Students Honor Crosskey

Seen (left to right) at the speakers' table at the student dinner honoring Professor William W. Crosskey are James Ford '53, Professor Malcolm Sharp, Professor Crosskey, David Ladd '53, Mrs. Crosskey, Professor Wilber G. Katz, and Alan Rosenblat '53.

More than forty students paid tribute to Professor William W. Crosskey at a dinner arranged by them at the Quadrangle Club on May 14, 1953. The specific occasion for the dinner was the publication of Mr. Crosskey's already renowned Politics and the Constitution. But a specific occasion was not needed for the students to express their affection and esteem for William Crosskey. Over the years many classes of Law School students have come out of Constitutional Law confirmed Crosskeyites.

David Ladd '53, who graduated this quarter and is now with the firm of Dawson and Ooms, was chairman of the dinner committee made up of Alan Rosenblat, George Beall, and Brent Foster. Among the alumni who sent letters of greeting to Mr. Crosskey on this occasion were Casper Ooms '27, Laird Bell '07, and George Pletsch '43.

Joining with the students in this overflowing expression of esteem were the faculty speakers of the evening, Wilber G. Katz, James Parker Hall Professor of Law, and Professors Malcolm Sharp, Karl Llewellyn, and Soia Mentschikoff.

Corbin on Crosskey

Professor Crosskey's great work on Politics and the Constitution should be read by every judge of a high court; without doubt it will be. In some instances, perhaps, the first reaction to it will be one of resentment; but more mature reflection, which is sure to follow, can produce only the pleasure of enlightenment. Two very impressive features of the work are its clear and attractive style and its detailed and convincing historical research; but these are important chiefly because they give full effect to the critical thinking of a first-class legal mind that has never been blunted by its contact with prevailing legalistic verbiage and is one that well knows the part that "politics" plays in constitutional interpretation without being slanted by the political prejudices and emotions of his own time.

In reading the first chapters, some may get the impression that the author devotes too much space to the language of the time in which the Constitution was written and was first interpreted. The truth is, however, that this is one of the most valuable features of the book. In the whole field of law and government there is nothing more necessary, and nothing more obviously lacking, than a conscious realization of the uncertainties of language, the variety and changeability in the usages of words. Lack of such realization is one of the principal causes of injustice, of litigation, and even of war. It has caused new and harmful interpretations of old statutes and constitutions by judges and executives who were ignorant of the nature of language and its growth, as well as by those who intentionally took advantage of the prevailing ignorance of others to redistribute political and economic power by a sly shift in word meanings.

An English judge once said of the Statute of Frauds, an important instrument now 275 years old and the subject of continual litigation: "It is now two centuries too late to ascertain [its] meaning by applying one's own mind independently to the interpretation of its language. Our task is a much more humble one; it is to see how that [statute] has been expounded in decisions and how the decisions apply to the present case." A comparative study of the many thousands of such decisions, constantly increasing in number, shows that a desire to be "humble" may lead merely to the distraction of judges and to the frustration of justice. Humility should go hand in hand with experience and intelligence. It is time to make a new start with the exact words of the statute.

This is just what Professor Crosskey does with the Constitution of the United States, a document of vast importance to millions, now 164 years old, the application of which is in constant litigation. If, as his evidence indicates, the power of Congress "to regulate Commerce among the several States" has been grossly pared down, resulting in a no-man's-land and in endless "jurisdictional" litigation; if the prohibition that "No state shall lay any Imposts or Duties on Imports or Exports" has been likewise cut down, opening the door toward the destruction of our freedom of commerce among the states; if these and other similar variations have occurred with resulting harm to our welfare and interest, both national and individual; if these variations have occurred, not merely because the Court has been aware

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Corbin on Crosskey (Continued from page 14)

of “election returns” but because of ignorance of changes in the usages of words and because of the pressures of political ambitions and sectional interests, it is time for us to be made conscious of the facts and to read anew the exact words of the Constitution in the light of that awareness.

The author undoubtedly hopes that his work will have important effects upon the interpretation of language and in the reversing of trends in court decisions. In a respectable degree, at least, his hopes should be well founded. He knows well enough, however, that ignorance is both massive and self-perpetuating and that decisions may not in a month undo what the decisions of a hundred years have done. The present turmoils show well enough that political ambitions and sectional interests still determine executive, legislative, and judicial action. The extent to which Professor Crosskey’s work will, or should, result in a changed trend or in the overruling of former decisions will depend upon wisdom as well as upon humility; and wisdom, while in large measure dependent upon humility, is generally quite impotent without courage. This is a wise and courageous book and cannot fail to strengthen the minds and arms of honest and intelligent men.

ARTHUR L. CORBIN

The Economic Market Place (Continued from page 7)

to reinforce the other type of freedom. Any Englishman at the end of the eighteenth century who, says Leslie Stephen, the historian of utilitarianism, demanded more power for the people “always took for granted their power would be used to diminish the activity of the sovereign power; that there would be less government and therefore less jobbery, less interference with free speech and free action, and smaller perquisites to be bestowed in return for the necessary services. The people would use their authority to tie the hands of the rulers, and limit them strictly to their proper and narrow functions.”

No conflict between the two types of freedom did, in fact, arise for a considerable period of time, and, when John Stuart Mill wrote the celebrated essay On Liberty, it was not to encroach on individual liberty through legislation that he directed his eloquence but to the tyranny of public opinion. This was also the main theme of Tocqueville’s famous book which significantly strengthened Mill’s own views on the dangers of democracy.

The subsequent decline of the attachment to individualism as dogma and the gradual replacement of freedom in economic affairs by collectivist (i.e., political) forms of organization were admirably traced by Dicey first at the end of the century and again in 1914. The further extension of collectivism in our time substantially enhances the reputation of Dicey as a prophet. Putting to one side that part of intellectual opinion which has repudiated the attachment both to civil liberty and to economic freedom, we note the marked divergence between the attachment to liberty as participation in government and the repudiation of liberty as freedom from restraint through government direction of economic life. In the former I include the attachment to free speech, the only area where laissez faire is still respectable.

Bearing in mind the danger of generalization without empirical investigation, it may nevertheless be asserted with some confidence that among intellectuals there is an inverse correlation between the appreciation of the merits of civil liberty—including freedom of speech—and the merits of economic freedom. I believe this generalization will hold even after the exclusion from the evidence of that group whose attachment to civil liberty is limited to the transition from the capitalist hell to the authoritarian heaven. Lacking empirical data for this generalization, I must resort to intellectual pride as partial proof. Dissent from the generalization implies either that intellectual discussion is without influence in the formation of policy or that intellectual opinion is always two generations behind the times.

Some evidence is readily available. Justice Douglas has told us:

Free speech, free press, free exercise of religion are placed separate and apart; they are above and beyond the police powers; they are not subject to regulation in the manner of factories, slums, apartment houses, production of oil and the like.

And Justice Black tells us with eloquent brevity that, when it comes to the fixation of prices of natural gas which goes into interstate commerce, “the alleged federal constitutional questions are frivolous.” I am aware that the preferred position accorded to free trade in ideas is based on constitutional considerations, with which I am not concerned. But I believe that the preference goes beyond such considerations. Justice Black tells us not only that “my own belief is that no legislature is charged with the duty or vested with the power to decide what public issues Americans can discuss.” He tells us at the same time that “in a free country that is the individual’s choice not the state’s.” Our distinguished visitor tells us not only that the Constitution draws a distinction between the liberty of owning property and freedom of discussion; he warns us also that, by confusing the two, “we are in constant

9 Cf. Mill’s review on Democracy in America (Disquisitions and Discussions, II, 1-83).
13 Beausarnais v. Illinois, 343 U.S. 250 at 270.