New Law School Building

On January 18, 1956, Chancellor Kimpton announced that the Ford Foundation had granted $1,275,000 to the University of Chicago to aid in the construction of a new law building, to provide funds for law fellowships, and for expanded instruction in legislative drafting. The grant provides $800,000 toward the estimated $3,500,000 construction cost of the new Law School Building, which is one of the objectives of the campaign for funds initiated by the University last June. On page 2 of this issue of the Record the Foreign Law Fellowships and the Law Fellowships for Commonwealth Students, in aid of which the Ford Foundation grant will be used, are discussed briefly. The Law Revision program, which will be assisted also, was explained by Professor Dunham in the Autumn issue of the Record.

The projected building has been designed by Eero Saarinen and Associates, who are now consulting architects to the University for the physical development of the entire campus. The building will be erected south of the Midway, in the block bounded by Sixtieth Street on the north, Sixty-first Street on the south, University Avenue on the east, and Greenwood Avenue, recently closed to traffic, on the west. It will thus occupy a site directly between the new American Bar Center on the east and Burton-Judson Courts, the University's newest and largest Residence Halls, on the west. The new building will have a direct physical linkage with Burton-Judson, in which law students will be housed. The Law School Building will consist of four wings, with purposes and facilities as follows: (1) The Auditorium-Courtroom Wing. This wing will contain a completely equipped courtroom seating about 250, with appropriate satellite rooms and an auditorium accommodating about 600. Flexible dividers will make it possible to close off the front portion of the auditorium should a very large classroom be desired. (2) The Classroom-Seminar Room Wing. This long, low wing will have a corridor running along one side its full length. Students will go up one

New Appointment

The Law School is pleased to announce the appointment of Francis A. Allen to be Professor of Law, effective July 1. Mr. Allen is currently professor of law at the Harvard Law School.

Mr. Allen was graduated summa cum laude from Cornell College in 1941. His legal education was secured at the Law School of Northwestern University, from which he was graduated in 1946 magna cum laude. He interrupted his law-school training to serve for three years in the Army Air Forces. During his Senior year in law school he was editor-in-chief of the Illinois Law Review.

Upon graduation, Professor Allen was appointed law clerk to Mr. Chief Justice Vinson, of the United States Supreme Court, with whom he worked during the 1946
and 1947 terms. In 1948 he was appointed to the faculty
of the Northwestern University Law School. He
remained at Northwestern until his appointment at Har
vard in 1953, except for brief service as branch chief in
the Office of the Chief Counsel of the Wage Stabiliza
tion Board and a stay at the University of Chicago Law
School as Visiting Professor for the Summer Quarter, 1955.

Professor Allen has served as a consultant to various
departments of the Illinois state government and as a
member of the board of governors of the Metropolitan
Housing and Planning Council of Chicago. He was
chairman of the Advisory Committee of the Illinois Sex
Offenders Commission in 1952-53. He is associate editor
of the Journal of Criminal Law, Criminology and Police
Science. He has published widely in a variety of fields, al-
though his primary interests are in criminal law and con-
stitutional law.

Alumni and Faculty Notes

The Honorable Harry Hershey, JD’11, is now serving
as Chief Justice of the Supreme Court of Illinois.

The president of the Association of American Law
Schools, Maurice T. Van Hecke, of the University of
North Carolina, and the president-elect, Philip Mechem,
of the University of Pennsylvania, are graduates of the
Law School. Professor Van Hecke is a member of the
Class of 1917; Professor Mechem, of the Class of 1926.

Professor Harry Kalven, Jr., discussed the School’s
Jury Project at a recent meeting of the Toledo Bar Asso-
ciation.

The School notes with regret the recent deaths of two
distinguished alumni. Mr. Walter Hammond, of Kenosha,
Wisconsin, was graduated from the Law School in
1916, after taking his undergraduate degree from Beloit
College. He then entered upon the practice of law in
Kenosha, where he remained until his recent death. Mr.
Hammond, a member of Phi Alpha Delta, served as
president of the Kenosha County Bar Association and, in
1941-42, of the Bar Association of the State of Wisconsin.
He was also a director of the Kenosha Chamber of Com-
merce and was active in Kiwanis and in Boy Scout work.

Mr. Arthur E. Mitchell, JD’10, died recently in Knox-
ville, Tennessee. Mr. Mitchell received the Bachelor’s de-
gree from Colorado College before coming to Chicago.
Subsequent to his graduation he entered practice in
Knoxville, which practice he maintained until his election as
Chancellor of the Knox County Court in 1934. He
served as Chancellor until his retirement in 1950, the
longest tenure in the history of the court. Mr. Mitchell
was for several years a member of the Knoxville School
Board, serving as its chairman in the difficult days of the
early 1930’s. He was also a trustee of Maryville College,
which in 1947 awarded him the honorary degree of Doc-
tor of Laws.

International Legal Studies

In the course of its work in international legal studies,
The Law School has for many years conducted courses
and seminars in comparative law. The Max Pam Profes-
sorship of Comparative Law was established in 1935. As a
base for research in comparative law, the Comparative
Law Research Center was established in 1948. Under its
auspices the annotated translation of Max Weber’s Law
in Society and Economy was published in 1954 and a
study on Conflict Law in American Treaties in 1956. A
major investigation into the relations between divorce
laws and marriage stability is nearing completion. Since
1949, the School has been carrying on a special course of
introduction to American law for foreign students. It is
designed to take care of the needs of that steadily grow-
ing number of graduates of law schools of civil law coun-
tries who do not come to this country to prepare them-
selves for the practice of law in the United States. What
these students want is, in a one year’s stay, to acquaint
themselves with the methods of common-law thought and
to obtain some knowledge of American law and institu-
tions. When back home, they will then utilize their
American experience in their work in their own laws and,
perhaps, also in the conduct of legal business between
their home countries and the United States. Students of
this kind are strangers to those institutions of American
social, economic, political, and cultural life which an
American student has absorbed simply by living here.
They are also unfamiliar with American university or-
ganization and American teaching methods. Many of
them are specially interested in some particular field of
American law such as trade regulations, corporation law,
or the treatment of juvenile delinquency, which they can-
not understand without some basic knowledge and train-
ing of a more general kind.

Such students are likely to waste all, or a considerable
part, of the short time they have in this country, unless
they receive understanding guidance as well as special
introductory instruction. At The University of Chicago
Law School the facilities offered to take care of these
needs have so far been used by some seventy students
coming from seventeen different countries.

In recent years a need has been recognized for Ameri-
can lawyers to acquaint themselves with the legal systems
of civil law countries, both for practical purposes and as a
method of enriching the understanding of American law,
its possibilities of development, and its teaching. If an
American law graduate goes abroad to study law in, let
us say, Paris, he is likely to be as much at sea as the for-
eign law graduate here unless he is specially prepared and
guided. To provide such preparation and guidance, the
School now offers a Foreign Law Program, which ex-
tends over twenty-one months, the first nine months to
be spent in residence at the University and the following
twelve months in a foreign country.
During the first nine months the major portion of the student’s working time will be spent in intensive and systematic study of the private law of France or Germany. These two systems have been chosen because a mastery of either one will enable a student to work effectively in any one of the many laws which are based upon the French or German models, such as those of Belgium, the Netherlands, Italy, Spain, and Latin America, of Austria, Switzerland, Japan, and Turkey. He will also be prepared to approach the private law systems of the Nordic countries and of many of the Arabic countries, of Eastern Europe and of Southeast Asia.

The remainder of the first-year curriculum will be flexible, but students who do not have a decided preference for any particular field of private law will be advised to devote their attention to the law of international trade and international business transactions. Insofar as necessary, the student will also have to advance his proficiency in the language of the country of his choice.

The work of the second year will be carried on in that foreign country for which the student has been prepared. Before the student goes abroad, arrangements will have been made for his continued guidance by a law teacher in the country chosen, who, in consultation with The University of Chicago Law School, will prepare for each student an appropriate plan of studies and research and who will be available through the year as counselor and consultant. In suitable cases provision may be made for practical training in a law office, a government agency, or a business firm.

Thus prepared and guided, the student should be in a position to gain the most from his work abroad and, quite particularly, to avoid that waste of time and effort which otherwise appear to be inevitable.

A student who has successfully completed the full program will be awarded the degree of Master of Comparative Law (M.Comp.L.). Upon the acceptance by the faculty of a major study as a thesis, the candidate will be awarded the degree of Doctor of Comparative Law (D. Comp.L.). In order to be accepted as a thesis, the study must constitute an original contribution to legal learning.

Financial assistance through the award of a fellowship or tuition scholarship may be given to students of eminently high qualification. Fellowships will cover tuition and other fees, the cost of travel, and a monthly living stipend of $180 or the equivalent of its purchasing power in the country in which the second year of the program is spent.

In a further effort to enrich its work in international legal studies, the School has decided also to offer a limited number of fellowships to graduates of law schools in countries within the British Commonwealth. The training which such students receive in the American variant of the common law should help them in their work at home and strengthen the ties within the common-law part of the world. Through their representing a diversity of background and interest, they also should exercise a stimulating influence among the student body of the School.

The year at Chicago may be taken either upon the completion of university studies or after a period in practice, government service, or teaching. The Fellows from the Commonwealth will be admitted to the regular undergraduate curriculum of the School and pursue the program of studies which is taken by students who are preparing themselves for admission to the bar and practice in the United States. The Fellows will normally be admitted to the Senior Class when they enter and may, therefore, complete the program and qualify for the J.D. degree during one year of residence at the School.

The stipends for the Fellows will be $3,000 for residents of the United Kingdom; $3,500 for residents of Africa, Australia, New Zealand; and $2,500 for residents of the Dominion of Canada. It is expected that these amounts, which reflect differences in travel expenses, will be adequate to cover the expenses, including tuition fees and living expenses, of a nine-month academic year at the Law School.

The Fellowships will be awarded by the Faculty of the School from a group of candidates from the Commonwealth, each of whom will have been selected by his university and designated to compete for the Fellowship as a representative of that university.

Some of the numerous publications by The Law School faculty are contained on these shelves in the Law Library.
Review of Katz, “Introduction to Accounting”

The following review is reprinted from the Journal of Legal Education, Volume 8, Number 2, with the permission of the author and of the Editors of the Journal. Mr. Katz is James Parker Hall Professor of Law at the University of Chicago Law School and was a pioneer in the introduction of accounting to the law-school curriculum.


Courses in accounting have become as much a part of the permanent law school curriculum as those familiar stalwarts: contracts, torts, property, and criminal law. They were once timidly inserted by reluctant curriculum committees into the course schedule as one-hour electives, usually taught by an instructor borrowed from the business school or from among local practitioners. Now, however, accounting has become a fixture in the law school curriculum, usually required of the degree candidate who has little or no accounting in his undergraduate work. Most faculties feel that accounting problems are so inextricably intertwined in many matters encountered in present-day law practice that a study of the subject is as necessary an ingredient in the training of the practical lawyer as courses in trial tactics, brief writing, legal drafting, and others.

In presenting accounting to the student who has had no training or experience in the field, the instructor has the problem of how much time to spend on the fundamentals of bookkeeping as contrasted with the more important problems of financial statement analysis, presentation of data concerning corporate net worth, and other matters which concern management and counsel for management. As a matter of pedagogy, some are disposed to teach accounting by the case method, using judicial interpretations of corporation and tax statutes as they pertain to accounting with supplementary explanatory matter. Others prefer to present the subject as it is taught in business schools: text reading, illustrative materials, and problems. Professor Katz's approach is the latter method, and it is done effectively in this latest text on a subject with which he has had considerable teaching experience. The student who has had no exposure to accounting must start with fundamentals. Deferred charges, depreciation reserves, and capital and earned surplus are all meaningless terms on financial statements unless the student understands the basic accounting process by which debits and credits to these accounts are journalized, posted, recorded in ledger accounts, and finally are reflected in summary form at the end of the accounting period in financial statements.

The first four chapters concern the fundamentals of the accounting process. Chapter 1 is a brief introduction to financial statements, the end product of the accounting process. Chapters 2, 3, and 4 illustrate the rudiments of bookkeeping and the accounts used in the double entry system. In Chapters 5 and 6, the author inserts materials on accumulation and discount computations and bond premium and discount tables. These chapters, which concern materials of a special nature that are encountered relatively infrequently in the average practice, could be omitted by the instructor without losing the continuity of the presentation of subject matter. Chapters 7 and 8 take up in detail two bugbears for the beginner—: inventories and depreciation—with a discussion of different theories with respect to these matters. In Chapters 9 through 12, the author discusses corporate proprietorship: issuance of shares, dividends, capital readjustments, treasury stock, and earned and capital surplus. These are the chapters that are so necessary to the student in the corporation law course, and the author suggests that they may be omitted, as they are at the University of Chicago Law School, and taken up in the corporation law course itself. Chapter 13, on partnership accounting, is of particular significance with the extensive codification of the treatment of partnerships for federal income tax purposes under the Internal Revenue Code of 1954. Chapter 14 takes up the problems of normal versus unusual items of operating income and their presentation in accounting statements. Chapter 15, on intangibles, and Chapter 16, on intercorporate stock holding and consolidated statements, concern special problems of importance with which the student should be familiar. Finally, in Chapter 17, the author comes full circle to financial statements, the subject with which he started in Chapter 1. Here the technique of comparative analysis and ratios is presented. This is important for the student since he must realize how masses of data are collected and presented on financial statements which are not only a formal summation of historical events, but tools which management can use to project more efficient and effective operations into the future.

The text quotes from materials of the American Institute of Accountants, the American Accounting Association, and S.E.C. releases. References are also made to corporation and tax cases and standard accounting texts. A minimum of problems is inserted throughout the book to enable the student, by these exercises, to understand in a practical way the principles discussed. The text is suitable for a one-hour course; or if additional materials such as prospectuses, corporate annual reports, and assigned reading in footnote and reference materials are used, the text is appropriate for a two-hour course.

Charles O. Galvin
Professor of Law

Southern Methodist University School of Law
New Building—
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flight from this corridor to reach four classrooms, varying in capacity from 85 to 170, and down one flight to five seminar rooms, accommodating 18 to 43 students, and to the student locker area. (3) The Library-Office Wing. This central, seven-story structure will have storage and mechanical facilities on the ground floor. On the first floor will be located an exhibition area and a student lounge. The presence of a small warming kitchen will make it possible to use this flexible space for the luncheon and dinner sessions of the Law School conferences and similar gatherings. The second floor will contain the Reading Room of the Law Library, together with the administrative offices of the Library, the offices of the Law Review, a Special Collections Room, and a Rare-Book Room. The third floor will be a balcony overlooking the Reading Room, occupied largely by stacks and study areas. The fourth through the sixth floors will duplicate the arrangement of the mezzanine floor of the present building, a central core of stacks surrounded by a ring of Faculty and research offices. Interspersed among the stacks will be a number of carrels for student work. (4) The Administration-Legal Aid Wing. This wing will contain a suite of offices for the administrative activities of the School, together with ample space for legal aid.

The building is designed to accommodate a senior teaching faculty of forty or more, about sixty research associates, fellows, graduate students, and visiting scholars, and an undergraduate student body of about 450. There will be stack space for 300,000 books, with provision made for the addition of necessary stack floors at minimum expense. The building will connect with Burton-Judson Courts, which will make available student housing facilities, lounges, dining halls, and private dining rooms.

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A plan of the entire site, with Sixty-first Street at the top of the picture. The new American Bar Center is on the left, Burton-Judson Residence Halls, the newest and finest the University has, on the right, and the projected new Law Building between.

Architect’s sketch at left shows the interior of a medium-sized Seminar Room. Drawing above indicates seating arrangements in a large Seminar Room.
Sketch shows the interior of a large classroom. Plans call for four classrooms, varying in capacity from 85 to 170.

Plan for the ground floor of the new Law Building. The seminar rooms and student locker areas are in the wing on the left; mechanical and storage space and stacks in the center; and the legal aid offices and student bar association on the right.
Top sketch depicts a typical research office and right, a typical faculty office. The sketch below shows the general layout planned for the Reading Room of the Law Library.
At top: plan for main floor of the new Law Building. Below: top sketch shows a cross-section view of the principal parts of the building, and bottom, plans of three typical floors of seven-story central library structure.
The new Law Building as it will appear on its site. On the left, consisting of, from left to right, the Auditorium-Courtroom Wing, and the Administration-Legal Aid Wing; on the right,
Left, the American Bar Center; in the center, the Law Building, Wing, the Classroom-Seminar Room Wing, the Library-Office Burton-Judson Residence Halls.
Floor plans and a cross-section view of the Auditorium-Moot Court Wing of the new Law Building. Drawing in lower left is a view of the interior of the Auditorium.

Drawing at left shows the interior of the Courtroom and sketch at right is of the Special Collections Room, adjoining the Reading Room of the Law Library.
Psychoanalysis and Law

By WILBER G. KATZ
(James Parker Hall Professor of Law)

How may one characterize the relation between the disciplines of psychoanalysis and law or, rather, the relation between representative members of the two professions? It will not do to say simply that it is a relation of friendly co-operation or one of hostile suspicion. Perhaps the usual relation may fairly be called one of mutual ambivalence. The analyst, on the one hand, regards the maintenance of a system of law and justice as a necessary condition for personal equilibrium. On the other hand, he regards much of the law as antiquated and outworn and often criticizes it as based on theological and moral ideas which have survived their usefulness. From their side, the men of law sometimes welcome the insights into human motivation which psychoanalysis has contributed. At other times lawyers show hostile defensiveness in the face of the analysts' sweeping criticisms of the law.

Psychoanalysts have sometimes spoken of the law in terms which seem calculated to increase this defensiveness. Thus in a book which we may take as representative of the psychoanalytic tradition, Dr. Franz Alexander begins one chapter with a brisk resolution boldly to "enter the Augean stables of philosophy of law and attempt to make a psychological analysis of the concept of responsibility."

As this quotation suggests, the principal focus of tension between psychoanalysis and law is the general concept of responsibility. Legal tradition asserts, or at least assumes, that most men have some measure of free choice. Psychoanalysis, on the other hand (to quote Alexander again), "considers the human psychic apparatus as a system which is fully, and without a single gap, determined by psychological and biological causative factors." He adds his diagnosis that the concept of free will is an illusion—"an expression of the narcissistic wish, or even the postulate of the moralists that the Super-Ego does or should rule, supreme and unlimited in the psychic apparatus of man. . . ."

Ten years ago an American Bar Association committee warned that careful consideration must be given to the spread of Freudian doctrine.

So far as your committee can discover, . . . the doctrines of psychoanalysis tend toward determinism; free will does not exist but human conduct is or may be determined . . . by long past events in the life of the individual . . . .

The committee added a vague threat:

Unless there is a reversal in the trend of the development and exploitation of psychoanalysis . . . , the courts will be called on sooner or later to determine whether it is or is not an established science or art . . . to justify the admission of testimony of psychoanalysts . . . .

(It is not recorded that analysts were thrown into a panic by this pronouncement.)

A general treatment of the relation of psychoanalysis and law would have to deal with many points of contact. In this paper, however, I shall consider only certain problems related to the concept of responsibility.

In the 1920's Dr. Alexander worked closely with a Berlin criminal lawyer, Hugo Staub. They wrote a book which was published in this country in 1931 under the title The Criminal, the Judge, and the Public—a Psychological Analysis. This book is still one of the most penetrating interpretations of criminal behavior. In the next few pages I shall attempt a highly condensed summary of this analysis, realizing, of course, that I can hardly expect to avoid inaccuracy.

Criminality is not a congenital defect; it results from defective training; it shows arrested development. We all go through a period of infantile criminality. (The authors invite us to imagine what the world would be like if predominance of power were in the hands of children under ten.) A majority of children learn not to be criminals through the experience of punishment—punishment from the physical world itself and from parents (and others) through the infliction of pain or the apparent withdrawal of love. This experience of the demands of reality leads to repression of part of the basic drives and to the discovery of socially acceptable outlets for the remainder. The result is an unstable equilibrium, "a sort of contract between the powers which restrict our instinctual expression and the instinctual demands of the individual." Criminal behavior results from the blocking of this process or from the precarious nature of this equilibrium.

Alexander distinguishes four principal categories of criminals. The first consists of psychotics and defectives in whom criminal acts are traceable to organic degeneration or failure of organic development. The second category is that of "neurotic criminals." The third he calls "normal criminals," professional criminals without psychological conflict. These three categories are those of "chronic" criminals. The fourth includes those who have committed crimes not because of a general criminal tendency but because of the external pressure of an acute situation.

These four categories of crime are distinguished according to the degree and character of the ego participation which they involve. In the ease of psychotics and defectives, ego participation is entirely absent. Among neurotic criminals, however, there is variety in the degree and mode of ego participation. One must distinguish those with specific neurotic symptom patterns from those with general neurotic characters. Persons with specific neurotic symptoms enact and re-enact an unconscious drama of crime and self-inflicted punishment. Klepto-
Dawson Lectures

During the Winter Quarter, The Law School sponsored a series of three lectures by Professor John P. Dawson, of the University of Michigan Law School, on the subject of "State Control of the Judging Function." A reception and dinner prior to each of the lectures afforded an opportunity for friends of the School to meet Professor Dawson, who was a visiting Professor at The Law School during the academic year 1954-55.
Psychoanalysis and Law—

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Mania and pyromania afford illustrations of such neurotic symptoms. Here the action is compulsive; ego participation is almost zero. In the case of general neurotic characters, however, the ego asssents to the overt conduct, but there is usually no awareness of the subjective meaning of the conduct, and mechanisms such as rationalization and projection are typically involved. This category includes not only many law-abiding eccentrics but also a large proportion of criminals. Often psychoanalysis can reveal clearly that the unconscious motivation is one of seeking punishment.

In the case of normal (professional) criminals, Alexander finds a “criminal Super-Ego”; the criminal is without unconscious conflict, but his adjustment is to the law-breaking section of the community. In his conduct there is relatively full ego participation. The same is true of the acute or “situational” criminal; here the circumstances faced are so painful that the individual feels released from the “bargain” which normally keeps his behavior within the law.

Alexander and Staub’s analysis covers not only the conduct of criminals but also the social demand for their punishment. In the first place, the demand for punishment is seen as a defensive reaction to the threat which the criminal presents. The threat is twofold. Externally, of course, crime is a threat to safety and order and is met by defensive force. But even more significant is the internal threat to the normally law-abiding citizen.

The example of the criminal has a stimulating effect on our own repressed impulses, and increases the pressure coming from them...4

The demand that every crime should be expiated represents, then, a defense reaction on the part of the Ego against one’s own instinctual drives; the Ego puts itself at the service of the inner repressing forces, in order to retain the state of equilibrium, which must always exist between the repressed and the repressing forces of the personality.5

In both of these ways the demand that crime be punished is defensive. It must be added, however, that the demand may also represent an outbreak of basic hatred and aggressiveness.

Other analysts might charge Dr. Alexander with oversimplification and might question his four categories. For our purposes, however, we may take the foregoing as a typical psychoanalytic view of the behavior of criminals and of the social reaction to such behavior. What does such a view imply as to the purposes of the criminal law?

It implies, in the first place, that the criminal law is exclusively forward-looking. Penalties should be imposed only in order to influence behavior—either the future behavior of the criminal himself or the behavior of others for whom his punishment serves as an example. The criminal law should in no sense be retributory. The criminal’s act was fully determined; he could not have avoided acting as he did. The notion of expiation or retribution is entirely inadmissible.

If penalties are viewed as imposed to influence the behavior of the criminals themselves, what are the implications of the classification of criminals outlined above? In the case of both psychotic and neurotic criminals, punishment will not have the desired effect. In such characters criminal conduct is not deterred by the threat of punishment. In many cases, in fact, the threat of punishment is an inducement, since the unconscious motivation is that of desire for punishment. The other two classes, the professional and the “situational” criminals, consist of those whose acts are characterized by ego participation. They are therefore more or less deterable. As to the acute or “situational” crime, however, Alexander states that “punishment... is superfluous.” He is skeptical as to the effect of actual punishment upon professional criminals, but he insists that these “will have to be isolated, or made socially safe in some other way, throughout the course of the period during which they remain a menace to society.”6

Much more important, from the viewpoint of psychoanalysis, is the deterrence of others as a justification of the criminal law. According to Alexander, “the majority of people resist some of their own tendencies toward antisocial behavior, not because of moral qualms, but because of fear of real consequences... The laws forbidding the murder of parents, incest and cannibalism... are almost the only laws which man, in general, obeys without police supervision.”7 In the words of Dr. Ranyard West, “In our law-making it is our own control which we are planning rather than that of others.”8 From this viewpoint the criminal law is an outstanding success.

This summary of the psychoanalytic view of the function of the criminal law suggests that a working agreement is possible between the lawyer and the analyst, notwithstanding their apparent disagreement as to retribution and free will. They should be able to agree that individuals who are in general deterable (those in whose conduct a high degree of ego participation is manifested) are to be held responsible as if their acts sprang from free choice. As to the mentally ill, neurotic criminals as well as psychotics, it is inappropriate to treat them in the same fashion—and it is unnecessary in order to maintain the general deterrent force of the law. To the extent that “normal” citizens sense that such persons are psychologically different, their being treated as sick rather than as criminals should accord with the sense of justice. This assumes, of course, that dangerous persons who are thus held irresponsible will be segregated with such opportunity for therapy as the state can make available.

For some lawyers acceptance of this working agreement should be relatively easy. Some lawyers take a determinist view of human conduct and regard punishment
as a mere use of the criminal to deter others. Thus Mr. Justice Holmes wrote in a letter to Laski:

"If I were having a philosophical talk with a man I was going to have hanged (or electrocuted) I should say, I don't doubt that your act was inevitable for you but to make it more avoidable by others we propose to sacrifice you to the common good. You may regard yourself as a soldier dying for your country if you like. But the law must keep its promises."9

In general, however, lawyers have balked at any such working agreement with psychiatrists. The typical lawyer, like the typical citizen, assumes that legal responsibility is related to moral responsibility and that moral responsibility presupposes freedom of choice. Judges and legislators (at least in Anglo-American countries) have hesitated to follow the lead of psychiatrists in defining the class of the irresponsible. For over a century they have insisted on a test of responsibility which most analysts and other psychiatrists regard as untenable and unworkable. This is the traditional "right and wrong" test (the M'Naghten test named for the celebrated English murder case out of which it originated), under which evidence of mental illness may be considered only if it establishes that the accused was unable to understand the moral nature of his act. Psychoanalysts and others have repeatedly criticized this formula because it apparently holds responsible many criminals who are seriously ill and who act compulsively despite an acute sense that their conduct is "wrong."

In some American states the class of irresponsibles is increased by recognition of an "irresistible impulse" defense. In many states, however, judges have refused to adopt this rule. Nor are they likely to be won over by the psychoanalyst who argues that "every tenet of modern psychiatry points toward the acceptance of the 'irresistible impulse' plea" and at the same time insists that "modern psychiatry... regards all criminal acts as products of abnormal personality structure and development."10 This, in an article labeling free will an illusion, seems to suggest that impulses which were not in fact resisted were necessarily irresistible, a notion which can hardly be incorporated into the criminal law.

Psychoanalysts and other psychiatrists have long insisted that the "right and wrong" approach to criminal responsibility should be abandoned. For example, the British Institute of Psycho-Analysis recommended recently that the law should hold not criminally responsible a person suffering from "disorder of emotion such that he did not possess sufficient power to prevent himself from committing the act."11 In the United States a similar recommendation has been made by the Group for the Advancement of Psychiatry, an organization which includes influential psychoanalysts. This recommendation is simply that "no person shall be convicted... when at the time he committed the act... he was suffering from mental illness." Mental illness is defined as "an illness which so lessens the capacity of the person to use... his judgment, discretion and control in the conduct of his affairs and social relations as to warrant his commitment to a mental institution."12

In July, 1954, the Court of Appeals for the District of Columbia reviewed these recommendations and, without the aid of statute, adopted a new test: Did the defendant's act stem from mental illness or defect, or was it the result of an exercise of free will?13 Judge Bazelon argued explicitly that, if free choice is involved, moral blame attaches and criminal responsibility is therefore imposed; if the act is traceable to mental illness rather than to free choice, criminal responsibility should not be imposed, because moral blame does not attach.

This reasoning raises anew the basic tension between the traditions of law and psychoanalysis. What are the possibilities of reducing this tension? I think the possibilities are substantial. Lawyers and psychoanalysts can achieve not only a working agreement but also common insight as to the nature of man and common acceptance of the paradox or mystery of his freedom.

In the first place, not all psychoanalysts and analytically oriented psychiatrists are dogmatic in their total rejection of free choice. The following quotation is from Dr. Stanley A. Leavey, of the Yale School of Medicine:

"Insofar as we approach the subject inductively we come out with nothing but a deterministic view; causality is even seen to reign within the moral life as it does elsewhere... [But] only a prejudice would make us deny the reality of all our choices. A scientific statement of the matter at this point seems to me to be this: that we really have moral choices, and that when we examine them, we find their determinants, and these two clauses are not reducible to one another, i.e., the discovery of causality in human experience does not exhaust its meaning."14

Another analyst who may be cited here is Dr. Robert P. Knight, whose address on "Determinism, Freedom," and Psychotherapy was a direct reply to the bar association warning already referred to. In this address he discussed the necessity of effort on the part of a patient undergoing psychotherapy. If therapy is to be successful, must the patient exert effort and, if so, is the exertion fully explained by tracing its appearance to existing character traits and to the new determinants brought to bear by the therapist? Dr. Knight took a thorough-going determinist position and yet insisted upon the necessity of effort. After puzzling over this address for some time, I wrote to Dr. Knight, asking whether there is not a paradox between determinism and the notion of "effort" which patients (and everyone else) must make in order to grow in responsibility. (I had laid a wager with one of my colleagues that Dr. Knight would admit the existence of paradox.) He replied as follows:

Yes, I puzzled quite a bit over the paradox of psychic determinism vs. "effort," and have not yet reconciled it to my satisfaction. One can say that the effort itself is also deter-
A general view of the luncheon meeting held at the Conrad Hilton Hotel during the annual meeting of the Association of American Law Schools.

Bigelow Fellow Alan Mewett, Ralph Kharas '27, Dean of the School of Law at Syracuse University, Assistant Dean Jo Lucas, and Bigelow Fellow Robert Stoyles, at the AALS luncheon.

Lawrence Friedman, '52, Professor Max Rheinstein, and John Hazard, JSD'39, professor of public law at Columbia University, on the occasion of the luncheon held by The Law School at the annual meeting of the Association of American Law Schools.

Maurice Van Hecke, '17, president of the Association of American Law Schools, Justice Walter V. Schaefer, '28, of the Illinois Supreme Court, and Robert Mathews of Ohio State University, at the AALS luncheon.

mined—which seems to be something of a tour de force—or one can concede that, especially in psychotherapy, one expects and mobilizes more effort than the amount which is yet “determined” by previous experience. Such factors as transference (in therapy), inspirational influences, and conceptions of one’s self or of one’s completed work, projected into the future, may be regarded as determining factors, but I still, at this stage of my thinking at least, feel that there is something left over. Harry Emerson Fosdick . . . calls it a “personal rejoinder” to life experience. I think you win your bet.

One may even find a psychoanalyst saying a good word for the idea of retribution and for traditional ideas of morality. Dr. Robert Waelder, a graduate of the Vienna Psychoanalytic Institute, has asserted that everyone, without exception, believes that retribution should follow violation of law; he explains that the apparent opponents of retribution merely hold that someone other than the criminal is guilty of his act—“society,” “the ruling class,” etc. Dr. Waelder has also written:
The complete elimination of the concept of retribution from the legal system may not be without danger. It would tend to dissociate the law entirely from moral sentiment. If the law no longer must conform, by and large, to moral standards, utilitarianism or expediency becomes the only guide. The emancipation from traditional moral sentiments, begun at first for humanitarian purposes, may eventually have consequences not so humanitarian. Once everything can be done that appears to be socially useful, i.e., that is so considered by those who have authority to define social usefulness, a course has been charted that may well end in despotism. Liberal positivism, in its humanitarian distaste for the harsher aspects of traditional morality, may, by undermining the authority of traditional morality, become the pathbreaker of more ruthless successors. The humanitarian goal . . . seems to me to be better served by the progressive mitigation of the severity of retribution rather than by an attempt to eliminate the retributive aspect altogether.17

Psychoanalysis is gradually developing a distinctive ethical theory. It has its own conception of "the good," the objective of healthy personality development. The varying formulations use terms such as "maturity," "spontaneity," "productiveness," "inner freedom," "responsibility," "capacity to love." Furthermore, some analysts, as we have seen, are willing to concede that men have a degree of freedom to move or not to move in the direction of this goal. To be sure, this is no power to lift one's self by his bootstraps. Progress toward maturity comes about only with external help—help which ordinary experience affords or help made available in psychotherapy. Man's real freedom of choice is a freedom to accept or reject such help, a freedom to choose among potential determinants of one's conduct.

Acceptance of help means the acceptance of painful self-knowledge (as well as other frustrations); it means also the resisting of self-protective reaction tendencies. This is the basic requirement for advance in maturity. In the words of Dr. Ernest Jones, the English editor of Freud:

The psychological problem of normality must ultimately reside in the capacity to endure—in the ability to hold wishes in suspension without either renouncing them or "reacting" to them in defensive ways. Freedom and self-control are thus seen to be really the same thing, though both are badly misused concepts.18

Of course one seldom finds psychoanalysts speaking of moral duty, but even Dr. Alexander comes close in the following passage:

Freud remarked once that one may postulate that man is responsible even for his dreams, i.e., for his unconscious wishes. When asked whether we must bear responsibility for our dreams, Freud answered: "Who else can take over this responsibility?" After all, an individual is closer to his own unconscious than anyone else . . . .

Psychoanalysis makes it possible for the individual to increase the scope of power of his conscious Ego. . . . The founder of psychoanalysis has thus a right to impose on us the responsibility for the unconscious because he made it possible for man to gain the upper hand over [it].19

In the foregoing pages are fragmentary materials for a psychoanalytic ethics. Can such a position be satisfactory to the lawyer? He has usually affirmed a freedom of choice far wider than that which any analyst is willing to recognize. Can he admit that this wider freedom is a fiction? He may have heard of the "philosophy of 'as if,'"20 and he may recall that careful judges have sometimes spoken of free will as only an assumption. Thus Mr. Justice Jackson:

How far one by an exercise of free will may determine his general destiny or his course in a particular matter and how far he is the toy of circumstance has been debated through the ages by theologians, philosophers, and scientists. Whatever doubts they have entertained as to the matter, the practical business of government and administration of the law is obliged to proceed on more or less rough and ready judgments based on the assumption that mature and rational persons are in control of their own conduct.21

What may trouble the lawyer is the realization that legal responsibility is thus revealed as largely vicarious responsibility. To be sure, the law has had its categories of liability without fault; employers are vicariously responsible for acts of their employees. But it is usually assumed that such instances of liability are exceptional and require special justification. And it is also believed that in criminal law vicarious liability is even more strictly limited. Now the lawyer is told that the typical liability for "fault," criminal as well as civil, is largely vicarious, since it is liability for consequences of the acts of others who have molded the defendant's character and determined his conduct.

If the lawyer explores this view of responsibility, he may discover that it is by no means novel. It is a central theme in the Judeo-Christian tradition of moral theology. In this tradition there is no impairment of the sense of responsibility if one recognizes the extent to which one's character and therefore one's acts are determined by the acts of one's forebears and others. Men are called to assume responsibility for themselves and for their acts regardless of the determinants of those acts. God imposes this responsibility, and his grace makes it possible for man to shoulder it, to make something of himself. The key to personality development is the acceptance of this vicarious responsibility—in Christian terms it is participation in the atoning life of the Savior. In the words of Sir Walter Moberly:

It may be [that it is] by the acceptance of a moral liability greater than appears to be due that moral advance is made. . . .

. . . . we are forced to widen our conception of responsibility. It no longer appears simply a liability arising out of a power. It may also be a power arising out of a voluntary, and apparently quixotic, embracing of a liability that could have been disputed.22
It is not essential, of course, that the lawyer and the psychoanalyst reach agreement on metaphysical terms in which to couch the mystery of human freedom. If they mutually acknowledge the existence of the mystery, they can join wholeheartedly in a working agreement. They can agree that the purposes of the criminal law are forward-looking, that the legal process is impotent to uncover and adjudicate man's real freedom and responsibility. The law must summon men to full responsibility and to this end must treat most men as if they were fully responsible. (In this sense only is legal justice retributive.) Legal liability is both necessary and helpful in enabling men to increase in self-control. But it is only the relatively healthy whom it is appropriate to treat in this manner. The drawing of the line will remain a difficult task. And it will be unfortunate and unnecessary if mutual distrust keeps lawyers and psychiatrists from co-operative attack upon this problem.

1 Franz Alexander and Hugo Staub, The Criminal, the Judge, and the Public 70 (1931).
2 Ibid. 71.
4 Alexander and Staub, op. cit. 214.
5 Ibid. 215.
6 Ibid. 151.
7 Ibid. 149.
8 Ranyard West, Conscience and Society 166 (1945).
15 9 Psychiatry 251 (1946).
17 Ibid.
18 Yearbook of Psychoanalysis, 1945, 49, 61.
19 Alexander and Staub, op. cit. 73.
20 Hans Vaihinger, The Philosophy of 'As If' 43-47 (1924).
**Manorial Rolls and Captain Clark**

A manorial roll which was among those involved in the *Great Tey* case (Beaumont v. Jeffrey, L.R. (1925) Ch. 1; 93 L.J. (Ch.) 532; 40 T.L.R. 796; 132 L.T. 246) is currently on display in the Reading Room of the Law Library. The roll dates from the 37th year of the reign of Henry VIII; it is in excellent condition and presents a fine example of the calligrapher’s art. On display with the manorial roll are papers summarizing current litigation between the Minnesota Historical Society and the United States, concerning ownership of field notes from the “Lewis and Clark Expedition.” The holding in the *Great Tey* case, which was a suit in detinue by the lord of the manor of Great Tey to recover possession of certain manorial rolls, seems pertinent to the current controversy.

That case seems to stand for the principle that original records of legal and historical interest may be sold by their initial owner, but that all purchasers assume an obligation to make the records available to anyone whose rights may be affected by their contents.

Litigation over the field notes of Captain Clark of the “Lewis and Clark Expedition” is now in process in the federal courts. The notes were discovered in 1952 among the papers of the late General John Hammond; the papers were at that time stored in the home of his daughter. The executors of the daughter’s estate brought suit to quiet title, naming as defendants the daughter’s heirs, and also the other children of General Hammond, who claimed the papers as part of the estate of their mother. Other defendants are John Doe and Jane Roe to cover any possible heirs of Captain Clark, and the Minnesota Historical Society, which has possession of the papers as bailee of the executors. The United States Government intervened, claiming title on the ground that the notes are “contemporary original records of the so-called ‘Lewis and Clark Expedition.’”

The concern of archivists, librarians, and other collectors of historical papers is over the possible precedent which might result from the Government’s success, throwing into doubt title to many highly prized items. The National Archives has stated that Government intervention was prompted only by the fear that if the documents remained in private hands they would not be available to all persons interested in them.