

Freedom and the Law

The third of the Fiftieth Anniversary conferences sponsored by The University of Chicago Law School was on the theme, "Freedom and the Law" and was held on Thursday, May 7, 1953. More than two hundred guests attended the all-day sessions devoted to individual, social, economic, and political freedom within the framework of the law.

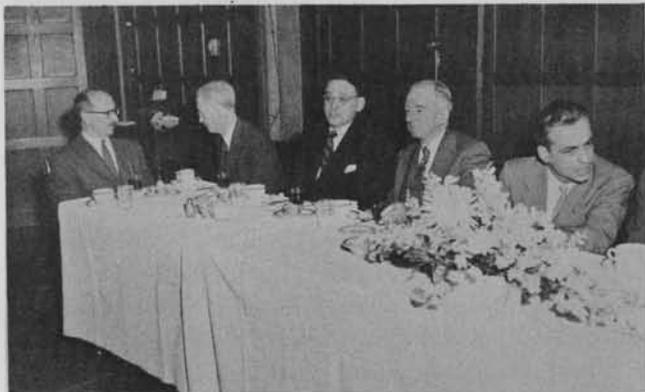
Alexander Meiklejohn, one of the nation's most distinguished educators, opened the morning session with a strong plea for the preservation of our traditional liberties. "Claims of authority to compel a man to state his political opinions are subversive of the most fundamental principles of the Constitution—the principle of the political supremacy of the people over their agents," Professor Meiklejohn stated.

Loyalty, Meiklejohn pointed out, does not imply conformity of opinion. Every elector, in the field of political thinking, has authority either to approve or to condemn (1) any laws enacted by the legislature, (2) any measures taken by the executive, (3) any decisions rendered by the judiciary, and (4) any principles established by the Constitution.

"In the long run, it is never true that the security of the nation is endangered by the freedom of the people. Whatever may be the immediate gains and losses, the dangers to security arising from political suppression are always greater than the dangers to that security arising from political freedom.

"Repression is always foolish. Freedom is always wise. That is the faith, the experimental faith, by which Americans have undertaken to live," Meiklejohn said.

Joining with Professor Meiklejohn in the session on "Freedom in the Two Market Places" was Professor Paul A. Freund of Harvard University. In his remarks Mr. Freund suggested that the Supreme Court has been more successful in meeting the problems of the free market than it has with those of free expression.



One-half of the speakers' table at the luncheon session shows (left to right) Aaron Director, Alexander Meiklejohn, Nathaniel L. Nathanson, Justice Vanderbilt, and Harry Kalven, Jr.



Completing the speakers' table were (left to right) Benjamin V. Cohen '15, Richard C. Donnelly, Kenneth Culp Davis, Douglas B. Maggs, and Paul A. Freund.

"From the beginning, a free market in goods had to be harmonized with the claims of the states for taxes and protection of the local welfare. The reconciliation of a free market in ideas with the claims of the general security occupied the Supreme Court very little until the past generation."

Professor Freund suggested that the government may make accommodations to the traditional concepts of freedom but that it must justify these encroachments on expression by showing that they are not excessive means to achieve a proper end. Mr. Freund called the Supreme Court's decision in upholding the conviction of the Communist leaders under the Smith Act "disquieting."

"The decision is disquieting not because it may have offended against the rules of formal logic nor because the Communist organizers are particularly worthy of sympathy. Most of the great victories in the history of freedom have been won on behalf of individuals who were not endearing.

"What is disquieting is the idea that Congress need not lay the knife close to the evils which are feared but may insert it all the way back to the stage of propaganda.

"This is especially troublesome when coupled with



Among the alumni attending the Conference were (left to right) Chester S. Bell '15, Moses Levitan '13, and Judge Samuel B. Epstein '15.

the virtual abandonment of the 'clear and present danger' test, and the substitution of a test of serious danger discounted by its unlikelihood.

"Judges and juries thus are given a license to speculate in historical futures. This is a license which the test of clear and present danger was to withhold in the market place of ideas."

Associate Professor Harry Kalven, Jr., presided at the afternoon session, devoted to the subject, "Restrictions on Tribunals and the Protection of Freedom." Participating in the discussion were Richard C. Donnelley, associate professor, Yale Law School; Kenneth Culp Davis, professor of law, University of Minnesota; and Chief Justice Arthur T. Vanderbilt of the Supreme Court of New Jersey. Mr. Donnelly spoke on "The Role of the Rules of Evidence"; Mr. Davis' topic was "The Development of the Administrative Agency"; and Justice Vanderbilt's paper was entitled, "The Role of Procedure in the Protection of Freedom."

Participating in the discussion as commentators were Benjamin V. Cohen '15, United States Delegate to the General Assembly of the United Nations, 1948-52; Douglas B. Maggs, professor of law, Duke University; and Nathaniel L. Nathanson, professor of law, Northwestern University.

Justice Vanderbilt pointed out that criminal law is being enforced in an era of rapid communication and transportation along lines better suited to the horse-and-buggy age.

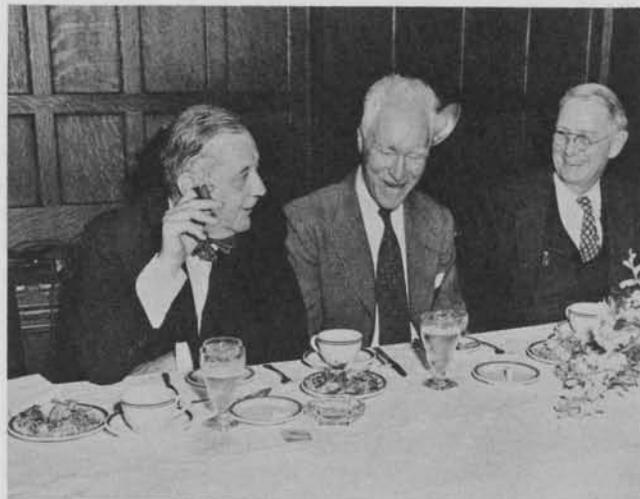
"The average citizen cannot be blamed for thinking what is going on in the traffic courts today may also be going on at the court house or even the state capital.

"More than 15,400,000 citizens come to the traffic courts as defendants, and what they see and hear—and sometimes smell—in these courts does not tend to create respect for law and for the judges and lawyers administering law."

Turning to judicial reform, which he termed "no sport for the short-winded," Justice Vanderbilt said: "There is no judicial reform program that could not be accomplished with dispatch if the governor, the legislative leaders, and the chief justice so desired."

Following dinner at the University's Quadrangle Club, the evening session of the Conference was devoted to "Principal Issues of Economic Freedom." Roscoe T. Steffen, John P. Wilson Professor of Law, presided.

Participating in the discussion were J. M. Clark, professor of economics, Columbia University, who gave "A Statement of Issues"; Thurman Arnold, of Arnold, Fortas & Porter, Washington, who made "A Reappraisal of the Antitrust Laws"; David McCord Wright, professor of economics, University of Virginia, who spoke on "Economic Man, Trade-Union Man, Total Man"; and John Kenneth Galbraith, professor of economics, Harvard University, who concluded the day's activities with his paper, "The Nature of Economic Freedom."



At the speakers' table at the evening session are (left to right) Thurman Arnold, Roscoe T. Steffen, who presided, and J. M. Clark.



Also at the evening speakers' table were David McCord Wright (left) and John Kenneth Galbraith.



Earl F. Simmons '35 (left) and P. Newton Todhunter '37 seen with a group of law students at the dinner session.