European Antitrust Policy
by DR. HANS B. THORELLI

In November 1958, Dr. Hans B. Thorelli, Research Consultant to the General Electric Company, gave a series of three lectures at the Law School on the subject of European Antitrust Policy. The first of these lectures, dealing with the socio-economic and political background against which recent European efforts to control monopolistic phenomena should be viewed, is presented below. The second lecture, which was concerned with a comparative survey and analysis of current national policies, is published in Volume 62, Number 2, of The University of Chicago Law Review. The final lecture, which treats of European participation in international efforts to control restrictive business practices and deals primarily with the Coal and Steel and European Economic Communities, appears also in this issue of the Record, beginning on page 19.

I. THE CARTELIZATION OF EUROPE, 1914-1945
It would seem that in recent years government and business relations in general and public monopoly control policies in particular have been moving in increasingly similar directions in the United States and Europe. Indeed, individual policies in individual European countries frequently have a striking affinity with corresponding policies here. But there are still basic differences on many points, and behind superficial similarity one will often find principal differences of economic and social philosophy, which are subject only to secular change. Thus, if we want to avoid being misled by apparent similarity in form, if we want to learn something by comparative study, if we are interested in the possibilities of international cooperation in this field, and, indeed, if we want to study law as an expression of public policy rather than as a mere body of rules and cases, we are per force obliged to start out with a review of economic organization and its social and political environment, at least during the period immediately preceding the present one. For reasons

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Levy Mayer
by FRANK D. MAYER, JD'23

The paper which follows was delivered by Mr. Mayer at the invitation of the Law School on February 17, 1959. It is the latest in the School's series on distinguished Chicago lawyers.

People often forget that post-Civil War midwesterners met and overcame in scarcely a lifetime three great problems, which in Europe came to the fore gradually over a number of centuries. The first was to build part of a unified nation out of an almost virgin continent, the second was to endow their towns and cities with modern machinery of production and communication and, third, midwesterners had to develop and modify their systems of law and government to meet the changing business and industrial conditions while they were tackling the first two problems.

In that tumultuous and fast-moving era, lawyers like Silas Strawn, John P. Wilson, S. S. Gregory, Horace Tenney, Levy Mayer and others helped to lift Chicago from a frontier swamp town which was merely the center of an agricultural area to today's industrial metropolis of the midwest and one of the great cities of the world. In so doing they helped usher in what has been called the new Industrial Era.

Levy Mayer was born of revolution and fierce times. His parents, Clara and Henry Mayer, had fled their little village in Bavaria, Germany, in the aftermath of the 1848 upheavals. The Mayers settled in Richmond, Virginia, where Levy Mayer was born October 23, 1858, the sixth of 13 children. There the immigrant family was soon caught up in the ferment of the Civil War. Finding security in Richmond illusory, in 1863 Henry Mayer moved his family to Chicago, then a town of less than 300,000. (Had this somewhat dangerous migration to Chicago not occurred, you might be sleeping comfortably in your respective beds instead of drowsing here.) In Chicago he set up a small business in furnishings, tobacco and other merchandise on

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which I hope will become apparent I think this period extends from World War I to 1945. If we want to put a name on this period we might label it "the cartelization of Europe."

1. Origins and Growth of Cartelization

The movement towards the liberalization of trade and economic activity in Europe that we often date back to Adam Smith had its culmination around 1900. Indeed, in Britain itself the liberalization from restrictions on trade, private or public, had actually culminated two or three decades earlier. Taking Europe as a whole we may perhaps say that economic liberalism held its own between 1900 and World War I.

A. Origins: War.

War is reckless with civil and economic liberties alike. The direction of all resources towards the single, common and unambiguous goal of national survival called for by war — rather than towards a multitude of known and unknown consumer wants and needs that we associate with peacetime — makes cooperation and regulation, rather than competition and freedom of entry and access, not only natural but also imperative. From the point of view of free enterprise and competition another pertinent aspect of international conflict is that wartime regulations and restrictions — and again I am thinking of public as well as private restraints — tend to linger on. Indeed, such measures may often be introduced well in advance of war by nations bent on aggression, which in turn may call forth similar behavior in nations which feel threatened.

To a certain extent, therefore, the wanderings of European economies between 1914 and 1945 are in large part attributable to the dislocations of war or preparation for conflict. In the United States the rapid reconversion to a peacetime free economy after 1918 contrasts vividly against the lingering ideas of control and order in Europe. But even in this country the war left its mark on the economic climate, on the outlook of businessmen. This quotation is an eloquent example:

In line with the principle of united action and cooperation, hundreds of trades were organized for the first time into national associations, each responsible in a real sense for its multitude of component companies, and they were organized on the suggestion and under the supervision of the government. Practices looking to efficiency in production, price control, conservation, control in quantity of production, etc., were inaugurated everywhere. Many businessmen have experienced during the war, for the first time in their careers, the tremendous advantages, both to themselves and to the general public, of combination, cooperation and common action, with their natural competitors.

This statement from 1921, was made not by some director of a German cartel but by Bernard M. Baruch, former chairman of the United States War Industries Board. While few would claim that Mr. Baruch's statement is representative of the general outlook of American businessmen — or perhaps even of Mr. Baruch — this type of thinking was gaining widespread acceptance in Europe.


The economic dislocations of the first World War on the European continent were severe, as manifested by general postwar depression followed by runaway inflation in Germany. Not until the mid-twenties was Europe firmly on its way back to a more liberal economy. The prime factor in this movement was neither a particularly individualistic philosophy nor, certainly, public antimonopoly policy, but rather the resurgence of free, multilateral world trade. This was an especially important factor in the restoration of competitive conditions in the smaller nations of Europe, which are drastically dependent upon international economic intercourse. But the fruits of renewed economic development were never to be fully reaped before the next great dislocation.

C. Origins: Depression.

This dislocation, of course, was the Great Depression, which you might say caused Europe's economies to rock 'n roll. Unfortunately, depressions have turned out to constitute a threat to economic freedom analogous to that posed by war. Small wonder, then, that such ideas as the self-government of industry and the governmental planning of economic activity on a grand scale and in much greater detail than at any time since mercantilism came increasingly to the fore. Trade associations and cartels had been growing in number and power during the twenties, but they were now further strengthened and expanded under governmental auspices, and, indeed, frequently given a quasi-public status.


Several observers have pointed out the fact that the ideas of free enterprise and a competitive economy thrive best in an atmosphere of expansionism, such as has traditionally prevailed in the United States. But the climate in Europe in interwar years was different, affected by a growing realization that while it might be genuinely doubted whether Britain and France really were the two victors of World War I, it could hardly be doubted that Europe as an entity emerged as a loser. The decline of Europe in world affairs was a topic of discussion frequently associated with ideas of economic stagnationism and maturism. The epoch-making step taken by Britain in 1932, when she introduced a sizable general tariff with provisions for imperial preference, may be taken as an expression of this kind of thinking. In a nutshell the idea was to hang on to what you have got by artificial means.

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the so-called Northwest Plank Road. Chicago was then still in the "horse and buggy" age. Electric lights were unknown and telephones were not used until a number of years later. Residences were generally lighted by kerosene lamps and a little later by gas. Buildings were generally heated by coal stoves. Public transportation was largely by horse or cable car, and private transportation, of course, completely by horse-drawn vehicles. There were livery stables in what is now downtown. Michigan Avenue and other downtown streets were still a part of the residential sections.

The family was poor—really poor—as Mr. Henry Mayer was never much of a success in business although he was an educated and cultured man. Accordingly, all the children worked as soon as they were able. The oldest boy, David Mayer, went into business with his brother-in-law, Leopold Schlesinger, under the name of Schlesinger & Mayer and eventually did business as a department store in the building which is now occupied by Carson Pirie Scott & Co. The women of the family also helped out either in housework, in the store, or in giving piano lessons.

Levy Mayer attended the Jones Grammar School and the Chicago High School on the west side. From the very beginning he showed evidence of the tremendous intellect which later brought about his great success. He was not only an excellent student but was a voracious reader, particularly of classical literature. When Levy Mayer finished high school in '74 he had already made up his mind to study law. By that time his older brother David had sufficient funds to see Levy Mayer through the then two year course at the Yale Law School, where the 18 year age requirement was waived for the 16 year old scholar. In 1876 he graduated from the Law School, standing second in his class. On the graduating platform with him was General William Tecumseh Sherman, then commanding general of the Army.

Coming home to Chicago, Levy Mayer was too young to be admitted to the bar, but he procured a job as Assistant Librarian in the Chicago Law Institute, the law library on the top floor of the Court House, at a salary of $4.00 a week. There he gained valuable experience in legal research, and made numerous contacts with members of the bar. To supplement the small salary he wrote for legal periodicals, prepared a catalog of the Library, edited several books and aided other lawyers in the preparation of cases.

We still have in our firm library a book, which is also in the Law School library, some 500 pages long by David Rorer entitled A Treatise on the Law of Judicial and Execution Sales published in 1878, the preface of which states:

"The favorable reception by the courts and legal profession of the original edition of this work encourages the author to lay before them a second edition, greatly enlarged, and so rearranged as to afford a more ready reference to the contents. All the cases cited, both old and new, have been carefully verified. This has been done by L. Mayer, Esq., of the Chicago bar, to whom also its editing has been confided. His faithful and able discharge of those duties is hereby acknowledged."

He also edited a book by the same author on so-called "interstate law," which is presently termed "conflicts of law." This was at a time when Mr. Mayer was only 20 years of age.

At this stage of his life, Mr. Mayer was described by the late Judge Jesse Holdom, who had observed him while he was Assistant Librarian at the Law Institute as—

"a great student of the law who expended all of his time not devoted to his duties, in digging into the law books at his hand. He was courteous and obliging and quite helpful to lawyers as he knew the library thoroughly and had practically every book at his fingertips. At that early age he had a remarkable knowledge of case law."

It was while working in the Law Institute that he became acquainted with Adolf Kraus, of whom more will be said hereafter.

As soon as he became 21, Levy Mayer was admitted to the bar of Illinois. One of his first cases was the de-

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Memorial to Fred M. Merrifield

by FRANCIS A. ALLEN, Professor of Law,
The University of Chicago Law School

Much of Fred Merrifield's life was identified with the University of Chicago. A son of a faculty family, he attended University schools from kindergarten through Law School. He ultimately returned to the Law School and, during the concluding years of his life, served as research associate and legislative draftsman.

I first became acquainted with Fred when, shortly after arriving at this institution, I became involved in the project to draft a new criminal code for Illinois. Fred's services were made available to us. It would be difficult to overstate the value of Fred's contribution to the work of the Joint Bar Association Committee, responsible for the drafting. He was our strong right arm. At times he served as Keeper of the Committee's Conscience.

In an age of legislation the drafting of statutes has become a function of great social importance. It is a function often poorly performed, and the resulting costs in frustrations and futility are simply incalculable. To say that Fred was a legislative draftsman of great competence is to pay high tribute to his professional skills.

The attributes of an ideal draftsman are these days the subject of some dispute. Everyone agrees that the draftsman should have a nice sense for the precise meaning of words and a sound instinct for the structure of language. These gifts Fred possessed. But as to the content of legislation, there are those who urge that the draftsman need not and, indeed ought not to be overly concerned. He should, it is said, be able and willing to accept complete guidance from others as to the substance of the regulation and perform merely the technical or mechanical function. Others argue that the draftsman should be an expert in the subject matter of the legislation who, it is hoped, also possesses the appropriate skills of articulation. Fred did not conform wholly to either image. As to the latter, no man could have been a master of all the fields in which Fred drafted legislation. As to the former Fred by temperament and character was incapable of performing a merely mechanical role. He could not serve as a mere conduit for the ideas of others. Typically, in venturing into a new field, he would immerse himself in the subject matter. In a remarkably short time he was able to acquire a rich fund of knowledge and insight and to make and evaluate suggestions as to the substance of the bill. But Fred was too modest and too blessed with common sense not to recognize that knowledge so acquired has limitations. He, accordingly, was able graciously to accept direction and guidance from his advisors. Even in so doing, however, he was often able to place the stamp of his craftsmanship on the finished product. There were many occasions when I conveyed a half-formed, inadequately-considered idea to Fred. The draft would return with the thought fully developed and improved. I do not care to attempt definition of the theoretically ideal draftsman. I can only say that I do not expect to encounter a more satisfactory associate than Fred in such an enterprise.

Fred's success as a legislative draftsman can be demonstrated in various ways. In the 1957 session of the Illinois General Assembly, for example, eleven bills drafted by Fred were introduced. Of these eleven, ten were enacted into law and, moreover, with almost no alteration in the language. But there are more precise measures of his capacity than the mere number of bills passed. He was largely responsible for the complete revision of the Illinois Savings and Loan Act. Almost single-handedly he drafted the Illinois habitual offenders act, one of the most interesting and original pieces of criminal legislation enacted by an American legislature in recent years. Faced by a strongly adverse opinion of the Illinois Supreme Court, he prepared the "quick-taking" eminent domain legislation which successfully withstood subsequent constitutional attack.

Mr. Justice Holmes once observed that he could think of no greater satisfaction than to be known as a lawyer who did his work well. Fred was a craftsman and enjoyed the personal satisfaction of craftsmanship. The same traits given expression in his work were
manifest in the other aspects of his activity. A man is more than his work. It is a commentary on the times that it may not be taken as wholly complimentary when I say that, for me, Fred was an embodiment of the Puritan virtues. By this I mean simply that he was a man with clearly defined standards, seriously concerned with the rightness and wrongness of things, and who advanced and adhered to the right as was given to him to see the right.

The worth of a man can never be fully captured in language. Words are not commensurate to the reality. Human character and personality are things too subtle and elusive to be imprisoned in a formula. But we can acknowledge, however imperfectly, appreciation for a life well lived, for high ends well served. And this we do today.

J. Ernest Wilkins, 1894-1959

J. Ernest Wilkins, a graduate of the Law School in the Class of 1921, died of a heart attack earlier this year. Mr. Wilkins practiced law in Chicago for thirty-two years, before going to Washington. During that period he served as president of the Cook County Bar Association.

He went to Washington in 1954 to become Assistant Secretary of Labor for International Affairs. After about four years in that capacity, Mr. Wilkins resigned to accept an appointment to the Federal Civil Rights Commission. He also served as a member of the federal Committee on Government Employment Policy.

Mr. Wilkins was a prominent Methodist layman. At the time of his death, he was president of the national Judicial Council of the Methodist Church.

Sam Myar, Jr., 1919-1959

We regret to note the recent death of Sam Myar, Jr., JD'42. Mr. Myar, a native of Memphis, had been in practice in that city with the firm of McCoy, Myar and Wellford since 1945. He was a member of the Board of Directors of the University of Chicago Law School Alumni Association. He was active also in Bar Association affairs, having formerly headed the Moral Fitness Committee of his city bar association, the Legal Aid Committee of his county bar association, and the tax section of his state bar association. Mr. Myar was very prominent in Community Chest work in Memphis, having acted as treasurer of the local group, and took part also in the work of the American Legion and in a large variety of religious and welfare organizations, including Temple Israel and the Jewish Service Agency.

Lecturers in Law

The Law School has always felt it vital to maintain close ties with the Bench and the Bar. One of the most important of such ties has been the distinguished group of judges and lawyers who have served as Lecturers in Law. The custom of appointing a small number of practitioners, generally only one or two a year, to act as Lecturers, began early in the School's history. These appointments are normally for one year only, in order that the Faculty and students may have the benefit of association with a substantial number of leading judges and practitioners.

Percy B. Eckhart, of Eckhart, Klein, McSwain and Campbell, former Lecturer in Law at the University of Chicago Law School.

This distinguished group ranges in time from George T. Peck, who was a Lecturer in Law in 1902-03 through Ray Garrett, Jr. and Charles A. Bane, '37, who are currently serving, and has included such names as Hon. Thurman Arnold, John Potts Barnes, JD'24, William G. Burns, JD'31, Henry P. Chandler, JD'06, Walker B. Davis, JD'27, Horace Dawson, JD'23, Leo Diamond, JD'29, Percy B. Eckhart, Alex Elson, JD'28, Hon. Evan A. Evans, George E. Frost, Robert Gottschalk, Robert F. Graham, G. E. Hale, JSD'40, Mrs. G. E. Hale, Bryce L. Hamilton, JD'28, Stanley A. Kaplan, JD'33, Vance
Leonard M. Rieser, 1893-1959

Mr. Leonard M. Rieser, Lecturer on the Law Faculty during the academic year 1955-56, and a frequent active participant in the annual University of Chicago Law School Federal Tax Conference, died last month. For more than thirty years Mr. Rieser had been a partner in the firm now known as Sonnenschein, Lautmann, Levinson, Rieser, Carlin and Nath. He had served as a trustee of the Julius Rosenwald Fund, a director of the Jewish Federation of Chicago, Chairman of the Board of Trustees of Fisk University and as a member of the Board of Governors of the Metropolitan Planning and Housing Council of Chicago. He was a member of the tax advisory group of the American Law Institute, and took an active part in the work of several other Bar organizations.

Mr. Rieser was particularly close to the Law School, the law students and the Faculty. He was an active participant on a number of occasions in the School's annual Federal Tax Conference. He was unspiring in his willingness to advise and assist the School, and in 1955-56 taught the regular seminar on Federal Tax Problems.

The Law School has received funds to make possible the creation of the Leonard Rieser Memorial Fund, which will be used in such a manner as to exemplify the many interests which Mr. Rieser had in the study of law in its broader aspects, and to deepen and enrich along these same lines the program of Legal education at the Law School.
Among University of Chicago Law School Alumni in Springfield, Illinois

The Honorable Dewitt S. Crow, Justice of the Illinois Appellate Court, and a member of the Class of 1920.

Jerome Finkle, J.D.'22, practiced law, following his graduation in Akron, Ohio and in Springfield. He served for two years on the faculty of Valparaiso University Law School. In 1940, Mr. Finkle became Executive Secretary of the Legislative Reference Bureau, of the State of Illinois, a position in which he continues to serve.

William G. Worthy, LL.B., Class of 1922.
Ines C. Hoffmann, JD’28, (Mrs. George C.) has practiced with her husband since her graduation. She served as Corporation Counsel for the City of Springfield from 1955 through 1957, and since then as Commissioner of Accounts and Finances of that city. She has been a member of the Lincoln Library Board and of a nine-member Citizens Committee to study the city government.

George C. Hoffmann has been in private practice in Springfield continuously since receiving his degree in 1928. During that period he has served as president of the Sangamon County Bar Association, Chairman of the Real Estate Section of the Illinois State Bar Association, president of the Springfield Urban League, president of the county Heart Association, chairman of the Board of his church, and in a host of other public service activities. He is currently Legislative Counsel for the Chicago Bar Association and the Illinois State Bar Association. Mr. Hoffmann has received a Citation for Useful Citizenship from the University of Chicago Alumni Association, and is a Director of the University of Chicago Law School Alumni Association.

Oscar Putting, JD, 1908, in individual practice in Springfield.
Charles F. McElroy, JD'15, practiced law for twenty-seven years in Chicago, during which period he served for twenty-five years as Secretary of the Law School Alumni Association and for a term as its President. He moved to Springfield in 1942, where he is now serving as Assistant Supervisor in the Illinois State Department of Revenue. Mr. McElroy has traveled extensively abroad. He is Elder Emeritus and Historian of his church.

The Honorable Charles H. Davis, Justice of the Supreme Court of Illinois, JD'31. Justice Davis, whose home is in Rockford, practiced in that city from his graduation until his election to the Court. He has been active in the work of the organized Bar, with his church and lodges, and is a member of the Law School Visiting Committee.

Robert C. Cronson, JD'49, is Assistant Secretary of State of the State of Illinois. Prior to his appointment to this office, he served as Corporation and Securities Supervisor, and in a variety of other positions in that office. Mr. Cronson is Vice-Chairman of the Executive Committee of the Illinois State Bar Association's section on Corporation and Securities Law.
Montgomery S. Winning, JD'17, of Giffin, Winning, Lindner and Newkirk. Mr. Winning is a former Executive Secretary of the Illinois Legislative Reference Bureau and a former First Assistant Attorney General of Illinois. He has written on the state revenue system, and is a director of the Citizen's Savings and Loan Association of Springfield, of Harold Prehn, Inc., and of Burton M. Reid, Inc.

The Honorable Harry B. Hershey, JD'11, Justice of the Supreme Court of Illinois. Justice Hershey, whose home is in Taylorville, is a member of the Board of Directors of the University of Chicago Law School Alumni Association, and of the Law School Visiting Committee.

Louis F. Gillespie, JD'34, of Gillespie, Burke and Gillespie.
The Honorable John William Chapman, JD'47, has been Lieutenant Governor of Illinois since 1952. Mr. Chapman entered private practice after his graduation, serving also as secretary to a Judge of the Illinois Appellate Court. He later served as alderman of the 40th Ward, and was designated by the Municipal Voters League as one of the outstanding members of the City Council. He went to Springfield with the late Governor Dwight H. Green, JD'21, in 1941, and for eight years served as the Governor's Executive Secretary.

The Honorable Walter V. Schaefer, JD'28, Justice of the Illinois Supreme Court, is shown with his seminar at the Law School, where he has served as a Lecturer in Law. He is a member of the Law School Visiting Committee.

John H. Hardin, JD'33, is a partner in Sorling, Catron and Hardin. He has specialized in oil and gas law and in real estate titles. Mr. Hardin has participated in the University of Illinois' Continuing Education Program for Practicing Lawyers, as a lecturer on the transfer of mineral and royalty interests.
Two Distinguished Lecturers

Mr. Frank D. Mayer, JD'23, recently delivered a lecture on Levy Mayer at the Law School. This was part of the series sponsored by the School on distinguished Chicago lawyers. This series has included lectures on Stephen Strong Gregory, Silas Strawn, Horace Kent Tenney, John P. Wilson, and Clarence Darrow. Mr. Mayer's paper is included in this issue of the Record.

One of the most eminent names in the history of the Law Faculty has been perpetuated in the Ernst Freund Lectures. The first lecture in this series was given by Mr. Justice Felix Frankfurter. The Justice was followed by Justice Walter V. Schaefer, JD'28, of the Supreme Court of Illinois.

The third lecture in the series was given this year by the Honorable Charles E. Wyzanski, Jr., U.S. District Judge for the District of Massachusetts, on the subject of “History and Law”. Judge Wyzanski’s address will appear in a forthcoming issue of the University of Chicago Law Review.

The Summer Quarter, 1959

The Program of Courses for the Summer Quarter, 1959, which extends from June 22 through August 29, is as follows:

ADMINISTRATIVE LAW. Soia Mentschikoff, Professorial Lecturer, The University of Chicago Law School.

TRUST AND FIDUCIARY ADMINISTRATION. James Hogg, Associate Professor of Law, University of Minnesota; Visiting Professor of Law, The University of Chicago Law School.

MODERN REAL ESTATE. Jesse Dukeminier, Professor of Law, University of Kentucky; Visiting Professor of Law, The University of Chicago Law School.

CONFLICT OF LAWS. The Honorable Roger J. Traynor, Associate Justice, Supreme Court of California; Visiting Professor of Law, The University of Chicago Law School. (Justice Traynor’s course will conclude on August 1.)

INSOLVENCY AND REORGANIZATION. Wilber G. Katz, James Parker Hall Professor of Law, The University of Chicago Law School.

Each of the above courses is a full unit, carrying four hours credit. All are available only to students who, at the beginning of the Summer Quarter, will already have completed at least one full academic year of law school work.
Frank D. Mayer, JD'23, delivering his lecture on Levy Mayer to a full house in Breasted Hall.

The Honorable Charles E. Wyzanski, Jr., delivering the biennial Ernst Freund Lecture in Mandel Hall. At left is Professor Bernard Meltzer, who introduced the speaker.

Three generations at the Mayer Lecture. Right to left, Isaac Mayer, grandfather of Frank D. Mayer, Jr., Class of 1959 (center), and on the left, Frank D. Mayer, JD'23, speaker for the evening.
The practices engaged in by this flora of cartels were quite varied. They ranged all the way from price fixing, via output restriction or restriction of entry by boycotts and stop-lists, and division of territories and markets, to joint selling agencies. Many agreements comprised several or all these practices, reducing individual managements to the status of mere executors of the collective will of the industry. In some industries concentration proceeded further by amalgamation and merger, such as illustrated by the ICI and the IG Farben empires, or the combines in the German iron and steel industry. General statistics of the movement are relatively meaningless, as it comprised such diverse units as rings of plumbers or barbers in many a European Podunk on the one hand and the famous so-called “as-is” agreement among the largest petroleum companies of the world on the other. That the movement at the time of the outbreak of the war was well on its way of resurrecting a new mercantilism in Europe cannot, however, be doubted.

Whether cartels are typically born during depressions or in times of prosperity is a debatable question. The experience of Europe in the 1930s does not resolve the issue, as the principal reason for the enormous expansion of cartels was the active government support they received in various forms in both Britain and Germany. It is perhaps idle to speculate on what would have happened if the movement had been allowed to run its course undisturbed by war. It is not entirely impossible that by 1950 or 60 it would have led to the complete ossification of European economic life.

G. World War II: Cartels Unlimited.

World War II at once brought the climactic realization of the cartelization idea and the seeds of reaction against it. Collective restraints of trade had greater sway in Europe than ever. Even governments that had previously been lukewarm to cartelization — like that of Sweden, for example — in the exigencies of the situation seized upon compulsory cartelization as the organizational means of enforcing rationing, licensing and national economic planning. For six years, under the auspices of public mobilization agencies, war production boards and import-export regulations, cartels completely dominated the economies of Europe.

It is no wonder, therefore, that rightly or wrongly cartels came to be associated in the public mind with the economics of scarcity and regimentation. Thus, when after the war the emphasis came to be on reconstruction and economic growth, and governments gradually eased other restrictions on economic activity, the idea began to gain momentum that many of the collective restraints imposed by private parties were really hampering the forces of progress. The ground was prepared for a revamping of public policy in re-
lation to monopolistic practices in many European nations and, at least tentatively, even in the international field. To this subject we address ourselves in two other articles.


After this exposé of the origins in economic history of the widespread cartelization in Europe in the interwar and wartime periods, let us briefly consider the climate of public opinion in which this movement took place. And in so doing, let us remember that we will be guilty of some gross generalizations, that there were considerable nuances in outlook among different nations, and sometimes rather wide divergences of view within such groups as business, labor and the political parties, groups which will here be treated as homogeneous.

A. Business, Labor and Consumer Groups.

a. The European Business Creed.

Long before most of the members of the rapidly proliferating tribe of American sociologists became irrevocably enchanted by the gospel of cooperation, cooperation had become an honor word among the industrialists and tradesmen of Europe. The businessmen of that corner of the world were on the defensive, their watchword being: let us hang on to what we have got, and let us divide it equitably among us. In most nations industrial markets were small enough for all competitors to know each other in person, and the getting together seemed natural. Meanwhile, back at the ranch, farmers abandoning old-fashioned individualism, embarked on the trek of collective action. Of course, old-fashioned gouging of the consumer was a motive in some instances, as was the sheer hunger for power over fellow men in others. But, by and large, the chief reasons for cartelization, as well as attempts at single-firm concentrations, ostensibly were the stabilization and rationalization of industry and trade. Unfortunately, stabilization often meant maintenance of high and level prices, which in periods of economic dislocation would tend to cause unstabilization of employment; that is, cartelized industries simply pushed their problems over on other branches of the economy. Not infrequently stabilization was also invoked to justify collective resistance to technological change. An Alec Guinness movie some years ago, "The Man in the White Suit" typifies what I mean.

Rationalization of a short-term character was certainly achieved by many cartels and monopolies. When the Swedish cement industry was consolidated into one combine it pointed with pride to the fact that no longer was a ton of that commodity cross-hauled, and German and British steelmen gained wide credence in claiming to have eliminated duplication of effort and other wastes of competition thanks to their national and international cartels. The possible, or even likely, reduction of incentives towards long-term improvements of technical and commercial efficiency was largely shrugged off. German industrialists, especially, would claim that "Rationalisierungs-kartelle" represented nothing more nor less than a natural extension of the principles of "scientific management" from the firm to the industry level.

To gain further legitimation of concerted action businessmen invoked several philosophical skyhooks. These may be represented here by such concepts as the "self-government of industry," "freedom of association," "freedom of contract" and of course the sacred right of private property.
Let the economy be run by experts, that is, by business leaders, rather than by that crude regulator of markets called competition! Let freedom of association be used until there is nothing more to associate! Freedom of contract is more important than freedom of trade! Not to recognize this would be tantamount to an intolerable infringement of the right of every man to make whatever disposition with regard to his private property he may wish.

Given this kind of outlook, and given the emergence of left-wing political movements in Europe, it is not surprising to find that the whole notion of Free Enterprise, so energetically proclaim by business leaders on both sides of the Atlantic, took on a meaning over there vastly different from that originally given to it in this country. In a nutshell, in Europe Free Enterprise came to stand for freedom from government interference or regulation, while its traditional meaning here, of course, is that enterprise is free when it is competitive. In some respects this difference is on the same order as that between black and white.

We may note in passing that in instances where governments were dominated by elements sympathetic to business, their concepts of Free Enterprise did not prevent European industrialists from...
invoking government aid for the enforcement and elaboration of their own regulatory schemes. Business stood for regulation of business—by business.

b. The House of Labor

The House of Labor, on the other hand, had been conquered by a brand of socialism which as yet had not emancipated to any remarkable degree from the somewhat stuffy doctrines of Karl Marx. Thus, cartels and monopolies were viewed on the one hand as embodying all the vicious evils of capitalism, and on the other as making the economy ripe for socialists, in fact facilitating the "expropriation of the expropriators." And while the monopolist was a scoundrel in charging high prices, many a workingman believed, rightly or wrongly, that stability of employment could only be achieved under the wings of large combines. In fairness it must also be added that a number of European unions found it advantageous to enter into collusion with employers at the cost of consumers.

It is sometimes said that American labor takes an ambiguous view of the monopoly problem. This may be true of later years, but traditionally the antimonopoly current ran stronger among American workingmen than among any workers abroad. The outlook of European labor in the decades between the World Wars was also ambiguous; indeed the European ambiguity was much more pronounced than it has ever been here, due to the heavy Marxist influence.

c. Consumers

In Germany and the Southern European countries, consumers as a group might well have been labeled the Hidden Non-Persuaders during the period under review. As in the United States they were largely unorganized and seemed to have no effective or independent representation. While this may not have mattered too much in this country where competition was still the rule rather than the exception in business, it was indeed a serious deficiency in nations where business was becoming hell-bent on collective action.

In Britain and Scandinavia consumers cooperatives actually did break cartel arrangements in several industries, such as oleomargarine and lamp bulbs, and they were certainly a vital element in keeping retail trade from becoming completely ossified as in France. The coops were also fairly effective as legislative lobbying groups. Nevertheless, we are probably justified in saying that by and large consumer views and consumer interests were not very well crystallized, articulated or represented in Europe before the end of World War II.

B. Political Parties.

In the political arena there was typically a fairly close relationship between business interests and conservative parties, and a very close affinity between labor unions and socialist parties. Conservatives tended to emphasize order, organic structure and stability, and so tended to look upon cartelization with favor. Holding expertise in high regard it was natural for them to conclude that businessmen know best about business, and that if cartels be the medicine they prescribed it must be a good one. Socialists, too, wanted order and stability, but under strong government direction. Distrusting the selfishness of business they could tolerate cartels and monopolies only as instruments of government policy or as transitional forms on the road to nationalization. Liberals, representing the lost generation, suffered heavy declines in their ranks and influence in the councils of prewar Europe. No doubt many of them felt uneasy about organized restrictions on competition and artificial obstacles preventing the citizen from freely engaging in any trade or calling of his own choosing. But a majority of them would tend to shrug off the whole matter as one of rather little consequence, maintaining that in the end competitive forces could be relied on to sweep any unreasonable restraints to the side. At the other extreme, nazism and fascism found cartels and syndicates of various types convenient means of governing the economy and of mobilization planning. Also, acceptance of cartels and combines was sometimes the price totalitarian regimes had to pay to gain business support or toleration.

C. Economics Profession.

Due to its prominent role in public life in many European countries mention should finally also be made of the economics profession. Professional economists of different schools were becoming increasingly infatuated with what might be called the economics of tinkering, which held that orderly planning and regulatory measures were preferable to spontaneous development, and which incidentally also promised to make the life of economists more interesting and, sometimes, financially rewarding.

D. Public Opinion Summarized.

Summing up our observations on public opinion in Europe between 1914 and 1945 we may say that there was a strong current in the direction away from belief in the salutary effects of free and open competition and towards increased reliance on direct regulation of business. This was generally true whether in a
particular nation at any particular time conservatives, socialists or nazis were in power. They all stood for regulation—and so did business. The problem was essentially one of power: who was to regulate whom, and how much?

3. Approaches to Policy.

A. Background: Roman Law, Law of Contracts, Ancillary Restrictions, Unfair Competition, Patents.

Before proceeding to a brief discussion of the translation of public opinion into public policy as reflected in cartel and monopoly control legislation before World War II, a few words concerning the background of such legislation in general European legal systems are in order. With the exception of the British, all European legal systems have their basis in, or have been heavily influenced by, Roman Law. This means that we find a bias in favor of statutory rather than case law. It also means an almost fanatical respect for the sanctity of contracts, a principle from which lawmakers have been making exceptions only with great reluctance. However, with regard to ancillary contracts in restraint of trade, and principally obligations not to compete appended to contracts of sale of a business or in connection with the termination of employment, rules as to the invalidation or modification of undue far-reaching limitations on individual freedom quite similar to those in force in the United States have been adopted in most countries.

Of old, too, freedom of contract has been limited in all countries by legislation against unfair competition. By American standards this legislation was traditionally of a very special character, directed only against certain clearly immoral methods, such as misleading advertising, undue disclosure of trade secrets, bribery, and unfair use of brands and trademarks. The purpose of these laws was originally to guarantee the maintenance of a minimum level of business honesty and decency, and they were not as such directed against monopolistic tendencies. The Federal Trade Commission Act, and some of the other legislation administered by the FTC, on the other hand, frequently embraces the dualistic purpose of maintaining both honesty and competition. It is interesting to note that as European nations in recent years have adopted more far-reaching monopoly control legislation there has been a certain tendency to integrate and formingle unfair practices and antimonopoly laws, much as in this country. The wisdom of this I think is debatable, but that is a question which would deserve separate treatment.

All West European nations, of course, have patent legislation. Generally speaking, there has been a marked reluctance to reduce the scope of the patent privilege. Patents have been freely used as the mainspring of price, market sharing and other cartel arrangements. On the other hand, most of these countries have compulsory licensing provisions in cases of non-use of patents. In the first wave of European antimonopoly legislation after World War II the problem of drawing a borderline between the patent right itself and its use as a device to control entire branches of industry tended not to be recognized. In 1949 the writer urged on the personnel of the Swedish Cartel Registration Bureau that the 1946 cartel registration law in the absence of provisions to the contrary should be construed as including cartels based on patents, but they took the view that as restrictive patent agreements had not been explicitly included such a construction would constitute an unwarranted violation of the privileges of patentees. On the other hand, we must remember that it took the courts several decades of painful effort to clear up the border zone between the patent and antitrust laws of the United States. And in the most recent European monopoly control statutes this problem is gradually being recognized.

B. National Policies.

While there is no time to go into the details of any nation's legislation before 1945, we should at least stop to remind ourselves of England as the cradle of open markets and free trade ideas. These were concepts which reflected themselves in the ancient statutes against forstalling, regrating and engrossing, and, later, in the common law doctrines against restraints of trade and conspiracies to monopolize. On these latter doctrines, as locally interpreted during the 19th century, squarely rests the Sherman Antitrust Act of 1890.

The Law and Behavioral Science Senior Fellows for 1958-59: left to right: Fred Kort, Assistant Professor, Department of Government and International Relations, University of Connecticut; Henry H. Foster, Jr., Professor of Law, University of Pittsburgh; and Clarence Roy Jeffery, Assistant Professor, Department of Sociology and Anthropology, Arizona State College.
Even by that date, however, the common law on restraints of trade and monopoly had well begun its long-term decline in Britain, in response to new social and economic values. By the time of World War I these doctrines had already lost their punch and fallen into disuse in that country. Recent legislation in Britain, therefore, has had virtually no tradition to build upon—a rather unusual situation in the Old Country!

Considering the climate of economic development and opinion prevailing in Europe during and between the World Wars, there is clearly no reason to expect to find radical antimonopoly legislation. If we divide the approaches to public policy in the field then current into a few broad categories, and then rank them according to popularity among European governments, we may come up with a list such as the following:

1. governmental indifference
2. scatter regulation
3. compulsory cartelization
4. publicity
5. prohibitory legislation

Keep in mind that these categories shade into each other, and also that a given country often subscribed to several of these approaches at different times, or even at any given point of time. Remember, too, that few European lawmakers lost any sleep over single-firm monopolies, and that hence policy in this field was concerned almost exclusively with cartels or specific trade practices, that is, indifference or scattered regulation. With these reservations you could place Britain, France, Sweden, Finland, and most East European countries in the first one or two categories. Germany, Italy and the Low Countries focused around compulsory cartelization, which to some extent was also practiced by the Norwegians. Publicity was tried by Norway and Denmark. No nation based its approach squarely on the principle of prohibition, but stray provisions against certain types of boycotts, refusal to sell and a few other practices considered undesirable could be found in several countries.

American students of public policy who have largely received their training in postwar years might well express some degree of bewilderment at the ways in which European nations handled the problems of economic organization in the period we have reviewed. Such bewilderment would be particularly natural in view of the markedly more aggressive policies of these countries during the last decade. Just to set our perspective straight, then, it may be well to remind ourselves that the 1920s and 1930s in the United States were the decades of the so-called "new competition" (hardly compatible with the spirit of the Sherman Act), of the dictum that "mere size is no offense," and of the Appalachian Coal case in which it was held that a cartel might be all right if the industry was distressed enough, and, of course, of the NRA which involved semi-compulsory cartelization and the wholesale suspension of the antimonopoly element of the antitrust laws. Indeed, it is only in 1958 that we can celebrate the 20-year jubilee of large-scale antitrust enforcement. The fact that so much has been achieved in such a short time in this country seems to me a source of encouragement in considering the future of the new European effort in this field.

III. EUROPEAN PARTICIPATION IN INTERNATIONAL EFFORTS TO CONTROL RESTRICTIVE BUSINESS PRACTICES

1. Need and Origin of International Effort.

The most outstanding feature of international economic relations in the postwar period has been the great and on the whole remarkably successful effort to liberalize the trade between nations. As the nations of the Western world have increasingly accepted the goal of the freest possible economic intercourse between them, and diligently participated in the work to remove tariffs, quotas, currency restrictions and other government-imposed trade barriers that were once so common, these nations have also begun to realize and indeed in some cases insist that the free movement of goods between nations shall not now be impeded by trade barriers erected by private parties. In an increasingly close-knit world economy it has also become more and more evident that national efforts to control restrictive business practices on the domestic scene may be largely ineffectual if international cartels are not controlled.

In the first years after World War II the United States was the mainspring of considerable activity at the establishment of an international agreement for the control of restrictive business practices. From the U. S. point of view there were at least three factors prompting this effort: (1) There was a desire to lessen the handicaps of American firms operating abroad, constrained by an omni-present Sherman Act but competing or making deals with foreign firms subject to no similar restraints. (2) Some responsible people in this country felt, too, that the Sherman Act almost as a matter of course is insufficient to cope with all restraints emanating from abroad but directed toward the American economy itself. (3) As usual in American foreign policy, there was also a good portion of idealism in this endeavor, and a notion that an international agreement to control restrictive business practices would strengthen domestic efforts in various countries to effectivize local monopoly controls and safeguard competition.
2. History.

The milestones on the rather tumultuous route on which European nations have gradually been drawn into concerted efforts to control restrictive business practices bear the insignia of the Havana Charter, the Council of Europe, the Ad Hoc Committee on Restrictive Business Practices of the United Nations, the European Coal and Steel Community, and the European Economic Community. It may also be that the proposed free trade area, or European Association as it is now officially called, will incorporate all or some of the provisions of the EEC in control of restrictive business practices, but this we shall only know when the negotiations concerning the free trade area have been concluded. Incidentally, the Euratom Treaty contains no rules specifically aimed at the control of restrictive business practices.

In 1945 this government, after two years of negotiations and three full-scale international conferences, persuaded the representatives of some 53 other nations—among them all European nations of any significance—to sign the Havana Charter for an all-inclusive International Trade Organization. While this charter also dealt with virtually all other forms of barriers to free international trade, it contained a chapter specifically devoted to the prevention and control of restrictive business practices affecting such trade. Due to Congressional resistance the administration later in a highly embarrassing turn-about abandoned the charter. Nevertheless the chapter on restrictive business practices in the Havana Charter has been of great significance as an inspiration to later developments.

In the years 1949 to 1951 the Council of Europe took an active interest in the possibility of a European agreement to control restrictions in international trade. I have in my possession copies of several informal drafts of such an agreement prepared by the Secretariat of the Council of Europe, some of these apparently reached as far as the Committee of Ministers of the Council. These proposals were squarely based on the Havana Charter, and in some respects went further in that they provided for the registration of cartels as well as the investigation of complaints and for a separate court to pass on whether the effects of particular agreements or practices were to be regarded as harmful or not. The effort of the Council got bogged down as jurisdictional problems developed with the Organization for European Economic Cooperation, and because of the lukewarmth—if there be such a word—of European governments to make a special European convention on restrictive business practices even before several of them had decided what their own national policy should be.

In the fall of 1951 the United States resumed its anti-cartel initiative within a less ambitious framework than the Havana Charter. It introduced a resolution in the Economic and Social Council of the United Nations to establish an intergovernmental committee to make recommendations to the Council for the control of restrictive business practices. In the Ad Hoc Committee on Restrictive Business Practices which was appointed, the United States delegate was Professor Corvin D. Edwards of this University. The basic report and the proposals of the Committee were submitted in 1953. Again a very considerable effort had been spent on finding a minimum platform of common principles on which nations with widely different antitrust philosophies could still agree. Two years later, however, the United States officially announced what had then been apparent for some time, namely, that she was no longer willing to put her support behind this effort. The reason given was that while it was certainly still a basic objective of this country's foreign economic policy to contribute to the elimination of harmful restraints on international trade and the promotion of free enterprise abroad, it could be doubted whether the proposed agreement would be practicable or effective in accomplishing that objective. Whether this was so or not may perhaps be debated. Certainly the withdrawal of American leadership again had the inevitable effect that the international effort petered out. Nevertheless, it is of interest to note that several West European nations before that time had indicated their willingness to accept, or even positively support, an international agreement of the character proposed.

The proposals of the Ad Hoc Committee were again squarely on the chapter on control of restrictive business practices in the Havana Charter. There is no need to go into the details of the proposals here. It is sufficient to note that the proposals envisaged the creation of an administrative agency with primarily consultative and investigatory functions. The agency was not to be given any independent judicial, legislative or other sovereign powers. Generally speaking, the agency could only investigate restrictive business practices if the firm or firms concerned possessed "effective control of trade among a number of countries in one or more products," and if a written complaint had been lodged by a government. The report of the agency would set out the information received and also indicate whether the complained-of practice had had or might have "harmful effects." If harmful effects were at hand the report would also make recommendations to governments as to remedial measures. The agency had no direct sanctions at its disposal except the informal one of publicity, as it was up to the governments subscribing to the proposed agreement to take whatever steps seemed appropriate to them to enforce the recommendations of the agency. By becoming a signatory of
the agreement a government would in principle obligate itself to supply information needed by the agency, to take appropriate action to implement recommendations, and to keep the agency posted on measures taken to comply with its recommendations. By these means presumably a body of opinion among the community of nations having signed the agreement could be brought to bear on a government not living up to its obligations.

Before getting into the discussion of the specifics of the coal and steel economic community arrangements, let us merely make a general observation concerning the meaning and effect of such common market schemes. In both instances a common trading area is being established comprising France, Germany, Italy and the Benelux countries, that is, Belgium, Luxembourg and the Netherlands. In effect this means that in American terms commerce between these six countries which used to be international will now become interstate in character. The elimination of governmental barriers to trade is opening the floodgates to a single market comprising 160,000,000 people. Inevitably, this will cause considerable realignment of European economies. Among other things, national cartels previously operating under the protection of tariff walls, quota restrictions and similar props, unwittingly or unwittingly supplied by governments, will find that these props have been removed from under them. Similarly, single-firm monopolies largely confined to national markets will all of a sudden find themselves in competition with a plethora of other companies. The key factor in this entire development is the fact that only with the arrival of the common market will European industry in many of its branches be able to prevail fully on the economies of scale in production as well as in marketing. Initially, therefore, a period of concentration toward larger entities must be expected in many industries, as indeed the experience of the Coal and Steel Community already suggests. And, as a matter of fact, this is really one of the things that European politicians and economists take both for granted and desirable. Here again we encounter the philosophy that tight combinations of the larger or combine type are generally looked upon as a favorable development in Europe as long as such concerns do not engage in practices which are clearly harmful or antisocial. On the other hand, many of the enthusiasts for the common market ideas for this very reason want a rather strong policy against cartels, whose main aim often is restrictive, and primarily to insure the survival of a multitude of relatively inefficient firms, which under the umbrella provided by the cartel have no real incentive to merge into larger units where this would be more effective.—We should also note in this context that a good number of firms now active only in one of these countries after the institution of the common market schemes will branch out and become truly international in character. Thus, single nations will have to look to an international agency or to some kind of mutual cooperation if they want some form of control exercised over these concerns.

3. The European Coal and Steel Community.

The treaty establishing the European Coal and Steel Community was signed in 1951 by France, Germany, Italy and the Benelux countries and went into operation the following year. The treaty for all practical purposes establishes a common market area as among those six countries in the vital industries of coal and steel. As an indication of the size of the undertaking it may be mentioned that the aggregate output of steel of these nations is about 1/4 of that of the United States, and it is increasing at a rather fast clip. Day-to-day management of the community's affairs is handled by the High Authority, which is located in Luxembourg. An outstanding feature of the organization is that it is actually endowed with sovereign powers, including the right of taxation. Thus, it is a supranational agency in a true sense.

While executive management is handled by the High Authority, the treaty provides that the Authority may seek the advice of, and indeed sometimes has to seek the guidance of, a Council of Ministers, composed of cabinet members from the participating countries. However, the Council of Ministers has almost nothing to do with the enforcement of the provisions of the treaty relating to restrictive business practices. The community also has its own Parliament, the Common
Assembly, composed of 18 delegates each from France, Germany and Italy, 10 each from Belgium and Netherlands and 4 from Luxemburg. Interestingly, the same common assembly will serve as the parliament of the European Economic Community. The Court of Justice set up to interpret the treaty will also serve as the judiciary branch of the European Economic Community.

After declaring that the purpose of the treaty is to establish a common market in coal and steel, the treaty in Article 2 sets forth that “the community must progressively establish conditions which will in themselves assure the most rational distribution of production at the highest possible level of productivity, while safeguarding the continuity of employment and avoiding the creation of fundamental and persistent disturbances in the economies of the member states.” This means, on the positive side, that the community has to insure that there is an adequate supply of these commodities in the common market, that all consumers have equal access to the sources of production, that research and technological improvement must be supported, that the standards of living and working conditions of the employees in these industries be promoted, and that international trade in these goods should be further promoted. But it also means that the community must “assure the establishment, the maintenance and the observance of normal conditions of competition, and take direct action with respect to production and the operation of the market only when circumstances make it absolutely necessary.”

Before all these steps can be taken the Authority must, of course, see to it that all the trade barriers that used to compartmentalize the community into six little pockets are abolished. Specifically, the treaty provides for the elimination of import and export duties, or taxes with an equivalent effect, quantitative restrictions of various types, subsidies or state assistance of all kinds, discriminatory practices, as well as privately engendered “restrictive practices tending towards the division or the exploitation of the market” (Article 4).

It is clear that an instantaneous transformation from centuries of compartmentalization to a common market of the six countries could have wrought havoc among the iron and coal industries of the region. For this reason the treaty provided for a transitional period which, however, was made remarkably short, and in fact ended in February 1958. During that period the High Authority had various extraordinary powers with regard to the temporary retention of certain tariffs and subsidies and the permission of certain restrictive business practices which might cushion the transition for the least efficient producers. In this way for instance the Belgian and Italian coal industries got a chance to modernize their machinery and operations so as to make the most efficient units competitive with the rest of the coal producers in the community by the end of the transition period. Even after the end of the transition period the Authority is in possession of certain powers of a regulatory nature. Thus it may establish quota arrangements among the producers of the community in times of extraordinary boom or of depression. Such quota arrangements were actually imposed by the Authority during the protracted period of scarcity of coal which ended last year.

Turning then to the provisions of the treaty more directly related to restrictive business practices, we may first observe that Article 48 of the treaty recognizes that “the right of enterprises to form associations is not affected by this treaty. Membership in such associations must be voluntary.” Furthermore such associations are obliged to furnish the High Authority with such information on their activity as the Authority may deem necessary—and apparently this has been interpreted as requiring a statement of registration with the Authority including the bylaws and other particulars of the trade associations and other industry groups concerned. But the freedom of association is not without its limitations. Article 65 of the treaty in language reminiscent of the Sherman Act declares that “all agreements among enterprises, all decisions of associations of enterprises, and all concerted practices, tending, directly or indirectly, to prevent, restrict or distort the normal operation of competition within the common market are hereby forbidden.” The article goes on to explain that this prohibition particularly relates to arrangements to fix or determine prices, to restrict or control production or technological progress or investment, or to allocate markets, products, customers or sources of supply.

In the manner of noble Anglo-Saxon tradition all such prohibited arrangements shall be void, and therefore may not be invoked before any court of any of the member states. This all sounds fairly drastic. However, Section 2 of the same article directs the High Authority to “authorize agreements to specialize in the production of, or to engage in the joint buying or selling” of specified coal and steel products, if the Authority finds that such arrangements satisfy all three of the following conditions:

1. that the arrangement will contribute to a “substantial improvement in the production and distribution of the products in question,”
2. “that the agreement in question is essential to achieve these results, and is not more restrictive than is necessary for that purpose,” and
3. “that it is not capable of giving the interested enterprises the power to determine prices, or to control or limit the production or selling of a substantial part of the product in question within the common market,

continued on page 35
Delay in the Court

HANS ZEISEL       HARRY KALVEN, Jr.

BERNARD BUCHHOLZ

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1959

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For several years now the Law School has been engaged in a series of extensive research projects on judicial administration, commercial arbitration and the jury system. The research has been made possible through a grant from The Ford Foundation and has involved a serious effort to pool legal resources with those of the social scientist in the study of legal problems. The results of the projects are now in the process of write-up for publication in a projected series of several volumes.

The first of these volumes, Delay in the Court by Hans Zeisel, Harry Kalven, Jr. and Bernard Buchholz has just been published by Little, Brown and Company.

Court congestion in the larger urban centers is the most notorious and one of the most pressing of contemporary legal problems. Delay in the administration of justice is everywhere regarded as an unmixed evil, but at the practical level has proved a stubborn problem indeed. Delay in the Court represents an effort to survey the problem systematically and to measure insofar as available data permit the relative value of the many remedies for congestion that have been put forward. The overall conclusion of the study is as follows:

Despite the modest contribution that can be expected from many of the proposed remedies, the problem is well within the reach of practical solution. Neither despair nor recourse to heroic measures is called for.

The book is intended for the bar generally, for whom the problem of justice delayed must be of grave concern.

We print below two types of excerpts from the forthcoming study. First, a resume of chapter headings which gives a sense of the overall organization and approach; second, a sample from the 100 charts and tables, illustrative of the quantitative emphasis of the study and of some of the specific points of inquiry. While the data in the book were chiefly drawn from the New York courts, the analysis and conclusions are of general application.

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The Approximate Scheme of Dispositions of Personal Injury Claims in New York City.

The key fact in the life of personal injury claims is that only a fraction of them ever reaches the court, and only a tiny fraction ever is tried to a verdict. Of every 100 personal injury claims in New York City only about 20 go to suit (the proportion is even smaller in most other communities). Of these 20 only 6 ever reach assignment, only 4 reach trial, and only 2 are tried to verdict.

Types of Suits and Jury Demand

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<td>49.1%</td>
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<td>25.9% Other Negligence</td>
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How much is the business of the court today confined to the automobile negligence suit? Though the New York Court is not typical for the rest of the country, the distribution of law suits is of interest. Over one third of all suits are contract cases, and less than one fourth are automobile cases. Jury waiver in personal injury cases, it will be noted, is considerably smaller than in general cases.
The all important resource of a court system is judge time. The judge time required for the disposition of a suit depends primarily on the stage at which it is disposed of. If it is disposed of before the case reaches assignment, it requires hardly any of the court's time. Once it reaches the assignment stage, time begins to count. To try a jury case to verdict takes around 18 hours in the New York Court. If the case is settled during trial, it will have lasted on the average some 10 hours. Bench trials need, as would be expected, less time. Significantly, there is very little difference between the time required for disposing of a personal injury case and of a general case.

Roughly two thirds of all suits are settled before assignment. Since they require, at best, only some pre-trial time, these 64 percent of all suits account for only 11 percent of the Court's overall time. On the other hand, the 15 percent of all cases which go to trial and verdict account for more than half of the Court's time. If one adds the 31 percent of the time required for trials settled before verdict, it appears that the roughly 30 percent of all cases that go to trial require over 80 percent of the Court's time.
Inherited Delay and Delay from Current Operations

Court delay is usually the combined result of an inherited backlog and of an imbalance in the current operation of the court. Some courts (Type A) deteriorate from bad to worse by adding an annual left-over backlog to the inherited one; the Chicago Courts are of that type. Other courts, the New York court is an example, have no current loss but carry on an inherited backlog (Type B). Then, there are courts which are on their way to health by reducing their inherited delay year for year until it is entirely removed (Type C).

Delay in Two Courts with Equal Delay “in Regular Order”

“Delay in regular order” may be a misleading measure of delay, because different courts may have different preferment policies. The average delay in a court depends, therefore, also on the proportion of cases that are given preferment and on the average delay of these preferred cases. Thus, two courts with equal delay “in regular order” may have in fact a very different overall delay.
The "average" is always an abstraction. For 100 suits, the average delay before disposition may be some 2 years. But that only means that roughly half of all suits will be disposed of earlier, and the other half after an even longer delay. It is interesting to see just what the actual delay time is for a typical sample of personal injury suits in the New York Court. The first 22 percent (from 100 to 78) are disposed of before 6 months are over, but the last 20 percent of the cases (from 20 down to zero) are disposed of only after 3 years and longer.
The average completed personal injury jury trial in the New York Court lasts 17.4 hours; the average non-jury trial 8.9 hours, a difference of almost 50 percent. However, part of this difference is due to the fact that non-jury cases are, on the whole, smaller cases. If the same case that now goes to a jury, were tried without a jury, it is estimated by various procedures that its trial would require 40 percent less time. This is a key figure in the debate over the extra costs of trial by jury in civil cases.

**Expected Savings in Judge Power in the New York Court if the Jury for Personal Injury Trials were Abolished**

If, one were to follow the proposal to abolish the jury in personal injury trials, the New York Court would save the equivalent of 1.6 judges per year, which is about 7 percent of its total judge power. This percentage is surprisingly low, but explained by the relatively small proportion of personal injury trials and a relatively high jury waiver rate in that court. Although the figure is larger in other courts, it will still not be sufficiently large to provide convincing support for those who want to abolish the jury merely to cure the court’s delay.
Length of Personal Injury Jury Trials in New York and New Jersey Metropolitan Courts

One important and currently underrated remedy is speed-up of the jury trial itself. Comparing the length of personal injury trials in New York and New Jersey, it was found that New Jersey tries its cases more expeditiously than New York. By a coincidence, the average difference between a New Jersey jury trial and a New York jury trial is almost exactly the size of the difference between jury and bench trial in New York, namely 40 percent.

The Effects of the Impartial Medical Expert on the Settlement Ratio

Among the more promising delay remedies is the impartial medical expert, appointed at the discretion of the trial court if the adversary medical experts differ too widely. Such an expert seems to be conducive to the settlement of cases before assignment, which, with adversary experts, would have been settled only later, after trial has begun.
The Cost of Pre-Trial: The Pre-Trial Judge Cannot Try

Pre-trial is today probably the most relied upon remedy for delay. Yet its effectiveness is easily exaggerated. The evidence that it does more than settle cases earlier which would have been settled later even without pre-trial is not compelling. And in any event, its major shortcoming is that by using judge manpower for pre-trial it necessarily reduces the judge manpower available for trial. Hence, unlike other remedies it has an important offsetting cost which its benefits must exceed if it is to be worthwhile as a remedy.

Average Number of Daily Hours on the Bench for Different Judges

One of the more diplomatic aspects of the delay problem stems from the fact that not all judges in a court are equally industrious. Some spend more hours on the bench than others. For example, the efficiency of the New York Court could be raised by 7 percent, if all judges who now perform at a below average rate would come up to the average level. Making visible the performance records of the judges is one of the important, if delicate, tasks of proper court administration.
Forecasting of Diversity of Citizenship Suits Filed in the Federal Courts

If the courts are to be brought up-to-date and kept up-to-date, it is necessary that they begin to use modern forecasting techniques to foresee their future caseload. In this example from the federal courts, the projection line, established at the end of 1954, provided a good forecast for 1955, although it proved somewhat too low for the following two years.

Accidents and Law Suits in N. Y. State Outside N. Y. City

Sometimes, not always, the frequency of law suits will follow closely another frequency curve (in this case the frequency of accidents), so that by predicting the one—one can predict implicitly the other.
## Varying Annual Rates of Personal Injury Claims Per 100 Insured Cars for Miscellaneous States and Cities

**Average 1950-1954**

<table>
<thead>
<tr>
<th>City</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>New York City</td>
<td>8.3</td>
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<tr>
<td>Philadelphia</td>
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<tr>
<td>Newark</td>
<td>4.6</td>
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<tr>
<td>New York</td>
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<tr>
<td>Chicago</td>
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<tr>
<td>Buffalo</td>
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<td>Milwaukee</td>
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<tr>
<td>Baltimore</td>
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<tr>
<td>Illinois</td>
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<td>Connecticut</td>
<td>3.1</td>
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<tr>
<td>Elizabeth</td>
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<tr>
<td>Rhode Island</td>
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<tr>
<td>Wisconsin</td>
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<tr>
<td>New Jersey</td>
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<tr>
<td>Akron</td>
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<tr>
<td>Minneapolis</td>
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<td>Louisiana</td>
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<tr>
<td>Pennsylvania</td>
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<tr>
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<tr>
<td>Oregon</td>
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<td>Jackson</td>
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<td>Ohio</td>
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<td>West Virginia</td>
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<td>Birmingham</td>
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<td>Vermont</td>
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<td>Richmond</td>
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<td>Washington</td>
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<tr>
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<tr>
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<td>Kansas</td>
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<tr>
<td>Iowa</td>
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<tr>
<td>Nebraska</td>
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<tr>
<td>Colorado</td>
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<tr>
<td>South Dakota</td>
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<tr>
<td>North Dakota</td>
<td>1.0</td>
</tr>
<tr>
<td>Wyoming</td>
<td>0.9</td>
</tr>
</tbody>
</table>

*Mutual Insurance Rating Bureau.*

The number of claims per 100 insured cars varies drastically from community to community. New York City has more than four times as many claims per 100 cars as, for example, Detroit. If one could reduce the number of claims, one would indirectly of course also reduce the burden of the courts.
Claim Consciousness: Twelve Cities Ranked According to Frequency of Bodily Injury Claims in Two Independent Fields.

Is "claims consciousness" a real phenomenon? The major reason why some cities have more claims than others is that they have more accidents. There are strong indications, however, of the reality of claim-consciousness. This is suggested by the fact that the cities with a high claims ratio for auto accidents also raise more claims for accidents in retail stores, the frequency of which cannot be connected with that of automobile accidents. Claim-consciousness which may derive from attitudes that range all the way from fraud to a bona fide overestimate of either liability or damages is a particularly inviting topic for further research.
or of protecting them from effective competition by other enterprises [Vol. 8, No. 2 The University of Chicago Law School 35]

Thorelli continued from page 22

existing ones. Among the emergent concentrations more sizeable ones are given different treatment from relatively small ones. According to Article 66 any transaction which might have the direct or indirect effect of bringing about a concentration must be submitted to a prior authorization of the High Authority. This obligation is effective whether the concentration may be brought about by merger, acquisition or any other means of control. There is thus no formal loophole of the kind that we used to have in the Clayton Act. The Authority is directed to grant the authorization of the concentration if it finds that it will not give the persons or concerns involved the power to "determine prices, to control or restrict production or distribution, or to prevent the maintenance of effective competition in a substantial part of the market" for the products involved or to evade the rules of competition pertaining within the community, for instance by establishing an "artificially privileged position involving a substantial advantage in access to supplies or markets." The article goes on to say that in arriving at its decision to authorize or not the Authority shall "take account of the size of the enterprises of the same kind existing in the community," with a view that the decision shall not create "an inequality in the conditions of competition."

With regard to emergent small concentrations Article 66 exempts such arrangements from the requirement of prior authorization. The definition of such small concentrations is to be made by the Authority with the agreement of the Council of Ministers, and it may include special conditions to which such exemption is to be subject. At the moment, the limit for small concentrations affecting the crude steel production is set at 1.2 million metric tons. Similar limits are set for other products.

If concentrations occur violating the provisions governing emergent concentrations the Authority is directed to denounce them as illegal and has such powerful remedies at its disposal as to order the separation of the enterprises or assets illegally concentrated, or the cessation of common control. It may also issue such temporary restraining orders which it may consider necessary to safeguard the interests of third parties. Due to the far-reaching effect in the life of a concern that may ensue from such measures, a right of appeal against dissolution decisions of the Authority to the Court of Justice of the Community has been provided for, but restraining orders of the Authority usually can be put into effect pending the decision of the Court.

The drafters of the treaty were reluctant about making its provisions with regard to concentrations retroactive in character. Hence with regard to existing concentrations, whether they are the result of public or private enterprises, the Authority is only empowered

It may be noted that there are no explicit provisions governing export cartels in the community. While conceivably they might be included in the general prohibition—much as American export cartels might be subject to the full operation of the Sherman Act were it not for the Webb-Pomerene exception—my own impression is that the attitude of the Authority towards cooperation in the export field will be dependent largely upon considerations of what may be called "foreign policy" in the community. In other words, if such arrangements were not to be tolerated by the United States, or created considerable ill will among trading partners of less significance, the Authority might well take a rather hostile attitude toward such cartels, while otherwise it may well be prone to go slow, acting on the conventional nationalist assumption that any gain firms in the community might make at the cost of third countries are legitimate gains.

In contrast to most national antitrust legislation within the community the treaty also has provisions relating to what it calls "concentrations," which roughly means the same thing as "tight combinations" in American lingo. There are different provisions for what may be labeled emergent concentrations and already
to make recommendations as to business practices etc., that will protect third parties and competition. If such recommendations are not carried out the Authority may fix the prices and conditions of sale to be employed by the firms in question.

With regard to the actual enforcement of the treaty provisions on cartels I have no more up-to-date information than that available in the fifth annual report which ends April 1957. By that time a total of 92 applications for authorization of cartel agreements had been received. Of these a total of 51 had been processed. Of these 51 agreements 22 were granted, 1 was rejected, proceedings in 4 cases were discontinued as the parties disbanded voluntarily, and 24 projects proved not to call for authorization at all, as they did not constitute agreements within the meaning of Article 65. This presumably means that they were trade associations or interest groups of a more general character. The High Authority also instituted a number of inquiries on its own initiative, as a result of which two schemes were authorized, one was refused authorization, one went into liquidation, and six proved not to require authorization. Rejected schemes apparently involved primarily national scrap buying cartels. Approved arrangements usually involved either technical specialization or common sales agencies, especially for various types of fuel. The giant Ruhr Coal Sales Agency inherited from prewar days was divided into three units; the Authority is attempting to maintain competition among them.

In the area of concentrations, the High Authority by 1957 had investigated 94 cases, 51 of which on its own initiative and 43 on the basis of requests for authorization. Twenty authorizations were granted. Of the remainder 3 were permitted conditionally after the payment of fines, 8 antedated the treaty, 2 needed no authorization and 15 did not even involve Article 66. The balance of 46 concentrations were still being studied. In other words, by 1957 no authorization had as yet been withheld. While the Authority has explicitly declared that it can in no way feel bound by the old deconcentration policy imposed on Germany by the Allied Governments now that Germany has become an integrated member of the community of European nations, it is, nevertheless, interesting to note that the Authority also has stated explicitly "that a reconstruction of the Vereinigte Stahlwerke, which was deconcentrated by the Allies, could not be authorized if a demand for authorization were submitted." Unfortunately, in deconcentration cases the names of the parties involved are kept secret. Ordinarily, only the shares of the total Community quantity of production covered by proposed concentrations are published. A predominant number of the concentrations approved are vertical in character, the most typical ones involving the acquisition of collieries by iron and steel companies. It may be noted that none of the mergers or concentrations so far approved has involved more than a maximum of 5% of either the steel production or the coal production of the entire Community. Representatives of the Community like to point out that the largest single combine in Europe produces only 10% as much steel as the United States Steel Corporation, and indeed is smaller than each one of the eight largest American firms. Rightly or wrongly representatives of the Community draw the conclusion that even the largest European combines may well not have reached optimum size.

Of the provisions of the treaty for the European Coal and Steel Community those in Article 60 concerning price discrimination are also of some interest here. According to these provisions pricing practices which go against the grain of the general goals of the Community are prohibited and especially "unfair competitive practices, in particular purely temporary or purely local price reductions the purpose of which is to acquire monopoly within the common market" and "discriminatory practices involving within the common market the application by a seller of unequal conditions to comparable transactions, especially according to the nationality of the buyer." These provisions are rigidly enforced by the High Authority, which feels, probably correctly, that in the absence of aggressive enforcement many firms would continue to discriminate on a national basis for quite a while. As it is, the emergence of a truly international spirit in the iron and steel and coal industries has been greatly hastened by the Authority's determined attitude on this point. It is interesting to note that one of the measures taken by the Authority to prevent price discrimination is very similar to the new automobile labeling act in this coun-

The Commonwealth Fellows for 1958-59: left, Donald J. MacDougall, LL.B., University of Melbourne, right, Michael C. Menton, LL.B., University of Aberdeen.
try. According to this regulation suppliers of coal, iron and steel products are obliged to print official price lists, which must contain the following information for each commodity: a) the base price; b) any extras reflecting the degree to which the commodity exceeds standard specifications; c) credit terms; d) place of delivery; e) taxes and delivery charges; f) discounts for dealers and sales organizations, quantity purchasers and standing customers. At any time when actual prices deviate on the average more than 2.5% from list prices for 60 days or more, suppliers are required to publish revised price lists.

To some American observers the enforcement effort in the field of restrictive business practices undertaken by the High Authority of the Coal and Steel Community may not seem very impressive. Perhaps in a formal sense it is not as yet too impressive. But it must be remembered that no other industries in the world have been as heavily dominated by national and international cartels as the iron and steel and coal industries of Europe in the first half of this century. Gauged against this background the mighty injection of fresh competitive forces that the emergence of a common market for these commodities among the most important nations on the continent has already provided is indeed truly remarkable. Thus, we must never lose sight of the fact that the institution of this great new plan itself means much more to the maintenance and promotion of competition in these industries in Europe than the antitrust provisions of the treaty could possibly hope to accomplish in and by themselves, even with the most vigorous administration.

4. The European Economic Community and the European Economic Association.

In March 1957 the countries participating in the European Coal and Steel Community—France, Germany, Italy and the Benelux countries—signed another and much more far-reaching agreement, the treaty establishing the European Economic Community (EEC). The area encompassed by the community has about the same population as the United States, but its GNP is as yet but one-third of ours. In principle, the treaty encompasses all areas of economic life in these nations, which are to be integrated into one giant common market. The only exception is the coal and steel and atomic industries, which by this time are already unified.

Clearly, it was again imperative to provide for a transition period to allow for the six participating nations to divorce themselves of all their trade restrictions gradually, thereby making it possible for their industries and labor forces to readjust in an orderly manner. Thus, intra-community tariffs will be abolished successively over a 12 to 15 year period, which began January 1, 1959. The establishment of a common external tariff structure will also take place gradually over this transitional period. However, instead of declining to zero, the external tariffs of the community nations will go up or down, depending on the starting point, converging, when the transition period ends, at a common tariff which generally should represent the arithmetical average of the tariffs in effect in the different community countries on January 1, 1957. In cases where the differences in duties then in effect were no more than 15% in either direction from the anticipated common tariff rate, the transition is shortened to four years.

Besides tariffs, quota restrictions may be a formidable obstacle to trade. The EEC treaty provides that all quotas between community nations must be removed according to a predetermined schedule before the end of the transition period. Again, external restrictions constitute a different problem. For the short term, at least, the signatories saw little hope of completely overcoming the dollar shortage that has long plagued most of them. Whether this shortage may be eliminated in the long run is a question which the community nations alone cannot answer. If the common market leads to expected increases in productivity and attracts considerable dollar investments, the prospects of far-reaching liberalization are great. In the meanwhile, the treaty only requires that member states work toward making uniform their non-quota lists at "as high a level as possible" with regard to third countries. Encouraging steps toward greater liberalization were taken in connection with the "convertibility reform" in December 1958.

In the long run, it would be impossible to maintain a common market if the financial, agricultural, social and commercial policies of the participating nations were too much out of line with each other. It is for
this reason that the treaty has numerous provisions for the gradual “harmonization” of such policies. (Complete equalization is not held necessary—as indeed we find different wage, social and economic structures in various parts within the United States.) Similarly, the mobility of labor, capital and services between member countries will be increased. A joint fund for international economic development and for assistance in solving what may sometimes be quite painful adjustment problems during the transition period will be established. All these provisions have made it natural to speak of an economic community rather than merely a common market, and, for many, to see in this Rome treaty a giant step toward a United States of Europe.

The institutional structure of the economic community will be similar to that of the Coal and Steel Community. Thus, there will be a European Commission corresponding fairly well to the High Authority of the Coal and Steel Community. There will also be a Council of Ministers. As we mentioned before the Common Assembly and the Court of Justice will be identical for the two communities. While the Community will from the outset be a sovereign body with supranational powers, the individual member nations retain a considerable measure of control during the relatively long transition period. It is interesting to note that in the beginning the decisions of the European Commission in most vital matters have to be approved by the Council of Ministers. The Commission proposes and the Council disposes, in fact. However the treaty very ingeniously provides for a gradual tapering off of the powers of the Council of Ministers toward the end of the transition period, while the European Commission will increasingly come into its own as a supranational body responsible directly to the Common Assembly.

The rules governing competition in the EEC treaty are in some respects similar to those of the Coal and Steel Community. Thus, Article 85 again contains a sweeping prohibition of any arrangements which are “likely to affect trade between the member states and which have as their object or result the prevention, restriction or distortion of competition within the common market.” And again we find this general prohibition reemphasized in a number of particulars, including the familiar fixing of prices, restrictions on production, distribution or technological progress and market sharing. But then Article 85 adds two types of agreements not specified in the corresponding provisions of the coal and steel treaty, namely, agreements setting up “unequal terms in respect of equivalent supplies” (that is, collective price discrimination) and tying contracts. As in the Coal and Steel Community all prohibited arrangements shall be “null and void.”

Again as in the case of coal and steel, the EEC treaty foresees that certain types of agreements will be exempted from the general prohibition, although no specific authorization procedure is provided for. Thus, any agreements may be exempt which “contribute to the improvement of production or distribution of goods or to the promotion of technical or economic progress, while reserving to users an equitable share in the profit resulting therefrom” provided that such agreements do not contain any restrictions not indispensable to the attainment of reasonable objectives and that they do not eliminate competition in respect to a “substantial proportion of the goods concerned.”

The provisions of the EEC treaty concerning tight combinations which have reached a dominant position within the common market are less stringent than those of the Coal and Steel Community. There is no procedure providing for the prevention of the emergence of such combinations. However, such combines are enjoined from engaging in any of those same specific practices which were explicitly enumerated as illegal in the case of cartel arrangements. (There is only the minor exception of market sharing, which of course inherently is collective phenomenon.) Article 90 extends to public enterprises the same rules with regard to competition as prevail for private concerns, with the only exception that public enterprises do not have to engage in competitive activities which would “obstruct the de jure or de facto fulfillment of the specific tasks entrusted to such enterprise.”

So much for the explicit provisions, which certainly are no less vigorous than any of the national antitrust legislations now existing in the participating countries. But as yet we have said nothing about applicability and enforcement. The treaty—which clearly does not place antitrust matters at the head of the list of priorities—provides that appropriate regulations concerning the application and enforcement of the principles set out in the treaty shall be devised within a period of three years and be based on a cooperative effort of the Council of Ministers and the European Commission. In performing this task these authorities will be concerned not only with matters of procedure. They are also directed to determine the scope of applicability of the general principles in the various economic sectors of the Community, a provision that unscrupulously interpreted could clearly make the principal provisions pretty worthless. The authorities are also instructed by the treaty to determine the respective responsibilities of the Commission and of the Court of Justice in the enforcement of the law, and similarly to define the relations between state law and community law in this field.

For the period antecedent to the adoption of the rules and regulations for the enforcement and applicability of the antitrust provisions of the treaty, it is provided that the authorities of member states shall “rule
upon the admissibility of any understanding and upon any improper advantage taken of a dominant position in the common market." Furthermore, the European Commission is directed to "insure the application of the principles laid down in articles 85 and 86." At the request of a member state it shall also investigate any alleged infringement of these principles. "If it finds that such infringement has taken place, it shall propose appropriate means for bringing it to an end." If the infringement continues, the Commission may reaffirm its opinion and thereafter publish it and "authorize" member states to take necessary measures to remedy the situation. What the effectiveness of these interim rules will be remains to be seen. It seems unlikely that any member nation during that period will take any action against cartels or dominant enterprises of any more far-reaching nature than what is already suggested in existing national laws.

5. European Economic Association.

The fact that the European Economic Community nations are identical with the participants in the Coal and Steel Community of course is not accidental. These six countries have generally proceeded further in the harmonization of mutual interests than have the other 11 nations in Western Europe. Of these the United Kingdom is the key element. Her agricultural policies and her commonwealth preference tariff policy are the chief obstacles to her accession to the community. However, with Sweden, Norway, Denmark, Switzerland and Austria—and possibly even the less developed Spain, Portugal, Greece, Turkey and Iceland—UK has proposed to team up with the European Economic Community in what was called the Free Trade Area, but has recently been renamed the European Economic Association, the EEA. While the obstacles in the way of the EEA plan seem formidable at the present time, the alternative prospect of an economic curtail dividing free Europe is such that there is every reason to assume that statesmen will do their utmost to overcome the difficulties.

Even if only "The Other Six" were to join it, the EEA would add another 50% to the number of consumers and another 65% to the GNP of the common market. Technically, tariffs, quotas and other trade barriers between all 12 nations would be eliminated—and presumably according to a unified schedule, as discriminations otherwise would become inescapable. With regard to external tariff and trade policies, UK, the Scandinavians, Switzerland and Austria would retain all, or at least a good measure, of their existing freedom of action. Hence there is less need for the harmonization of domestic social and financial policies of these nations. On the other hand, to avoid the mutual undermining of external tariff protection by such means as reexportation based on tariff differences, it will be necessary to introduce rather complicated rules for the definition of origin of goods in the EEA.

The preliminary negotiations for the creation of an EEA adjoining the common market failed at the close of 1958. Nothing official is known as to what was contemplated with regard to policy on restrictive business practices in the EEA during these negotiations. While we are awaiting clarification on this point, and a likely new cycle of negotiations, it so happens that by informal means of communication I have in my possession a copy of a proposed report synthesizing the views of the powerful Federations of Industries in the UK, the Scandinavian Countries, Switzerland and Austria. This preliminary and as yet unofficial report was prepared by a joint committee of the federations under the chairmanship of the President of the Swedish Federation of Industries. I shall take the liberty of quoting two pertinent passages from the draft report:

Since one object of the EEA is to abolish tariffs and quotas it appears desirable to insure that the expected advantages are not rendered illusory by other measures of public or private character, which falsify competition or otherwise are incompatible with the aims of the EEA.

It is therefore necessary to establish rules for competition. These rules must be applied to public undertakings and to all other enterprises, irrespective of ownership—all categories having to act in the market on the same terms.

As the representatives of industry usually tend to advance the viewpoint least in favor of vigorous antitrust measures in Europe, it would seem that this report, if ultimately adopted by the Federations of Industries in the UK, Scandinavia, Austria and Switzerland, would clear the way for the inclusion of some kind of antitrust provisions in a prospective EEA agreement. As might be expected, however, the federations will at least initially urge that such provisions leave greater room for national enforcement efforts and the application of national laws rather than supra-national legislation in this field. Nevertheless, it is important to note that these federations apparently would not resist any and all kinds of international antitrust policy within the framework of the association.

6. Outstanding problems.

Our review of the antitrust provisions of the European Coal and Steel Community, European Economic Community and of the prospects of the European Economic Association indicates that there are still a host of problems which have been only partially solved, or indeed left entirely outstanding, for the time being. Let me briefly indicate a number of the major ones:
1.) The relationship of the existing national legislation inside the Economic Community and the prospective Economic Association to the emerging international laws may present administrative problems of gigantic proportions. At least during a transitional period we may well get a triple-layer cake of ERA law, EEC law and national law, all operative on various parts of interstate and intra-national commerce. If in the meanwhile a universal law on restrictive business practices is created under United Nations auspices, we could actually get four layers of antitrust law, unless heroic efforts at integration are made.

2.) A special problem is represented by the potential relationship between the Economic Association and the European Coal and Steel Community legislation. As we have displayed, and as the draft report of the Federations of Industries has carefully noted, the antitrust provisions of the Coal and Steel Community in some respects are more far-reaching than those of the EEC treaty. If the Association is created, therefore, some special arrangement to dovetail national and supranational action in the coal and steel industries will presumably be necessary.

3.) It is conceivable that in some countries outside the common market—or the Economic Association if it comes into being—cartelization may actually get a stimulus from the creation of this powerful community. It is interesting to note that in none of these supranational treaties is there any provision against export cartels, and certain tendencies toward the formation of such organizations have been observable in the Coal and Steel Community, although so far they have been fairly restrained, presumably out of respect for possible negative reaction in the United States. But if we assume, for example, that the Economic Association will not come into being it is quite possible that the Scandinavian countries might feel impelled to try to increase their bargaining power in relation to the economic giant on the continent by encouraging export cartels among their wood, pulp and paper producers, and that other nations might take similar steps in industries where they are strong.

4.) In some areas of commerce the several national and international systems of antitrust law might successfully operate on a mutually exclusive basis. But there will inevitably be many points at which some coordination will be necessary. It will be necessary to define more clearly, for instance, the role of national enforcement agencies in the application of international law, as in the furnishing of data for the execution of the decisions of such a body as the European Commission. In this context one may also pose the question of whether national registration statutes will be amended so as to cover national export agreements, in an effort to make national enforcement agencies assist the data accumulation at the community level. Incidentally, we may notice that at the time of speaking Italy only has an old Mussolini law on cartelization which she neglects, and her protracted consideration of a revamped law in this field bears no sign of yielding immediate results.

5.) A number of additional problems are likely to arise from the fact that the incidents of the treaty provisions will be very different in different nations, unless the supranational authorities are given at least as broad powers of execution as the High Authority has been given in the Coal and Steel Community. These problems root, of course, in the greatly differing national philosophies in the antitrust field. If you rely on national authorities to do the enforcement of international law, what happens if a national statute permits, or even stimulates, behavior which the international agency wants to penalize? Nations with stronger laws will tend to feel handicapped, as indeed many U.S. concerns with international interests are now complaining about the relative severity of American antitrust laws.

6.) Other sticky problems are likely to arise in considering restrictive business practices on the part of firms which are owned or directed from outside the Community or the Economic Association, for instance, subsidiaries of American concerns.

7.) The procedure for initiating action is fairly cut in the Coal and Steel Community where the High Authority as well as individual firms may start the enforcement machinery. Among the many issues left open in the common market treaty, however, is whether firms as well as governments, or firms with the sanctions of their governments, shall be able to launch complaints. The extent of the foreseen independent initiative of the European Commission also remains to be further defined.

8.) Finally, I would like to point to the problem of the relation of antitrust provisions to the regulatory and restrictive schemes that the international authorities themselves may set up under the exigencies of the transitional periods or economic depressions. It is a well-known fact, for instance, that quota schemes imposed by public authorities usually tend to be administered under some form of self-government of the firms concerned, and that when such an arrangement has been established it is often rather hard to get rid of.

It is submitted that the solution to all these and many other problems yet to be solved in the European antitrust field depends very largely on what will happen in other fields embraced by the cooperative efforts of the nations concerned. For instance, if nations turn out
to be willing to subordinate themselves fully to supranational authority with regard to social welfare policies, anti-recession policy, fiscal and financial policy, etc., it is quite likely that they will also display considerable willingness to internationalize their antitrust policies. On the other hand, if nationalism prevails in one field it is likely to prevail in the other.

The notion is often advanced that it is likely that the European Economic Community will do less with regard to restrictive business practices in intra-community trade than any one of the participating nations is doing domestically at the present time. I do not necessarily think that this hypothesis is the best one. I think an equally plausible hunch is that the Community will be able to go rather much further than the national minimum in several countries with regard to fact-finding and investigatory activities, but that, on the other hand, at least during the transitional period, the Community may be relatively weak as far as remedies are concerned.

And again, in the end we must not lose sight of the fact that the general idea embodied by the common market and the European Economic Association proposals is much more vital to the development of aggressive competition within the European economies than any antitrust provisions could ever hope to be, no matter with what zest they might be enforced.

Europe has traveled far in the direction of an American approach to the problems of economic organization and public policy in relation thereto during the twelve postwar years. First, a spiritual climate much friendlier to competition than the prewar atmosphere has emerged. Secondly, individual nations have forged instruments of public policy to help maintain and develop competition in business. Thirdly, a Herculean effort has been made to create common markets, which in and of themselves will represent an enormous strengthening of competition and the dynamic elements in European industry and trade. Fourthly, the nations most intimately concerned have at least drawn up the outlines of a supranational public policy capable of dealing with restrictive business practices on this new and higher level of economic organization. Indeed, in the coal and steel industries enforcement of such policy is already in full swing.

It is always difficult to prophesize—especially about the future, as someone said! But if Dean Levi invites another Guest Lecturer twelve years from now, that Lecturer might well tell you the story of how the national antitrust laws of Europe gradually fell into a state of semi-oblivion, somewhat similar to the state antitrust laws of this country. The antitrust law of Europe worthy of serious discussion at that time, of course, would then be that of the European Economic Association. Thus, in contrast to a growing complexity that seems to be characteristic of most other fields of law, students of the next generation may actually face a simpler task in learning about antitrust in Europe than that challenging the present one.

Chutkow Memorial Library
The Arnold M. Chutkow Memorial Law Library has been established in the county court house of Washington County, Colorado, in memory of Arnold Chutkow, JD'51, who had practiced in that community before his death. Mr. Chutkow, son of Samuel Chutkow, D'20, was an outstanding student while at the Law School, and had earned an excellent reputation in practice in the Denver area. The Arnold Chutkow Memorial Fund has been established at the Law School in his honor.
Some of the Law School Alumni in Toledo, Ohio

Ross W. Shumaker, JD'23, senior partner of Shumaker, Loop and Kendrick. Mr. Shumaker, a fellow of the American College of Trial Lawyers, has served as trustee of the Toledo Chamber of Commerce, trustee of the Chamber of Commerce of Ohio, and president of the Toledo Bar Association.

Donald M. Hawkins, JD'47. Partner in the firm of Fuller, Harrington, Seney and Henry, Mr. Hawkins is a member of the Board of Goodwill Industries of Toledo and is Treasurer, District Steward and Board Member of his church.

Mrs. Robert Allard, JD'53. Mrs. Allard is associated with Fuller, Harrington, Seney and Henry. She was previously Instructor at the University of Missouri and successively Research Associate and Law and Behavioral Science Research Fellow, and Assistant Dean, at the University of Chicago Law School.
Mayer—continued from page 3

fense of his brother David in a lawsuit which contained not a trace of his future practice or of the so-called new Industrial Era. David Mayer was negotiating to buy a horse, and in the course of the negotiations tried it out. He decided not to buy it, and the owner alleged that the horse was returned to him lame. The owner had retained Adolf Kraus, a lawyer who was then coming into prominence. Mr. Kraus was a Bohemian by birth, was self-educated and at that time was about 30 years old. Mr. Kraus’ client (possibly because of Mr. Kraus’ greater experience) procured a judgment in the trial court against David Mayer for $200. While the case was pending on appeal, Mr. Kraus, who had been impressed by Levy Mayer both in his contact with him at the Law Institute and in the trial of the horse case, concluded to offer Mr. Mayer a partnership. In order to form the partnership, it was necessary to settle the horse case, so Mr. Kraus and Mr. Levy Mayer each contributed $100 towards satisfying the judgment. It is said that Mr. Mayer used up the rest of his savings to buy a desk and some books.

According to Mr. Kraus, who published his reminiscences some years ago, young Mr. Mayer from the beginning was able to do more work in a day than the average lawyer could do in two days and to do it well besides. For the first year of his practice, Mr. Mayer did office work: drawing contracts, examining abstracts, investigating legal authorities, preparing memoranda and attending to office routine. Mr. Mayer, as is not unusual, was at first extremely nervous at the thought of trying a case in court. However, before the year was up Mr. Kraus told him to take charge of a case. Young Mayer tried it, won it and from that time on had no lack of self-confidence, and in fact acquired great courtroom presence.

In its first year the partnership handled a variety of minor matters, both civil and criminal. There were small contract and real estate disputes, in addition to charges of adultery, and allowing a minor to play cards in a saloon. Of course the firm also handled collections, leases, contracts and other matters for Schlesinger & Mayer, the growing department store operated by Levy Mayer’s brother and brother-in-law. In those early days, before the Bankruptcy Act of 1898, when a person or business got into financial difficulties he made an assignment to a trustee for the benefit of creditors. These assignments frequently became involved in litigation in much of which the firm participated. After the Bankruptcy Act, the firm was required from time to time to handle claims and other matters requiring knowledge of the bankruptcy law. Mr. Mayer went through a number of severe depressions, those of 1893, 1907 and 1921 and so was familiar with legal and business problems arising from them.

Frank A. Harrington, JD'21, who passed away just prior to this printing. Mr. Harrington, a senior partner in Fuller, Harrington, Seney and Henry was prominent as a trial and business lawyer. He was a director and officer of Great Lakes Terminal Warehouse Company, Maumee Valley Transportation Company, Short-Way Lines, Inc., Shurfit Products, Inc., and numerous other corporations. Mr. Harrington had served as president of Toledo Goodwill Industries. In addition to practice he maintained an active interest in farming and in the breeding and racing of standardbred horses.
and the laws pertaining to them, such as those just mentioned.

One of Mr. Mayer's early briefs, filed in the Appellate Court in 1887, shows his flair for satire as well as clarity of expression. The case was that of Felsenthal and Kozminski, Plaintiffs, v. Ludwig Thieben, Defendant. The plaintiffs were bankers and the defendant was a depositor in their private bank. The bankers sued to recover for moneys obtained from the bank by the depositor by means of an alleged conspiracy between him and the bank's bookkeeper. It was contended that the arrangement was that Thieben was to draw checks upon his account, receive moneys which he was to share with the bookkeeper, and the latter was to destroy the checks and not enter them in the bank's books. Mr. Mayer won a victory before the jury and the bankers appealed from the judgment of the trial court. Apparently the custom at that time was that the winning party treat the jury to drinks at the nearest saloon after the verdict was rendered. Plaintiffs in their brief had complained of the quickness of the jury in reaching their verdict and of this custom. Mr. Mayer wrote in his reply brief:

"Plaintiffs in error conclude their brief by asking this court to reverse the judgment of the court below, because the jury, they assert, (by a statement dehors the record), arrived at a verdict in forty-five minutes, and subsequently adjourned to a neighboring saloon after the close of the trial upon the invitation of the defendant, for the purpose of having refreshment. Did the rules of law permit, we should be inclined to assign as cross-error the fact that it took the jury forty-five minutes to arrive at a verdict, and, furthermore, to complain, in the language of the court below, that 'a new trial ought to have been granted, because, in the satisfaction of the defendant with the verdict, he forgot to ask the presiding judge to partake of his treat.'"

However, the Appellate Court reversed the judgment of the trial court and remanded the case back for another trial on the ground that the trial court had erred in refusing to admit certain evidence. The opinion of the Appellate Court was written by Judge Moran, who later became a member of the firm of Kraus & Mayer, possibly on the theory "if you can't beat 'em, jine 'em."

As he gained experienced, Levy Mayer became a truly great advocate. He not only had an excellent speaking voice but he was impressive both physically and intellectually. He was nearly 6 feet tall and well proportioned, had a rather leonine head, handsome, though rather large, regular features and dark hair. Intellectually he was quick, had an unusual power of analysis, but was also exceedingly thorough as will be demonstrated in later discussion of some of his cases. Mr. Mayer was always a good listener and could quickly and accurately absorb facts related to him by clients or associates. He was aggressive, but not in an overbearing or disagreeable way, yet in the heat of court battles he remained calm. Even after he attained great prominence he was always readily approachable by persons in all walks of life.

Mr. Mayer's assistant for many years, Mr. Matthews, relates the following story:

"It was my custom to stay in the office until Levy Mayer went home and sometimes he left quite late. The evening before the bar examination he came out of his room at about 7 o'clock, hat and coat on, ready to go home. He had just heard that I planned to take the examination and he asked whether I thought I had done enough studying to do so. I told him what I had read and he started to ask me questions which I answered readily. He finally asked me a difficult question involving the applicability of the Rule of Shelley's case in a real estate transaction. I answered him and he said I was wrong. I said I thought I was right and I cited a case to him which supported my answer. He took off his hat and coat, walked into the library and started to pull down books. I found further decisions supporting my answer and showed them to him and finally he said, 'I believe you are right.' Then he put on his hat and coat and as he walked out he said, 'I guess you will do.'"

This demonstrates his interest not only in legal questions but also in the young men who worked for him; also his open-mindedness and readiness to admit error.

Here, although it may not prove any particular point, I would like to interpolate and tell one of my own recollections of Mr. Mayer. The evening of my first day at this Law School, Mr. Mayer was at our home for dinner. Naively, I told him about the first case which we discussed in personal property under the late Professor Bigelow, who subsequently became the Dean of the Law School. The case involved a question, seemingly a simple one (although I have since learned better) as to whether the true owner, the finder or the owner of the property had the right to possession of a ring which had been lost in a hen shed. To my amazement, Mr. Levy Mayer and his brother, my father, Mr. Isaac H. Mayer, became engaged in an argument which lasted for hours. But these nestors of the bar never came to an agreement over the correct answer. I wondered to myself whether I should not immediately drop out of Law School, rather than pursue a career concerned with questions to which apparently there are no answers. But, I continued and am therefore here before you.

However, it was not merely as an advocate that Levy Mayer attained his claim to greatness, but soon he became widely known for his expertise in the intricate field of corporate, business and antitrust law, and his keen perception of business itself. Chicago was growing with great rapidity. So were the businesses located here. Mr. Mayer not only acquired an astonishing knowledge of a great diversity of businesses, such as grain, meat packing, banks, utilities and newspapers, but he also kept up with the legal and business developments in the corporate and business field. He
had among other assets great imagination and skill in working out new legal machinery adapted to the era of rapid business expansion.

Professor James Willard Hurst, in his book on The Growth of American Law, says with respect to the changing functions of lawyers as business became more complicated in the last and earlier in this century:

"After 1850 the handling of facts took on a new importance both in advocacy and in counseling. By the 1860's the complex facts of the economy in particular offered both the setting and the pressure for the lawyer to take on a new role -- as a specialist in incisive, accurate, fast appraisal of snarled or complicated situations. Law was too close to affairs for the lawyer ever to have been wholly a man of books. Nonetheless, there now came a change in emphasis that amounted to a change in function. * * *"

When Levy Mayer began his practice, the financial, business and industrial centers and the great markets were still in Europe. Even as late as 1890 over a third of the American wheat crop was shipped abroad, and in 1906 the export of beef reached a peak of 732,000,000 pounds. During the 80's and 90's cheap American grain and beef blanketed the English market, contributing to a prolonged depression in that country and causing the great English landlords and capitalists to shift their investments to American farming, ranching, railroads and industry.

Thus it was that Douglas Gordon McCrae, the editor of the London Financial Times, came to Chicago in 1890 to invest capital entrusted to him. His contact with Levy Mayer soon resulted in the organization by the latter of the Chicago & Northwestern Granaries Company, merging a great grain elevator concern in the Lake Michigan and Lake Superior regions. The contacts with Mr. McCrae lasted long and profitably for both parties and their principals. Incidentally, to digress for a moment, it may be of interest to note that Mr. McCrae's daughter became the wife of Lord Webb-Johnson, the surgeon of the former King of England and the head of one of the great English hospitals.

These English contacts also led to the organization by Mr. Mayer of a corporation under the Companies Act of England to control a line of elevators along one of the large American railroads. English capital represented by him was also invested in Chicago breweries and in certain packing companies, among them Hately Brothers, Chicago Packing & Provision Company and International Packing Company, all three of which were later consolidated into one company.

In 1889 Mr. Mayer organized American Trust and Savings Bank, which through various consolidations, changes of name and other transfers became the present Continental Illinois National Bank and Trust Company of Chicago, which is among the large financial institutions of the country today. From that time on Mr. Mayer, with the able help of his brother Isaac H. Mayer and his brothers-in-law, the Messrs. Carl and Abraham Meyer, became the legal adviser to these banks and to their chief executive officers. In fact, one of the last matters Mr. Mayer was working on at the time of his death was the acquisition of the Fort Dearborn Banks by the Continental.

As Chicago and its business enterprises grew, the business of the firm grew rapidly in the 80's and 90's. This was fortunate because not only had Philip Stein, who later went on the bench, become a partner, but also Mr. Mayer's brother, Isaac H. Mayer, who is beginning his 75th year with the firm and who is present tonight at the age of 94. His wife's two brothers, Carl Meyer and Abraham Meyer had also joined the firm. All of these very competent lawyers were soon to become leaders of the bar, Mr. Isaac H. Mayer particularly in the trial field and Messrs. Meyer in banking and corporation law. Subsequently a number of nephews also entered the firm so in the earlier days it was more or less a family organization. Accordingly, had the firm not done well, the entire family might have died of starvation. Seriously, however, one of Mr. Mayer's great assets was his organizing ability. Under his leadership, both his and his wife's relatives worked together harmoniously. After it became impossible for him personally to attend to all of the matters in which he was retained, he had the ability to select able men and delegate to them the legal matters for which he was accountable. Although he did delegate, he also had the faculty of remaining responsible for and keeping sufficient contact with the various problems so that the clients felt, and properly so, that they were receiving Mr. Mayer's own attention to their work.

In addition to the persons previously mentioned, in 1892 Judge Thomas A. Moran of the Illinois Appellate Court, who was one of the city's ablest lawyers, joined the firm.

Mr. Mayer's practice became more and more diversified as the years passed.

Long before the days of the Wagner or the Taft-Hartley Act, and as early as 1905, Mr. Mayer was engaged in bitter labor litigation. He represented an employers' association which sought an injunction in a federal equity court to restrain picketing and violence on the part of the Teamsters Union, which then, as it is now, was a powerful organization. History may be repeating itself and apparently is, according to recent testimony before the Senate Committee, but I can recall when Mr. Mayer during the pendency of this litigation had to be accompanied by a bodyguard because of threats of bodily injury made by the Union. In spite of these threats he fought on, the injunction was granted, and the violence terminated within a short time.
As might be expected, complicated antitrust litigation grew out of the consolidation of the large grain and cattle concerns. For a decade the Distillers and Cattle Feeders Trust, popularly known as the Whiskey Trust, was under attack, and Mr. Mayer defended it as well as the Corn Products Refining Company, which had been organized by him.

But he was not always on the side of big business or the so-called monopolies. In 1895 as counsel for certain independent companies, he procured a court decree upsetting the exclusive franchise of Peoples Gas Light & Coke Company.

He organized the Illinois Manufacturers Association in 1893, and as counsel for the Association he succeeded in litigation to compel the Chicago Telephone Company to submit its rates to the City Council for approval, and enjoining the phone company from putting into effect increased rates which had not been submitted to the Council.

There are three printed volumes of opinions which Mr. Mayer rendered to the Illinois Manufacturers Association from 1899 to 1907. They cover almost every conceivable question of business law. For example, they answer questions as to the liability of railroads for damages or loss of goods under a variety of circumstances, whether foreign corporations under the particular facts set forth were doing business within a state, and whether they were subject to its taxes, various questions of liability under sales contracts, whether under the laws of Iowa and North Dakota a manufacturer was obliged to print his formula on packages of birdseed, and whether there is any method for the owner of real estate of guarding against claims from more than one broker in a single real estate transaction.

In the last opinion mentioned, Mr. Mayer disclosed not only his knowledge of law but his common sense. His opinion concluded:

"There is no absolute way by which real estate owners can always avoid being made defendants in suits for unjust demands. The most efficacious course is to employ only one firm of brokers and to refuse to have any correspondence or negotiations of any kind with any others. This may at times be a somewhat harsh and brusque course, but it comes nearest to being the safest way in a community, where a mere look, a word or a nod is sometimes made the basis of a claim for commissions."

One of the so-called trusts which Mr. Mayer had helped to create was the American Preservers Trust. He represented it in early litigation against one Andrew Bishop, who contended that the contract under which the company had purchased his business was void on the ground that it was an illegal contract in restraint of trade under the common law. Although the Sherman Act had been adopted at the time the suit was filed, the Supreme Court of Illinois in the case of Bishop v. American Preservers Company, 157 Ill. 284 (decided in 1895) did not rely upon any statute but merely upon the common law policy that contracts and combinations in restraint of trade are illegal and void.

The Company after buying Mr. Bishop's business had made him a manager and given him possession of the assets as its agent. The action was one in replevin by the Company against Bishop to recover possession from him of its property which it had bought from him. The Supreme Court of Illinois held (157 Ill. 289) that because of its illegality the contract would not be enforced. When, however, suit was brought upon the replevin bond in the Federal Court (which case is reported as Gilbert v. American Surety Co., 121 F. 499 (decided in 1902) the Court of Appeals of this circuit held that under the doctrine of Steff v. Tyson (it being long before the days of Erie Railroad v. Tompkins, the Federal Court was not bound to follow the decision of the state court. The court further held that regardless of the possible illegality of the contract, the agreement having been executed and Bishop having received the consideration for the sale and holding the assets merely as the Company's agent or as trustee, that he was estopped from attacking the title of his principal. Accordingly American Preservers Company was the ultimate winner. The Court of Appeals quoted the observation of Lord MacNaughten in Nordenfelt v. Ammunition Co., English App. Cas. 535:

"There is a homely proverb in my part of the country which says you must not 'sell the cow and sup the milk.' It seems almost absurd to talk of public policy in such a case. It is a public scandal when the law is forced to uphold a dishonest act."

In 1901 Mr. Mayer participated in the Union Stockyards and Transit Company suit. In that case he represented independent packers and was attacking large New York financial interests, which were defended by William D. Guthrie of the Cravath firm. Mr. Guthrie apparently developed considerable bitterness toward his antagonist but the court ordered the Transit Company to treat the independent packers, represented by Mr. Mayer, with the same consideration that it was according the large packers.

Other transit affairs with which Levy Mayer was concerned involved the traction magnate, Charles T. Yerkes, who gained posthumous although rather unsavory fame in Theodore Dreiser's novels, "The Financier" and "The Titan." The electrification of the street cars, which originally had been horse cars and were later cable cars, involved large concentrations of capital, and then as now it apparently was exceedingly difficult to operate the transit lines profitably.

Early in the century receivership proceedings were instituted against the Yerkes controlled traction lines and Judge Grosscup in the Federal Court issued an injunction restraining certain state court proceedings in
which Mr. Mayer was involved. Judge Moran and Mr. Mayer were of the opinion that Judge Grosscup's injunction was invalid, and advised their clients that they might safely ignore it. This led to considerable ill feeling at the time between the Judge and the attorneys.

One of Chicago's leading reforms was the establishment of the merit or civil service system for a large number of civic jobs. In 1897 Adolf Kraus resigned as a partner to become head of the Civil Service Commission, newly created by Mayor Carter Harrison. A storm immediately was instigated by certain politicians, who had lost their patronage, and Mr. Kraus and the other Commissioners were indicted and imprisoned allegedly for hiring a policeman who was 5 foot 7 inches instead of the required 5 foot 8 inches, actually for political reasons. Mr. Mayer and his partner, Judge Moran, obtained a writ of habeas corpus, and Mr. Kraus and the other defendants were discharged in accordance with a colorful opinion by Judge Waterman.

Several years later, in 1904 Mr. Mayer was retained in one of the major criminal cases of his career. It took courage and showed a willingness on the part of Mr. Mayer to take on an exceedingly unpopular cause when he assumed the defense of Will J. Davis in the Iroquois fire case. On December 30, 1903 Eddie Foy, the father of the present Eddie Foy, was playing in "Mr. Bluebeard" to an overflow crowd of more than 1600 in Chicago's Iroquois Theatre. This was located on Randolph Street at the site of the present Oriental moving picture theatre. A flash of flames suddenly spurted from an electrical circuit and set fire to a flimsy drapery at the side of the stage. It is said a stagehand tried to lower the asbestos curtain, which snagged when partially closed; the tunnel formed between the curtain and the front of the stage acted like a tremendous suction tube which swept a jetlike blast of fire out into the audience. In the ensuing panic 597 persons, mainly women and children, lost their lives.

The community, at first numbed by the horror of the holocaust, soon gave vent to its rage and the numerous lawsuits which followed made nationwide news. As a result of the outcry, manslaughter indictments were returned against Will J. Davis, who was the President, manager, and a director of Iroquois Theatre Company, and against others who were connected with the operation and management of the theatre. The indictments alleged that Chicago city ordinances providing safety measures for theatres had not been complied with. The feeling was so great that defendants sought a change of venue. The motion was opposed by the State. Judge Smith in the Circuit Court in granting the motion said (1 Ill. Circ. Ct. Rep. 215-16):

"It would seem that there are very few occasions that in a court suit like this a man would be entitled to a change of venue. So far as we can look forward and anticipate cases it is very seldom that circumstances arise that would make a situation in a great cosmopolitan city where a man would not get a fair and impartial trial."

He then commented on the fact that the defense had presented over 12,000 affidavits as to prejudice and the State something like 4,000 counter-affidavits. He also remarked on the fact that such men as Judge John Barton Payne, Dr. Emil G. Hirsch (grandfather of the present Dean of the Law School), Dr. Frank Billings and hundreds of other eminent citizens had been among those who had furnished the affidavits. The fact that Mr. Mayer had procured such a large number of affidavits is not only a demonstration of his great industry, but is evidence of the thoroughness with which he prepared cases and the foresight with which he anticipated arguments of his opponents.

After the cases were transferred to the Circuit Court of Vermilion County at Danville, Mr. Mayer, who had briefed the law thoroughly (in fact his trial brief was 231 pages long), argued that the safety ordinances pleaded were invalid because beyond the power of the City under the Illinois constitution and the statutes thereunder. He further pressed the point that the City only has such power as is delegated to it by the legislature, and that no such powers had been delegated to the City Council. Furthermore he urged that there had been an unlawful delegation of power to the Board of Underwriters. Accordingly, he argued the common law count of NEGLIGENCE could not rest as it did on the failure of the defendants to supply the equipment provided for in the ordinances, that a reasonable man is not required to take all possible precautions but merely those which would be taken by an ordinary prudent man under the circumstances. At the conclusion of the arguments the Court ruled that the ordinances were invalid and inadmissible. The State thereupon asked leave to move the indictment. Mr. Mayer at first insisted that this not be done but that a jury be brought in and because the State had insufficient proof without the ordinances, Judge Kimbrough directed the jury to return a verdict for the defendants. Had later indictments been returned the defense of double jeopardy would have been sustained.

Over 100 civil actions were similarly resolved and none ever got as far as a jury. This total victory was the result of the great legal ability displayed by Mr. Mayer and resulted in his later retention by important theatrical people, such as Klaw & Erlanger, the Shuberts, and Florenz Ziegfeld, the producer of the "Ziegfeld Follies."

He also represented Charles Frohman in an interesting copyright case, which had been decided adversely to Mr. Frohman's position by the Appellate Court of Illinois before he retained Mr. Mayer. Under the law,
if a play is published the owner loses his exclusive right to produce it. The play is question, "The Fatal Card", had been produced in England. Both the Supreme Courts of Illinois and of the United States ruled in favor of Mr. Mayer's contention that a production of the play in England was not a publication within the meaning of the law so that Mr. Frohman had not lost his exclusive rights in the United States. The opinion of the Supreme Court of the United States was rendered by Mr. Justice Hughes and is reported at 223 U.S. 424. The case has been relied upon and cited with approval by a Federal Court as recently as 1957.

A great deal of other theatrical legal business came to Mr. Mayer as a result of his successful defense of Mr. Davis in the Iroquois fire case.

A number of injunction suits were filed by him against the Actors Equity Association and the members thereof to prevent them from striking. These cases involved the negative covenant in the actors' contracts and the uniqueness of their services. In one of the suits, to prove uniqueness, Mr. Mayer placed Willie Howard, a noted comedian of his day, on the stand and asked him whether anyone else was competent to play his part. He replied, "No one, except possibly David Warfield," the leading actor of that day, who was unavailable. In a number of these suits Clarence Darrow represented defendants.

Probably as a result of the reputation acquired in the fire litigation, Mr. Mayer was retained to represent certain directors of the Mattoon City Railway Company,
who were indicted on a charge of criminal negligence when a collision occurred in which 16 people were killed. One of the directors indicted was Judge Peter Grosscup, who retained Mr. Mayer to defend him in spite of the hard feeling which the Yerkes injunction case had promoted between them. Motions were filed to quash the indictments, which were argued in the little town of Charleston in Coles County, Illinois. The State's Attorney made a fiery appeal to the court not to permit citizens of Chicago to come downstate and kill the citizens of Coles County. Mr. Mayer's argument prevailed, however, and the indictments were quashed.

In 1904 Mr. Mayer was retained by the State of New Jersey in litigation testing out the question as to whether the franchise fee, levied by New Jersey upon capital stocks of corporations incorporated there, was a tax entitled to prior payment in bankruptcy proceedings. At that time many of the large corporations were incorporated in New Jersey just as they are in Delaware today, so that the question was a rather important one. There were conflicting decisions in various states. The lower courts ruled that a franchise fee was not such a tax as to be entitled to priority, but the decision was reversed by the Supreme Court in favor of the State of New Jersey, which was granted priority.

In 1905 the major and a number of smaller meat packers in Chicago were indicted for violation of the Sherman Antitrust Law. This was the beginning of criminal proceedings in long drawn out litigation in which Mr. Mayer appeared as counsel for J. Ogden Armour, the President of Armour & Company. These indictments were eventually quashed but new ones were returned in 1910. After motions to quash and other motions had been overruled and habeas corpus proceedings had been dismissed, the trial of the packers commenced in November of 1911 before Judge Carpenter in the U.S. District Court at Chicago. The Government introduced its evidence for a period commencing December 6 until March of the following year. The Times of that day gave a rather graphic and dramatic description of the trial and I shall quote in part from it:

"But while we have been following Mr. Veeder [counsel for Swift & Company] through the details of the old beef pool, the courtroom has been filling. In the end seat at the prosecutor's table sits United States Senator Kenyon of Iowa, consulting counsel for the Government. * * * He already has behind him a distinguished career as lawyer and judge and Government counsel. The dapper young man with whom he is talking is United States District Attorney Wilkerson. And now, unnoticed, the jury has filed into its seats at the side of the room. The jurymen are evidently impressed with the importance and the dignity of the duty imposed on them. They are all dressed up. At the start they sit in more or less constrained and awkward attitudes. On these twelve rests the decision as to whether or no the Beef Kings go to jail or he fined. One has been a grocer all his life in a tiny hamlet of fifty people; three are farmers; there is a carpenter, an insurance solicitor, a grocer's clerk, a millwright, a drug salesman, a telephone inspector, and a baker. The most prominent is president of a merchant tailoring company.

"The joint wealth of the panel is estimated at perhaps $100,000. J. Ogden Armour alone is credited with a fortune of $100,000,000. Whatever the outcome of the trial, each of the jurymen will have a subject of conversation for the rest of his life.

"The fat bailiff stands up in his brass buttons, and everybody in the court room rises with him.

"'Hear ye! Hear ye!' he intones. Out from his chambers onto the broad platform behind the bench walks Judge Carpenter, a tall, well-built man in his early forties, with a smooth-shaven, rather stern face, his eyes looking out through gold-rimmed spectacles. He bows the bar, the defendants, and the spectators to their chairs, then seats himself, leans forward to the bench and rests his chin on his hand, his fingers partly concealing his mouth. * * * * * * As Judge Carpenter sits himself the jurymen settle back patiently into their chairs. Then, just as Levy Mayer rises to address the court, the swinging doors open and a small man, carrying his black overcoat over his arm, comes in and slips quietly across the room. There is nothing about him to attract attention but as he nears 'Packers' Row' three or four men rise to offer him a chair. Plainly this is a personage of importance who deserves a closer inspection. He is a short, rather slender man, nearing fifty years in age. His brown hair begins to grow thin, his shoulders are a bit stooped. He whispers behind his hand to a man who leans forward eagerly to listen. It is J. Ogden Armour, president of Armour & Company, president of the Fort Worth Stock Yards Company, director of the Armour Car Lines, Armour Grain Company, Chicago, Milwaukee & St. Paul Railroad Company, Continental National Bank, National Packing Company, Northwestern National Insurance Company, Illinois Central Railroad Company, National City Bank of New York, Kansas City Railway & Light Company.

"Gossip says that originally the custody of the great packing business was intended for his brother Philip, and that J. Ogden's primal tastes were more artistic and literary. But when Philip and his father both died J. Ogden took the place of power. He has greatly increased the widespread business interests left by his father.

"The corporation of Armour & Company alone has total assets which are estimated at $125,000,000."

At the conclusion of the Government's case there was considerable difference of opinion among counsel for the various defendants as to whether defendants should introduce evidence. Mr. Mayer's view, which at that time was thought to be a rather risky one, was that defendants should introduce no evidence but should argue first to the court and, if necessary, to the jury that the defendants were not guilty. His view prevailed. Arguments were made to the court to instruct the jury that they should return a verdict of not guilty. Judge Carpenter overruled these motions, arguments on which lasted for four days. Thereupon arguments made before the jury from March 18 to March
25, on which date the jury returned its verdict of not guilty.

At the time that these prosecutions commenced the Government attempted to enforce the Sherman Act to the letter, whenever an effort was made to enforce it at all. Prosecutions were not conducted on the basis that an unreasonable restraint of trade, or restraint of trade leading to monopoly or to unfair competition was illegal, but the Government took the position that every contract or conspiracy in restraint of trade was illegal. At that time very few cases had been decided construing the Act, and as has since been demonstrated by the great confusion of both courts and lawyers in the interpretation of the Sherman Act and the other Antitrust Acts, there was and is great doubt as to the meaning of the antitrust laws. Mr. Mayer, however, fortified by great experience both in business and the law, insisted that the literal words of the Sherman Act could not be the law, and persuaded the court to instruct the jury accordingly.

Some of the principles argued by Mr. Mayer in his construction of the Sherman Act were later embodied by Judge William Howard Taft in his book entitled "The Antitrust Act and the Supreme Court." In it Judge Taft wrote:

"The object of the antitrust law was to suppress the abuses of business of the kind described. It was not to interfere with a great volume of capital which, concentrated under one organization, reduced the cost of production and made its profits thereby, and took no advantage of its size by methods akin to duress to stifle competition with it. * * * More bigness is not an evidence of violating the Act. It is the purpose and not the necessary effect of controlling prices and putting the industry under the domination of one management that is within the statute."

In the light of more recent decisions, such as the Alcoa case, the above quotation from Judge Taft probably no longer states the law.

Historically it also may be interesting to note that the counsel in the packers' prosecution included, in addition to those already mentioned, Pierce Butler, later a Judge of the Supreme Court of the United States, John Barton Payne, who had been a Circuit Judge and later became a partner of the late Silas Strawn, and James M. Sheehan, at that time one of Chicago's ablest trial lawyers.

By the time this case had been tried, Judge Moran had been in his grave for almost 10 years. In addition to the persons previously mentioned, Alfred S. Austrian and Mr. Henry Russell Platt, two of Chicago's leading lawyers, had joined the firm. Mr. Platt's daughter, Mrs. George V. Bobrinskoy is here tonight, as is his son Sherwood K. Platt, unless he has slipped out.

In 1908 Mr. Mayer had been retained by the California Fruit Growers Exchange, composed of over 10,000 growers of oranges and lemons in California, in a rate controversy with the railroads. He filed a complaint before the Interstate Commerce Commission. His assistant, Mr. Matthews, spent a month in California studying the industry, including the costs of growing, gathering, packing and shipping the fruit in order to determine to what extent the operations were profitable and what changes the traffic could reasonably bear. The Commission held that the proposed increase in rates on the shipping of lemons was unreasonable. From this case knowledge was acquired of Interstate Commerce Commission matters which led to a study of the forms of bills of lading used by the railroads, and Mr. Mayer helped to draft the form presently in use. He also was of considerable assistance in the drafting of the Federal Bills of Lading Act of 1916, which is similar to the Uniform Act adopted by many states, and which is still in force.

Mr. Mayer also represented various newspapers at different times. Until 1914 he was counsel for the Chicago Tribune. In that year he was a member of a group which organized the Chicago Record-Herald, a morning newspaper, which became a competitor of the Tribune, and thereafter he was unable to represent the latter. He also represented at various times the Chicago Journal owned by John C. Eastman, and Herman Kohlsaat who was interested in several newspapers, among them the Inter-Ocean, the Chicago Times Herald and the Evening Post, later owned by Mr. John C. Schaffer. Mr. Mayer represented the Associated Press in its litigation with the Hearst papers, wherein they unsuccessfully sought to secure an Associated Press franchise. He later became quite friendly with Hearst and a number of his executives and writers, such as Arthur Brisbane, the noted columnist, and Emil Friend, the financial writer who wrote for the Hearst Papers under the name of "Boersianer."

Mr. Mayer in 1916 represented Great Lakes Transit Corporation, which he had organized, in the acquisition of 36 railroad-owned steamships. Later Mr. Mayer consummated a deal in behalf of the same corporation for the purchase of docks and warehouses in Chicago covering 105,000 square feet on the railway and river front east of the Kirk soap factory.

Mr. Mayer was in many other interesting cases and business transactions, including consolidations, mergers and similar matters. Time permits me to mention only a few of them. One is the case of Stafford v. Wallace, (reported at 255 U.S. 495) in which Mr. Mayer represented a number of dealers engaged in business in the Union Stockyards at Chicago. In their behalf he sought to enjoin the Secretary of Agriculture from enforcing orders made under the Packers and Stockyards Act of 1921 on the grounds that the Act could not constitutionally regulate persons such as commis-
sion merchants or dealers who, he contended, were not engaged in interstate commerce. The court speaking through Mr. Chief Justice Taft overruled his contention, upheld the validity of the Packers and Stockyards Act and in so doing stated that:

"they [referring to the commissionmen and dealers] create a legal change of title it is true, but they do not stop the flow; they merely change the private interests in the subject of the current, not interfering with but on the contrary, being indispensable to its continuity ***. The stockyards and the sales are the necessary factors in the middle of this current of commerce."

This case has been frequently cited in subsequent decisions dealing with the meaning in the constitution of the term "commerce."

In 1914 in the case of *Scoun v. Czarnecki* (reported in 264 Ill. 305) Mr. Mayer attacked the validity of the state law granting women suffrage. Although the Supreme Court of Illinois overruled his contentions, there were sufficiently strong dissenting opinions so that great doubt was cast upon the legality of granting of votes to women without a federal constitutional amendment. This probably led to the adoption of the 19th Amendment, granting women suffrage on a national basis.

Although apparently Mr. Mayer's practice did not embrace international law, his interests and clients reached into many countries. He represented Messrs. Wexler and Diskins, who controlled Pan-American Commission Corporation, a company which handled and marketed the sisal crop of Yucatan. Sisal is used for the manufacture of binder twine. It was contended that the Corporation tended to fix prices and create a monopoly in this crop. In arguments before the United States Circuit Judge Hough, sitting near his summer home in the old court house at Windsor, Vermont, Mr. Mayer's motion to dismiss the complaint was heard and sustained, mainly on the ground that by that time the questions had become moot.

For many years Mr. Mayer represented large distilleries and other whiskey interests which had moved their headquarters to New York. There was so much legal business for these clients that Mr. Mayer for a time maintained a New York office. In representing the liquor concerns in litigation, Mr. Mayer in a number of instances opposed Benjamin N. Cardozo, later famed as a justice of the Supreme Court of the U.S.

In litigation involving a new process of yeast manufacturing, pending before the Federal Trade Commission, wherein it was contended that Mr. Mayer's client illegally acquired an important invention, he caused depositions to be taken not only in numerous states but in England. In a tax case of Mr. Mayer's, involving the meaning of the term "whiskey", he had depositions taken throughout the United States, in England and in Russia to establish its origin and meaning.

During the First World War Mr. Mayer was very active on the State Council of Defense, to which he had been appointed by Governor Lowden. This Council had serious problems to meet, such as threatened labor and production troubles in the coal mines and other production stoppages. Mr. Mayer also made many patriotic speeches and aided materially in the sale of Liberty Bonds.

Levy Mayer needed all his resources and those of his firm for the battle against Prohibition. It was not just another case of Big Business against the Public. In the early decades of the present century, distillers and industrialists fought their own civil war — while the nation lined up as Wets and Drys. Many ranking employers contributed heavily to the Anti-Saloon League, often less for moral reasons than because their drunken workers were inefficient and a menace. Furthermore, saloon and liquor dealers were predominantly Democrats. Thus during the First World War the need for conserving grain for food served as a convenient excuse for large pressure groups to urge suppression of the saloon.

On the national scene, the first big case to test the constitutionality of the Wartime Prohibition Act was *Hamilton v. Kentucky Distilleries*. Before the Supreme Court in 1919 Levy Mayer and William Marshall Bullitt of Louisville, Kentucky, former Solicitor General of the United States under Taft, argued that the Act took property without compensation and that the statute had lapsed because war had ended. But the court held that the distillers had had sufficient time to dispose of their property — ignoring the right to future profits — and that demobilization had not yet ended completely.

In 1920 Mr. Mayer and William Marshall Bullitt argued the case of *Kentucky Distilleries and Warehouse Company v. Gregory, et al.* before the Supreme Court of the United States. In that case the Distilleries Company had sought to enjoin the enforcement of the Prohibition Amendment and the Volstead Act which had been adopted by the Congress pursuant thereto, on the ground, among others, that the power of amendment contained in Article Five of the Constitution does not authorize the invasion of the sovereign powers expressly reserved to the states and the people by the Ninth and Tenth Amendments except with the consent of all the states. He argued the unique theory, which as far as I know had never been raised before and to this day has never been satisfactorily answered by any court, that if the amendments authorized under Article Five were unlimited the legislatures of three-fourths of the states would have it in their power to amend the Constitution so as to establish a state religion and prohibit free exercise of other religious beliefs; to quarter a standing army in the houses of citizens; to do away with trial by jury and republican form of government;
to repeal the provision for a president; and to abolish the Supreme Court and with it the whole judicial power vested by the Constitution. In other words, he argued, the power to amend was to amend within the framework of the Constitution, that without unanimity on the part of all the states there was no right to take away the police power of states which it has always been held was reserved to the states by the Ninth and Tenth Amendments any more than there was or is the right to take away by amendment the fundamental rights above described and granted by the early amendments constituting the so-called Bill of Rights.

Another powerful argument made was that the provision of Article Five of the Constitution to the effect that "the Congress whenever two-thirds of both Houses shall deem it necessary" shall propose amendments to the states for ratification means that two-thirds of all the members of each house or both houses must vote affirmatively and not merely two-thirds of a quorum. The question therefore was whether the language of Article Five was complied with by a vote of only two-thirds of a quorum voting; that is, two-thirds of 51% which is only 34% of the full membership.

Finally he argued that inasmuch as 19 states had adopted the initiative and referendum into their constitutions, it was necessary for an amendment to be passed upon by the people in addition to the legislatures in those states, and that had not been done. The Government contended that the actions taken were sufficient and its contention on this point as well as on
the first point was accepted by the court, but in the opinions filed, which may be found in 253 U.S. at p. 350, no reasons are given for the conclusion reached that the Amendment had been validly adopted, the opinions dealing mainly with the meaning of the Amendment and the constitutionality of the National Prohibition Act.

Mr. Mayer's wisdom and philosophy in fighting national prohibition has certainly been proven by subsequent events. The wave of lawlessness and disrespect for law in general which overcame the country as a result of prohibition cannot be denied. His philosophy that law, particularly a sumptuary law such as this one, must have the sanction of public opinion, was eventually recognized by the repeal of the Eighteenth Amendment in 1934.

Mr. Mayer's only election to public office was his election as a delegate to the abortive State Constitutional Convention of 1922. However, he was from his early days interested in public affairs and did not hesitate to express himself on them. At the convention he attended many laborious sessions in 1922, but did not live to see the defeat of the constitution which the Convention had brought forth. An example of his interest in public affairs is a statement that he made early in the century after the Supreme Court had rendered a decision relating to the status of Puerto Rico. Mr. Mayer in a press interview regarding that decision said:

"In the Delina case the court holds that as soon as the territory is annexed by treaty, purchase or conquest, it becomes a part of our national sovereignty and subject to the constitution—in other words, that the constitution follows the flag. The assertion of this doctrine I regard as a great victory, not for the administration of President McKinley but for all the people.***

In an address which he delivered in 1914 he advocated reforms in our criminal law and the codification thereof, many of which suggestions have since been adopted.

In another public speech which he made, he compared the industry and commerce of the United States with those of foreign countries. He said, among other things:

"Comparison of the manner in which the German, English and French governments stimulates, help and foster trade, puts us to shame.

Just recently the Chairman of a Subcommittee of the House Ways and Means Committee has announced that he will introduce in Congress a bill to give further tax exemptions to foreign trade so as to foster American exports. In this respect as well as in many others, Mr. Mayer was years ahead of his time.

Mr. Mayer was married in 1884 to Miss Rachel Meyer of this city. He had a very happy home life and was a devoted husband and father. Unfortunately, Mrs. Mayer was seriously ill a great part of her life. They had two daughters, both of whom married and lived in New York, and both of whom have carried on through themselves and their families the intellectual and other attainments of their father. Two grandsons and one grandson-in-law are now practicing law in New York. In addition to his success as a lawyer and his interest in his home, Mr. Mayer had a great diversity of interests running all the way from the growing of cranberries at his summer home near Plymouth, Massachusetts, to active participation in public affairs. He was most hospitable and enjoyed entertaining and was himself very fond of good food and wines. Mr. Mayer's virtues have been so extolled that the listener may have received the impression that he was not entirely human. That notion is incorrect. He was exceedingly human, and had and showed great tenderness and affection for the members of his family and his friends.

Mr. Mayer's untimely death occurred in 1922 when he was only 63 years of age. At that time he was working on a merger of steel companies, which was never consummated. Overwork was undoubtedly a contributing factor to the early ending of his life. He left his imprint on the times and on the many clients whom he had represented with such rare vigor and ability. He left to his successors a sterling example of industry, integrity and tremendous intellectual power. His success was due not only to his intellect, his unremitting work and his loyalty to his clients, but to an almost unequaled ability to express himself simply and clearly, both orally and in his briefs. In this age of specialization, we may learn from his life that it was and is possible, if one works hard and enthusiastically enough, to be a specialist in many fields.
BOOK REVIEW—
Reviewed by R. A. Spieler
First published in 1941, this comprehensive treatise on the pigeon is now in its third revision. Its author is a graduate of the University of Chicago Law School and since 1923 has headed the Palmetto Pigeon Plant, commercial squab raisers of Sumter, S. C. During World War I he was a lieutenant in the Pigeon Section of the U. S. Army Signal Corps. He has served as president of two national associations and is well known among pigeon fanciers as an editor and author.
Mr. Levi has produced an admirable and encyclopedic treatment of his subject. This large volume is primarily intended for the pigeon fancier or breeder, and indeed it will occupy the most prominent place in his working library. But its usefulness is by no means restricted to that group. Practicing attorneys will find a helpful summary of legal principles and decisions relating to pigeons. (It is brought out in this section that pigeons restrained in lofts are not a nuisance under the common law.) The scientific chapters were written with the advice and aid of qualified specialists. These sections provide a handy reference for the elementary student of biology.
The relationship of pigeon and man is the subject of the first chapter, with emphasis on the role of pigeons in history, warfare, and religion. One learns that pigeons are considered sacred objects in some Moslem countries, a startling notion to American city dwellers, many of whom harbor homicidal tendencies toward the unwanted columbarian residents of their eaves and rooftops. A more acceptable idea for adoption here might be the oriental custom of attaching bells and flutes to the birds, which thus produce melodious sounds in flight.
Over two hundred pages are devoted to descriptions and photographs of the various breeds. Some of these varieties present a bizarre appearance indeed, but all have been derived by selective breeding from one (or a few) wild species.
The chapters on anatomy, physiology, and genetics are intended for "the practical pigeon man", but the latter must find some of the material rather hard going. The introduction to the genetics section does not provide a sufficient explanation of the basic mechanisms of heredity. The nonscientist probably will have to turn to other books for an understanding of these principles, knowledge of which is so essential to any animal breeder. An amusing item is the photograph of the featherless strain (a heritable variation). "The birds resented sweaters knitted for them, so they had to be kept in a warm room."
Physically the book is attractive, well bound, and printed on good quality paper. There are more than nine hundred photographs, most of them ranging from adequate to excellent. An index, a glossary, and a sizable bibliography are provided.
Pigeon fanciers will be grateful to Mr. Levi for his labor and skill in compiling this volume. Other hobbyists may well wish for such a complete guide to their own fields.