At the Fiftieth Anniversary Convocation, May 8, 1953, Andrew J. Dallstream '17, President of the Chicago Bar Association, extended the greetings of the Chicago, the Illinois State, and the American Bar associations to The University of Chicago Law School.
Chancellor Lawrence A. Kimpton, with the honorary degree candidates. Left to right: The Honorable Felix Frankfurter, Associate Justice, Supreme Court of the United States; Laird Bell, Chairman, Board of Trustees, The University of Chicago; Arthur Linton Corbin, Professor of Law Emeritus, Law School, Yale University; The Honorable Jerome N. Frank, Judge, United States Court of Appeals, Second Circuit; The Honorable Thomas Walter Swan, Presiding Judge, United States Court of Appeals, Second Circuit; The Honorable Arthur T. Vanderbilt, Chief Justice, Supreme Court of New Jersey.

FELIX FRANKFURTER
Professor of Law, pioneer in the study and teaching of administrative law, Justice of the United States Supreme Court, in recognition of his devotion to scholarship and to the principles of the judicial process.

LAIRD BELL
Distinguished alumnus, lawyer, and citizen, who has made of the practice of law a career of public service and who, as Chairman of the Board of Trustees of this University, has encouraged us to believe that a university, to be great, must adhere to principle and not be afraid of freedom.

ARTHUR LINTON CORBIN
Dedicated and gifted teacher and scholar, whose insight and painstaking analyses have contributed greatly to our understanding of contract law and its relation to changing social mores.

JEROME N. FRANK
Distinguished alumnus, lawyer, commissioner, judge, philosopher, and teacher, for the ability, the courage, and the enthusiasm with which he has sought, by the orderly processes of law, to make a better world.

THOMAS WALTER SWAN
Outstanding lawyer and educator in the law, presiding judge of the United States Court of Appeals for the Second Circuit, in recognition of his craftsmanship and scholarship in the noblest tradition of our common law.

ARTHUR T. VANDERBILT
Lawyer, educator, and judge, pioneer in the field of judicial administration, in recognition of his scholarly and able work for the improvement of the administration of justice.
Left to right: Justice Felix Frankfurter, Chancellor Lawrence A. Kimpton, and Mr. Laird Bell '07.

Left to right: Dean Wesley A. Sturges of the Law School, Yale University, who gave the Convocation Address; and The Honorable Walter V. Schaefer, Chief Justice, Supreme Court of Illinois, who brought the greetings of the judiciary to The Law School.

Left to right: Judge Thomas W. Swan, Chancellor Kimpton, and Judge Jerome N. Frank '12.

Dean Sturges addressing the Fiftieth Anniversary Convocation. His subject was "Fifty Years of Legal Education."

Dean Edward H. Levi at the lectern presented the honorary-degree candidates to Chancellor Kimpton. Shown above is Justice Felix Frankfurter, who was escorted by Wilber G. Katz, James Parker Hall Professor of Law.

Laird Bell was escorted by Professor Sheldon Tefft.
Rockefeller Memorial Chapel was filled on the afternoon of May 8 for The Law School’s Fiftieth Anniversary Convocation. In addition to a large assemblage of alumni representing the fifty years of the School’s history, the bar associations, the learned societies, and the judiciary were represented. Legal education in the United States was represented by delegates from the following schools: American University, Washington College of Law, Boston College Law School, Catholic University of America, Chicago-Kent College of Law, College of William and Mary, Columbia University, Drake University, Duke University, Emory University, Fletcher School of Law and Diplomacy, Fordham University, Georgetown University, Harvard University, Howard University, Indiana University, John Marshall Law School, Loyola University, Montana State University, New York University, Northwestern University, Ohio State University, Southern Methodist University, Stanford University, St. John’s University, Tulane University, University of Arizona, University of Arkansas, University of Colorado, University of Denver, University of Georgia, University of Illinois, University of Iowa, University of Kansas City, University of Kentucky, University of Louisville, University of Michigan, University of Minnesota, University of Mississippi, University of Missouri, University of North Carolina, University of North Dakota, University of Notre Dame, University of Pennsylvania, University of Pittsburgh, University of Puerto Rico, University of Santa Clara, University of Southern California, University of Utah, University of Virginia, University of Washington, University of Wisconsin, Vanderbilt University, Washburn University, Washington and Lee University, Washington University, Wayne University, Western Reserve University, and Yale Law School.

University Trustee Frank L. Sulzberger closed the ranks of the trustees preceding the honorary-degree candidates in the procession from Ida Noyes Hall to Rockefeller Memorial Chapel.

Following the Convocation the guests of The Law School attended a reception at the Quadrangle Club.

Nearly five hundred alumni and friends of The Law School filled Hutchinson Commons for the banquet climaxing the Fiftieth Anniversary Celebration.

Joseph W. Bingham '04, Professor of Law Emeritus, Stanford University, and a member of the first class of The University of Chicago Law School, was the banquet speaker.

Glen A. Lloyd '23, president of The Law School Alumni Association, brought the greetings of the alumni to The Law School. To his left are George Maurice Morris '15, who introduced the speaker of the evening, and Chancellor Lawrence A. Kimpton.
The Parity of the Economic Market Place

I

Absolute doctrines are always easier to state and perhaps defend than doctrines which have to be limited. The doctrine of complete laissez faire, which is claimed for the area of discussion, is not part of the main tradition of liberalism in the area of economic life. It is not possible on this occasion to outline in detail the proper division of labor between political and economic organization. A few preliminary observations directed to such an outline is all that can be here provided.

1. There is, first of all, the field of taxation, which is, in fact, the field of public expenditures the object of which is redistribution of income. How far such political activity can be carried without ultimately undermining the competitive form of economic organization is indeed an open issue. But it can take a form which will minimize such undermining. Ideally it should take the form of transfers of money income between families. How far this ideal form can be pushed I do not know. It should further take a form which tends to remove the necessity for redistribution, i.e., it should emphasize the goal of greater equality in earning capacity, rather than greater equality in the distribution of results.

The main point I wish to call attention to here is the unnecessary increase of government activity which derives from the implicit assumption that, whenever there is a political decision to make certain expenditures by families compulsory or to assure certain minimum standards of consumption, the organization of the resources involved must also be assigned to the state. The test for the latter should always be whether or not the necessary organization is of a type which can be arranged on a competitive basis. A proper regard for this criterion would, I believe, reduce significantly the area of political decisions without in any way impairing the equalitarian objectives. In fact, an incidental advantage of this principle is that it would clarify the extent to which actual expenditures do, in fact, foster equalitarian objectives and the extent to which they reinforce the inequalities which already exist. The point can perhaps be best illustrated with Mill's observations on the organization of education, made, it is true, with the different objective of preventing the growth of uniformity of ideas:

If the government would make up its mind to require for every child a good education, it might save itself the trouble of providing one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one to pay them.1

2. Laissez faire has never been more than a slogan in defense of the proposition that every extension of state activity should be "examined under a presumption of error." The main tradition of economic liberalism has always assumed a well-established system of law and order designed to harness self-interest to serve the welfare of all. The institution of private property—at least since Hume2—has always been defended on this ground. And wherever it seemed that this institution might be modified without subverting the general framework of a competitive society, the tradition has shown a readiness—perhaps exaggerated—to modify this basic institution. But the tradition goes much beyond this. It has always assumed that there were some economic results which cannot be attained at all or attained only in inappropriate amounts if left to the free market.

The tradition has always been hostile to private monopolies whether contrived by enterprise or labor. Inadequate attention to this problem in the earlier period is to be explained by the tacit assumption, which is not without merit, that under neutral rules the market would largely frustrate such contrivances. To the extent that this assumption was shown to be invalid, the tradition has shown a readiness, although not matched by achievement, to formulate positive rules which will do so.

Where economic services can only be provided by monopoly form of organization because of underlying technical conditions, the liberal bias, in our own day at least, is against private exploitation of such monopolies. Fortunately the area does not appear to be very

1 J. S. Mill, On Liberty.

2 Cf. David Hume, An Inquiry concerning the Principles of Morals, Sec. III of "Justice."
extensive. If it were, the conflict between economic freedom and economic efficiency would become significant. The coercive character of monopoly is not altered by transferring it to the state.

3. Reference should also be made to the recognition that a suitable monetary framework cannot be provided by competition and constitutes one of the requisite legal institutions.

4. Having noted these qualifications or "concessions," it is now in point to restate the "presumption of error doctrine." Every qualification is made because of some deficiency in the free-market type of organization. But every deficiency is met by an extension of state activity. It has been well said that "it is not possible to be continually taking steps towards socialism without one day arriving at the goal." In this respect there is a remarkable similarity between the underlying basis for complete laissez faire in the market for ideas and the market for economic goods and services. The absolute doctrine of the first is defended even though it necessitates the protection of speech which no reasonable man wants or should want to see protected. But there is great wisdom in Justice Douglas' eloquent observation on the danger of encroaching interference:

The Court in this and in other cases places speech under an expanding legislative control. Today a white man stands convicted for protesting in unwelcome language against our decisions invalidating restrictive covenants. Tomorrow a Negro will be haled before a court for denouncing lynch law in heated terms. Farm laborers in the West who compete with field hands drifting up from Mexico; whites who feel the pressure of orientals; a minority which finds employment going to members of the dominant religious group—all of these are caught in the mesh of today's decision.4

II

The free market as a desirable method of organizing the intellectual life of the community was urged long before it was advocated as a desirable method of organizing its economic life. The advantage of free exchange of ideas was recognized before that of the voluntary exchange of goods and services in competitive markets. The explanation lies perhaps in the greater complexity of the theory of the market for goods and services, which came only with the actual emergence of a substantial amount of competition.

Moreover, freedom of speech and belief was advocated long before the growth of democracy. Hume and Smith, the leading theorists of the competitive system, were not democrats. With Bentham and James Mill, the argument for freedom merges with that for democracy. And this in a peculiar manner. Leslie Stephen tells us that liberty "means sometimes simply the diminution of the sphere of law and the power of the legislators, or, again, the transference to subjects of the power of legislating, and, therefore, not less control, but control by self-made laws alone."5 Bentham and James Mill argued for liberty in the second sense on the ground of "responsibility to persons whose interest, whose obvious and recognizably interest, accords with the end in view—good government." And such identity of interest is to be found in "nothing less than the numerical majority."6 Bentham was not only a great reformer of the law but also a vigorous advocate of liberty in the sense of a diminution of the sphere of law and the power of legislators. The argument for this was the same as that for democracy—interest. "The interest which a man takes in the affairs of another, a member of the sovereignty for example in those of a subject, is not likely to be so great as the interest which either of them takes in his own: still less where that other is a perfect stranger."7 To this Bentham added the advantage of superior knowledge which is correlated with interest and the very shrewd remark that if the "statesman were better acquainted with the interest of the trader than the trader himself...simple information would be sufficient to produce the effect without an exercise of power."8

No conflict between the two types of freedom was at first expected. In point of fact democracy was expected

5 Leslie Stephen, The English Utilitarians, 1, 132.
7 W. Stark, Jeremy Bentham's Economic Writings, 1, 229-31.

(Continued on page 19)

participants in the morning session on "Freedom in the Two Market Places" were (left to right) Alexander Meiklejohn, former president, Amherst College, and former chairman of the Experimental College of the University of Wisconsin, who spoke on "The Priority of the Market Place of Ideas"; Wilber G. Katz, James Parker Hall Professor of Law, who presided; Professor Director, and Paul A. Freund, Professor of Law, Harvard University, whose paper was entitled, "Competing Freedoms in American Constitutional Law."
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.

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..."
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 marketplace 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. Donnelley 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 courthouse 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."
The Use and Disposition of Private Property

The second of the three conferences held in 1952-53, celebrating the Fiftieth Anniversary of the Law School, took place on February 27. Under the general subject, "The Use and Disposition of Private Property," its topics ranged from the transmission of wealth in one generation to the next to the recently developed public controls on an owner's use of his property.

The Conference Committee was composed of Associate Professor Walter J. Blum, Professor Allison Dunham, Associate Professor Harry Kalven, Jr., Professor William R. Ming, Assistant Dean James M. Ratcliffe, Professor Max Rheinstein, Professor Malcolm Sharp, and Professor Roscoe Steffen. The Conference was open to the general public.

Taking a keynote from the Fiftieth Anniversary celebration, the Conference emphasized the many changes which have taken place in the rules of property since October, 1902, when the Law School was founded.

Max Rheinstein, Max Pam Professor of Comparative Law, presided at the morning session, which was devoted to the subject, "The Property Owner and His Family." Participating in the panel were Richard W. Effland, professor of law, University of Wisconsin, who spoke on "The Owner's Choice of Succession," and Frank H. Detweiler '31, of Cravath, Swaine and Moore, New York, whose topic was "The Owner's Control over Property Use and Disposition after His Death.

The luncheon session, held at the Quadrangle Club, was on the topic, "The Property Owner and the Public." Professor Allison Dunham, who presided, extended a special welcome to Roscoe Pound, Professor and Dean Emeritus of the Harvard Law School, whose paper was on "The Changing Role of Property in American Jurisprudence." In his remarks Dean Pound mentioned that his visit was somewhat of a home-coming. During 1909-10 he served as a member of the Law School's early faculty. Joining with Dean Pound and Mr. Dunham were Roy Blough, director of the Office of Economic Affairs, the United Nations, who discussed "The Effect of Tax Laws on the Use and Disposition of Property," and Walker Cisler, president, The Detroit Edison Company, speaking on "Private Property and the Development of Atomic Energy."

Professor Sheldon Tefft presided at the afternoon session on "The Property Owner and Purchasers and Creditors." The other members of the panel were Charles G. Grimes, general counsel, Chicago Title and Trust Company, who spoke on "Rights of Creditors To Limit the Owner's Disposition and Use of His Property," and W. Page Keeton, dean and professor of law, University of Texas Law School, who discussed "Rights of Disappointed Purchasers."

Following the reception and dinner, the evening session took place with Associate Professor Walter Blum in the chair. The topic of the evening discussion was "The Property Owner and Programs for the Conservation of Family Estates." Joseph Trachtman of New York spoke on "The Use of Trusts and Other Family Arrangements," William J. Bowe, professor of law, Vanderbilt University, presented his views on "The Use of Life Insurance," and René A. Wormser, of Myles, Wormser and Koch, New York, discussed "Methods of Disposing of Family Business."

The papers of the Conference have been published and can be obtained from The Law School Office.
The leaders of the seminar included Professor M. A. Adelson, Massachusetts Institute of Technology; V. W. Bladen, Director, Institute of Business Administration, University of Toronto; Ward Bowman, research associate, University of Chicago Law School; Professor Yale Brozen, Northwestern University; Hammond Chaffetz, Kirkland, Fleming, Green, Martin and Ellis; Professor Aaron Director; Professor Ralph Fuchs, Indiana University Law School; Professor Carl H. Fulda, Rutgers University Law School; Rosemary D. Hale, Lake Forest College; George E. Hale, Wilson and McIlvaine; A. Leslie Hodson, Kirkland, Fleming, Green, Martin and Ellis; Professor Willard Hurst, University of Wisconsin Law School; William Letwin, research associate, University of Chicago Law School; Dean Edward H. Levi; F. A. McGregor, former combines investigator of Canada; Professor Fritz Machlup, Department of Political Economy, Johns Hopkins University; Professor William H. Nicholls, Vanderbilt University; Casper W. Ooms, Dawson and Ooms; Professor Eugene V. Rostow, Yale School of Law; Professor Louis B. Schwartz, University of Pennsylvania Law School; Thomas E. Sunderland, general counsel, Standard Oil Company (Indiana); and Robert L. Wright, District of Columbia Bar.

The schedule of discussions was as follows:

Hurst: The Historical Setting of the Sherman Act
Letwin: Early History and Purpose of the Sherman Act
Ooms: Public Policy and the Patent and Trade-Mark Law
Machlup: Public Policy and the Patent and Trade-Mark Law
Director: Devices Regarded as Monopolizing
Adelman: The Problem of Integration
Schwartz: Competition in the Regulated Industries
G. Hale, R. Hale: Market Imperfections
Rostow: Foreign Commerce and the Antitrust Law
Fuchs: Critique of the Robinson-Patman Act
Chaffetz and Sunderland: The Robinson-Patman Act
Nicholls: Problems in the Several Firm Industries
Wright: Doctrines of Conspiracy
Fulda: Resale Price Maintenance
Bowman: Resale Price Maintenance
Bladen and McGregor: Canadian Policy toward Antitrust
Rostow: Basic Implications of the Size Theory
Brozen: Special Problems of the Natural Resources Industries

During last year the Law School began a research program on the problems of antitrust. Contributors to the law and economics fund making possible these studies include Sears, Roebuck and Company, Swift and Company, Standard Oil Company (Indiana), Borg-Warner Corporation, International Harvester Company, and International Minerals and Chemical Company.
"The Administration of Criminal Law"  
by Ernst W. Puttkammer

This book, although the writer does not agree with everything that Professor Puttkammer states therein, is an important contribution to the practice of criminal law. It must be remembered that very few books have been written on this phase of the law. Criminal law, as popular as it is in a general sense, has very few texts of any particular value. This text is an exceptionally useful book, not only for laymen and law students, but for the everyday practicing lawyer. Although Professor Puttkammer intimates its basic value is to laymen and law students, the writer feels that it serves an extremely useful purpose for the everyday practicing lawyer.

In a city like Chicago, where the Criminal Court is remote from the other courts, the criminal practice is limited to a few. The young lawyer, who today does not have the advantage the old lawyer had in the days when the Criminal Court was in close proximity to all lawyers, can use this much-needed book in the way of "handy" information. This is also particularly so in cities where the public defender represents so many people, hence depriving the young lawyer of the opportunity to occasionally represent one charged with a crime.

Professor Puttkammer, by way of introduction, discusses the purposes of the criminal law from every possible aspect. Particularly amusing is the analogy of the criminal who repeats his crime because of a return to the same environment to that of a person who acquired pneumonia and was cured, and then returned to the same atmospheric conditions and then had a recurrence—omitting completely that the repeater could, if he desired, avoid the crime even in the same environment if he so wished.

His chapter on "Police Organization" is highly informative and gives a short and interesting history of this organization. It is interesting to note that the "policeman," as such, is only of "recent origin and that, particularly on the Continent, policemen more often than not come from some other community than the one in which they are police officers. What a controversy making it a requisite that nonresidence be the basis of an appointment to the police department would raise in a city like Chicago or New York.

Professor Puttkammer speaks of crime waves as being the idea of a shortage of newspaper material. He serves a very useful purpose in writing of crime waves in that light. It enables the practicing attorney, the student, and the laymen to realize that no crime wave in fact exists in many cases. He presents an entirely different approach to the administration of punishment in the courts. Too frequently, courts are influenced by what newspapers say rather than by the issues immediately before the courts. It would be well if the courts would read what Professor Puttkammer says of crime waves toward assisting them in the administration of justice.

He discusses at some length the basis of an arrest and warrants and a summons. He points out how statutes have limited the authority of a citizen to make an arrest. His reference to the summons, although overlooked in the state's courts, as far as criminal matters are concerned, is interesting enough and particularly so when one considers that in England 82 per cent of the offenses were proceeded against by way of summons. In our states, although used, it is so insignificant that it would be interesting to conjecture what reaction would be had if the states were to adopt it on the same basis as England.

Professor Puttkammer discusses police investigation from only two aspects: (1) the questioning of suspects and abuses and (2) search and seizure. It is difficult to understand the divergent points of view that Puttkammer takes, in that he so bitterly opposes third-degree measures but intimates that, as far as search and seizure are concerned, the rule that ought to prevail is that civil liability is the only remedy against officials who engage in an illegal seizure. In either event, it is suggested that the point of view ought to be the same in both cases, and violations of constitutional rights, in either event, should be strictly upheld, even though on an occasion justice might be thwarted.

The writer agrees with what is said of the police
magistrate or the presiding magistrate on preliminary hearings, and what is said therein, if true, would add a great deal to the administration of criminal law, although, in fact, a court, the presiding magistrate, particularly in many of our large cities, including Chicago, is merely a hold-over court without a hearing. How often does a lawyer complain of the court that makes the remark that "this is a hold-over court in which the defendant does not have to be represented by counsel, is not entitled to cross-examine the witnesses, and that the hearing is limited to only what the court wants to hear and no more." It might be suggested that it is not often too frequent that he is by-passed and the matter is heard directly by the grand jury.

The rights and duties of the coroner are discussed at some length. It is sufficient to say, as Professor Puttkammer intimates, that it is an office of ancient origin and should have long been abolished. He speaks of the medical examiner as supplementing the coroner but under the direct supervision of the state's attorney's office. There are occasions, however, when a coroner's inquest could arouse an indifferent state's attorney to prosecute when the need should arise.

The reference to the grand jury and its duties portrays an interesting insight into that body; although an independent body, unfortunately at times, its destinies can be guided by a clever prosecutor.

He comments on the indictment and information, and this is most noteworthy in that he indulges in discussing some of the difficulties at some times attached to such instruments. His discussion on the elimination of a grand jury and on proceeding by information is extremely interesting, and the conclusion that he comes to, namely, the retention of both systems on a limited basis, is interesting to observe.

He discusses jurisdiction and venue, extradition and rendition, with sufficiency to comprehend the issues involved.

His chapter on arraignment becomes more interesting today in view of the rule now used in some states requiring a particular transcript of the proceedings to be filed concerning arraignment to preclude the defendant from subsequently raising the question that no attorney was appointed for him, that he did not have the choice of an attorney, and that he was not fully advised as to his plea as well as to the charge against him.

Puttkammer's chapter on the trial, particularly as to the public defender, should be of great interest to lawyers generally. Unfortunately for the professor, he assumes that, because of the friendship created between the public defender and the prosecution, a give-and-take situation would not materialize under such conditions. This is not necessarily so. The converse is true; a strong public defender, through these friendships, could possibly gain an advantage that might not otherwise be obtained.

Professor Puttkammer also discusses posttrial motions. Unfortunately, he omits the postconviction statute, which provides for a remedy for prisoners who maintain that their conviction was a result of a substantial violation of their constitutional rights. It has become quite a controversial statute, but indications are that the substance of it will remain.

Professor Puttkammer's book, all in all, is a contribution to anyone interested in the administration of criminal justice. It is informative at spots controversial, but, on the whole, worth-while reading; and, used as a handbook of information, it is invaluable.

Frank Ferlic '30

Lloyd Elected Trustee

As this issue of the Record goes to press, word has been received that Glen A. Lloyd '23, President of The Law School Alumni Association, has been elected to the Board of Trustees of the University of Chicago. Mr. Lloyd is the sixteenth alumnus member of the Board.

In addition to his busy practice as a senior partner in the firm of Bell, Boyd, Marshall and Lloyd, and his constant and vital activity on behalf of The Law School, Mr. Lloyd is one of Chicago's most active and public spirited citizens. He is president of the Board of Lake Forest Academy and a trustee and member of the executive committee of the Aspen Institute for Humanistic Studies. He was vice-chairman of the Goethe Bicentennial held in Aspen, Colorado, in 1948.

A former vice-president of the Republican Citizens' Finance Committee of Illinois, he has also served as secretary of the Commercial Club of Chicago and vice-president of the Chicago Council of the Boy Scouts of America.

The busy President of our Law School Alumni Association holds a number of corporate directorships, among them being the Produce Terminal Cold Storage Company of Chicago, Yates-American Machine Company of Beloit, Wisconsin, South Bend Lathe Works, and W. F. and John Barnes Company of Rockford, Illinois.

He is a member of the American, Illinois State, and Chicago Bar associations and The Law Club and The Legal Club of Chicago. He is a former member of the Board of Managers of the Chicago Bar Association.

Mr. Lloyd was born in Knoxville, Tennessee, in 1895, the son of Henry Baldwin and Maud Jones Lloyd. He attended school in the preparatory department of Maryville College and was graduated from Maryville with the degree of A.B. He also attended Westminster College, Salt Lake City, Utah, and was awarded an honorary L.L.D. from Westminster in 1951.

Upon receipt of his J.D. from Chicago, he became associated with his present firm—then known as Fisher, Boyden, Kales and Bell. He became a partner in 1931, and the firm name was changed to its present name—Bell, Boyd, Marshall and Lloyd—in 1949.
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

(Continued on page 19)
Lowell Wadmond Cited

At the Annual Alumni Assembly this year the University of Chicago Alumni Association presented a citation for public service to Lowell C. Wadmond '22, J.D. '24. Mr. Wadmond, a member of the firm of White and Case in New York, has for twenty years served on the Committee on Character and Fitness of the Appellate Division of the Supreme Court of New York. He is chairman of the Board of Governors of The Lawyer's Club of New York and has a distinguished record of leadership in civic, philanthropic, and professional endeavors. He is president of the Metropolitan Opera Association, presiding elder of the Brick Presbyterian Church, and holds the Order of the North Star from King Gustav V of Sweden.

The Alumni Association inaugurated its citation program in 1941 to recognize the achievements of its alumni. Thus far 350 alumni have been cited. In the past citations have been awarded only to alumni of the College. Beginning in 1954, alumni at all degree levels will be eligible for the awards. You can help the Association discover candidates for the awards by sending their names with pertinent data and references to the Alumni Association.

Summer Quarter 1953 · June 22 to August 29

PROGRAM OF COURSES

202. CONTRACTS. Malcolm P. Sharp, Professor of Law, University of Chicago Law School. 8:00-9:00 and 11:00-12:00 M-TH; Law South

204. CIVIL PROCEDURE. Brainerd Currie, Professor of Law, University of Chicago Law School. 10:00 M-TH; Law North

302b. CONSTITUTIONAL LAW. W. W. Crosskey, Professor of Law, University of Chicago Law School. 2:00 M-F; Law South

304. ACCOUNTING. Wilber G. Katz, James Parker Hall Professor of Law, University of Chicago Law School. 8:00 TU-F; Law North

309. TRIAL PRACTICE. Philip Kurland, Associate Professor of Law, University of Chicago Law School. 10:00 M-TH; Court

329. RESTITUTION. Edward L. Barrett, Jr., Visiting Professor, University of Chicago Law School. Professor of Law, University of California School of Law, Berkeley. 9:00 M-TH; Law North

404. LABOR LAW. J. Keith Mann, Visiting Professor, University of Chicago Law School, Professor of Law, Stanford University Law School. 9:00 M-TH; Law South

412. INSURANCE. Walter Blum, Associate Professor of Law, University of Chicago Law School, and Wilber G. Katz, James Parker Hall Professor of Law, University of Chicago Law School. 11:00 TU-F; Court

415. STATE AND LOCAL GOVERNMENT. Jo Desha Lucas, Assistant Professor of Law, University of Chicago Law School. 8:00 TU-F; Court

491. SEMINAR ON PROBLEMS IN ANTITRUST LAWS AND LAWS RELATING TO UNFAIR COMPETITION. Edward H. Levi, Dean and Professor of Law, University of Chicago Law School. 3:00-5:00 TU, TH; Court

Life in Beecher

Since its opening last fall as The Law School residence, Beecher Hall has become an important and busy center of activity for all law students. Numerous special meetings and social events have been held at the Hall, and, in addition to its residence functions, it provides facilities for entertaining Law School visitors. During the first year Mr. Justice Frankfurter and Dean Roscoe Pound stayed in the Beecher guest suite during their visits to The Law School.

A softball team and a basketball team have been organized among the residents, and the Beecher Nine won the campus independent softball championship.

Two regular events held in the Hall have been the Friday evening meetings and the seminar luncheons with visiting members of the bench and bar. These occasions give the law students an opportunity to discuss a variety of problems with practicing lawyers, judges, and legal scholars from other institutions. Among the Friday evening visitors this winter and spring were:

- Richard F. Babcock '46, Taylor, Miller, Busch & Magner
- Abner Mikva '51, Goldberg, Devoe, Brussel & Shadur
- Luis Kutner
- Stanton E. Hyer '25, Hyer, Gill & Brown
- Quincy Wright, Professor of Political Science
- Laird Bell '07, Bell, Boyd, Marshall and Lloyd
- Joseph Lohman, Lecturer in Sociology
- Richard B. Austin '26, Assistant State's Attorney
- John M. Harlan, Root, Ballantine, Harlan, Bushby & Palmer
- Morris I. Leibman '33, Crowell & Leibman
- Joseph McMahon, Federal Bureau of Investigation

Among the seminar leaders at the student luncheons have been:

- Walker B. Davis '27, Chicago Bridge and Iron Company
- Jerome S. Katzin '41, Director of Public Utilities, Securities and Exchange Commission
- Edward H. Harsha '40

HONORABLE WALTER V. SCHAEPER '28, Chief Justice, Illinois Supreme Court

H. Templeton Brown, Mayer, Meyer, Austrian & Platt

Robert Redfield, Robert M. Hutchins Distinguished Service Professor of Anthropology, University of Chicago

CHARLES BANE, Mitchell, Conway & Bane

Federal Judge Charles E. Wyzanski, Jr., addressed The Law School last October, and following this meeting a reception was held in his honor in Beecher Hall. Left to right: Wilhelm Oberer, Germany, Alan Edwards, Chicago, Judge Wyzanski, and Ruth Miner, Vermont, Illinois.

Dean Pound stayed in the guest suite at Beecher Hall during his visit to The Law School. He is shown here with Professor Sheldon Tefft and a group of the students after lunch.
Mr. Justice Frankfurter also stayed at Beecher Hall during his two-day visit to The Law School this winter. He met with a number of groups of students and is shown here at lunch with the Beecher residents and members of the faculty.

Mr. and Mrs. John M. Harlan visited Beecher Hall during the Spring Quarter and had dinner with the residents. Mr. Harlan, of Root, Ballantine, Harlan, Bushby & Palmer, was in Chicago as Chief Counsel for the DuPont Corporation. Following dinner he met informally with the students.

Among the Friday evening visitors has been Joseph D. Lohman, lecturer in sociology and law and former chairman of the State of Illinois Parole Board. Mrs. Sheldon Tefft is seated with Mr. Lohman and the students.

Milk time is an important hour in the Beecher Hall routine; afternoon tea and evening coffee are also available to all law students.

The Beecher Nine with a few extras thrown in
Dean Levi Visits Oregon Alumni

Invitations to address the Seattle Bar Association and the joint meeting of the Oregon State Bar Association and the Multnomah Bar gave Dean and Mrs. Edward H. Levi the opportunity to visit in March with alumni in Seattle and Portland.

"A Jurisprudence for the Legal Profession" was the subject of the Dean's talk before more than two hundred lawyers meeting in Portland.

"Jurisprudence is the description and appraisal of the art of law," Dean Levi said, "but, to the Anglo-American lawyer, jurisprudence for the most part appears to deal with what Professor Dicey has called 'the oddities of the outlying portions of legal science.' This is not wholly true, for in this country on great issues we become insistent upon our jurisprudence.

"The concepts of sovereignty, the state, the separation of powers, justice and natural rights are then used to explain positions. The contribution of jurisprudence to great issues is most inadequate if the science has not kept in touch with the workings of the legal system.

"As lawyers we deal with situations and cases. This is the material from which our law grows. The creation of law out of lawsuits is the essential characteristic of our system of law. Our law, more than any other highly developed legal system, depends upon case reasoning for its development.

"There is no better way to see general truths like these than to watch them at work on homely simple matters of the everyday. The law of negligence as applied to railroad-crossing accidents is an example.

"It is the virtue of case-law reasoning that it achieves continuity with the past, that it shapes the law with due regard for the ideals and judgments of the community, and that, while changing the law, it achieves a measure of consistency essential if human expectations are to be fulfilled."

Dean Levi then discussed the development of the rule of negligence in crossing and roadway cases in England and the United States and reviewed the pattern in Oregon as disclosed by cited cases of the Oregon Supreme Court, going back to the middle 1880's.

"Law-making systems must meet the standards of continuity and practicality," he concluded. "The distinctions and ideas on which rules are based must be understandable and natural to the community. The problem of law-making is not to make new laws for perfect people; rather it is to work with and benefit people as they are. "Continuity with the future is just as important as continuity with the past. It is respect for the expectations of people which distinguishes the rule of law from the caprice of arbitrary discretion. These requirements are just as applicable to legislation as they are to judge-made law."

The luncheon for Dean and Mrs. Levi with the Chicago Alumni Club in Portland was presided over by Robert L. Weiss '48. While in Seattle, where the Dean spoke before the Bar Association, the Levis also met at lunch with the Seattle Chicago Alumni Club.

Oregon Associate Supreme Court Justice George Rossman '10 introduced Dean Levi at the Portland bar meeting and gave a luncheon in his home for the Levis and the members of the Oregon Supreme Court.
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 encroachment 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 (Dissertations and Discussions, II, 1-83).

11 Beasharmas v. Illinois, 343 U.S. 250 at 286.
13 Beasharmas v. Illinois, 343 U.S. 250 at 270.
danger of giving to a man's possessions the same dignity, the same status, as we give to the man himself."
I hold that this dichotomy is a doubtful one, and I turn to this aspect of the problem.

III

A superficial explanation for the preference for free speech among intellectuals runs in terms of vested interests. Everyone tends to magnify the importance of his own occupation and to minimize that of his neighbor. Intellectuals are engaged in the pursuit of truth, while others are merely engaged in earning a livelihood. One follows a profession, usually a learned one, while the other follows a trade or a business. To cite a trifling example: For every opinion voiced in England against restriction of ordinary imports, there must be a hundred against restriction on foreign travel. Objective evaluation of the two restrictions would recognize that they differ only in that one involves bringing the goods to the consumer, while the other involves shipping the consumer to the goods. Intellectuals, on the other hand, see one restriction as interference with culture and the other as mere exclusion of cheap American movies.

Such an attitude does not accord with a proper respect for the ordinary activities of the bulk of mankind. Short of a revolution in tastes which would make people want much less than they now have of material well-being, or a revolution in technology while keeping present material wants constant, neither of which can be expected, most men will for the foreseeable future have to devote a considerable fraction of their active life to economic activity. For these people freedom of choice as owners of resources in choosing, within available and continually changing opportunities, areas of employment, investment, and consumption is fully as important as freedom of discussion and participation in government. The former freedom is at least important for those who wish to exercise such freedom.

It is perhaps of such people and of such activities that Tocqueville wrote:

"The principle of enlightened self-interest is not a lofty one, but it is clear and sure. It does not aim at mighty objects, but it attains without impractical efforts, all those at which it aims. As it lies within the reach of all capacities, everyone can without difficulty apprehend and retain it. . . .

The doctrine of enlightened self-interest produces no great acts of self-sacrifice, but it suggests daily small acts of self-denial. By itself it cannot suffice to make a virtuous man, but it disciplines a multitude of citizens in habits of regularity, temperance, moderation, foresight, self-command: and if it does not at once lead men to virtue by their will, it draws them gradually in that direction by their habits."

The preference for the free market in ideas stems also from an undue emphasis on the definition of democ-

15 Democracy in America, II, 122-23.
and important issues of policy such as trade between nations, fixing rents of houses, or subsidies to agriculture are made the subject of collective decision. Skepticism regarding the possibilities of solving problems by political decisions after discussion is not confined to those with a bias for the advantages of the impersonal market. It is in fact shared by those who wish to maximize the area of such decisions. This must be the explanation for the results of the recent election which runs in terms of the effectiveness of advertising and radio and television entertainment against the party which "talked sense to the American people." Professor Cooley, a not unsympathetic student of democratic institutions, has emphasized the great amount of "nonsense" which passed for discussion when such issues as the silver question were made the subject of political decisions. And he finds the saving feature of democracy in the skill of the ordinary man in choosing between persons. This in turn emphasizes the large element of discretionary authority inherent in increasing the scope of political authority over economic organization.

Finally, Professor Knight, who has explored the limitations of the impersonal voluntary exchange system of organization with greater subtlety than any critic of that system, has in turn warned us of the limitations of discussion:

Genuine, purely intellectual discussion is rare in modern society, even in intellectual and academic circles, and is approximated only in very small and essentially casual groups. On the larger scale, what passes for discussion is mostly argumentation or debate. The intellectual interest is largely subordinate to entertainment, i.e. entertaining and being entertained, or the immediate interest of the active parties centers chiefly in dominance, victory, instructing others, or persuading rather than convincing, and not in the impartial quest of truth.18

The traditional defense of the free market as a method of organizing economic life has been utilitarian or instrumental. This emphasizes the consequent efficiency with which resources are used to achieve given ends. It derives its emphasis from the economist’s desire to be scientific. The traditional defense of the free market in ideas has in the main also been utilitarian. Thus it plays an important role in Mill’s defense of freedom of discussion. It has been challenged in both areas and more extensively in the sphere of economic matters. An empirical test of efficiency in the absence of experiment with alternative forms of organization is not readily available. The historical evidence is stronger—at any rate, less ambiguous—in the economic area. The short period of liberalism has been accompanied by as much material progress as took place in all prior times. But the evidence has not been persuasive. It is always easy to contrast the observed deficiencies with the unknown advantages. And cognizance of deficiencies tends—rightly—to grow with material progress. Very recent experience with alternative forms of organization has again strengthened the efficiency argument. This is all to the good: "The common man or average family has a far greater stake in the size of our aggregate income than in any possible redistribution of income." Current concern over the effect of taxation on incentives also illustrates the revived interest in efficiency. But I have tried to emphasize the importance of the free market as an end in itself, as an important aspect of freedom to choose between alternatives. While not always explicit, I believe it has always been implicit in the attachment of the great economists to the liberal tradition. In this context freedom means more than discussion and participation in government. It means responsibility, change, adventure, departure from accepted ways of doing things. It means freedom to choose one’s ends as well as means for attaining them. In Leslie Stephen’s phrase, it means “energy, self-reliance, and independence, a strong conviction that a man’s fate should depend upon his own character and conduct.” It is broader than Milton’s dictum: “The whole freedom of man consists either in spiritual or civil liberty.”

More recently with the spread of authoritarian regimes which have destroyed both economic and intellectual freedom, the instrumental character of the free economic market in an entirely new context has received substantial recognition. This is the argument that noneconomic freedom cannot flourish when the division of labor between voluntary organization and the coercive state is destroyed. Again the argument is not altogether new. Mill, whose defense of the free market was mainly in terms of efficiency, nevertheless added that if the “industries, the universities and the public charities, were all of them branches of the government; . . . if the employees of all these different enterprises were appointed and paid by the government, and looked to the government for every rise in life; not all the freedom of the press and popular constitution of the legislature would make this or any other country free otherwise than in name.”21

In this respect the political economists have shown better insight into the basis of all freedom than the proponents of the priority of the market place for ideas. The latter must of necessity rely on exhortation and on the fragile support of self-denying ordinances in constitutions. The former, on the other hand, have grasped the significance of institutional arrangement which foster centers of resistance against the encroaching power of coercive organization. Failure to appreciate this essential method of protection of freedom among students of the law who minimize the importance of the free econ-

18 F. H. Knight, Freedom and Reform, p. 349.
21 On Liberty.
nomic market is especially striking. In their own field they fully recognize the great significance of legal institutions—procedure—as against the substantive content of law in protecting the liberty of the subject.

The issue is no longer one of the general theory of the essential character of major economic decisions made by political organizations, which involves broad delegation of power to experts who cannot be disciplined by those for whom they act. As individual freedom is being challenged because we are no longer indifferent to diversity of views, we get an indication of what may happen when the state becomes the principal employer or determines the conditions of employment. The privilege against self-incrimination may not be an important protection of freedom. But any legal protection of this general type will become an empty piece of ceremonial apparatus when its exercise and protection is accompanied by the loss of one's livelihood. This may increase our esteem for martyrdom, but martyrs are not always rewarded in this world.

We can learn much in this context from the acute observations of a recent comprehensive review of the privilege against self-incrimination. Without access to books and records, we are told: “The enforcement of complicated regulation would break down and would involve additional costs not easily met in a period when the government is assuming staggering commitments. It is not surprising that a majority of the Supreme Court was convinced that the application of the privilege to required records is a luxury which a welfare-state cannot afford.” Economists cannot distinguish between luxuries and necessities; other necessities may become mere luxuries which the welfare state cannot afford. Courts cannot provide satisfactory alternative areas of employment and promotion.

It is not essential to demonstrate that there is only one road to serfdom or that a particular road must inevitably lead to a specified destination. Some institutions are more flexible than others. We must choose those which minimize the risks of undesirable consequences.

The Law School Entertains

The University of Chicago Law School was host at a cocktail party on Thursday, June 11, to all the delegates attending the annual meeting of the Illinois State Bar Association. More than two hundred lawyers from all over the state attended the party at the Hotel Orlando. The occasion marked the conclusion of the Fiftieth Anniversary celebration of the School. Representing The Law School at the annual meeting were Dean Edward H. Levi, Bernard Meltzer, Sheldon Tefft, Karl Llewellyn, Soia Mentschikoff, and James M. Rachlff.

The Faculty of the University of Chicago Law School on Convocation Day. Absent from the photograph are Philip Kurland, Malcolm Sharp, Kenneth G. Sears, Max Rheinstein, who is lecturing in Germany, and Allison Dunham, who is teaching law this quarter at the University of New Zealand.
Be sure to attend
The University of Chicago Law School
Alumni Luncheon
at
The American Bar Association Meetings
The Parker House, Boston
Wednesday, August 26, 1953

The Law School's First Graduating Class

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