Fall 9-1-1976

Law School Record, vol. 22, no. 1 (Fall 1976)

Law School Record Editors

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The Law School Record. The University of Chicago Law School.
1111 East 60th Street, Chicago, Illinois 60637
published for alumni, students, and friends
Volume 22, No. 1, Fall 1976
Copyright 1976 The University of Chicago Law School
Additional copies available
$2.00 per copy
from
William S. Hein & Company, Inc.
1285 Main Street
Buffalo, New York 14209
We meet today, March 9th, to commemorate the 200th anniversary of the publication of the Wealth of Nations. We do this, I believe, not simply because of its historical importance as a landmark in the development of economics but because it is a book which still lives and from which we continue to learn. Commentaries, such as mine, are only of value as a preliminary to reading the Wealth of Nations, or, if this has already been done, to re-reading it. The Wealth of Nations is a masterpiece. With its interrelated themes, its careful observations on economic life and its powerful ideas, clearly expressed and beautifully illustrated, it cannot fail to work its magic. But the very richness of the Wealth of Nations means that each of us will see the book in a somewhat different way. It is not like a multiplication table, or a modern textbook with a few simple messages, which once absorbed, makes a re-reading unnecessary. The Wealth of Nations has many ideas from which to choose and many problems to ponder. Though the time may come when we will have nothing to learn from the Wealth of Nations, or, more accurately, when what we would learn would be irrelevant to our problems, that time has not been reached, nor will it, in my view, for a long time to come.

Adam Smith was born in 1723. He went to the University of Glasgow when he was 14 years old, according to Scott, a somewhat later age than was usual at the time. In 1740, when 17 years old, he graduated with an M.A. He was then elected to what we would call a post-graduate fellowship at Oxford. There, neglected by his teachers, who, as he observes in the Wealth of Nations, received their pay whether they taught or not, he studied on his own for six years. He then returned to Scotland and in the period 1748–1751, gave public lectures in Edinburgh on literature, rhetoric and jurisprudence. The lectures on jurisprudence, it seems clear, included an early version of some of the leading ideas which were to appear in the Wealth of Nations. In 1751, he was appointed a Professor at the University of Glasgow, at first, of Logic but shortly afterwards, of Moral Philosophy.

In 1759, he published in The Theory of Moral Sentiments, the substance of a major part of his lectures. But Adam Smith also gave lectures on jurisprudence and in them he presented his views on economics under the heading, "Police." As Cannan points out, this may appear strange to us but this is only because Adam Smith believed that the economic system should be controlled through the operations of the market, a view, which, largely because of his work, many of us share. Had Adam Smith been, in Cannan's words, "a old-fashioned believer in state control
of trade and industry," as were many of his contemporaries and most of his predecessors, this would, of course, have seemed the most natural heading in the world under which to discuss the determination of prices.\(^3\) The surprise felt by those listening to his lectures at Glasgow would not have been at the heading but at his conclusion.

Adam Smith resigned his Professorship in 1764 to become tutor to the young Duke of Baccleugh and passed the next 2½ years with him, mainly in France. This position brought with it a pension of £300 per year for life and after his return to Britain in 1766, Adam Smith spent most of his time in Kirkcaldy, his birthplace, where he devoted himself to study and the writing of the Wealth of Nations.

From this account of Adam Smith's life it is possible to discern the special circumstances which, his genius apart, made the Wealth of Nations so extraordinarily influential. First, many of his main ideas were conceived very early in his life, very probably in his days at Oxford. He thought about these ideas and enriched his analysis by reading and observation for about 30 years. His life included long periods, in Oxford and later in Kirkcaldy, in which he worked out his position completely alone, with little or no contact with others interested in economic questions. Adam Smith called himself a "solitary philosopher," and though he also seems to have been a "clubable" man, there can be no doubt that he enjoyed his own company and could work well on his own without requiring any stimulus from others. In a letter to David Hume, written from Kirkcaldy, he says: "My business here is study. . . . My amusements are long solitary walks by the seaside. You may judge how I spend my time. I feel myself, however, extremely happy, comfortable, and contented. I never was perhaps more so in all my life."\(^4\) Adam Smith's independence of mind, and his liking for solitude, which gave his independence free reign, must have greatly helped in writing a book which was to launch a new subject. It is perhaps no accident that Adam Smith and Isaac Newton were both posthumous children. Historians of economic thought tell us, I am sure correctly, of the works of others, such as Hutcheson and Mandeville, who influenced Smith. But he absorbed their ideas and made them serve purposes of his own.

The popular success of the Wealth of Nations, however, depended on another factor: its readability. Adam Smith, as is clear from the subjects dealt with in the Edinburgh lectures and later at Glasgow, was interested in the art of writing—and James Boswell was one of his pupils. Schumpeter acknowledges Adam Smith’s skill in rather grudging terms: ". . . he disliked whatever went beyond plain common sense. He never moved above the heads of even the dullest readers. He led them on gently, encouraging them by trivialities and homely observations, making them feel comfortable all along."\(^5\)

What Schumpeter means is that the Wealth of Nations can be read with pleasure. It is clear, amusing and persuasive. Adam Smith's style is, of course, very different from that of most modern economists who are either incapable of writing simple English or have decided that they have more to gain by concealment.

That Adam Smith worked alone and wrote Wealth of Nations over half a lifetime was in part responsible for the qualities which made it so influential. But it also brought with it some disadvantages. It has often been remarked that the Wealth of Nations is not particularly well constructed, with sections awkwardly placed—indeed, Adam Smith himself labels some very long sections, "Digressions." The explanation normally given is that as Adam Smith wrote the Wealth of Nations over a very long period completing sections one at a time, he found it too onerous a task to make the substantial revisions in earlier sections which a finer construction would have called for. I accept this explanation. It seems clear that Adam Smith found writing extremely painful. This seems to have been true even for the physical act of writing and he usually composed by dictating to an amanuensis. The Wealth of Nations also contains some obscurities and inconsistencies which might have been removed had Adam Smith not been so solitary but had consulted more with others, although it has to be confessed that not many of his contemporaries were capable of a close analysis of his work. There is, however, another reason why Adam Smith did not give that added attention which might have removed some of the in-

\(^3\) Scholars are divided as to his exact religion. If as a Unitarian he did not believe in an all-powerful God, this might have influenced him in writing his famous "digressions." A radical, he was only a moderate Adam Smith.

\(^4\) This letter is a bit misleading. Adam Smith did not normally visit the seaside, nor did he have any use for fine clothes.

consistencies: he did not know that he was Adam Smith. Had he known that we would be discussing his work 200 years after it was published, he would undoubtedly have been even more careful about his writing. But I think we may be glad that he could not have foreseen this great interest in his work, for the most probable result would have been an unwillingness to publish the Wealth of Nations at all. When Adam Smith was dying, he asked that his surviving manuscripts be burnt, which, to the despair of all lovers of Adam Smith's work, was in fact done. A man so anxious that work not properly finished should be withheld from the public, would have been greatly concerned about the kind of scrutiny which the Wealth of Nations has come to receive. Another remark he made as he awaited death was to regret that he had done so little. "... I meant to have done more."4 All of which suggests that he never knew what he had achieved—that his concentrated study had produced the most important book on economics ever written, a work of genius.

What Adam Smith did was to give economics its shape. The subjects he dealt with, the approach that he used, even the order in which the various topics are treated can be found repeated in economics courses as they are given today. From one point of view, the last 200 years of economics has been little more than a vast mopping up operation in which economists have filled in the gaps, corrected the errors and refined the analysis of the Wealth of Nations.

Adam Smith succeeded in creating a system of analysis—our system—by a series of masterstrokes. Some are very familiar to us. Others, it seems to me, are not, even yet, fully appreciated. Adam Smith’s starting point is well-known. He abandoned the idea, held by many mercantilists, that wealth consists of gold or money. To Adam Smith, the wealth of a nation was what people get for their money, that is, what is produced, either directly, or indirectly by exchange with other nations. This is the viewpoint he expresses in the opening words of the Wealth of Nations: "The annual labour of every nation is the fund which originally supplies it with all the necessaries and conveniencies of life which it annually consumes, and which consist always either in the immediate produce of that labour, or in what is purchased with that produce from other nations. Accordingly therefore, as this produce, or what is purchased with it, bears a greater or smaller proportion to the number of those who are to consume it, the nation will be better or worse supplied with all the necessaries and conveniencies for which it has occasion."5 We can see immediately that what Adam Smith is concerned with is the flow of real goods and services over a period of time and its relation to the numbers of those who are to consume. The emphasis is on real income, not money income: "The labourer is rich or poor, is well or ill rewarded, in proportion to the real, not to the nominal price of his labour."6

This is Adam Smith’s starting point. The welfare of a nation depends on its production. But the amount that is produced depends on the division of labour: "The greatest improvement in the productive powers of labour, and the greater part of the skill, dexterity, and judgment with which it is anywhere directed or applied, seem to have been the effect of the division of labour."7 To produce even the most ordinary commodities requires the co-operation of a vast number of people: "Observe the accommodation of the most common artificer or day-labourer in a civilized and thriving country, and you will perceive that the number of people of whose industry a part, though but a small part, has been employed in procuring him this accommodation, exceeds all computation. The woollen coat, for example, which covers the day-labourer, as coarse and rough as it may appear, is the produce of the joint labour of a great multitude of workmen. The shepherd, the sorter of the wool, the wool-comber or carder, the dyer, the scribbler, the spinner, the weaver, the fuller, the dresser, and many others, must all join their different arts...."8 And so Adam Smith continues, adding more and more detail, until at the end he is able to conclude: "... if we examine, I say, all these things, and consider what a variety of labour is employed about each of them, we shall be sensible that without the assistance and co-operation of many thousands, the very meanest person in a civilized country could not be provided, even according to, what we very falsely imagine, the easy and simple manner in which he is commonly accommodated."9
Schumpeter remarks that “nobody either before or after A(dam) Smith, ever thought of putting such a burden upon division of labour.” But Adam Smith was right to insist on the importance of division of labour, and we do wrong to slight it, for it turns economics into a study of man in society and poses an extremely difficult question: how is the co-operation of these vast numbers of people in countries all over the world, which is necessary for even a modest standard of living, to be brought about? Adam Smith’s answer is that it is done by means of trade or exchange, the use of the market fueled by self-interest: “... man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and shew them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind, proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.”

This is a familiar quotation which you, and I, have read on innumerable occasions in one textbook or another. It seems to assert that man is wholly dominated by self-interest and not at all by feelings of benevolence. Furthermore it seems to imply that benevolence, or love, could not form the basis on which an economic organization could function. Neither of these inferences would be correct. Man’s behaviour, as the author of *The Theory of Moral Sentiments* knew, is influenced by feelings of benevolence and the division of labour within a family, even an extended family, may be sustained by love and affection. Adam Smith is, I believe, making a more subtle and more important point than we normally assume. Benevolence or love is personal: it is strongest within a family but may exist between associates and friends. However, the more remote the connection the less strongly, in general, are we influenced by feelings of love or benevolence. This is indeed what Adam Smith says in *The Theory of Moral Sentiments*. It is very strange but I do not recall anyone who, when giving this famous quotation, and it has been repeated on innumerable occasions, also includes what Adam Smith says just the sentence but one before. “In civilized society [man] stands at all times in need of the co-operation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons.” This, as I see it, completely alters one’s perception of Adam Smith’s argument. To rely on benevolence to bring about an adequate division of labour is an impossibility. We need the co-operation of multitudes, many of whom we do not even know and for whom therefore we can feel no benevolence nor they for us. Indeed, if we did know them, their lives and circumstances would often be so different from our own that it would be hard for us to sympathise with them at all. Reliance on self-interest is not simply one way in which the required division of labour is achieved; for the division of labour needed for a civilized life, it is the only way. We just do not have the time to learn who the people are who gain from our labours or to learn of their circumstances and so we cannot feel benevolence towards them, even if benevolence would be justified were we to be fully informed. The fact that economists, when discussing Adam Smith’s treatment of the division of labour, have usually quoted his famous pin-making example, where everyone is situated within a single factory, rather than the long passage from which I quoted earlier, where the participants in the division of labour are scattered all over the world, has also helped to divert attention from the extremely limited role benevolence could play in bringing about the division of labour in a modern economy.

I have remarked that the earlier sentence about one’s whole life being “scarce sufficient to gain the friendship of a few persons” is never quoted. Neither curiously are the sentences which follow and which make the same point: “Nobody but a beggar chuses to depend chiefly upon the benevolence of his fellow-citizens. Even a beggar does not depend upon it entirely... The greater
part of his occasional wants are supplied in the same manner as those of other people, by treaty, by barter, and by purchase. With the money which one man gives him he purchases food. The old cloaths which another bestows upon him he exchanges for other old cloaths which suit him better, or for lodging, or for food, or for money, with which he can buy either food, cloaths, or lodging, as he has occasion.” Adam Smith’s main point, as I see it, is not that benevolence or love is not the basis of economic life in a modern society but that it cannot be. We have to rely on the market, with its motive force self-interest. If man were so constituted that we only responded to feelings of benevolence, we would still be living in caves with lives “nasty, brutish and short.”

The efficient working of the market thus becomes the key to the maintenance of a comfortable standard of living and to its increase. What Adam Smith does first is to show that an efficient market system is one in which, because of the inconveniences of barter, we use money, in terms which all prices are expressed. He then shows that the pricing system is a self-adjusting mechanism, which leads to resources being used in a way which maximises the value of their contribution to production: “Every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society, which he has in view. But the study of his own advantage naturally, or rather necessarily leads him to prefer that employment which is most advantageous to the society.” He is “led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.”

Adam Smith’s analytical system may seem primitive to us but in fact he reaches results which we accept as correct today. He uses the concept of the natural price, what we would call the long-run supply price. The effectual demand is the amount demanded at that price. This is how Adam Smith describes the position of equilibrium: “When the quantity brought to market is just sufficient to supply the effectual demand and no more, the market price naturally comes to be either exactly, or as nearly as can be judged of, the same with the natural price. The whole quantity upon hand can be disposed of for this price, and cannot be disposed of for more. The competition of the different dealers obliges them all to accept of this price, but does not oblige them to accept less.”

He also goes through the operation familiar to those taking introductory courses in economics of supposing that the amount supplied is less than the amount demanded at the equilibrium price: “When the quantity of any commodity which is brought to market falls short of the effectual demand, all those who are willing to pay the whole value of the rent, wages, and profit, which must be paid in order to bring it thither, cannot be supplied with the quantity which they want. Rather than want it altogether, some of them will be willing to give more. A competition will immediately begin among them, and the market price will rise more or less above the natural price…”

And, of course, he also examines what happens when the amount supplied is more than the amount demanded at the equilibrium price: “When the quantity brought to market exceeds the effectual demand, it cannot be all sold to those who are willing to pay the whole value of the rent, wages and profit, which must be paid in order to bring it thither. Some part must be sold to those who are willing to pay less, and the low price which they give for it must reduce the price of the whole. The market price will sink more or less below the natural price, according as the greatness of the excess increases more or less the competition of the sellers, or according as it happens to be more or less important to them to get immediately rid of the commodity. The same excess in the importation of perishables, will occasion a much greater competition than in that of durable commodities; in the importation of oranges, for example, than in that of old iron.”

As an example of the way in which Adam Smith examines an actual situation, consider his discussion of the effect of a public mourning which increases the demand for black cloth: “A public mourning raises the price of black cloth (with which the market is almost always under-
stocked upon such occasions), and augments the profits of the merchants who possess any considerable quantity of it. It has no effect upon the wages of the weavers. The market is under-stocked with commodities, not with labour; with work done, not with work to be done. It raises the wages of journeymen tailors. The market is here under-stocked with labour. There is an effectual demand for more labour, for more work to be done than can be had. It sinks the price of coloured silks and cloths, and thereby reduces the profits of the merchants who have any considerable quantity of them upon hand. It sinks too the wages of the workmen employed in preparing such commodities, for which all demand is stopped for six months, perhaps for a twelvemonth. The market is here over-stocked both with commodities and with labour.”19

There is a sure-footedness about this analysis which demonstrates Adam Smith’s ability to get at the heart of the matter. His tools may be primitive but his skill in handling them is superb. He may not work with schedules but implicit in his analysis is the view that if one did construct a demand schedule, more would be demanded at a lower price. Consider, again, Adam Smith’s discussion of the effects of price regulation: “When the government, in order to remedy the inconveniences of dearth, orders all the dealers to sell their corn at what it supposes a reasonable price, it either hinders them from bringing it to market which may sometimes produce a famine even in the beginning of the season; or if they bring it thither, it enables the people, and thereby encourages them to consume it so fast, as must necessarily produce a famine before the end of the season. The unlimited, unrestrained freedom of the corn trade, as it is the only effectual preventative of the miseries of a famine, so it is the best palliative of the inconveniences of a dearth; for the inconveniences of a real scarcity cannot be remedied; they can only be palliated.”20

Could we do much better today if we were discussing government control of the price of oil and natural gas?

Adam Smith’s handling of economic analysis has not, however, occasioned universal praise. The clumsiness of his treatment and its lack of finish have been strongly criticised by some economists, so strongly indeed as to suggest that if only these writers had been around in 1776, Adam Smith would not have been necessary. Many economists have criticised the way in which Adam Smith discusses the distinction between “value in use” and “value in exchange”: “The things which have the greatest value in use have frequently little or no value in exchange; and on the contrary, those which have the greatest value in exchange have frequently little or no value in use. Nothing is more useful than water: but it will purchase scarce any thing . . . . A diamond, on the contrary, has scarce any value in use; but a very great quantity of other goods may frequently be had in exchange for it.”21 This passage is, it is true, neither original nor particularly helpful. But Adam Smith’s economics in no way suffers because he did not also give us the theory of diminishing marginal utility. Utility theory has always been an ornament rather than a working part of economic analysis.

Another passage which has offended economists is Adam Smith’s statement about monopoly price: “The price of monopoly is upon every occasion the highest which can be got. The natural price, or the price of free competition, on the contrary, is the lowest which can be taken, not upon every occasion indeed, but for any considerable time together. The one is upon every occasion the highest which can be squeezed out of the buyers, or which, it is supposed, they will consent to give: The other is the lowest which the sellers can commonly afford to take, and at the same time continue their business.”22 What is found objectionable is that Adam Smith, by speaking of the “highest possible price” rather than the price which maximises profits, seems not to take into consideration that at a higher price, less would be demanded or alternatively assumes that the decrease in the amount demanded takes place in a discontinuous fashion. But it is apparent from the quotations I gave earlier, and is quite explicit elsewhere in the Wealth of Nations, that Adam Smith knew that the demand schedule was downward sloping. What does seem clear is that he was not able to formulate the determination of monopoly price in the rigorous manner of Cournot. However, Adam Smith’s view of competition was quite robust. He thought of competition, as the quotations given earlier illustrate, as rivalry, as a process, rather
than as a condition defined by a high elasticity of demand, as would be true for most modern economists. I need not conceal from you my belief that ultimately the Smithian view of competition will prevail.

Adam Smith also discusses the relation between the number of competitors and the price that will emerge. He says that if the trade "is divided between two different grocers, their competition will tend to make both of them sell cheaper, than if it were in the hands of one only; and if it were divided among twenty, their competition would be just so much the greater, and the chance of their combining together, in order to raise the price, just so much the less." What Adam Smith believed was that a greater number of competitors leads to lower prices both directly through the competitive process and also indirectly by making collusion less likely. It is not a very thorough treatment but I am not sure that modern economists can do much better. We should not object because Adam Smith left us some problems to solve although it may be a legitimate complaint that in the 200 years since the Wealth of Nations, we have made such little progress in solving them.

Adam Smith showed how the operations of the market would regulate an economy so as to maximise the value of production. To accomplish this required little assistance from government: "Every man, as long as he does not violate the laws of justice, [should be] left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man.... The sovereign is completely discharged from a duty, in the attempting to perform which he must always be exposed to innumerable delusions, and for the proper performance of which no human wisdom or knowledge could ever be sufficient; the duty of superintending the industry of private people, and of directing it towards the employments most suitable to the interest of society." Note that Adam Smith, as his reference to the "laws of justice" shows, saw the necessity for the government establishing what we would call a "property-rights system." But he did not favour government action which went much beyond this.

Adam Smith's opposition to more extensive government action did not arise simply because he thought it was unnecessary. Government action would usually make matters worse. Governments lacked both the knowledge and the motivation to do a satisfactory job in regulating an economic system. He says: "Great nations are never impoverished by private, though they sometimes are by public prodigality and misconduct." Again: "It is the highest impertinence and presumption ... in kings and ministers, to pretend to watch over the economy of private people, and to restrain their expence.... They are themselves always, and without any exception, the greatest spendthrifts in the society. Let them look well after their own expence, and they may safely trust private people with theirs. If their own extravagance does not ruin the state, that of their subjects never will." Adam Smith explains that government regulations will normally be much influenced by those who stand to benefit from them, with the result that they are not necessarily advantageous to society: "The interest of the dealers ... in any particular branch of trade or manufactures, is always in some respects different from, and even opposite to, that of the public. To widen the market and to narrow the competition, is always the interest of the dealers. To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be, to levy, for their own benefit, an absurd tax upon the rest of their fellow citizens. The proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it." According to Adam Smith, the government has only three duties. The first is to protect the society from "the violence and invasion of other independent societies." As he says, "defence ...
is much more important than opulence.” The second duty is to establish a system of justice, by which he means a legal system which defines everyone’s rights. Economists are prone to think of Adam Smith as simply advocating the use of a pricing system but, throughout the Wealth of Nations one finds Adam Smith discussing the appropriate institutional framework for the working of a pricing system. Whether one agrees or disagrees with his views on apprenticeship laws, land tenure, joint stock companies, the administration of justice or the educational system, what distinguishes Adam Smith’s approach from much of what has come since is that he obviously thinks this a proper and important part of the work of an economist. It is I believe only recently that economists in any number have come to realise that the choice of an institutional framework is a subject which deserves to be studied systematically.

The final duty which Adam Smith gives to the government is the establishment of certain public works and public institutions. What he mainly has in mind are roads, bridges, canals and such-like. It seems to me that the list of public works which Adam Smith thought should be undertaken by government, although quite limited, was as extensive as it was because he did not realise the potentialities of the modern corporation, and a modern capital market, a position understandable in the light of the history up to his day of joint stock companies, of which Adam Smith had a very unfavourable opinion. But there is nothing ordinary even about his treatment of a subject such as this. In his discussion of how these public works should be financed and administered, Adam Smith argued that they should be financed by payments from consumers rather than by grants from the public revenue: “It does not seem necessary that the expense of those public works should be defrayed from the public revenue.... The greater part of such public works may easily be so managed, as to afford a particular revenue sufficient for defraying their own expense, without bringing any burden upon the general revenue of the society.”

“A highway, a bridge, a navigable canal, for example, may in most cases be both made and maintained by a small toll upon the carriages which make use of them: a harbour, by a moderate port-duty upon the tunnage of the shipping which load or unload in it.” If this were done, such works would only be provided where they were needed: “When high roads, bridges, canals, &c. are in this manner made and supported by the commerce which is carried on by means of them, they can be made only where that commerce requires them and consequently where it is proper to make them.... A magnificent high road cannot be made through a desart country where there is little or no commerce, or merely because it happens to lead to the country villa of the intendant of the province, or to that of some great lord to whom the intendant finds it convenient to make his court. A great bridge cannot be thrown over a river at a place where nobody passes, or merely to embellish the view from the windows of a neighbouring palace: things which sometimes happen, in countries where works of this kind are carried on by any other revenue than that which they themselves are capable of affording.” It is clear that Adam Smith, had he been presented with a proposal for marginal cost pricing, would have understood the advantages but would not have neglected the effect such a policy would have on what would be supplied.

In making this survey of the Wealth of Nations I have concentrated on what I see as Adam Smith’s main contributions to economics: the division of labour, the working of the market and the role of government in the economic system. I am acutely aware that this does less than justice to Adam Smith’s great work. It would require, however, many lectures, and many lecturers, to do that. In the Wealth of Nations many subjects are dealt with doubtless as important as some of those I have mentioned. It is enough to note his discussion of economic development, of public finance, of education, of religious establishments and above all, his discussion of colonies and particularly the American colonies. On all these subjects, and still others, Adam Smith has much to say that is profound and his ideas appear striking and even, paradoxically, novel to someone reading him today.

I will illustrate this by considering the one subject which, on such an occasion as this, I can hardly avoid: Adam Smith’s view of the American Revolution. In the Wealth of Nations, America becomes in effect the minor theme ac-
companying the major theme, the working of a pricing system. As Fay says: "America was never far from Adam Smith's thought. Indeed, in the end it was almost an obsession." On America, Adam Smith's views were liberal. He saw the future greatness of America: it was likely to become "one of the greatest and most formidable [empires] that ever was in the world." He had little faith in the conduct of British policy. In a letter written from Kirkcaldy in June, 1776, a month before the Declaration of Independence, he wrote: "... the American campaign has begun awkwardly. I hope, I cannot say that I expect, it will end better. England tho' in the present times it breeds men of great professional abilities in all different ways, great Lawyers, great watchmakers, and great clockmakers etc. etc., seems to breed neither Statesmen nor Generals."

Adam Smith did not underestimate the fighting quality of the American military forces. In discussing defence expenditures, he argued that, although normally a militia would be inferior to a standing army, yet after a few years in the field, it would become its equal. He added: "Should the war in America drag out through another campaign, the American militia may become in every respect a match for that [British] standing army, of which the valour appeared ... not inferior to the hardiest veterans of France and Spain." It was no doubt in part with this in mind that Adam Smith said elsewhere in the Wealth of Nations: "They are very weak who flatter themselves that ... our colonies will be easily conquered by force alone." In a memorandum written in 1778, Adam Smith gave as the probable outcome of the American conflict, out of four possibilities, that one which actually materialised. And towards the end of the war, Adam Smith wrote a letter of introduction to Lord Shelburne, who was to become Prime Minister, on behalf of Richard Oswald, who became the chief British peace negotiator with the Americans. Oswald signed on behalf of Britain the preliminary articles of peace in 1782. He then lost his job, being attacked as one who supported "the Cause of America", rather than that of Britain, a view which may not have been too far from the truth. For example, Oswald not only forwarded Franklin's proposal that Britain cede Canada to the United States but seems to have favoured it.

However, while all this is no doubt indicative of Adam Smith's attitude, he was by no means a cheering supporter of the American cause. In the Wealth of Nations, he describes the motives of the leaders of the American Revolution in the following terms: "Men desire to have some share in the management of public affairs chiefly on account of the importance which it gives them... The leading men of America, like those of all other countries, desire to preserve their own importance. They feel, or imagine, that if their assemblies, which they are fond of calling parliaments, and of considering as equal in authority to the parliament of Great Britain, should be so far degraded as to become the humble ministers and executive officers of that parliament, the greater part of their importance would be at an end. They have rejected, therefore, the proposal of being taxed by parliamentary requisition, and like other ambitious and high-spirited men, have rather chosen to draw the sword in defence of their own importance." To Adam Smith, what the American leaders wanted was not liberty nor democracy but position. He therefore devised a plan which would give it to them. He proposed to give the colonies representation in the British parliament in proportion to their contributions to the public revenues. If this were done, "... a new method of acquiring importance, a new and more dazzling object of ambition would be presented to the leading men of each colony. Instead of piddling for the little prizes which are to be found in what may be called the paltry raffle of colony faction, they might then hope, from the presumption which men naturally have in their own ability and good fortune, to draw some of the great prizes which sometimes come from the wheel of the great state lottery of British politics." That is to say, an ambitious American could hope to become Prime Minister and, in effect, the ruler of the British Empire. Adam Smith also argued that Americans could ultimately expect that the capital of the British Empire would cross the ocean. "Such has hitherto been the rapid progress of that of [America] in wealth, population and improvement, that in the course of little more than a century, perhaps, the produce of America might exceed that of British taxation. The seat of the empire would then naturally remove itself to that
part of the empire which contributed most to the general defence and support of the whole."  
Professor Stigler quotes Adam Smith's account of the motives of the American leaders with approval as a discussion of "political behavior in perfectly cold-blooded rational terms" and considers Adam Smith's plan to be shrewd. He contrasts this discussion of Adam Smith's with other passages in the Wealth of Nations in which men in their political behaviour are apparently "hot-blooded" or even "irrational," passages which are inconsistent with the view that political behaviour is "cold-blooded" and "rational" and are therefore wrong. But the behaviour of Americans in the Revolution demonstrates to me that men can be both "cold-blooded" and "hot-blooded." I do not myself find it difficult to understand why George Washington or Thomas Jefferson supported the American Revolution—Adam Smith adequately explains a large part of their motives. But why did they secure the support of the masses who suffered and died? Self-interest successfully pursued seems an inadequate explanation of their actions. Revolution is a risky business for all who take part in it, with the prizes going to the successful revolutionary leaders, if the revolutionaries win. 

Adam Smith does give an explanation of why the American leaders had followers but this is found not in the Wealth of Nations but in The Theory of Moral Sentiments, in his discussion of the distinction of ranks. "The great mob of mankind are the admirers and worshippers, and, what may seem more extraordinary, most frequently the disinterested admirers and worshippers, of wealth and greatness." This deference to the powerful, on which the distinction of ranks is based, is, Adam Smith explains, a human propensity necessary for the maintenance of order. But we can see that it is also, on occasion, capable of producing disorder.

Was it better for the ordinary American to have secured independence from British rule? It certainly got rid of those absurd restrictions on trade, imposed for the benefit of British merchants and manufacturers, which Adam Smith denounced. But the American government, through its tariff policy, was to re-introduce similar absurdities for the benefit of American merchants and manufacturers. And were taxes lower with independence than they would have been without it? As the main expenditure in America by Britain was for defence, to Adam Smith, the taxation question became simply, who was the low-cost supplier of defence and, if it was the British Government, would the colonies pay for it? If they would not, there was no reason for Britain to retain its control. "If any of the provinces of the British empire cannot be made to contribute towards the support of the whole empire, it is surely time that Britain should free herself from the expense of defending those provinces in time of war, and of supporting any part of their civil or military establishments in time of peace, and endeavour to accommodate her future views and designs to the real mediocrity of her circumstances." These are the last words of the Wealth of Nations.

There is indeed some reason to suppose that Adam Smith may have had a hand in Charles Townshend's taxation schemes which helped to precipitate the American Revolution. Adam Smith regarded the taxes as a method of paying for the services which the mother country provided the colonies. The colonists, or rather their leaders, turned an economic problem into a political one. But had Adam Smith's whole plan been agreed to, there would have been no American Revolution. A child's essay on 1776 which I heard read on the radio in Chicago contained the following sentence: "If it had not been for 1776, England would now rule America." But had Adam Smith's plan been followed, there would have been no 1776; America would now be ruling England, and today we would be celebrating Adam Smith not simply as author of the Wealth of Nations but hailing him as a founding father.

The Wealth of Nations is a work that one contemplates with awe. In keenness of analysis and in its range, it surpasses any other book on economics. Its pre-eminence is, however, disturbing. What have we been doing in the last 200 years? Our analysis has certainly become more sophisticated but we display no greater insight into the working of the economic system and, in some ways, our approach is inferior to that of Adam Smith. And when we come to views on public policy, we find propositions ignored which Adam Smith demonstrates with such force as almost to make them "self-evident." I really do
not know why this is so but perhaps part of the answer is that we do not read the Wealth of Nations.

NOTES

4. John Rae, Life of Adam Smith, 434 (1895).
6. Id. at 33.
7. Id. at 3.
8. Id. at 11.
9. Id. at 12.
10. Supra note 3, at 187.
11. Supra note 5, at 14.
12. Id.
13. Id.
14. Id. at 421.
15. Id. at 423.
16. Id. at 57.
17. Id. at 56.
18. Id. at 57.
19. Id. at 59.
20. Id. at 493.
21. Id. at 28.
22. Id. at 61.
23. Id. at 324.
24. Id. at 651.
25. Id. at 325.
26. Id. at 329.
27. Id. at 280.
28. Id. at 653.
29. Id. at 431.
30. Id. at 682.
31. Id. at 682–83.
33. Supra note 5, at 588.
34. Quoted in W. R. Scott, Adam Smith, An Oration, 23 (1938).
35. Supra note 5, at 662–63.
36. Id. at 587.
40. Id. at 587.
41. Id. at 590.
44. Supra note 5, at 900.
45. See C. R. Fay in supra note 32, at 115–16.
I am delighted to be here to participate in the installation of Kenneth Prince as President of the Chicago Bar Association. This is an important occasion for the legal profession, an occasion that recognizes this significant office and the man who is to assume it. I am very proud of this Association, which I regard as my association, and which includes so many lawyers with whom I have worked in many ways throughout the years. Kenneth Prince is fully worthy of his distinguished predecessors, and they have been outstanding—which is the mark of an association which has lived up to its responsibilities. My pleasure is enhanced, although I cannot play favorites among law schools and universities, that Kenneth was a near-classmate of mine both at the college of the University of Chicago and in its law school. He graduated one year behind me in the college and one year ahead of me in the law school, which I admit says something about his alacrity and brightness. But these are qualities well known to you.

Since I assume I have been invited to speak at this solemn occasion because I am temporarily in exile in a far off place, I thought it would not be amiss if I began by describing one of the amusing folkways I have encountered.

It occurred just last week as I began to prepare for a formal press conference.

Two days before I was scheduled to talk with the press, I received what is known in Washington as a "briefing book." This briefing book, prepared by the public information staff at the Department, in consultation with the various divisions, U.S. Attorneys and bureaus, includes questions that might be asked with some proposed answers. In these days the briefing book is by no means brief. One peculiar thing is that the hardest questions often have no proposed answers. I suppose this is based on the theory that peril is a stimulant to wit.

In some ways the briefing book is a necessity, and it is a most valuable tool for the head of an agency. The Department of Justice is not a large department, as cabinet departments go, but it has about 52,000 employees. And while the Department has many aspects which go beyond those which might be expected in a large law office, the Department has enormous litigating, law advice giving and related duties, which would qualify a part of the Department as a rather large, although segmented, law firm. The Department has about 3,600 lawyers, functioning as lawyers, handling a caseload of about 76,000 cases, of which more than one third are criminal. As I have indicated, a great deal of the work of the Department goes beyond these matters. The law office aspect itself suggests the difficulty and importance of keeping

*Attorney General of the United States and Karl N. Llewellyn Distinguished Service Professor of Jurisprudence. This address was delivered before the Annual Dinner Meeting of the Chicago Bar Association on June 24, 1976. At this meeting Kenneth C. Prince '32 became the 100th President of the Chicago Bar Association.
informed so that one can achieve, when necessary, a unified approach. We use many methods to try to achieve this. In my own view, a too segmented Department of Justice is undesirable; one has to achieve a balance between centralization and delegation—a balance in which the exchange of information is pivotal. But all that is the subject of another talk. Suffice it to say that the briefing books, of which I have had many, are themselves valuable tools for keeping informed. As the Attorney General moves around the country, or even when he is in Washington, he is supposed to know or be able to say something—or look as though he could say something even if he says "no comment"—on every case, investigation or other matter in which the Department may be involved and as to which there is some curiosity. This convention of total knowledge is bothersome. But the briefing book is a legitimate help. The briefing book, however, goes beyond such questions.

Before an important press conference, the briefing book in the Department of Justice is supplemented with a session in which one goes over the questions and supposed answers with members of the Department's public information office. This session is, I suppose, a perquisite of office. I must admit that it has rather astonished me. This is one aspect of Department of Justice life which, before returning to the Department a year and half ago, I would never have imagined would greet me.

So let me take you to this session which occurred last week. I apologize that this recounting inevitably involves an apparent preoccupation with myself. I like to think it would have happened to anyone. I just happened to be there. The book did not begin gently.

"Question: A recent article about you in one of your hometown newspapers suggested you regard the press as a rabble, unable to comprehend complex matters. Is this really your view?"

I remembered having been advised that the jocular style of the press has a glorious tradition, and that it has been best described in a Chicago setting by Ben Hecht and Charles MacArthur. I knew that it was not the better part of wisdom to make light of heritage. Of course when the revival of the play, *The Front Page*, opened in Washington this year, the *Post* piously observed that this play's bawdiness characterized a press era well past and an image of newsmen that had been eradicated by noble victories of reporting. Even so, I figured that as an outsider to the media I would only get into trouble commenting on style and tradition. Instead I mumbled weakly, as I was told this attack would be made upon me, that I might answer, "Some of my best friends are newsmen." "That answer won't do at all," I was told.

Then I moved on to the second question: "Columnists Evans and Novak recently described your performance with respect to the Boston Busing case as 'hopelessly amateurish.' Notwithstanding the fact," the question went on, "that those who are aware of the background of this matter know differently, do you believe that unnamed White House aides are deprecating you in talks with reporters?" I suggested I might say that the busing decision perhaps seemed bad because it was not politically shrewd—indeed was not political—and in that sense was hopelessly amateurish. I was inwardly a little relieved by the kind suggestion of the Department employee who wrote the question that "those who are aware of the background of this matter know differently," but then I looked at the third question, and realized that he might have a reason other than just kindness for saying so.

The third question: "One characterization of you that has appeared in the press with some frequency is that you are thin-skinned and take strong umbrage to criticism. Is this a fair assessment?"

Frankly, that irritated me.

All of my attempts to answer this question before my colleagues failed as being hopelessly defensive, offensive, or too light-hearted.

At this point, I was presented with a fourth question, concocted too late for inclusion in the book, but presented on an emergency basis.

The fourth question: "Various commentators in the press have characterized you as indecisive, vacillating and ineffective. Do you feel such comments are justified?" The suggested answer which was given to me began with the statement "No, I don't," and then proceeded to wobble along with a series of equivocating, indecisive, vacillating, ineffective and unpersuasive defenses. Realizing I couldn't use these, and by
now feeling totally taunted and done in, I suggested I might answer that various commentators at different times had characterized foreign tyrants as great liberals, knaves as heroes and scholars as fools, and that a little indecision among commentators might have a salutary effect.

My colleagues were divided between those who thought the answer was too flippant and those who considered it insulting.

Next I ventured I might reply that commentators have to say something in order to make a living and that is all right with me. One of my colleagues, playing the role of a newsman with a follow-up question, asked whether my answer didn’t indicate the kind of grating arrogance that had been attributed to me. As to any answers to this, I was advised that I should be apologetic, but not so apologetic that anyone might think I was being thin-skinned. When I ventured a serious response as to how I thought reasoned decisions should be arrived at, the unanimous view was that I should not try anything so complicated and therefore evasive.

Now through all of this I felt what a student of Zen must feel when, asked by his master an unanswerable question, he tries honestly to unravel it and receives a blow on the head for his efforts. I suppose the genius in this Zen master approach is to thicken the skin by scarring it.

Anyway the press conference came. I was livid with preparation for it. None of the questions was asked. It was all quite amicable. In fact it restored my spirits which had been drenched by the hazing. But I was ready. I was ready.

I suppose that this experience of office holding is a part of the era in which we find ourselves. As a people we have been fortunate enough to have had government abuses of the past 30 years revealed in a short period of time. It is a serious moment in our history, and it is the part of statesmanship to handle these revelations, not with a cycle of reaction, but rather as an experience to be brought within our system of governance, which after all has shown itself to be as strong as we had hoped it was. I think, by the way, that civility and trust have been reestablished during the Ford Administration—an achievement, gained through openness and the willingness to accept the vulnerability that openness always entails.

At the Department of Justice we have tried to draw upon the experience of our recent past to determine where institutional changes are needed. We have also tried to look further back into our history to find the mechanisms that will most effectively accomplish the change. Guidelines now in effect controlling the Federal Bureau of Investigation’s domestic security and civil disturbance investigations are a result of this effort. They provide a series of legal standards that must be met before various investigative techniques may be used. They tie domestic security investigations closely to the enforcement of federal criminal statutes. And they set up a detailed process of review of investigations by the Attorney General and other Department officials who are not a part of the FBI. We have undertaken the establishment of guidelines in a spirit of cooperation with Congress, which, I have often said, should undertake legislative efforts to clarify the jurisdiction of the Bureau. I believe it is important to the well-being of the public to be vigilant about the operations of the FBI and also to give it the support it deserves and needs in order to continue as an effective and highly professional investigative agency. This requires a consistency of concern that goes beyond the perceived issues of the moment.

The Department of Justice also drafted and President Ford proposed legislation providing for a special kind of judicial warrant procedure to be used for electronic surveillance to obtain foreign intelligence and foreign counterintelligence information. Electronic surveillance in this special and extremely important area has never involved a judicial warrant procedure. Suggestions that it could and should have never before been accepted—not for 35 years. The unprecedented legislation proposed by the Administration in this area promises to provide an assurance to the American people that the federal government is not abusing its powers.

There have also been movements in Congress to undertake statutory reforms in reaction to the revelation of past abuses. One recent example is “The Watergate Reform Act,” currently being considered by the Senate. It is doubtless a sincere effort to prevent the recurrence of abuses, but it raises serious questions.

The bill would require compendious public
financial disclosures by all federal employees who earn more than about $37,000 a year. I do not know whether this broadside public disclosure requirement will make it difficult for the government to attract from the private sector the high quality people that it needs. You are perhaps the best judges of this. The bill would also create a Congressional Legal Counsel who could, when Congress chooses, intervene or appear as *amicus curiae* in any litigation in which the United States is a party and in which the constitutionality of a federal statute is challenged. Among its provisions the bill, as I read it, would also prohibit the Department of Justice from intervening in cases to challenge the constitutionality of federal statutes. The possible effect this would have upon the protection of constitutional rights is, I think, a matter which should be carefully considered.

I must say I am disturbed by the current provision in the bill to create a procedure by which a special prosecutor could be appointed by federal courts when certain allegations are made about a federal official. Tempting as it may be for an Attorney General to rid himself of controversial cases involving officials, I must say that the procedure in the bill is seriously flawed. When an allegation is made concerning a federal official in certain categories, it would be required that a special prosecutor be named unless within 30 days of the receipt of the allegation, the Attorney General certified that the allegation was clearly frivolous and that no further investigation was required. The time limit of 30 days is impractical. A thorough criminal investigation requires much longer. But worse is the certification the Attorney General must make. An Attorney General would be very unlikely to certify that an allegation is clearly frivolous. The consequence of the bill would be the appointment of numerous special prosecutors. I take it that it would remove U.S. Attorneys from any part in these cases. I also take it that an ongoing criminal investigation in which an allegation against certain federal officials is made might be required to be turned over to a special prosecutor to the exclusion of the U.S. Attorney. I do not know what would be done if the allegation later turned out to be unfounded, but the procedure could result in a clumsy passing of the case back and forth between the Department of Justice and special prosecutors. Such intricate cases are a reminder of the point that it is difficult to say whether an allegation is "clearly frivolous." Indeed, often the more outrageous the allegation the more it requires a careful and thorough investigation and review to evaluate. In addition the requirement that these allegations be reported publicly in court would result in the wide dissemination of all manner of malicious gossip and unfounded allegations. The provision of the Watergate Reform Act, designed as a reassurance, would have the effect of undermining the confidence of the people in the integrity of their government. Though I know it was not intended to do so, I fear that the bill would politicize justice.

Legal reforms based on our recent experience are certainly required. The Department of Justice has undertaken this effort. But the reforms must be carefully designed lest they create more problems than they solve. It is the duty of the legal profession to seize upon what is good and wise and abiding in the values we hold and the traditions we share as a people and to fashion from them the standards and procedures that will protect and nurture them. This duty is always with us. Organizations such as the Chicago Bar Association and its new President, Kenneth Prince, play a significant part in meeting it. And the duty is most heavy upon us, I believe, at times such as this when legal reform is both a requirement and a danger, for it is an essential function of the bar to moderate the cycle of reaction and to remind us of the strength of our values.
Contemporary Canons
of Taxation

Walter J. Blum*

Adam Smith, in his Wealth of Nations, published in 1776, propounded four canons or maxims of taxation. They were:
(I) The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.

(II) The tax which each individual is bound to pay ought to be certain, and not arbitrary.

(III) Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.

(IV) Every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state.

These canons, although perhaps sound at the time of publication, now seem outmoded. New canons, maybe of smaller bore but appropriate to the contemporary scene, are called for.

What follows is a first attempt to formulate modern canons by reflecting on more than a half century of experience by the federal government in taxing income. The suggested new canons are put in the form of guides to legislators whose interest in the taxation of income is serious.

Adam Smith was able to make do with four canons; unfortunately, ten now seems to be the bare minimum.

(1) Always proclaim, vigorously, that any change is a "reform." A reform generally is equated with improvement of the tax law. Any change you favor is obviously an improvement—otherwise it would not have your support.

(2) A reform proposal appears to be more acceptable if it has been around for quite some time. For some queer reason ideas are thought by many to improve with age. Therefore you should push a reform measure as often as possible, long before it has any real chance of passage. In due course it will be ripe.

(3) Whenever possible a proposed change in the law should carry the endorsement of someone in academic life. In many quarters professors are thought to be independent thinkers rather than partisan lobbyists. Despite all the evidence that this viewpoint obviously does not square with the facts of life today, apparently there are many persons who enjoy being deluded. Accordingly you should line up your academics in advance, making sure that they will educate you

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exactly as you wish to be educated. Full professors usually carry more weight than lesser potentates; and those who have good relations with the press are the best bet of all.

(4) Deferral of tax is very important to taxpayers; it may be equally important to you. A taxpayer usually finds it more comfortable to pay a dollar of tax tomorrow rather than today. You may find it easier to endorse a change but to postpone its effective date for many years. This arrangement may win you friends, both among those who seek the change and those who oppose it, but understand the value of a second line of defense. If you are disposed to favor the former group over the latter one, a convenient choice is to defer the full impact of the change, but to bring it on gradually in increasing intensity over the years to come. This arrangement can always be claimed to have the virtue of easing the transition from the old to the new rule. It is virtually a sure winner.

(5) Always make your proposal as complicated as possible. Do not feel upset, however, if you fail to complicate it enough; you can be sure that somewhere along the line it will be more than adequately embellished. The merits of complexity cannot be understated. Some potential opponents of the change are likely to soften their stand merely because they cannot comprehend the measure. The opposition of many tax practitioners will be softened because they will be taking pot shots at the complications instead of concentrating on the bull’s-eye. Indeed, it can be expected that some professional groups will respond by appointing committees charged with seeking ways of simplifying the tax law. By introducing a highly complicated proposal, you will keep the members of these special committees so busy that they will lack the time to grab hold of the jugular in attacking the measure. Moreover, complicated schemes are very congenial to academic types. This observation provides the basis for building a symbiotic relationship: you will find it easier to attract academic support if your proposals are complicated; and the academics you do line up will be encouraged to keep you well stocked on complicated suggestions for change.

(6) It is advisable to create the appearance that the tax law contains special breaks for every taxpayer. The typical person feels good if he thinks that he gets an advantage not enjoyed by others. There is ground to believe that people are more impressed with the fact that they are entitled to a break than with its dollar value. You should not overlook the many opportunities to seed the law with breaks. In addition to improving the disposition of taxpayers, a heavy helping of breaks
will assist you in making the law more complicated.

(7) Try hard to change the tax law often in minor ways and resist making sweeping changes. Annual amendment of the law generates the appearance of great activity and tends to produce a belief in many persons that you are trying to do the right thing. Frequent minor modification of the law has its practical sides: it induces practitioners to take a look at the statute from time to time instead of relying on memory; it makes commercial publishers happy; and it supplies building materials for annual tax conferences. Drastic changes have undesirable consequences: they force some practitioners into semi-involuntary retirement; they spawn a whole new series of tax institutes—many of which turn into perennials; they upset commercial publishers; and they coerce teachers of tax law into revising their class notes. Minor changes enacted over, say, 20 years are better than one sweeping change.

(8) Never argue that a proposed change is fair; instead merely assert the proposition. Arguments about fairness in taxation usually are no more than assertions dressed up in formal garb. If anyone should challenge the fairness of your proposal, rest assured that you can always defend by stating that he has failed to place the issue in a sufficiently broad context. Tax problems never outdistance their contexts.

(9) Sprinkle your proposals with mathematical terms such as ratios or sums, and adjectives such as "reasonable" or "primary." The former tend to make accountants feel wanted; the latter make lawyers believe they are needed.

(10) Proposals for change should always be accompanied by ghastly long explanations. If you follow the other canons that have been tentatively formulated here, it is clear that some sort of explanation surely will be needed. Moreover, if you do not furnish an explanation of your proposal, someone else, not necessarily a friendly party, is likely to seize the opportunity. It is important to remember that an explanation need not be consistent with the proposal on which it purports to elaborate. Indeed, an inconsistency usually will be resolved in favor of the accompanying explanation rather than the enactment itself. If you have a choice between drafting the law and writing the authoritative explanation, it may be prudent to forego authorship of the law and settle for being the anonymous author of the explanation.

If, by any chance, these ten canons do not guide your way as a legislator, you can always fall back on that overriding maxim of taxation: When in doubt about a tax, from others make sure it is due!
Speech to the Entering Class of the University of Chicago Law School

*John Doar*

Members of the Entering Class: Tonight marks a special experience for you as you enter the University of Chicago Law School. I admire your Law School. Two of the finest lawyers with whom I’ve worked were educated here. Owen Fiss learned to teach here. Today he’s exciting students at Yale. John Labovitz, a 1969 graduate, was one of your most outstanding students. John is finishing a book on presidential impeachment.

As you study law at Chicago, you will examine constitutional principles which restrain or limit the power of government. Your orientation will be toward such subjects as separation of powers or the right of an individual to a hearing before the government can act in a way that has, for him, adverse consequences.

There is one dimension of constitutional law that may not receive as much attention from your professors. I have the impression that law schools do not spend much time teaching law students the beauty of making our constitutional system into an effective government.

The entire thrust of the Constitution was not to limit power. The framers believed that the diffused power of the legislative, executive, and judicial branches could be molded into a workable government.

I think it is important for you as law students to understand the roles and responsibilities of each of the three branches of government and the achievements that are attainable when the three

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*John Doar is a partner in the New York City law firm of Donovan, Leisure, Newton & Irvine. He has spent many years with the U.S. Department of Justice, and was Assistant Attorney General of the Civil Rights Division when he left the Department in 1969 to direct the Bedford-Stuyvesant Development and Services Corporation. In December of 1973 he was selected majority counsel to the Impeachment Inquiry.

In the fall of 1975, Mr. Doar was the first Ulysses S. and Marguerite S. Schwartz Visiting Fellow. The Fellowship is supported by a fund honoring the late Chicago jurist and his wife. Judge Schwartz, who died in December of 1973, served as alderman of the old 44th Ward from 1916 to 1925. In 1939 he was elected judge of the Superior Court, and in 1950 he was elected to the Illinois Appellate Court.

During Mr. Doar’s two-day visit to the Law School, he led a colloquium, and met with the faculty, attended classes, and had frequent informal sessions with students. This speech was delivered to the entering class on October 1, 1975, at the beginning of Mr. Doar’s visit.*
branches each meet their responsibilities and at the same time work together to carry out a national purpose. I think it important for you, by the time you become lawyers, to appreciate that lawyers, as craftsmen, can help to bring this about.

If you agree, from time to time during your law school careers, you may wish to turn the sphere of constitutional law around and examine it from this direction.

One way to examine this dimension of constitutional law is to study the effort of the Federal Government to uphold the Constitution, from the passage of the 1957 Civil Rights Act through 1968, about the end of the first phase of the enforcement of the 1965 Voting Rights Act. To begin, you will need some examples.

I can furnish the examples because during most of those years I worked in the Civil Rights Division of the Department of Justice.

In 1957 the Congress passed the first civil rights legislation in almost 100 years. The statute authorized the Attorney General of the United States to bring civil actions in the Federal District Courts for preventive relief, including an application for a permanent or temporary injunction, against public officials who were practicing racial discrimination in registration or voting, and against anyone, public official or private citizen, who interfered with registration or voting by threats, intimidation, or coercion by any means.

Three years later, in April, 1960, I joined the Civil Rights Division of the Department of Justice.

The first case I worked on was in Haywood County, located in southwestern Tennessee, almost adjacent to the Mississippi border. Haywood County is more like the Mississippi delta than Tennessee—that is, large cotton farms, with black citizens comprising a majority of the voting age population.

Late in the fall of 1959 a group of rural blacks formed a Civic Improvement Association. This Association was dedicated to the improvement of the lot of the Negro in Haywood County. Once founded, meetings were held and thereafter blacks began to try to register. Immediately the whites retaliated with economic coercion. Credit was cut off. Supplies were withheld. In some instances, jobs were lost. In August, 1960, the Government filed suit. Soon thereafter I went to Haywood County to take depositions of some of the defendants.

Haywood County is full of oak trees, red clay, cotton fields, eroded landscapes. There I saw my first white southern sheriff—Taylor Hunter. When he appeared for his deposition I asked him his name. He told me. Then I asked, did he know that prior to 1960 no Negroes had registered to vote in Haywood County? He refused to answer on the grounds it would tend to incriminate him. He did it as if he were an old southern soldier, reciting from memory the pledge of allegiance to the flag. With him, dressed in blue suit, dark tie, white shirt, was Attorney Gray talking about the problems of the poor in southern America. There was a farmer named Scott who thought I was related to the Indiana comedian Herb Shriner. Lawyer Mooney was from Memphis. He barked in the greater glory of Notre Dame's football teams and kept telling his witnesses to "Take the Fourth."

We were asked to go out to several rural churches for meetings to talk with some sharecroppers. I will never forget those meetings. They were held at night in churches beside country roads. We would come into a dimly lighted church; we would walk to the front of the church. Eighty, ninety, one hundred black men and women would be waiting in the church pews. I would tell them that I was from the Department of Justice and was there to help them. Without expecting many to respond, I asked how many had received notices to get off the land. The hands of almost every one in the church went up. We learned that some of the families had lived on their places all their lives and that they or some member of their family had recently tried to register to vote.

We returned to Washington determined to do something to help these people. Our theory was that if we could lay out the facts fully and completely the law would take hold and effectively correct such injustice.

We amended our complaint, added 33 landowners who had served the eviction notices as additional defendants, obtained 57 sworn affidavits from the black sharecroppers, added pictures and moved for a preliminary injunction.

Let me read to you from one of the affidavits:
I, Hallie Powell, being first duly sworn, say: I am 43 years old; I reside in Civil District No. 8, Haywood County, Tennessee, on the place of Mr. John T. Gillespie, who owns a large farm in Haywood County. I have lived on the farm about 14 years as a sharecropper on a third basis. My wife and 5 children, 4 of whom are in school in Haywood County, live with me. In the past years I never had much discussion with Mr. Gillespie about staying on. We just carried on as we had from year to year. No new arrangement was made and we never had any trouble about my farming for him. I registered to vote in Haywood County on June 6, 1960. On June 7th, Mr. Gillespie met me in the road up by my place. He said, "I haven't had a chance to talk with you. I know you have been up there several times to try to register." I said yes I had. He said, "I don't know; you all suit yourself. I would advise you not to register." I did not tell him that I had registered. He came back that evening and said he wanted to talk to me some more about that registering. I said, "Mr. Gillespie, I'd already registered." He said, "Well, then, I will tell you just like I told J. W., you will have to hunt yourself a house." I asked him why, what was the matter. He said, "Well, you know the colored people haven't registered here before and they are telling me they are aiming to register and try to take over the county." And I told him, "I don't see why no one would try and take something that don't belong to them." I said, "I have talked to several ones on this occasion and none of them had said they wanted anything but what belongs to them." Sometime in July I got a registered letter from him telling me I would have to get off at the end of the year. I have done traded for next year with Mr. C. W. Rawls, a negro, but its nowhere near as good a place. There is not as much cotton. It is only 10 acres where I had 30 acres for Mr. Gillespie. My only means of support is farming.

Hallie Powell,
Affiant.

We went to speak to Federal Judge Boyd in Memphis. He finally set a hearing three days before Christmas.

We subpoenaed all the sharecroppers and some other witnesses. None of the court officials would provide the blacks a place to sit; many were forced to wait on benches among the furnace pipes in the basement of the Federal court house. Finally we were permitted to put on our case.

We were not able to accomplish very much. The evictions that winter were cruel and savage things, but the Federal District Judge refused to halt them. We did appeal to the Court of Appeals and on December 30 secured an injunction pending appeal. But the case went back and forth and our efforts had no lasting corrective impact.

We did learn the value of preparation, the utility of an injunctive suit and a motion for preliminary injunction. We did come to appreciate the necessity of speed. That was nowhere near enough.

We decided we had to help the executive and judicial branches of the Federal Government work together. At that time, we did not understand how important it was that the Congress as well be involved.

We began to bring voter discrimination suits in the various district courts in the States of Louisiana, Mississippi and Alabama. Our purpose was to educate the executive and judicial branches to the facts. We included in this assignment the Department of Justice, the U.S. Attorneys' offices, the FBI, the White House, and within the judicial branch, the various district judges, their court families and the Court of Appeals. Our strategy was to persuade the Federal courts to enforce the law.

Two and one-half years later we had an example of the success and the limits of this approach. In the litigation involving James Meredith and the University of Mississippi, I sat in a court room in New Orleans listening to Judge Tuttle, Chief Judge of the Fifth Circuit, tell Burke Marshall, the Assistant Attorney General for Civil Rights, that:

the record in the case will demonstrate that this Court has moved as expeditiously as it has been possible for the Court to move, because the Court has considered that . . . if
there be a right to obtain a college education, (it) expires of its own term within a reasonably short time.

Judge Tuttle added:

I think I do state the views of the Court that the Court has practically exhausted its powers in the circumstances. I am sure it is a planned policy of our Government that a court have no power to execute its orders . . . . The Court feels that the time has about come, when the burden now falls on the Executive Branch of the Government. Now, Mr. Marshall, will you indicate, if you can, what can be done by the Executive Department to see that the Court’s orders are carried out.

Showing great sensitivity to the thought required for the effective exercise of executive power, Assistant Attorney General Burke Marshall replied:

We recognize the responsibility of the Executive Branch of the Government to enforce the orders of the Court. We also have a responsibility to make every effort to enforce the orders of the Court in a way that is least disruptive of the national interest. When we are dealing with a state, we want to give the state every opportunity to cooperate with the Court and the Federal Government in seeing that the orders are obeyed. . . . We have attempted to proceed in a responsible fashion, giving every opportunity first to the University and then to the Government of the State of Mississippi to meet their responsibilities.

Mr. Marshall at the same time made it clear that the Executive Department understood its responsibility and that that responsibility would be exercised. What Burke Marshall said illustrates the importance of straightforwardness and clarity in committing the use of the executive power:

Now, . . . despite every attempt that we have made to have the order of the Court respected and obeyed voluntarily, those efforts have thus far failed. . . . It appears that
stronger efforts are going to have to be made to enforce the order of the Court. There is no question but that the executive branch of the government will use whatever force, physical force, is required, if that is required, to enforce the order of the Court. . . . That task will be easier and the country will be better off if by the order of this Court we can yet bring the state officials to a recognition of their responsibilities to cooperate with us instead of opposing us in accomplishing this purpose.

Thereafter, James Meredith did attend the University of Mississippi. This was accomplished with great difficulty, but it was accomplished. But that is not my only point. The case also illustrates the exceptional craftsmanship of one lawyer, Burke Marshall, in assisting the judicial and executive branches to meet their constitutional responsibilities.

During the early years of the 1960's Congress was not involved in the Government's effort to eliminate the caste system. This changed with the passage of the 1964 Civil Rights Act. The significance of this change can be appreciated by examining the history of the Voting Rights Act of 1965.

Between March 16, 1965, when President Johnson first went before a joint session of the Congress, and June, 1966, the three co-equal branches of the Federal Government worked independently but in harmony to make the Fifteenth Amendment mean what it says.

The way President Johnson used the Presidency, the way the Justice Department presented evidence to the Congressional committees, the way Congress drafted the bill, the way Congress acted, the way the President, the Justice Department and the Civil Service Commission enforced this law, the way the Supreme Court quickly decided the law's validity, and finally the way blacks were able to actually vote, and have their votes counted, were living proof of how the three co-equal branches of the Government could work together.

In every instance what was accomplished was imagined, developed, and implemented by lawyers as craftsmen assigned to support the three co-equal branches of the Federal Government.

Let me summarize briefly the history of the first year after the Act was passed:

The Act was given meaning on the day of the signing ceremony. There President Johnson set the tempo when he said:

"... I intend to act with dispatch in enforcing this Act.

"... Tomorrow at 1:00 p.m. the Attorney General has been directed to file a lawsuit challenging the constitutionality of the poll tax in the State of Mississippi.

"... By Tuesday morning, trained federal examiners will be at work registering eligible men and women in 10 or 15 counties.

"And on that same day, next Tuesday, additional poll tax suits will be filed in the States of Texas, Alabama, and Virginia."

On the Monday following the passage of the Voting Rights Act, the Civil Service Commission announced that registration offices would be open in nine counties in three states. On the first day that these offices were open 1,144 blacks registered. During the first week, 9,845 blacks registered. By the first of the year there were 36 counties where Federal officials were operating and 79,815 blacks had been registered. During the same period local officials in the five states of the deep south registered 215,000 blacks—the direct result of voluntary compliance by local officials.

This compliance did not occur by chance. Considerable efforts were made to bring this about. On the day following the passage of the Act, Attorney General Katzenbach, a former University of Chicago Law School teacher, wrote to the 650 registration officials subject to the Act. He explained the provisions of the statute and told them that his decision to appoint examiners would be made when it was clear that past denials of the right to vote justified it, or where present compliance with Federal law was insufficient to assure prompt registration of all eligible citizens.

During that first year FBI agents checked voter registration books in every county for the five-state area on a weekly basis. Young attorneys in the Civil Rights Division, most of them under 30, spent long days in rural counties in the south
explaining the law to local officials and to Negro citizens and bringing situations of noncompliance to the attention of the Attorney General.

On January 8, 1966, the Attorney General sent another letter to every registrar in the six states covered by the Act explaining once again in detail his criteria for the appointment of Federal examiners.

On March 7, 1966, the Supreme Court upheld the validity of the Voting Rights Act. Again it was Attorney General Katzenbach who used his skill as a lawyer to bring this about. Shortly after the passage of the Act, Attorney General Katzenbach applied to the Supreme Court for leave to file three original actions against Alabama, Louisiana, and Mississippi. In due course, the Supreme Court entered an order expediting consideration of the applications. Shortly thereafter it denied the Attorney General’s application, but granted leave of the State of South Carolina to file an original action against Katzenbach and set an expedited schedule for hearing the case. (Black, Harlan, and Stewart dissenting.) The Attorney General had accomplished what he set out to do—to obtain a speedy review of the constitutionality of the Voting Rights Act.

Just before the first elections following the passage of the Voting Rights Act, the Attorney General wrote individual letters to 14,000 election day officials. The idea that he should do this came from a lawyer in the Civil Rights Division.

Think of it. The Attorney General of the United States patiently explaining to local election officials the factors which would lead to his decision to utilize Federal observers.

On May 3, 1966, the first post-Voting Rights Act primary election arrived. Dallas County, Alabama, was the test county. I can’t begin to relate all the events that happened that day and thereafter, but they included the use of Federal observers to watch so-called “replacement clerks,” sent by the county judge (at 5:00 o’clock in the morning) to certain critical polling places; the impounding of six boxes by the Dallas County Democratic Executive Committee; a suit by the United States to compel the local officials to count the votes in the six boxes; and the decision of the Federal District Court that the votes in the six black boxes should be counted—thus changing the outcome of a critical election. On the strength of the votes of the black citizens, the candidate who was respected by the blacks and who sought black support was elected. Lawyers from the Justice Department, Civil Rights Division, again contributed their skills in bringing this about.

Let me give you one final example of what can happen when the three co-equal branches of the Federal Government work together.

1966 was the summer of the Meredith March. September brought another escalation of the drive to desegregate public schools in Louisiana, Mississippi, and Alabama. Two years earlier, Congress had enacted the Civil Rights Act of 1964. Under this statute, Congress had declared that it was unlawful for a state to segregate its public schools, and had authorized the Attorney General to commence injunctive action to “materially further the orderly achievement of desegregation in public education.”

On September 12, 1966, a bad situation developed in Grenada, Mississippi. Grenada was half way between Memphis and Jackson, 12,000 population. Grenada was rural Mississippi, hill country, not delta. Grenada’s population was half white, half black, but totally segregated. Public schools had opened that morning. For the first time, black children tried to enter the all-white school and were attacked by a crowd of white men.

I already knew Grenada. In June of 1966 I had accompanied the Meredith March through Grenada. James Meredith was the Mississippi ex-serviceman who had desegregated the University of Mississippi. Eight days before, on the first day of his march through Mississippi, Meredith had been shot. He was hospitalized, but national civil rights leaders rushed to Memphis to pick up the march and the march continued. By the time the march had reached Grenada, it had really picked up steam. Guarded by 40 or 50 Mississippi State troopers, accompanied by members of the FBI and the Division, national black leaders had returned to Mississippi to declare their independence.

I remember watching 400 or 500 marchers move into the town square. A black student from Michigan, Robert Green, stuck an American flag on a monument of the Confederate soldier and told the crowd that, “We’re tired of rebel flags.
This is the flag we want to see.” The blacks marched on the Grenada court house, where they desegregated the washrooms, and, then, at a meeting in the court room demanded of county officials adequate registration facilities. Later, there were speeches, songs, night marches. Hundreds of white Mississippians glared at the march, but, in that totally segregated city, there was no violence.

On July 18, a month after the march, the Federal Government brought a school desegregation suit against the Grenada School District. On August 26 the Federal District Court for the Northern District of Mississippi ordered the Grenada schools to operate on a completely racially non-discriminatory basis. Prior to the opening of school, 204 black children registered for the formerly all-white schools; 89 at John Randall High School, and 115 at Lizzie Horn Elementary, which adjoined the high school.

On September 12, when the black children arrived at school, many were attacked by a crowd of white men armed with ax handles, chains, sticks. The Grenada Police Chief and the Sheriff of Grenada County, along with deputy sheriffs and police officers were on the scene. They did nothing to stop the attack. Fifteen children were injured, several seriously.

In Washington we received an immediate report. We were over our heads in school desegregation problems. Our legal manpower resources were very thin, but I sent a lawyer to Grenada to get the facts. That night another lawyer and I flew to Memphis. We arrived about 11:00 p.m., and drove to Grenada, Mississippi.

At 7:00 a.m. the next morning we started to take affidavits from eyewitnesses to the violence. We brought the affidavits to Oxford. The United States filed suit that afternoon in the Federal District Court for Northern Mississippi against the local law enforcement officials. The Government secured a temporary restraining order from Federal Judge Clayton at 9:30 p.m. that evening.

A hearing was held on September 15 and September 16. In preparing for the hearing, Division lawyers had located an eyewitness to a racial incident at a high school football game held the Friday before school opened. The testimony of this witness proved without doubt that the local law enforcement officials should have known there were going to be high risks for the black kids when they tried to desegregate the public schools. At the close of the hearing, the Federal District Judge entered an order against the Sheriff and the Police Chief and their deputies, requiring them to maintain order, including an order directing each of them to develop a plan to maintain order and a chain of command for execution of that plan, including establishing liaison with the Governor, the State Commissioner of Public Safety, and the State Highway Patrol.

Thereafter order was maintained in Grenada, Mississippi, and black children attended the formerly all-white schools.

I have tried to show how important it is that the three co-equal branches of the Federal Government function together, each in its own sphere of power, if the Federal Government is to function effectively. The Constitution provided for a comprehensive system of government. As Mr. Justice Jackson once said:

While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

I have tried to urge you to study the legal techniques that lawyers can use to make our system function and to strengthen the reciprocity Mr. Justice Jackson spoke of.

I have tried to stress the importance of the role of Congress. I have no question that the Congress of the United States can meet its responsibilities as a component part of a comprehensive system of government. I know the Congress can responsibly exercise its power. I witnessed Congress act last year during the Impeachment Inquiry.

In January, 1974, when there was a public debate over the direction in which the Committee on the Judiciary should proceed with its Impeachment Inquiry many lawyers said the Committee should immediately ask the President for the tapes.

During January the Committee considered carefully this question. Finally, after the Committee had fully debated the question, it decided first to secure clear authorization from the entire
House of Representatives for the Judiciary Committee with subpoena power to investigate fully and completely whether the House of Representatives should exercise its constitutional power of impeachment. The Committee concluded that the matter of first necessity was to firmly establish the legitimacy of the inquiry; that a proceeding to consider the possible removal of the President of the United States should not be launched without the greatest respect for the dignity and tradition of our basic institutions—the Presidency and the Congress of the United States.

On February 6, 1974, Chairman Rodino went to the well of the House to ask his colleagues for approval of such a resolution.

I will never forget that day. I was on the floor of the House with the Chairman when he was recognized by the Speaker. The House of Representatives is not the most attentive audience in the world. Representatives come and go, mingle in small groups, whisper, laugh, read, as government business proceeds. Hardly anyone listened when Chairman Rodino began to speak. As is the custom, pages distributed his speech to the press. Gradually, more and more people began to listen. His speech was full of history, serious, restrained, business-like, straightforward. By the time the Chairman neared the end, the entire House, the galleries, were listening.

I can still hear what he said:

“For almost 200 years Americans have undergone the stress of preserving their freedom and the Constitution that protects it. It is our turn now.

“We are going to work expeditiously and fairly. When we have completed our inquiry, whatever the result, we will make our recommendations to the House. We will do so as soon as we can, consistent with principles of fairness and completeness.

“Whatever the result, whatever we learn or conclude, let us now proceed with such care and decency and thoroughness and honor that the vast majority of the American people and their children after them will say, that was the right course, there was no other way.”

The House then voted 410–4 to authorize the Inquiry. No one can measure the impact of that event, but I believe that the House of Representatives had launched its Judiciary Committee on a course that would prove to most Americans, now and in the future, that our constitutional process was reliable.

As a lawyer, I want non-lawyers to have confidence in the law. I want non-lawyers to believe that our constitutional government is reliable.

Lawyers can’t solve the world’s problems. But lawyers can, with training and with effort, give to all Americans confidence that our government works. Lawyers can do this by helping as craftsmen to make it work. But first, as students, you must study and think about the ingredients and requirements for a workable government.

As you begin your studies remember what Chairman Rodino said more than once during the Impeachment proceeding:

“The real security of our nation lies in the integrity of our institutions and in the trust and informed confidence of our people.”

Finally, remember that all the members of the Committee on the Judiciary were lawyers.
From The Law School

Gerhard Casper Appointed Max Pam Professor

Gerhard Casper has been appointed the Max Pam Professor of American and Foreign Law. The Chair was previously held by Professor Max Rheinstein, who is emeritus and in residence at the School.

Gerhard Casper studied law at the Universities of Hamburg, Yale, and Freiburg im Breisgau. In 1964 he came to this country and was appointed Assistant Professor of Political Science at the University of California at Berkeley. Mr. Casper came to the University of Chicago Law School in 1966 as Associate Professor of Law and Political Science. He has been a Professor since 1969.

The Max Pam Professorship was established in 1935 in memory of Max Pam, a member of the Chicago Bar.

Kenneth Dam Appointed Harold J. and Marion F. Green Professor

Kenneth W. Dam has been appointed to the Harold J. and Marion F. Green Professorship in International Legal Studies. The chair was established through an endowment from Chicago lawyer Harold J. Green and his wife, Marion. Mr. Green, a member of the class of 1928, also earned an undergraduate degree at the University.

Mr. Dam received his B.S. from the University of Kansas in 1954 and his J.D. from the University of Chicago Law School in 1957. Following his graduation, he clerked for Mr. Justice Charles E. Whittaker and then was associated with the New York City firm, Cravath, Swaine & Moore. He joined the faculty in 1960. In 1971, Mr. Dam took a leave of absence from the Law School to become Assistant Director of the Office of Management and Budget, where he was concerned with national security and international affairs. In 1973 he was Executive Director of the Council on Economic Policy, which was responsible for coordination of U.S. domestic and international economic policy. He returned to the Law School in 1974.

Mr. Dam has written three books: Federal Tax Treatment of Foreign Income (with Lawrence Krause), The GATT: Law and International
Economic Organization, and most recently Oil Resources: Who Gets What How?, which is published by the University of Chicago Press. He has served as consultant to the Office of Management and Budget, to the Department of the Treasury, to the Federal Trade Commission, and to the RAND Corporation. Mr. Dam is the first person to be appointed to the Green Professorship.

Gidon Gottlieb Appointed Leo Spitz Professor of International Law

Gidon A. G. Gottlieb has been appointed Leo Spitz Professor of International Law. Mr. Gottlieb, who was visiting Professor at the Law School during the 1975–76 academic year, was a member of the New York University Law School faculty prior to coming to Chicago. He has also been a Senior Exhibitioner at Trinity College, Cambridge, a graduate fellow at Harvard University, a lecturer at Dartmouth College, and was associated with the New York law firm of Shearman & Sterling.

Mr. Gottlieb received an LL.B. in 1954 from the London School of Economics, an LL.B. in 1956 from Cambridge University, and an LL.M. in 1957 and a J.S.D. in 1962 from Harvard. He has also received a Diploma in Comparative Law from Cambridge University. Mr. Gottlieb, who is a member of many international organizations, has served as a United Nations consultant. He has taught international law, international organizations, jurisprudence and torts. Among his publications is The Logic of Choice (1967).

The Leo Spitz Professorship in International Law was established in 1975 with a bequest provided by the will of Leo Spitz, J.D., 1910, in memory of his parents, Caroline and Henry Spitz.

Walter Hellerstein Appointed to the Faculty

In January 1976, Walter Hellerstein was appointed Assistant Professor of Law. Mr. Hellerstein graduated cum laude from the Law School in 1970. He was Editor-in-Chief of the Law Review and was elected to the Order of the Coif.

After law school, Mr. Hellerstein clerked for Judge Henry J. Friendly. Following a summer in the Paris law offices of Cleary, Gottlieb, Steen & Hamilton, Mr. Hellerstein spent two years as a member of the Honors Program of the Air Force General Counsel's Office. From 1973 until he joined the Law School faculty he was an associate with the Washington, D.C. law firm of Covington & Burling.

Mr. Hellerstein was a magna cum laude graduate of Harvard College, where he majored in government. He is a member of Phi Beta Kappa. He has written in the field of state taxation. Mr. Hellerstein teaches state and local taxation, civil procedure and federal estate and gift taxation.

Anthony Kronman Appointed Assistant Professor

Anthony Kronman has been appointed Assistant Professor of Law. He will begin teaching in the Fall of 1976. Mr. Kronman received his J.D. in 1975 from Yale Law School where he was editor of the Yale Law Journal. Last year he taught at the University of Minnesota Law School.

Mr. Kronman is a 1968 graduate of Williams College and holds a Ph.D. in philosophy from Yale University. His doctoral dissertation was on Max Weber. During his four years as a philosophy graduate student, Mr. Kronman was a Danforth Fellow. While a law student he was Lecturer in the Yale Philosophy Department, teaching courses in social theory and jurisprudence.

Mr. Kronman's principal areas of interest are contract and commercial law and jurisprudence. He has recently published several law review articles in the commercial law field.

Douglas Laycock Appointed to Faculty

A 1973 cum laude graduate of the Law School, Douglas Laycock will join the Law School faculty in January, 1977, as an Assistant Professor. Following graduation Mr. Laycock clerked for Judge Walter J. Cummings of the Seventh Circuit and then he started his own practice in Austin, Texas, and also served as counsel to the Chicago law office of Robert Plotkin and to Fielder and Levatino, an Austin firm.
From 1974 to 1976 Mr. Laycock engaged in federal litigation with emphasis on the plaintiffs' class actions under the securities laws and the Truth-in-Lending Act. At the same time he developed a separate plaintiffs' litigation practice in Austin, with emphasis on consumer protection and civil liberties.

Mr. Laycock's teaching interests are civil liberties, securities regulation, and consumer protection law.

KENNETH CULP DAVIS RETIRES

Kenneth Culp Davis, John P. Wilson Professor of Law since 1961, retired from teaching at the Law School in June of 1976. Mr. Davis has specialized in administrative law since 1937; he rapidly became a dominant force in shaping that field of law. Although he has practiced in a Cleveland law firm and has served in the government as a staff member of the Attorney General's Commission on Administrative Procedure, his principal activity, along with law teaching, has been research and writing in the field of administrative law.

Mr. Davis and his wife, Inger, who was an Assistant Professor at the School of Social Service Administration, have moved to La Jolla, where each will continue with professional work, he as a member of the faculty of the University of San Diego School of Law, and she on the faculty of San Diego State University.

Mr. Davis's most recent publication is Discretionary Justice in Europe and America. It was published in April, 1976, and is a sequel (with his Police Discretion, published in 1975) to his 1969 book, Discretionary Justice: A Preliminary Inquiry.

Mr. Davis, a graduate of Whitman College and of the Harvard Law School, where he was Case Editor of the Harvard Law Review, was awarded a doctor of laws degree in 1971 by Whitman College. In February the Fellows of the American Bar Foundation presented their 1976 award for outstanding research in law and government to Mr. Davis. The Fellows noted: "His scholarship in the area of administrative law has been a powerful force for preserving a general perspective in that field.

"Professor Davis is a recipient of the Henderson Prize of the Harvard Law School for his textbook, Administrative Law, published in 1951. His Administrative Law Treatise, published in 1958, was the first comprehensive study of American administrative law and has become the standard and much-cited authority in the field. In 1969 Professor Davis published Discretionary Justice, a study of the informal levels of official action, such as police and prosecutor discretion, the discretion of school boards, and a multitude of other low-visibility makers and enforcers of official policy. In outlining the challenges of this pervasive problem of government and in sketching the principles for further inquiry, he set objectives to occupy legal research for years to come."


During the 1976–77 academic year, the School will have three Visiting Professors of Law. Francis A. Allen, who is the Edson R. Sunderland Professor of Law at the University of Michigan Law School, was a member of Chicago's faculty from 1956 to 1966. Mr. Allen, who clerked for Mr. Chief Justice Fred M. Vinson before beginning law teaching, has also taught at Harvard and Northwestern Law Schools and served as Dean at the University of
Michigan Law School. Mr. Allen, a graduate of Cornell College and Northwestern Law School, is currently President of the Association of American Law Schools. His fields of interest are criminal law, constitutional law, and family law. He will be teaching during the Winter and Spring quarters at the Law School.

Arnold N. Enker taught at the University of Minnesota Law School for six years prior to moving to Israel where he founded the Law School at Bar Ilan University, Ramat Gan. He has been Dean of that school since 1969; in 1974 he became Director of the Bar Ilan Center for Research in Comparative Criminal Law. Mr. Enker, who is a graduate of Yeshiva College and Harvard Law School, where he was Articles Editor of the Law Review, has been an Assistant United States Attorney for the Southern District of New York. He has also served as the Senior Advisor to the Attorney General of Israel. His major teaching areas are criminal law and professional responsibility.

Ted J. Fiflis, has been a member of the University of Colorado law faculty since 1965. Prior to that time he practiced law in Chicago. Mr. Fiflis has written several articles in the real property, securities and legal accounting fields. He has also been a Visiting Professor at New York University and the University of California at Davis. Mr. Fiflis coauthored, with Homer Kripke, the casebook Accounting for Business Lawyers (1971). He received his undergraduate degree from Northwestern University and his law degree from Harvard.

GARETH JONES TO RETURN AS VISITING PROFESSOR

Gareth Jones, Visiting Professor of Law for two quarters during the past academic year, will return to the Law School in the Spring of 1977 as Visiting Professor. Mr. Jones, who taught Contracts in 1976, will be teaching Restitution next year.

Mr. Jones was educated at the Universities of London and Cambridge. He practiced law for a year prior to entering law teaching. He has taught at Oxford, London and Cambridge. In January of 1975 he was elected into the Downing Professorship of the Laws of England at Cambridge and became an Honorary Bencher of Lincoln's Inn. At present Mr. Jones is completing a new edition of The Law of Restitution which he co-authored with Robert Goff in 1966.

LECTURERS APPOINTED

Three persons have been named as Fellows and Lecturers in Law for the 1976-77 academic year.

Benjamin Geva, a 1970 graduate of the Faculty of Law of the Hebrew University of Jerusalem, was an instructor in property and corporation law at Hebrew University. Mr. Geva received an L.L.M. in 1975 from Harvard Law School and is currently writing his S.J.D. thesis to be submitted to Harvard.

George L. Priest, who was appointed Fellow in Law and Economics in 1975, will be teaching commercial law. Mr. Priest is a 1973 graduate of the Law School. Upon graduation he joined the faculty of the newly-formed University of Puget Sound Law School in Tacoma, Washington. Mr. Priest’s current work consists of empirical studies of antitrust law, jury decisions, and commercial law.

Thomas Weigend, who has studied law at the Universities of Freiburg, Hamburg, and Chicago, will be teaching criminal law. After receiving his Referendar degree from the University of Freiburg, Mr. Weigend studied at the Law School for a year and was awarded the M.Comp.L. degree in 1973. Following his return to Germany, Mr. Weigend worked as a research assistant at the Max-Planck-Institute for Foreign and International Criminal Law in Freiburg and, at the same time, served as a law clerk for several courts and administrative agencies. Mr. Weigend’s doctoral thesis on problems of prosecutorial discretion has been submitted to the faculty of the University of Freiburg.

BEGELOW TEACHING FELLOWS

Five Harry A. Begelow Teaching Fellows have been appointed for the 1976-77 academic year.

Susan J. Dawe obtained her Bachelor of Laws degree at the University of Bristol (England) in 1974. Since then she has been undertaking doctoral research into Industrial Relations Law at Darwin College, Cambridge University. She hopes to complete and present her thesis when she returns to England. Her research topic is “The Law and Practice of Industrial Relations in Agriculture.”

James R. Ferguson is a graduate of Northwestern University School of Law, where he served as Articles Editor of the law review. A member of Phi Beta Kappa, he did undergraduate and graduate work in history and psychology at Indiana University.

Thomas M. Fitzpatrick graduated from Yale College in 1973 and from New York University Law School in 1976. In 1971 Mr. Fitzpatrick was a consultant to the League of Red

Gareth Jones
Cross Societies in Geneva, Switzerland, serving as liaison with the United Nations Institute for Training and Research. In 1974 he was assistant to the director of the State Supreme Courts Project at Yale Law School. Mr. Fitzpatrick has contributed to Citizen Participation in Education, published by the Institute for Responsive Education in 1973.

Joseph Kattan first came to the Law School in the spring of 1976 to assist Professor Gary H. Palm in the compilation of materials on civil rights litigation. While at Northwestern University School of Law, from which he graduated cum laude, Mr. Kattan was active in the Northwestern Legal Assistance Clinic. Mr. Kattan is a 1973 graduate of Case Western Reserve University.

Deborah A. Luth is a 1973 graduate of Wellesley College and a 1976 graduate of Harvard Law School. While in law school she was Court Coordinator for the Harvard Student District Attorneys and prosecuted misdemeanors in the lower Massachusetts criminal courts. Ms. Luth is currently on leave of absence from the Chicago firm Schiff, Hardin & Waite.

The Bigelow Fellows are responsible for designing and carrying out a program of instruction for the first year students in legal research and writing. The program is intended to impart basic legal skills through frequent assignments that aim to simulate the problems of law practice. Professor Richard A. Epstein is coordinator of the program and advisor to the Fellows.

LAW SCHOOL HAS NINE CLINICAL FELLOWS

With several new appointments, the Law School's clinical staff now numbers nine attorneys. One hundred students are currently able to participate in the clinical programs.

The Mandel Clinic renders legal assistance in civil cases, handling approximately 3,000 cases a year. Seventy students participate in its work, conducting weekly interviews and assuming responsibility, under the guidance of Professor Gary H. Palm, for the six full-time staff attorneys, for the cases of the clients who are interviewed.

The three persons most recently appointed to the Mandel Clinic staff are Marc Beem, Nils Olsen, and Ronald Staudt. Marc O. Beem, a 1975 graduate of the Law School, clerked for Judge Bernard M. Decker. Mr. Beem, who received his undergraduate degree from Princeton University in 1970 with high honors, was elected to the Order of the Coif. Prior to entering law school, he was an elementary school teacher in Princeton. Mr. Beem is particularly interested in litigation concerning the mentally ill.

Rolf Nils Olsen, Jr., joined the Mandel Clinic staff in October, 1975. A graduate of the University of Wisconsin and Columbia University Law School, Mr. Olsen clerked for Judge Thomas E. Fairchild prior to coming to the Law School. Mr. Olsen’s area of concentration at the Clinic is problems of the elderly.

Ronald W. Staudt, whose special interest in the Clinic is housing problems, also joined the staff in 1975. A 1970 graduate of the Law School, where he was a member of the Law Review, Mr. Staudt practiced law in Chicago prior to becoming a staff attorney with the Legal Aid Society of the Pima County Bar Association in Tucson, Arizona, in 1972. In 1974 he became Deputy Director of that project.

Thirty students work in the School’s new clinical program at the Woodlawn Community Defender Office, located within a block of the Law School. This office, which serves approximately 1,000 clients annually, is a branch office of the Criminal Defense Consortium of Cook County. The Consortium has been designed as a model clinical program for the delivery, through neighborhood offices, of legal services to indigents charged with crimes.

Three staff attorneys have been appointed by Dean Norval Morris to work in the Consortium office. Frederick F. Cohn will be Director of the Woodlawn Office of the Criminal Defense Consortium. Mr. Cohn joined the Clinic Staff in the fall of 1976. Mr. Cohn, a 1962 graduate of the Law School, clerked for Judge Ulysses S. Schwartz and worked as an Assistant Public Defender in Cook County prior to starting a private practice where he concentrated on criminal cases.

Stanley L. Hill, a graduate of Northwestern and of the University of Michigan Law School, has worked as an Assistant State’s Attorney in Cook County and has been a faculty member at DePaul University College of Law. Mr. Hill joined the staff of the Woodlawn Criminal Defense Services in 1975. Currently he is the First Assistant and staff attorney of the Consortium’s University of Chicago Branch Office.

Robert M. Axelrod, a 1974 graduate of the Law School, clerked for Judge Bernard M. Decker and then for Judge Joel Flaum, both of the U.S. District Court of the Northern District of Illinois, and worked for the Illinois State Department of Corrections prior to joining the Consortium Staff. Mr. Axelrod’s special interest is in the use of scientific evidence in the criminal justice system.

HERBERT FRIED APPOINTED DIRECTOR OF PLACEMENT

Herbert B. Fried, a member of the class of 1932, was appointed Director of Placement in April of 1976. Mr. Fried had returned to the Law School in the Fall of 1975 to work as an administrator in the Mandel Legal Aid Clinic.

Following his graduation from the Law School, Mr. Fried practiced law in Chicago for twenty years. In 1952 he joined the Chas. Levy Circulating Company as
treasurer. In 1968 he became President of this company, the nation's largest distributor of paperback books and magazines.

WAYNE KERSTETTER JOINS CENTER

Wayne A. Kerstetter joined the Center for Studies in Criminal Justice as Associate Director in July, 1976. Mr. Kerstetter is also directing a research project, "Pretrial Settlement in Criminal Cases," funded by the National Institute of Law Enforcement and Criminal Justice.

Immediately prior to coming to the Center, Mr. Kerstetter was Superintendent of the Illinois Bureau of Investigation. A 1967 graduate of the Law School, he has also served as Senior Methods Analyst, Chicago Police Department; Assistant Administrator and Special Counsel, Illinois Drug Abuse Program; Associate Reporter, Unified Code of Corrections; Research Associate and Administrator, Center for Studies in Criminal Justice; Special Assistant to the Police Commissioner, New York City Police Department; and Assistant First Deputy Police Commissioner, New York City Police Department, serving in command of the Inspectional Services Bureau.

Mr. Kerstetter has written extensively on the problems of drug abuse and police administration.

KRAMER FELLOWSHIP ESTABLISHED

A fellowship for professional employees of the Federal Trade Commission and the Antitrust Division of the Department of Justice has been established by the Victor H. Kramer Foundation. Designed to strengthen the opportunities of employees in these two government agencies, Kramer Fellowships will provide mid-career training and intellectual enrichment for persons already launched in their careers. Fellows, drawing upon their experiences as public officials, will in turn be able to contribute to the work of the academic community.

The first Kramer Fellow will be David O. Bickart, who has worked for the Bureau of Consumer Protection of the Federal Trade Commission since 1971. His current position is Deputy Assistant Director for National Advertising. Prior to going to the FTC, Mr. Bickart clerked for Chief Justice Warren E. Burger and for Judge Inzer B. Wyatt. He is a graduate of Harvard College and of New York University School of Law, where he was Editor-in-Chief of the Law Review. Mr. Bickart will be in residence at the University of Chicago beginning October 1, 1976, for a period of nine months. In an alternate year arrangement between the University and Yale University, the Fellowship will be available at Yale in the Fall of 1977.

The purpose of the Kramer Fellowship is to provide a time for reflection and continued education for middle level officials in the two agencies and to provide an opportunity for acquainting the professional staff of these agencies with research results and academic thinking in the antitrust, consumer protection and other competition areas. Project director at the University is Kenneth W. Dam.

EPSTEIN ON TORTS


The reviewer, Roger Pilon, a doctoral candidate in philosophy at the University of Chicago who has published several articles on liability problems, also states: These four articles, taken together, set out a principled theory for handling most of the private wrongs that are today handled under a patchwork of private law, one often producing inconsistent or otherwise unacceptable results.

"The task," Epstein writes, "is to develop a normative theory of torts that takes into account..."
common-sense notions of individual responsibility.” He observes that such an approach, by virtue of its primary appeal to notions of justice and fairness, “stands in sharp opposition to much of the recent scholarship on the subject because it does not regard economic theory as the primary means to establish the rules of legal responsibility.” Far from looking to any end-state distribution of goods, then, “the major assumption of these articles is that, as a substantive matter, the tort law should be seen as a system of corrective justice that looks to the conduct, broadly defined, of the parties to the case with a view toward the protection of individual liberty and private property.” In looking to conduct, “to what given individuals have done to upset the others,” Epstein is presenting a theory that offers principled (and richly detailed) solutions to many of the persistent difficulties surrounding the principle of equal freedom.

Very briefly, the first of these articles provides the analytical framework of this system of corrective justice, the framework for the three substantive articles that follow. Its sets out the rationale for and constraints upon a multiple stage system of pleadings—each stage in the pleadings creating a substantive presumption in favor of either plaintiff or defendant—which “both allows and requires us to establish the appropriate relationships among these concepts regarded as relevant to the tort law."

The second article is the heart of the theory. Here Epstein takes a close look at the negligence standard that dominates the law of tort today, finds it unacceptable on a number of grounds, and then sets out his own theory of strict liability, which he argues convincingly (and contrary to much conventional wisdom) is the only moral standard of civil liability.

The title of the third article presents a detailed working out of the system outlined formally and substantively, respectively, in the first two articles.

Finally, in the fourth article, that curious and sometimes difficult area of tort law—intentional harms—is fit within the system developed in the first three articles. It is here that Epstein treats at some length the issue of so-called economic harms. Free-market lawyers and economists will find especially interesting the conclusions of this section regarding, for example, trade regulation, for Epstein is an unusually rigorous free-market theorist.

Dedication of the Glen A. Lloyd Auditorium

On May 3, 1976, Chief Justice Warren E. Burger, Justice Walter V. Schaefer of the Illinois Supreme Court, and Phil C. Neal, Harry A. Bigelow Professor of Law, spoke at the dedication of the Glen A. Lloyd Auditorium. The dedication was held in conjunction with the School’s Alumni Association Annual Dinner.

Mr. Lloyd, who was a member of the Law School’s Class of 1923, was a trustee of the University for 22 years. He served as Chairman of the Board of Trustees from 1956 to 1963.

Bicentennial Lecture Series

In celebration of the Nation’s Bicentennial, the Law School sponsored a series of nine public lectures on the theme “1776: The Revolution in Social Thought.” The major topics of the series were three books which appeared in 1776 and which had a profound influence on the Western World—The Wealth of Nations, by Adam Smith; The Decline and Fall of the Roman Empire (Vol. 1), by Edward Gibbon; and Fragment of Government, by Jeremy Bentham—the writings of Thomas Jefferson on the ownership of property, and the writings on taxation by Anne-Robert Turgot, French finance minister under Louis XVI.

Lecturers and subjects were: Bernard Bailyn of Harvard University on “1776: The Intellectual Climate”; Stanley N. Katz on “Thomas Jefferson and the Right to Property in Revolutionary America”; H. R. Trevor-Roper of Oxford University, on “Gibbon and The Decline and Fall of the Roman Empire”; Terence Hutchison of the University of Birmingham on “Adam Smith and The Wealth of Nations”; R. H. Coase on “Adam Smith’s View of Man”; H. L. A. Hart of Oxford University on “Bentham and the United States of America”;

John T. Wilson, President of the University of Chicago; Chief Justice Warren E. Burger; Dean Noreal Morris shown at dedication of The Glen A. Lloyd Auditorium.

A five-member faculty committee, chaired by R. H. Coase, planned the series. Members of the committee were Stanley N. Katz, Phil C. Neal, Richard A. Posner, and George J. Stigler, the Charles R. Walgreen Distinguished Service Professor in Economics and the Graduate School of Business. The series was funded in part by a grant from the Walgreen Foundation. All of the lectures will be published in the forthcoming issue of The Journal of Law and Economics.

AMERICAN BAR FOUNDATION RESEARCH JOURNAL

The American Bar Foundation, of which Professor Spencer L. Kimball is Executive Director, has recently launched a new publication to report results of legal research. Members of the Law School’s faculty who have been active in research projects conducted under the aegis of the Foundation have contributed heavily to the first two issues of the Journal:


the Mitchell-Stans Conspiracy Trial.” Professor David P. Currie contributed “Federal Air-Quality Standards and Their Implementation,” and Professor Kimball, who is Editor of the Journal, coauthored “Legal Service: A Typology.”

VOLUME ON TELL ASMAR LEGAL DOCUMENTS

An Oriental Institute Research Associate at the University, Robert M. Whiting, Jr., has been awarded a grant from the National Endowment for the Humanities to prepare a volume on the contents of 100 legal documents which the University’s Oriental Institute uncovered more than forty years ago from the ruins of a Babylonian palace and temple complex at Tell Asmar, Iraq. The documents, which were among 1,400 excavated at Tell Asmar, pertain primarily to the documentation of land and house sales, but they also include records of loan contracts, legal depositions and claim settlements.

Mr. Whiting’s volume will contain a transliteration for each of these texts, accompanied by an English translation and a discussion of the text’s wording and its linguistic characteristics. It will also contain glossaries, indexes of proper names, and a commentary which will place each group of texts in its proper cultural setting by pointing out its historical, social, and economic significance.

ROSCOE STEFFEN (1893–1976)

Roscoe Turner Steffen died on June 8, 1976, in Berkeley, California. Mr. Steffen was a member of the University of Chicago Law School faculty from 1949 to 1961. He also taught at Yale Law School, from 1925 to 1949, and at Hastings College of Law in San Francisco, from 1961 to 1975.

Mr. Steffen wrote casebooks on Agency-Partnership and on Commercial and Investment Paper. He left a completed manuscript entitled “Agency-Partnership in a Nutshell,” which will be published soon.

Born in Great Falls, Montana, Mr. Steffen earned his A.B. degree at the College of Idaho in 1916 and his LL.B. degree at Yale in 1920. During World War I he was a second lieutenant with the American Expeditionary forces in France. Mr. Steffen was a Judge in Hamden Town Court in Connecticut for five years. In 1939–49 he was a Special Assistant to the Attorney General and tried antitrust cases. Important cases that he argued were the first Gypsum case and the Investment Bankers’ case.

GEORGE E. FEE (1934–1976)

George E. (Nick) Fee, Jr., died in February 1976. Mr. Fee was a 1963 graduate of the Law School. From 1964 to 1969 he was Assistant Dean and handled a variety of administrative tasks, including placement and admissions. After he left the Law School, Mr. Fee was associated with several lawyer placement services. At the time of his death he had his own company, George Fee and Associates, which is located in Chicago.

R. H. Coase
Brief Notes from the Faculty

Gerhard Casper and Philip B. Kurland have edited a series of Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law which, for the first time, makes available the oral arguments of a substantial number of important Supreme Court decisions.

Mr. Casper has testified before two Congressional committees in recent months. He appeared before the Senate Subcommittee on Separation of Powers of the Committee on the Judiciary, when the Committee was considering Executive Agreements, and he testified before the House Select Committee on Intelligence Activities when it was holding hearings on Covert Activities.

He also participated in the Annual Chief Justice Earl Warren Conference on Advocacy in the United States.

R. H. Coase, Clifton R. Musser Professor of Economics, served as technical advisor, with Ben Rogge and Edward G. West, for the production of "Adam Smith and the Wealth of Nations," a documentary film on the life and thoughts of Adam Smith. Production of the film was funded by Liberty Fund, Inc. Mr. Coase presented the film at several schools in this country and in England.

During this past year Mr. Coase has delivered many lectures in commemoration of the Bicentennial of the nation and of the publication of the Wealth of Nations. Among the places he delivered lectures were the University of California at Los Angeles, the University of Miami, and the University of Virginia.

In April, 1976, Kenneth W. Dam, Harold J. and Marion F. Green Professor in International Legal Studies, was appointed by Secretary of Commerce Elliot L. Richardson as a member of the Patent and Trademark Office Advisory Committee. The Committee will advise the Commerce Department’s Patent and Trademark Office on matters concerning the patent system and administration of the Patent and Trademark Office.

Mr. Dam spoke on "The Economic Aspects of Detente" at the Committee on Foreign Affairs of the Chicago Council on Foreign Relations in January. He also delivered a lecture on "The Role of Rules in the International Monetary System" at the University of Miami Law School last winter. Mr. Dam also participated in a panel on "Information and Antitrust" at the Conference Board in New York.

At the June Convocation of the University, Frank L. Ellsworth received his Ph.D. degree. Mr. Ellsworth, who is Assistant Dean in the Law School, wrote his dissertation on "Developments in Legal Education at the Turn of the 20th Century: The Founding of the University of Chicago Law School." In addition to his Law School responsibilities, Mr. Ellsworth teaches a course in "Freedom and Political Change" in the College.

KAPLAN: LEGAL ETHICS

Stanley A. Kaplan initiated the Legal Ethics Forum in the May, 1976, issue of the American Bar Association Journal. The format of the forum which Mr. Kaplan conducts is to set forth a problem—usually a hypothetical fact situation—which raises significant ethical questions. The problem is then commented upon by two or three lawyers, and comments are solicited from the bar in general.

The purpose of the forum is to bring to the attention of lawyers and judges practical and important questions relating to the lawyer's role, to latent conflicts of interest and to uncertainties in the interpretation and application of rules concerning professional responsibility with the hope that their discussion will help lawyers better understand, recognize, and knowledgeably deal with ethical problems.

Mr. Kaplan has been a frequent participant in programs considering ethical responsibility, including the Airlie House Symposium in June, 1975, on "An In-Depth Analysis of the Federal and State Roles in Regulating Corporate Management" and an April, 1976 program sponsored by the Chicago Bar Association on "The Corporate Lawyer and Professional Responsibility."

Stanley N. Katz, Professor of Legal History, delivered the Thomas M. Cooley Lecture at the University of Michigan Law School on November 3, 1975. Mr. Katz’s talk was entitled "Property and the American Revolution: The Law of Inheritance."

Mr. Katz was one of the faculty lecturers in the University of Chicago’s week-long study session for alumni—Alumni College ’76 held in July, 1976. The issue alumni and faculty considered in this first such gathering was "Technology and American Life." Mr. Katz spoke on law, politics, and technology.

The American society of Legal History recently elected Mr. Katz Vice President. He will hold this office for two years.
Edmund W. Kitch served as Executive Director of the Civil Aeronautics Board Advisory Committee on Procedural Reform which in January suggested a series of comprehensive proposals designed to increase the efficiency and fairness of Board procedures. Among its recommendations, the Committee urged that the Board establish deadlines for completion of its work, noting that although many cases before the Board are complex, "it is difficult to conclude that there is sound justification for the Board to take a half year or more from the time a case has been briefed and argued to decide the matter and prepare a decision."

The committee also recommended changes that would eliminate the need for some hearings and shorten the time needed for others by strengthening the pre-hearing phase of the proceedings. It also urged the Board to establish an annual route and service proceedings agenda to provide a mechanism for informing the public and all interested parties as to the status of route and adequacy-of-service cases.

Mr. Kitch also was a panelist in the 24th Annual Management Conference of the University’s Graduate School of Business. Mr. Kitch's panel considered “The Economic Effects of Government Intervention” at the Conference held in March in Chicago.

KURLAND GIVES RYERSON LECTURE

On April 27, 1976, Philip B. Kurland delivered the Nora and Edward Ryerson Lecture, the third lecture in an annual series established by the University of Chicago Trustees in 1973 in memory of the Ryersons. Mr. Ryerson was a trustee for 45 years and Chairman of the Board of Trustees for five years.

The Ryerson lecturer delivers one or more lectures during the academic year to an audience from the whole University about significant aspects of his work.

Nominations for the lecturer come from the University’s entire faculty.

In introducing Professor Kurland who spoke on “The Private I: Some Reflections on Privacy and the Constitution,” University President John T. Wilson said: "The pronouncement of James Beaver that ‘Philip B. Kurland is undoubtedly the most astute living student of the United States Supreme Court’ has become the opinion of a good part of the world. His reputation is so great that one is led sometimes to wonder how the Constitutional Convention managed to write the documents without him. When Kurland points out the contradictions and inadequacies of that document, we know indeed that they only just managed."

Attorney General Edward H. Levi, Karl N. Llewellyn Distinguished Service Professor of Jurisprudence and President Emeritus of the University, received honorary Doctor of Laws degrees from Yeshiva University in April, 1976, and from the University of Pennsylvania, in May, 1976.

Norval Morris, Dean of the Law School and Julius Kreeger Professor of Law and Criminology, has spoken to countless groups of alumni since becoming Dean one year ago. He has also spoken to many law clubs, at several criminal justice conferences, and before penological gatherings.

He spoke at the dedication of a federal prison at Butner, North Carolina, which was developed following the model Dean Morris suggested in *The Future of Imprisonment*. And he delivered the commencement address at graduation ceremonies held on June 8, 1976, at the federal penitentiary in Leavenworth, Kansas.

Dean Morris also participated in the forum sponsored by New York University School of Law this spring, which explored the topic “American Law: The Third Century.” N.Y.U.’s Professor Bernard Schwartz, who planned the forum, was quoted in the April 19, 1976, *New Yorker* as having said, “The standard for whom to invite to come to N.Y.U. to speak about different issues in the law was who was the best person available. . . .

For instance, really the only person I thought of when I considered criminal law was Norval Morris, Dean of the University of Chicago Law School.”

In September Mr. Morris gave The Robert Stevens Lecture at Cornell Law School on "Criminal Sentences: Treating Like Cases Alike."

Richard A. Posner was one of three panelists considering “The New Portfolio Management” at the March 11, 1976, University of Chicago Graduate School of Business 24th Annual Management Conference. He also served as a faculty member at the 1976 Salzburg Seminar in American Studies. The Salzburg Seminar was established in 1947 to provide “practical and academic study of aspects of life in the United States and of problems common to North America, Western Europe, and Eastern Europe. . . . It brings potential leaders of Western European countries and socialist European countries together with each other as well as with distinguished Americans.” Each year there are seven different sessions of the Seminar usually lasting three weeks, each on a different subject and each led by a different faculty member. Mr. Posner served on the faculty for the four week session on American Law and Legal Institutions, held in July and August.


During the past year Max Rheinstein, Max Fam Professor Emeritus of Comparative Law, has published three journal articles,
two book reviews and one book, with Mary Ann Glendon. This last, *Marriage: Interspousal Relations*, will be published as part of the *International Encyclopedia of Comparative Law*.

Adolf Sprudz was among a group of law librarians from five continents invited to participate in a Seminar on the Law of the European Communities held in Germany in August, 1975, by the International Association of Law Libraries (IALL). Mr. Sprudz, who is a member of the Board of Directors of the IALL, participated in the IALL Roundtable Discussion on the Law Library Profession held in Oslo during the 1975 Conference of the International Federation of Library Associations.

In March, 1976, Mr. Sprudz was invited to Vanderbilt University Law School to advise their librarians on the development of a foreign and international law collection.

James B. White presented a paper at the December, 1975, four day institute of the Midwest Faculty Seminar conducted by the University Extension. About 50 persons from the humanities and social science faculties of thirty-five midwest liberal arts colleges attended the seminar which was held at the Center for Continuing Education.

Mr. White's paper, "The Behavioral Sciences vs. Legal Reasoning," was presented with Professor Norman Bradburn, Professor and Chairman of the Department of Behavioral Sciences in the Graduate School of Business and the College.

Hans Zeisel spoke at the annual meeting of the American Newspaper Alliance in New York on "Free Press, Fair Trial and the Jury."

Mr. Zeisel has again collaborated with Shari Diamond, Assistant Professor of Criminal Justice and Psychology, University of Illinois at Chicago Circle. One of their articles, "The Jury Selection in the Mitchell-Stans Trial," was published in the new journal of the American Bar Foundation; another, "Sentencing Councils; A Study of Sentence Disparity and Its Reduction," appeared in *The University of Chicago Law Review*.

Franklin E. Zimring participated in a panel on "The Right to Die: A Matter of Choice?" held February 17, 1976, in Chicago. Other persons on the program, which was sponsored by the University of Chicago Alumni Association, were Professor James M. Gustafson of the Divinity School and Dr. Chase P. Kimball of the Departments of Psychiatry and Medicine.

ADMINISTRATION AND LEGAL AID FACILITIES EXPANDED

A grant from the Edyth Bush Foundation has allowed for expansion of the Mandel Legal Aid Clinic and for relocation of the development, alumni, and graduate studies offices to the courtroom wing of the School. It also provided for a greatly enlarged placement facility in the courtroom and auditorium complex.

DEPARTMENT OF JUSTICE LECTURES

The Bicentennial lecture series sponsored by the U.S. Department of Justice brought Professor Paul A. Freund of The Harvard Law School to the Law School on May 10, 1976, to speak on "The Constitution: Newtonian or Darwinian." Norval Morris will give one of the series' eight lectures at the University of Denver Law School in the fall.

75TH BIRTHDAY EVE

In October, 1977, the Law School will be celebrating its 75th birthday. Observances of this very special occasion are being planned. The schedule will be announced shortly.

Three Law School faculty members participated in a series of panels sponsored by the University's Center for Policy Study. The series called the American Issues Forum was held in the early part of 1976 in celebration of the Nation's Bicentennial.

R. H. Coase served on a panel which discussed "The Business of America—Selling the Consumer."

Kenneth W. Dam was a panelist in the discussion of "America in the World—The Economic Dimension." And, Philip B. Kurland was one of the persons who examined "Growing Up in America—Education for Work and Life."