While Sir Hartley is the Attorney General and not the Foreign Secretary of Great Britain, his address to the American Bar Association (delivered at the recent Atlantic City convention) was a crystal-clear exposition of the British view as to the future role of international law in accomplishing peace and security.

In opening, he emphasized the basic similarity of the British and American attitudes and spoke of the sincere desire of both nations to enshrine the role of law as the arbiter of nations' dealings with one another. The real significance of Nuremberg, he considered, lay not in the fact that a handful of men had been executed, and others imprisoned, but that it served to establish these three principles: that to initiate a war of aggression is an international crime; that the individuals who lead their countries into such a war are personally responsible; and that individuals have international duties which transcend the National duty of obedience imposed by particular states, where to obey would constitute a crime against the nations.

The actuality of International Law must be realized. Legal purists have sometimes denied its existence; nations have never done so and, while they have of course flouted its precepts, even in doing so they have appealed to their own interpretation of its canons to show that right was on their side. The difficulty is to secure its unreserved and sincere acceptance by all nations. Two factors have stood in the way of this end. The first is that nations felt they could not afford to submit every dispute to an international tribunal, from the fear that some interest of theirs, which they deemed vital to security, might suffer. This is only part of the larger problem — that the nations must have complete confidence in the acceptance by every other nation of any and every decision given under international law: in short, this is the problem of Collective Security. The second stumbling block is that, in the past, nations have flinched from applying law to the settlement of major disputes between the great powers, because no effective means existed for enforcing respect for its solution to these disputes.

The latter part of Sir Hartley's address was devoted to an appraisal of the attitude of Russia and the possibility, at some
time in the future, of replacing the present unanimity rule (the "veto") in the United Nations Security Council with a procedure based on the majority decision. "The problem, then, is to secure the ordered application of a system of law which is there already. Unless freedom and civilization are to perish, we must secure the rule of law in international affairs." (J. E. WILSON)


The Judicial Committee returned in June last to its Privy Council office room in Downing Street after having sat in a Committee room in the House of Lords for six years. Judicial work went on all through the War.

No change has been made in its jurisdiction. The Bill which proposed the abolition of appeals from Canadian courts in civil matters has not been forwarded. Several important appeals on constitutional questions were taken from the Australian High Court, in one of which the question was whether a scheme to assist wheat growers in Tasmania involved discrimination between states. No appeals have been possible from the Irish Free State since 1933 and no appeals on constitutional questions may be brought from South Africa. In 1945 the Judicial Committee set aside a judgment of the highest tribunal of India in a criminal matter.

During the war years the Committee was called on frequently to deal with criminal cases and granted leave to appeal when there appeared to have been infringements of "the essential principles of justice". In one case "the distinction between a criminal and civil liability" had been inexact; in another, evidence of certain officials had not been given in open court; in a third, as a result of the court's refusal to adjourn the hearing of an appeal, the accused was deprived of the chance of having an advocate to prepare and conduct it. In a West African case in 1946 the Committee held that the court should have put to the jury the question whether by reason of provocation the charge should have been reduced from murder to manslaughter, although that point had not been raised by counsel for the accused.

In two cases, one of them the Canada Temperance Act Appeal, the Judicial Committee affirmed its power "to reexamine its findings and not to be exactly bound by the rule of precedent", although in both cases it refused to upset its earlier decisions. The Crown was ordered to pay costs in a Prize Court Appeal in 1942.
Mr. Bentwich says that it is generally felt to-day "that a tribunal representing more equally the Crown in the Dominions and the Crown in the United Kingdom would be a more appropriate body" than the Judicial Committee "to judge inter-imperial disputes" but expresses the hope that it may remain the supreme judicial authority "to maintain unity of interpretation in the civil law and uniformity of the principles of justice in the criminal law".


This is one of twelve articles which make up a symposium on housing, being the Winter number of "Law and Contemporary Problems". Other articles are concerned with such subjects as the extent of the U.S. housing shortage, property ownership, mortgage finance, the construction industry and its handicaps, building codes and co-operative housing. Here Mr. Hill presents "a study of the movement in congressional circles to meet the challenge of present day housing needs".

He points out first that the shortage is nothing new but has been developing ever since the decline in building began in 1925. The reason that insufficient housing has been built each year to keep pace with demand is that even before the War and, of course, to a much greater degree now, the building of houses has been too expensive. A builders' association publication is quoted for June 1946: "The $9000.00 to $15,000.00 class (of potential home owners) represents only the cream on the top of the bottle — some time that cream will be all skimmed off". The reasons for this excessive cost are admirably set out in another article in this symposium, "Handicrafts and Handcuffs: the Anatomy of an Industry" by Lee Loevinger.

In the belief that private enterprise simply could not solve the problem because it could not "build for half the population", three Senators introduced in November 1945 a bill called after them the Wagner-Ellender-Taft General Housing Bill. It is said that before its introduction even its most detailed provisions had had "continuous and painstaking consideration". Naturally it was subjected to many fierce attacks by groups whose members considered such legislation unsound or unnecessary. One such attack, quoted here, derides it as "The greatest of all housing bills — it’s democratic — it’s Republican — it’s Socialistic! — it’s good for one — it’s good for all — and best of all it’s free..... Uncle Sammy pays the Bills!"
The bill declares that its objectives are to produce residential construction “sufficient to remedy the serious cumulative housing shortage” and to “eliminate slums and blighted areas” and its provisions are designated to attain these objectives by following four specific policies. These are, first, the encouragement of private enterprise “to serve as large a part of the total need as it can”; secondly, the utilization of government assistance where feasible, “to enable private enterprise to serve more of the total need”; thirdly, the use of Government aid to clear slums and give adequate housing for low income groups in localities which can demonstrate that this can not be done by private enterprise alone; and, fourthly, the consolidation of the government’s housing functions “into a single national housing agency in order to achieve unified and co-ordinated activity”. Mr. Hill says that the bill has “a clarity of thought and continuity of purpose seldom found in such comprehensive legislation”. However, although it was passed by the Senate in April without a dissenting vote, it had not been passed by the House of Representatives when Congress adjourned in August 1946.

It is estimated that under the Veterans’ Emergency Housing Program, announced in February 1946, about a million dwellings were started in that year and a million and a half are to be started in 1947. However, the price of this housing is said to be too high for veterans to pay and insufficient rental housing is being constructed. The Wagner-Ellender-Taft legislation is needed to remedy these two major deficiencies.


There has not been a great deal of litigation concerning profits a prendre and comparatively little has been written about them. Mr. Hahner here attempts to set out the law as it appears in cases decided in English and American courts and to analyse “problems which have not been subjected to judicial review”.

He begins by distinguishing profits a prendre, or simply profits, from easements, transfers of personal property, licences and conveyances of estates, in order to establish the nature of profits. Many illustrations are given. The right to take water from a spring is said to be an easement, while if the water becomes ice it becomes a “product of the soil”, a grant of which is a profit. If one orally purchases growing trees one has a revocable implied licence to cut the tree. A grant of coal in place is a conveyance of an estate.
Profits are classified as exclusive, where there is a privilege to take to the exclusion even of the owner, or nonexclusive, such as rights of common. The latter are appurtenant or "in gross", i.e. held independently of any ownership in land. Profits are created by grant, reservation or prescription but not by custom. They are transferable and inheritable but are generally considered not divisible as otherwise the burden on the servient estate would be increased. If a division occurs or if the dominant and servient estates become the property of one person the whole profit is extinguished.

The author has gathered together a great many cases and refers to texts and legal periodical articles so that his article is a very thorough exposition of the subject.


Section 7(a) of the United States Fair Labor Standards Act (1938) provides: "No employer shall, . . . . employ any of his employees who is engaged in commerce or in the production of goods for commerce . . . . for a work week longer than forty-four hours (now forty hours) . . . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed".

In the case Walling v. A. H. Belo Corporation, 316 U.S. 624, decided in October 1941, it was held that a plan formulated by the Company immediately before the act went into force was in accordance with this provision. Under this plan the employees continued to work the same number of hours and to receive the same pay as before but a "basic rate of pay" was set, and a guaranteed minimum weekly amount of pay. This weekly guarantee was large enough "to cover 54½ hours per week as the basic rate for the statutory 44 hours and 1½ times that rate for the 10½ hours of overtime," but employees often worked more or less than the maximum work week, receiving the guaranteed weekly minimum in either case. Only after working more than 54½ hours per week would they receive any extra compensation.

Three later cases have left the Belo case "battered, it is true, but not expressly overruled". Artificial regular rates have been set in each case and "regular rate" was defined by the court as "the hourly rate actually paid for the normal non-overtime work week". The pay arrangements were held to violate the statute because they did not "spread employment by placing financial pressure on the employer" or "compensate employees for the
burden of a work week in excess of the hours fixed by the Act” and the employer’s labour costs were not increased by 50% after 40 hours work. It was held that although the artificial regular rate in each case was a product of contract and above the statutory minimum, it was “derived not from the actual hours and wages but from ingenious mathematical manipulations, with the sole purpose being to perpetuate the pre-statutory wage scale”.

It is difficult if not impossible to distinguish these cases from the Belo case and the Supreme Court will be called upon at this term to decide in the case of Walling v. Haliburton Oil Well Cementing Co., 152 F(2d) 622, “whether any life remains in the Belo doctrine”. Here as in the Belo case there was a weekly guarantee, an hourly rate was specified for the first 40 hours of each week and payment of not less than one and one-half times such basic rate was made for hours worked in excess of 40. But the basic rate was fixed so that employees would work 84 hours before being entitled to receive more compensation than the guaranteed weekly salary.

Mr. Levy’s conclusion is that “the Court should stand by its decisions. The question is, which ones should it stand by . . . ?”


Section 7(a) of the U.S. Fair Labor Standards Act (1938) provides that no employer shall hire his employees “for a work week longer than forty hours” unless they receive compensation for time worked in excess of that figure at a time and a half rate. Under section 16(b) of the act, employers who violate section 7 must pay not only the unpaid wages but also “an additional equal amount as liquidated damages”.

The interpretation of working time had, formerly, been determined by custom and agreement. “Remuneration for irrelevant, unproductive periods of time”, such as for time waiting in line or changing clothes, was unheard of. Plumbers charged from the time they left their shops and miners were paid on a “face to face” basis while, in general, labourers were paid only “for the time actually spent working”. Then in two decisions handed down in mine cases in 1941 and 1944 the Supreme Court, influenced apparently by conditions of travel in mines, held that travel time was working time in spite of custom and contract. Finally, in 1946, the Mt. Clemens Pottery case extended working time to cover the fourteen minutes between the punching of a time clock near the gate of a factory and the actual beginning of work.
The effects of this decision are "almost beyond comprehension". It has "created a cause of action in every employee against his employer in every industry in the United States" covered by the act and unions and employees "are gleefully pressing demands for back wages and liquidated damages" for billions of dollars. "Every employer is to be penalized for the heinous offense of not having been a crystal gazer". For time during which employees did not work and for which they never even expected compensation, employers are asked to pay three times as much as they were paid for time in which they worked. The court has, according to Mr. Cotter, "quite arbitrarily created new wrongs and made them retroactive". Furthermore, employees and unions may not release or waive their rights under the act and there is no Statute of Limitations in effect except those of the States, where actions may be brought within periods which vary from one to ten years. The "de minimis" doctrine would apply but in the Mt. Clemens case fourteen minutes were held to be too long a period to be disregarded. Employers must revamp their methods of computing time or make new agreements for an increase in pay to cover the additional "worktime".

The author says that "the Supreme Court has seen fit to legislate when Congress was silent" and claims that there is nothing in the act to justify the position that the courts may define a workweek "regardless of the prevailing custom and practices in the industry concerned". "The solution can rest solely with Congress to prevent the perpetuation of what can only be described as profound injustice."

Note — Since Mr. Cotter’s article was written the Mt. Clemens Pottery case has been dismissed by Federal District Court Judge Picard, to whom it had been referred back; doubtless more will be heard of it.


Administrative law and agencies are said to have come into being because of the need for "positive, continuous, expert action", which neither the courts nor the legislative body could furnish. This need has arisen as a result of the "accelerating industrial revolution" and "the rise of democracy". The administrative process was first attacked as unconstitutional, then an attempt to check its growth was made by the advocacy of extended judicial review. Finally, it has become the subject of a procedural attack, which has culminated in the passing in 1946 of the Federal Administrative Procedure Act.
What the act is intended to accomplish is summarized under four headings. First, rules, delegations of final authority, statements of policy and interpretations must be published in the Federal Register, and opinions and orders and matters of official record generally must be made available to public inspection. It is submitted in this article that much of the material issued by the agencies will lose its value if it has to be buried in the unwieldy Federal Register, which by the end of 1943 included almost 67,000 documents. It might be better to have a selection only of rules and regulations published.

Secondly, procedure in adjudication is prescribed and limitations on administrative powers are stated. Officers presiding at hearings may not consult any person on facts in issue except on notice, and investigating or prosecuting officials must not "participate or advise" in a decision except as a witness. Parties are entitled to counsel, to the issue of subpoenas and to a statement of grounds where a request is denied. It is pointed out here that a deciding officer is deprived of the opportunity to consult experts by the "segregation clause". Moreover the sections in question have limited application and most of their provisions are said to be already observed by the agencies in practice.

Thirdly, "requirements for administrative hearings and decisions" are set out in detail. Presiding officers must act impartially, are to have the authority they need and "must make the initial decision" unless agencies themselves do so.

Fourthly, a "simplified statement of judicial review" is set forth. Any person suffering a legal wrong by agency action is entitled to have it reviewed by the courts except where review is specifically precluded. Discretionary authority vested in some agencies by congress is taken away. For example the field of benefactor legislation, pensions, grants-in-aid, etc., is now open to litigation. Courts may try matters de novo, thus further restricting administrative discretion.

The last part of this article is a careful study of the reasons for the passing of the act, the arguments of its critics and the opinions of the agencies affected by it. The author clearly would prefer "non-reviewable administrative freedom of action". He suggests that the act may be a "retrogression", an obstacle to the full and free development of the newest jurisprudence". "The struggle of administrative law for recognition" he says "is no less . . . . . crucial for Western civilization" than "the conflict between Coke and Ellesmere over equity".

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