the program), eligible teenagers showed nearly total disinterest, presumably because they were unwilling to mortgage their future for eight years and were increasingly aware of the problematical character of the draft. Enlistments in the program for its first year of operation were under 50,000. As a result, expensive training commands and facilities prepared in anticipation of a 250,000-man annual influx were going to waste, there was no substantial strength added to the drilling reserve, and, most important of all, the manpower pool (to control the size of which had been the primary purpose of the program) kept on swelling.

Drills Cut

Drastic action was needed, and on April 1, 1957, it was taken. By administrative directive and without special Congressional sanction, the drilling time of the teenager was cut from seven and one half years to three years as an inducement to enlist. No longer would the 18-year-old have to wait until he was 26 to take his first summer vacation (one of the frequently voiced complaints about the eight-year term of weekly drilling and annual two-week summer training). He now had less total time of active duty and drilling reserve than the draftee, and only one-quarter as much active service.

Discriminatory as this abandonment to expediency was, it did not compare with the other administrative revision of the six-month program. To insure full subscription, the limitation of the program to those under 18½ was dropped, and it was opened to every draft eligible who had not yet received his induction notice. The program became popular overnight, as reserve units were swamped with applications from draft eligibles about to be called. Although the period of drilling time for these men was five and one half years, the reprieve from a two-year abandonment of home, career, and earning power at the cost of a mere six-month interruption in life made the extra reserve time seem inconsequential. Moreover, a precedent for reducing the term of the obligated drilling now existed. An additional attraction was that the six months of field training could be deferred for up to two and a half years, with a free choice during that period as to the most convenient time to take it, in contrast to the draft call which had to be answered when it came.

Limitations

This alternative to the draft proved so popular that it was limited in mid-summer of 1957 by the requirement that reserve units could not enlist men beyond their authorized strength. Despite the emphasis of the 1955 act on reserve strength, neither the Army reserve nor the National Guard were allocated funds to expand (in drilling status the authorized strength of the former is about 300,000 and the latter about 400,000). However, it appears to be still possible for a draft eligible to join a reserve (in any service except the Navy) or Guard unit (which offers the same terms) and do the "six-month hitch."

The only sop to the draftee and enlistee in the face of these preferences for his juniors and contemporaries was a one-year cut in the Ready Reserve obligation, from three to two years in the case of the draftee.

There was no diminution in the two-year active duty tour, and inductees were given no opportunity to extend their reserve obligation — in order to equal that required of six-month reservists — in return for an early release from active duty. Even when the Department of Defense announced in the fall of 1957 that extensive manpower cutbacks would take effect by June 30, 1958, no consideration was given to reducing the term of service for inductees and initial enlistees then on active duty. Instead, draft calls were reduced, thereby permitting numbers of men to evade military service altogether by passing the upper limit of the draft age.

Quality Declines

The second major administrative revision of the draft laws in 1957 introduced an equally significant distortion in their application. The Department of Defense had long been concerned about the rising proportion of so-called "Category IV" inductees. Category IV is comprised of those men whose score on the Armed Forces Qualification Test, an objective test administered during the draft classification process, ranged between 10 and 30. It is the lowest "passing" score; those below 10 are rejected for the draft as illiterates. The profile of all draft eligibles indicates that 27 per cent are Category IV, yet 40 per cent of the inductees in the first half of 1957 were Category IV personnel.

Emphasizing the fact that the manpower pool, even after all the existing exemptions, was growing by 200,000 annually, the Defense Department sought to have Congress amend the 1951 act to permit the indefinite deferment of all Category IV personnel. The effect of this would have been to exempt from the draft at least an additional 25 to 40 percent of the men who were still eligible despite all of the already existing exemptions. The argument was that the increased complexity of weapons and warfare made Category IV men untrainable. No mention was made that this measure would destroy the last pretense of the draft to universal coverage. No consideration was given to the inadequacies of a written test for plumbing the potential of a man to discharge the many military duties that require no more than bare literacy. The long-range social effects of "penalizing" comparative mental superiority went unremarked. This Defense Department recommendation never passed into law because the Senate Armed Services Committee failed to report out the bill after a public hearing, in August of 1957. In the same month, however, the Army implemented a policy which was designed to achieve a comparable result for inductees (all of whom at present are assigned to the Army).

Tests

Shortly after induction the Army administers a battery of nine objective tests, two of which measure reading comprehension and arithmetical ability, the rest much more specialized abilities such as knowledge of automotive mechanics. The Job Performance Potential Program, as the new policy was called, established a score of 90 in at least two of these nine tests as a prerequisite for retaining inductees in the Army. Below that level, immediate discharge, with no further military obligation, active or reserve, was mandatory. As of March, 1958, all inductees in the "inadequate" class had been discharged and the implementation of the policy at Army training centers was resulting in the immediate discharge of all trainees lacking "performance potential" as soon as their test scores were tabulated.

This administrative program is open to the same objections as the proposed amendment to the draft law raising the minimum qualification score. There is no provision for weighing empirical evidence of the job performance potential of inductees and enlistees. The test scores

are conclusive, even though it is easily possible, for example, for a man to have a knack with engines without being able to answer written questions on mechanics and equally possible for a man to fail the tests purposely. The result is a serious distortion in the coverage of service obligation, based on two highly questionable premises:

1) that manual and mechanical aptitude can be accurately measured by written test scores, in which the degree of literacy is likely to be as significant as the amount of specialized skill;

2) that there is an incentive to excel in the tests.

The obvious economic waste in operating this program — the administrative costs of inducting, maintaining, and then discharging a man instead of determining his ineligibility for service before induction — has led the Defense Department to continue pressing for an amendment to the draft law which would raise minimum qualification scores and achieve substantially the same result as at present. Another Senate Committee hearing was held in April of 1958 but there has as yet been no committee action, probably because of the dislocating social effects anticipated in the South where the lower average educational level of the Negroes would leave them disproportionately draft-exempt.

Responsibility

It is not entirely fair to assign to the Defense Department all of the responsibility for the perverting influence these administrative measures have had on the equitable distribution of the burden of compulsory military service. The Department has been caught between the Scylla of a flooding manpower pool (in which it was necessary to keep the Congressionally enacted reserve program afloat) and the Charybdis of the long-range need to tailor the military to the increased technological demands of warfare in a nuclear age. Its mission is to make the national defense establishment as efficient as possible, and not primarily to concern itself with weighing individual rights and freedoms against society's requirements. But too much deference can be paid to this mission. Congress must necessarily depend very heavily on the Defense Department for advice, because of its expertise and exclusive possession of the facts as to the requirements of national defense. Precisely because its assessment of military needs cannot be challenged, the Defense Department cannot abdicate its responsibility for the impact on society involved in the policies which it proposes and executes.

The purpose of the draft law is not only to supply the military with manpower but to see that it is done in an equitable and non-discriminatory manner. If changing times make the latter impossible, the laws should be openly amended and not perverted *sub silentio* by administrative action. Traditional American principles demand this. It is also the most expedient course for the long-range development of national defense. If it is true that the military must be more selective, that only a minority can be absorbed and used productively by the armed forces, that the obligation is neither universal in scope nor uniform in application, then the present system, with the heavy civil and financial restrictions it imposes, must be changed. We are headed in the direction of "from each according to his abilities, to each in inverse proportion to his needs." Quality is not obtained for nothing. Competent people alone can be inducted. But competent performance cannot be compelled and, unless manpower policies are completely reformed, it will not be forthcoming.

(Ed. note: Slightly more than one-third of *The Universal Military Obligation* has been here published. Single copies of the entire *Paper* may be obtained free of charge by writing to *The Fund for the Republic*, 60 East 42nd Street, New York 17, N. Y. Additional copies cost 15 cents each.)

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Book Review

TRAFFIC VICTIMS:
TORT LAW AND INSURANCE

by Leon Green

Northwestern University Press, 1958, \$4.00.

by
ROBERT E. KEETONRobert E. Keeton
Professor of Law

Students and colleagues of Dean Leon Green need not be long in his presence to discover his disenchantment with current modes of adjudicating claims of traffic victims. Invitations to lecture at Cincinnati in 1956 and at Northwestern in 1958 provided the occasion for development of the forceful statement of his views now published in *Traffic Victims: Tort Law and Insurance*. One of Dean Green's objectives in this monograph is "to demonstrate the obsolescence and futility of common law jury trial and liability insurance as a remedy for traffic casualties." (p. 5) A reader of his lively assaults on these institutions could hardly fail to appreciate that he approaches the task with missionary zeal.

Dean Green pictures 19th Century legal scholars, confronted with a system of burdensome tort liability "imposed by the strict morality of earlier law" (p. 31), accepting "in name the complex Roman concept of fault" and converting it "into a comprehensive and bloated system of liability based on fault" or "no liability without fault" as opposed to a suppositious 'absolute liability' of the earlier common law." (p. 13) He argues: "Something far more significant than morality must be found for this about-face of the courts." (p. 13) That explanation he finds in economic policies. Infant enterprise of the early 1800's was financially weak, and to hurt it was to hurt the community.

Though one may question Dean Green's conclusion that "liability based on fault" is as much a myth as "absolute liability," (p. 13) and may question the implication that 19th Century economic considerations were overpowering amoral factors behind a false facade of fault, there is little basis for challenging his observation that concern for infant enterprise was an important influence on decisions. He makes the interesting point that this was a concern for group welfare. Thus, in Chapter 1 he characterizes the 19th Century as one of protection of the groups, and in Chapter 2 characterizes the 20th Century as one of protection of the individual through expanding tort remedies. This reversal of the usual characterizations cautions us that the difference between 19th Century and 20th Century social order is inadequately described if we view it only from the perspective of individual action, thus seeing the 19th Century, relatively, as one of unfettered individualism and the 20th Century as one of restraints for group welfare. If we take instead the point of view of victims of action, we see, with Dean Green, 19th Century emphasis on group welfare compared with 20th Century emphasis on economic security of the individual. From still another point of view, the transition appears as one concerning the relative importance of the individual's freedom of action and his freedom from the economic insecurity incident to action of others.

Surprising Observations

A few of Dean Green's observations are surprising. One concerns the division of power between courts and juries in negligence cases. "No doubt the most remarkable aspect of the traffic doctrines is how by a process of fragmentation they have shifted power from the jury to the court, and particularly to the appellate court." (p. 72) "The trial judge becomes little more than a trial examiner . . . while jury trial becomes a formalism designed to satisfy lay and professional demands for ceremonial." (p. 74) Doctrines of negligence law remain in the books, but "serve primarily as professional ritual." (p. 74) Asking a jury whether the defendant exercised the care of an ordinarily prudent person is a "transparent but valuable fiction" that does nothing more than ask the jury whether the defendant should be liable; as a method of shifting power from judge to jury it "makes good sense" because it tells the jury nothing and leaves it to assess liability on the raw facts. "But for shifting power from jury to an appellate court it nullifies the good sense of the judicial process, and is utilized only because it conceals the impotency of the judicial process in the administration of traffic injuries." (emphasis in the original, p. 76) This picture of powerful appellate courts disregarding the views of powerless juries may be startling to trial lawyers and insurance men, who commonly suppose there has been a trend of increasing reluctance of appellate courts to disturb jury verdicts. Perhaps the zenith, or nadir, of non-interference with jury verdicts was reached on October 27, 1958 (well after Dean Green's monograph had come off the press), in the Supreme Court's summary holding without benefit of argument that a state court, authorized by state procedure to grant a new trial because a verdict is against the overwhelming preponderance of the evidence even though sufficiently supported to prevent a directed verdict, cannot grant a new trial on this ground in an F.E.L.A. case. *Deen v. Hickman*, 27 U.S. Law Week 3134. Though the trend in motor vehicle cases has not moved to the extreme of F.E.L.A. cases, certainly the minimum evidence required to support a finding

of negligence is less now than twenty years ago, and far less than fifty or more years ago.

Also surprising is the observation that "most of the victims of the highways are left outside the protection of the law altogether." (p. 81) This view Dean Green expresses despite his recognition that claimants against an insured defendant, "unless their claims are considered utterly groundless," usually receive something in settlement. (p. 77)

Texan

In the argument of a zealous advocate for reform, some exaggerations may be forgiven, especially if, like Dean Green, the advocate is from Texas. Even after appropriate discount, there remains in the first three chapters of this monograph a persuasive argument that a change in the system of compensation for motoring victims is badly needed.

In the finale, Chapter 4, Dean Green states his proposal; he urges a plan of compulsory comprehensive loss insurance, with the following principal points: All vehicles (rather than the drivers) shall be covered by compulsory comprehensive loss insurance. The amount of insurance coverage, premium rates, classification of vehicles, and other matters incident to the administration of the system shall be subject to determination by a state insurance commission. The insurance coverage shall be for the benefit of any person injured through the use of the vehicle, and for the beneficiaries of any person so killed. If more than one vehicle is involved in an accident, the insurance of all such vehicles shall be available for the satisfaction of the losses incurred. Losses shall be measured in most respects by rules of damages now recognized, but compensation for pain and suffering shall be excluded. Losses shall be paid in full up to the limits of the insurance; if there are several claims against a limited sum of insurance, they shall be paid proportionately. There shall be a loss deductible of \$100. Claims shall be administered in the trial courts, but with the use of a master and not a jury. The only issues shall be injury, causation by the use of a motor vehicle, identity of the vehicle and extent of injury and loss. Special provisions shall be made for compensation of losses caused by hit-and-run vehicles and those caused by uninsured vehicles. A claim must be filed within 30 days after the occurrence of the accident. Settlements must be approved by a master, and if there are several claimants and the insurance coverage is inadequate for all, a settlement shall not be approved until all claims are settled or adjudicated.

Since it is easier to criticize particulars than to construct a whole plan, a proposal of this scope accumulates opponents for a motley range of particularized reasons. But the importance of the problem and the quality of Dean Green's proposal and argument warrant the kind of appraisal reached by asking first whether one's objections can be met by modifications of the proposal, and only then whether reform of this general character would be worthwhile. Here are a few questions one might consider.

Questions

(1) Will the amount of compensation be adequate? Should such a vital question as the amount of coverage be left for determination by a commission? Dean Green's proposal is a substitute for negligence actions; the victim would be without compensation above the amount of insurance provided by this system. If those limits were comparable to limits now applied in the compulsory automobile insurance statutes of Massachusetts and New York and the safety responsibility legislation of other states, the system would be grossly inadequate. I venture a guess, though it can be no more than a guess, that the system of loss insurance with such low limits as \$10,000 per person and \$20,000 per accident could be operated at no overall increase in cost from the present system. But it would be done at great sacrifice to the gravely injured, who now have a very good chance of collecting substantially more than \$10,000. These are the very people who most need assurance of compensation. Of course Dean Green would prefer unlimited coverage. One can only speculate as to how much greater the motorist's insurance costs would be than under the present system. If, as is probably true, most

motoring victims are now receiving some compensation by way of settlement, perhaps the increase would not be as drastic as opponents of any change from the present system have urged. As Dean Green points out, much overhead and administrative cost would be saved by eliminating litigation over fault. It is quite plain, however, that we could not introduce a new system of loss insurance without limit of coverage through private insurance channels alone; the lack of a basis for accurate prediction of the required rates indicates either a specified amount of compulsory coverage or a guarantee of governmental subsidy to private insurers if losses run higher than predicted in the initial calculation of premium rates. Of these alternatives, the former seems more likely to be chosen, and thus the victims of the most severe injuries — those who most need full compensation — might receive much less than under the present system. This prediction is borne out by experience with workmen's compensation plans. They have worked well with respect to slight and moderately serious injuries, but very poorly for grave injuries. They are based on a theory of awarding a percentage of compensation for loss from all injuries, whether slight or serious. In fact, however, the tendency in administration is to give the injured worker the benefit of doubts about the gravity of his injuries, thus awarding normally adequate and sometimes excessive compensation for slight injuries, while ceilings result in inadequate compensation for the more severe injuries. For a loss insurance system to be acceptable in motoring cases, should limits be higher than those for workmen's compensation and compulsory liability insurance? Would a temporary period of governmental guarantee to private insurers be needed at the inception of the new system?

(2) Is it wise to provide for lump sum settlements, or would it be better to require that all benefits be paid only as losses are incurred — for example, on a monthly basis? Even our workmen's compensation systems, purportedly providing for weekly or monthly benefits, in practice often operate on the prepayment principal because of provisions for lump sum settlement so loosely construed that most claimants qualify. A system of prepayment not only encourages the dishonest claimant to shoot the moon by staying off work until his settlement is effected, but also presents the fact-finder with grave concern that he may do injustice to an individual claimant by underestimating his future disability. Total payments thus tend to run higher than if they were made on a periodic basis, and were subject to review, even though at infrequent intervals. Perhaps more important is the fact that these lump sum settlements rarely accomplish their purpose, since the claimant is ill-prepared to invest wisely, and even in the case of adequate settlement usually lets it slip through his fingers soon.

Master or Jury?

(3) Who should be given the task of deciding the factual issues? Dean Green's proposal places these decisions in the hands of a master, working under the judge of the principal trial court in the county where the accident occurred; he argues that such an arrangement would provide speedier and less expensive administration than by jury trial. Might such advantages be increased by the use of a group of hearing officers operating under the supervision of a state-wide board or court rather than under the supervision of a local court? Or might it be better to preserve the right of jury trial in these cases? Perhaps the most vigorous criticisms of the effectiveness of jury trial in automobile cases, aside from those relating to delay, have concerned competency of juries to decide (a) questions of fault and (b) questions of medical causation. The former would be eliminated under this proposal. As to the latter, might not the little learning of the master be a dangerous thing? Of course the long delays in trial now encountered in many courts should be reduced. But settlements might be more frequent and demands for jury trial

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less frequent if negligence were of less or no importance, and if settlements and trials concerned only the amount of periodic payments, subject to infrequent review, rather than a lump sum payment binding forever. In those circumstances, might we not find that the cost of preserving the cherished right to jury trial would be rather moderate?

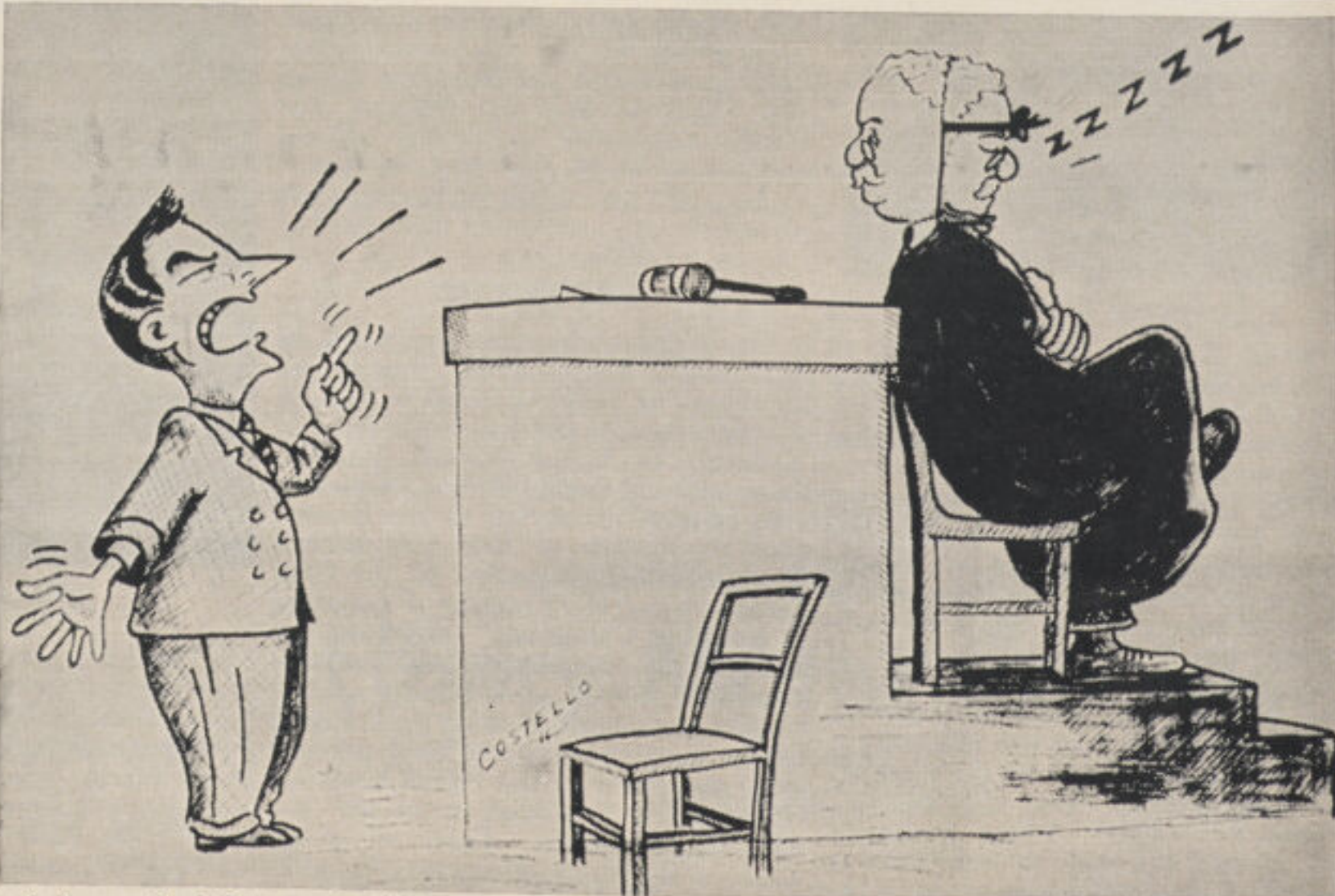
(4) Is it wise to postpone payment of compensation until all of the multiple claims against an inadequate sum of insurance are settled or adjudicated? Would not a system of tentative allocation of coverage and partial payments be preferable to leaving victims with no compensation until all disputes have been resolved?

(5) Is it wise to allocate cost of the system independently of fault, or to leave a state insurance commission free to do so? While accident proneness may negate fault with respect to some of our traffic accidents, there are ample grounds for believing that most accidents are in large measure due to controllable factors such as excessive speed, and that a higher percentage of the cost of compensating victims ought to be paid by those who can be identified as abnormal risk-creators because, for example, they fail even to conform to the unwritten rule that the permissible speed is five or ten miles faster than an unrealistic posted limit.

Differences

On each of these questions reasonable men may differ. For me, Dean Green's proposal could be measurably improved in two respects, at least — (1) by provision for periodic payment and prohibition against lump sum prepayment of benefits, and (2) by a requirement that costs be allocated as nearly as possible according to risks created, fault in the operation of vehicles being one of the elements in appraisal of those risks. One of the strongest arguments for compulsory loss insurance is that persons engaged in risky activities ought to bear the burden of compensating injuries from such activities, else they are unjustly enriched by realizing the benefits of their activities without paying the full cost. Allocating the cost of such a system according to the variations in degree of risk for different types of drivers, insofar as it is feasible to make these classifications, is a finer adherence to this principle.

The problem of compensation of motoring victims demands legislative attention. Dean Green's thoughtful proposal merits study by the fraternity of experts on personal injury law and by others as well. Probably a majority among insurance men and personal injury lawyers, on both sides of the docket, will continue to prefer the present system over anything similar to Dean Green's proposal, but the problem is too far-reaching to be left to the decision of the experts alone.



And we submit, that under § 1.355-2(b) of the Federal Tax Regulations this proposal is . . .

SOCIALISM

(Continued from page one)

the ordinary processes of daily life. Within this concept, stress was also laid upon the need to keep open the effective possibility of change to reflect general shifts in outlook or values; and upon the need for a widespread diffusion of power throughout the society, with a correlative prevention of concentrations of power whether in private or governmental hands. In a second range of conception of the rule of law, closely akin to the first but not quite so comprehensive, emphasis was placed upon a substantive element, in the nature of human rights or a bill of rights; a procedural element, understood broadly to embrace the principle that the government may not interfere with the citizen except in accordance with a general law previously in effect, and the principle that the government may not apply force or sanctions against the citizen even for violation of such a general law except in accordance with a fair and orderly procedure; and an institutional element, in the sense of institutions through which the substantive and procedural factors can be vindicated. Another and narrower range of conception sought to concentrate attention upon institutions deemed essential. While recognizing the importance of the values intrinsic in these institutions, the participants in this view believed it necessary or at least wiser to confine the concept of the rule of law to the institutions themselves. Another and still narrower range of conception contemplated primary or exclusive emphasis upon a particular group of institutions: an independent judiciary and judicial review of executive (or legislative) action.¹

Common Concern

Through these variations of compass and emphasis among the heirs to the western tradition of law, there ran a common note of concern for the interplay between doctrine and practice, principle and procedure, concept and operating institution. There was also a general sensitiveness to the problem of change: how established arrangements and forms of organization and procedure might be adapted to changes in the facts and circumstances of society without impairing the essence of government under law. This concern tended to focus upon the implications for the supremacy of law of the diverse attitudes and arrangements, differing in scope and style and degree from society to society, which are so often lumped together under the rubric, 'welfare state'; and the more restricted but related question of administrative discretion.

For participants in the Chicago colloquium who also attended the conference at Warsaw, it was natural to wonder whether and how far the Warsaw discussions might ring further changes upon the lines of inquiry opened up at Chicago. Might there be discernible elements of continuity in the terms of reflection and analysis; or would there inevitably be an abrupt and fundamental breaking off into a different realm of thought? In view of the connection of eastern Europe with Roman law through Byzantium (as well as through later European channels), might it turn out that the East European experience of law (in a sense comprehensible to the West) has been more pervasive and persistent than the brief and shallow experience of East European societies with parliamentary democracy and personal freedom? Might the discussion of issues in the terms of law afford possibilities of insight into the Communist mentality — and the variations in mentality among the several Communist countries — which are not available when the same or similar questions are discussed in moral or political or economic terms?

II

In the course of the proceedings at Warsaw, Professor V. N. Tchikvadze,

Associate Director of the Institute of Law of the Academy of Sciences of the Soviet Union, undertook to present a concise analytical commentary upon the various papers submitted to the Conference by delegates from the several Communist countries. Noting that the authors had approached their task in different ways and had exhibited variations in detail and emphasis, he stressed their "complete accord in their understanding of the essence of socialist legality, which in terms of its principles is common to the juridical practice and the juridical thought of all the socialist countries. . . . All the rapporteurs take as their point of departure an outlook according to which socialist legality is a method by which the state assures the direction of society and serves as the instrument of the dictatorship of the working class . . . socialist legality is a legality of a new kind which assumes new forms . . . it is distinguished from all other types of legality. . . . The necessity of abrogating the old order of legality and of creating a new socialist legality is an objective law valid for all countries within which the socialist revolution operates." Professor Tchikvadze went on to insist that this complete break with the historic experience of law must take place whatever the means by which power may pass into the hands of the working class. If this transition of power should be by peaceable rather than violent means, "it may be possible to use — and only for a transitional period which may be more or less prolonged — the old juridical forms and institutions; but even in such a case, the suppression of the old established juridical system and the creation of a new system are equally inevitable."

Ambiguity

In proclaiming that socialist legality is a means of assuring control over society by "the State," and that socialist legality has "no other objectives than the defense, the strengthening and the development of the historic conquests of the socialist revolution," Professor Tchikvadze exposes an ambiguity which is often latent in the use of the term "rule of law." In the usual French terminology and the German, which tend to offer "légalité" and "Rechtsstaat" as the equivalent of "rule of law," the ambiguity tends perhaps to be even more pronounced. If the term "legality" is taken in a narrow technical sense to mean a strict observance of the law by all the organs and officers of the state as well as by the citizens, its significance will turn upon the purpose which it serves. In a well-disciplined army, for example, the commanding general would naturally insist that his orders, general and specific, be strictly obeyed by colonels and majors as well as by privates. He might also take pains to assure that all his orders were duly written, duly recorded, and effectively disseminated throughout the army. In a technical sense divorced from notions of purpose and from any system of values, such a state of affairs might be described as a state of "legality." The aggregate of orders and regulations issued by the commanding officer might be regarded as law, duly issued by the duly recognized ultimate authority, comprehensively expressing the norms by which the army is governed, and requiring strict compliance not only by the men in the ranks but also by the brigadier generals, colonels and captains. It might also be said of such "legality" that it "assures the direction of the society [army] by the State [commanding authority]." To the western mind, it would labor the obvious to point out that this would not be the rule of law in the deeper sense, but rule by means of law; it would not be government under law, nor the supremacy of law, but an arrangement by which law is employed as an apparatus to strengthen and give effect to the will of the commanding authority.

The Communist delegates at Warsaw were not oblivious to these distinctions. A Polish delegate, Stanislaus Ehrlich, pointed out that "one

must not conclude that the observation of no matter what collection of norms signifies legality. . . . It is not possible to analyze the problem of legality if one reduces to an abstraction the content of the norms which must be observed. . . . This content must concern the rights of man." At another point, Professor Ehrlich spoke of the "concept of legality, indissolubly bound up with the protection of the rights of man. . . ." Mr. Tchikvadze referred with apparent approval to these observations of Mr. Ehrlich, and on his own account asserted that the "protection of civic rights and liberties is one of the essential elements of socialist legality." He argued, however, that the protection of civic rights and liberties was not really a distinct problem from the essential purpose of realizing "the direction of society by the State, assured by the working class." In Mr. Tchikvadze's view, under a socialist regime there was a necessary and automatic harmony among the interests of the collectivity and the interests of the individual. In consequence, as he saw it, in order to guarantee the rights of citizens, it sufficed to protect the socialist regime through socialist legality, for "To assure the protection of the socialist political and social regime signifies at the very same time to guarantee the rights of citizens."

III

At one point in the proceedings, a position taken by a leading Communist delegate suggested that the tradition of Roman law through Byzantium (or Europe) might have persisted, despite the general assertion that socialist legality was born in the October Revolution and is a legality of a wholly new type. Professor Romachkin, Director of the Institute of Law of the Academy of Sciences of the Soviet Union, in discussing aspects of Soviet Russian criminal law, affirmed the validity of the principle "*nullum poenem sine lege*." He acknowledged that Article 16 of the Criminal Code of the U.S.S.R., which declared it to be criminal to engage in conduct analogous to forms of conduct specifically prescribed by other provisions of the criminal code,² was inconsistent with the principle that no punishment for an alleged crime should be administered except in accordance with a law enacted before the commission of the allegedly criminal act. He went on to explain that Article 16 had been a dead letter for a number of years, in that both the courts of the Soviet Union and the prosecuting attorneys had consistently declined to enforce it.³ At other points, too, Communist delegates expressed their views of law in terms congenial to American concepts and doctrine. Professor Jarosinski of Poland, for example, stated that "the definitive purpose of socialism [and of socialist legality] is man and his well-being." Professor Tchikvadze stated that the fundamental purpose of Socialist Soviet legality and Socialist Soviet society is to safeguard the "complete well-being and all-round development of all members of society" and the "flowering of all the forces and creative gifts of personality."

Actual Beliefs?

I have no means of knowing how far these elements in the presentations of the Communist delegates may have reflected their actual beliefs; how far they may have been expressions of hope; how far they may have been bored repetitions of rote; nor how far they may have been simply and unashamedly phony. Even if it should be possible to interpret them in the most favorable light, they could have only a tentative and provisional significance, because of the shadow of the Communist Party.

At various points, members of the Communist delegations stressed the need for law to reflect the will of the people, and pointed out that in a Communist society this meant the will of the working class. In developing this

theme, Professor Tchikvadze stated that:

The will of the working class may even differ from the will of its members taken as individuals. Thus it is the will of the ruling class as a whole and not that of its representatives or groups that finds expression in law.

Since socialist law and socialist legality must be faithful to the will of the people; since the will of the people is the will of the working class; and since the will of the working class is not that of the members of the working class taken as individuals; it is plainly of the essence to determine the will of the working class. It is also manifest that the means by which the will of the working class is determined goes to the heart of any possible concept or practice of socialist legality.

Communist Party

It is through the hierarchical organs of the Communist Party, and more particularly through its highest leadership, that the will of the working class is authoritatively revealed. In consequence, the legislative organs of the State, whether national parliaments or local popular councils, must receive and execute these determinations by the authoritative leadership of the Party, and must express them in law. Similarly, courts and executive officials must execute these determinations as they are embodied in law. Yet the Communist Party itself — and the leadership of the Party — stand outside and above the structure of the State and the system of law. To the writer, this extra-legal and supra-legal status of the Communist Party and its leadership appears to be not merely a fact of practical politics. It is fundamental in the doctrine and principles of the Communist societies.⁴

The experience of western society includes the phenomenon of illegal intervention by party bosses, who exploit their political power to flout the law. It also includes the phenomena of extra-legal pressures from other powerful groups. When and to the extent that such pressures or interventions make themselves effective, however, they are recognized to be violations of the legal system and the political and social order. It is part of the job of law and legal administration, as understood in the west, to cope with these disruptive factors. In the doctrine and practice of Communist societies as expounded at Warsaw, however, the actions of the leadership of the Communist Party in issuing directives which interpret the will of the working class are not interventions at all, but authoritative revelations of purpose to which the legal system must be fitted.

'Principes Legibus Solutus'

In contemplating the status of the controlling organs of the Communist Party in relation to socialist law and legality, it is possible again to recall a part of the tradition of Roman and Byzantine law. The recollection may bring a wry cast to the mouth. By the third century of the Christian era, the Stoic ideas of the primacy of law, which had been incorporated into Roman doctrine through the work of Cicero and other thinkers during the period of the Roman Republic, had been submerged under imperial absolutism. The Emperor had been proclaimed to be above the law — "*princeps legibus solutus*" — and the doctrine established that "What is pleasing to the Prince has the force of law, since the people have conferred upon him all their authority and power."⁵ It is not beyond conjecture that this tradition may have contributed to the psychological basis for the contemporary acceptance in Communist Europe of a doctrine that "What is pleasing to the Communist Party leadership has the force of law" and that the Communist Party leadership is "*legibus solutus*."

⁴ In terms of Article 124 of the Constitution of the Soviet Union, the Communist Party is the "vanguard of the working people in their struggle to construct a socialist society and the leading core of all organizations, both social and state." By an extension of this language, it might be argued that the Soviet Constitution gives the Communist Party a status within the legal system. Yet by the very terms of Article 124 — and even more clearly in the terms of the expositions and analyses of the Communist lawyers at Warsaw — this status is that of a kind of Aristotelian "prime mover." The Party may move the legal system, but the system does not contain the Party.

⁵ Institutes, Book I, Title II, § 6.

² "16. If a given act which constitutes a social danger is not directly specified by this code, the basis and limits of liability to punishment therefor shall be determined by analogy with the sections of the code that deal with crimes of the most nearly similar nature."

³ It is my impression that Mr. Romachkin also indicated that, in a possible future revision of the Soviet Union's Criminal Code, Article 16 might be eliminated or amended to bring it in harmony with the principle that there should be no penalty without a prior law. However, I do not have a transcript of these remarks of Mr. Romachkin, and my recollection on this point is not entirely clear.

Law Wives

On November 19, at 8 p.m. in Harkness Commons, Dr. Babette Whipple, wife of the Smithsonian Astrophysical Laboratory's Dr. Fred Whipple, will speak to the Law Wives.

Dr. Whipple will tell of their recent trip around the world. She will make particular reference to the status of women in the various countries visited.

Foreign Tax Men Study Here

Fifteen tax officials from abroad, 14 men and one woman, are studying in the Law School's International Program in Taxation this year.

Oliver S. Oldman, Lecturer in International Tax Law, is coordinator of the training curriculum of the group. "The program of these tax officials consists of class room and seminar work at Harvard, field observation at the United States Internal Revenue Service offices in the Boston region, a week or more of conferences with United States tax officials in Washington, and two weeks of conferences with Canadian tax officials at Ottawa, Montreal, and Toronto," Mr. Oldman explained.



Stanley S. Surrey

Academic work at the Law School includes the course in Taxation given by Visiting Professor J. Nelson Young, special lectures by Stanley S. Surrey, Jeremiah Smith, Jr., Professor of Law and Director of the International Program in Taxation, and special seminars devoted to international tax problems. A large proportion of the work is devoted to the study of income taxes. A few other graduate students participate together with the foreign tax officials in classroom work.

The group is especially interested in problems of taxation as they relate to the further economic development of their own countries. They expect to familiarize themselves with the tax laws and systems of the United States and Canada while here. The visiting tax officials come from Brazil, Costa Rica, France, Ghana, Greece, Indonesia, Japan, Korea, Mexico, Pakistan, and Turkey. They are being sponsored in this country by the United States International Cooperation Administration and the United Nations Technical Assistance Administration.

The International Program in Taxation cooperates with the United Nations Fiscal and Financial Branch and was founded with the aid of a grant from the Ford Foundation. It is a part of the Law School's broad program in International Legal Studies, under the direction of Professor Milton Katz.

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