RECOLLECTIONS OF GOOD CONVERSATION WITH AN ADMIRED COLLEAGUE, GEORGE L. HASKINS

COVEY T. OLIVER†

One of the most satisfying aspects of being involved in legal education, what Dean Charles McCormick[1] used to call "that most enviable branch of the legal profession," is at-the-school chats with one's colleagues, especially conversations involving not matters of administration and governance, but of shared outlooks and recollections about the law itself. The pleasure is heightened when the conversers have become expert from thorough study and repeated teaching in a particular subject and thus can kick the topic around, invert themes, and reminisce fondly.

In this symposium in his honor, Professor Haskins will be recognized by others for his merits and achievements as to many things: scholarship, legal history, teaching, practice, and public service. I wish to record my indebtedness to him for pleasant recollections of chance meetings and good talk. The talks often concerned our shared appreciation of the law of future interests, which in my earlier years I had to learn myself in order to teach it. From time to time our talk would also range to another topic that some may consider exotic, if not arcane—the United States Department of State.

I did not know George Haskins when he served in the State Department, where (without ever intending to do so) I have spent nearly one-third of my working life. But within the Department, in 1946, I heard that Dean Earl Harrison had recruited yet another star for the Pennsylvania Law School. A decade later, after I became his colleague at the Law School, George and I discovered in one of our casual chats that we shared a worried nervousness about foreign affairs operations in the federal government. We both seemed defensively protective of "Thuh Depahtment,"[2] much as parents would be of a somewhat back-

---

† Ferdinand Wakeman Hubbell Professor of International Law, Emeritus; former Acting Dean, University of Pennsylvania; Visiting Professor of Law, Washington College of Law, American University.

[1] Distinguished as a writer in Evidence and Damages and longtime Dean of the University of Texas Law School.

[2] In those days the more or less New England-British pronunciation was *de rigueur*. The storey goes that the women in the Division of Communications and Records who corrected all outgoing traffic for proper diplomatic style, spelling, and use of the subjunctive were thoroughly shocked one Monday morning to discover that in a weekend crisis a new undersecretary had issued a press statement that referred to

ward or disadvantaged child.

In those days the great battles were within the executive branch: (i) State Department versus Treasury Department over a wide range of policy issues in international affairs, particularly post-war arrangements; (ii) later, State versus our American proconsuls in occupied Germany and Japan, via its loyal instrumentality, the Department of Defense.

George and I chuckled wryly at recalling George Kennan's Silurian-age imagery that cuttingly illustrated Treasury's great effectiveness in its dealings with the State Department. Kennan compared State unfavorably to Treasury, with Treasury as the terrible, fast-running, aggressive, meat-eating *Tyrannosaurus Rex,* capable of holding its prey in its front paws as it tore at it, and State as the huge but gentle, herbivorous *Brontosaurus,* too weak in the legs to stand except in quagmires, with one tiny pea brain in its skull and another between its huge hind legs, neither well linked to the other. Claws extended, the Treasury top brass went across to our masters at State, who would then come down on us from above.

As I recall, George and I never found ourselves entirely sanguine as to foreign affairs operations in this country. For as the intraexecutive tussles faded,[3] the increasing assertiveness of Congress in the field presented new challenges to clarity, speed, effectiveness, and, above all, wisdom.[4]

When our conversations roamed to future interests, George showed his mastery of America's somewhat indefensible but delightful continuation of complexities inherited from British feudalism but long since abolished in the United Kingdom. He thus revived my own somewhat abashed delight in a field that I once mastered (after a fashion), but no longer taught.

On the serious side, we agreed that inasmuch as the system was still with us except for marginal legislative alterations, it had to be taught and understood lest, its many traps and minefields lead to lawyer-caused defeats of property owners' intentions. We saw it as the

---

"this" Department. Doubtless much has changed.

[3] The rising influence of the White House through the National Security Council assisted in this process, tending to reduce the role and powers of the ministries, including their capacities for internecine warfare.

[4] Elsewhere I have addressed the unique problems for U.S. foreign affairs operations created by the application of "the American way with treaties" and a strict version of separation of powers that prevents the establishment by law of assured structures for executive-congressional collaboration in foreign relations. *See, e.g.,* Oliver, *Legal Relations Among Legal Systems: Games, Pains, and Some Pending Problems,* 127 U. PA. L. REV. 909, 915-17 (1979).

lawyer's job to be able to use the system positively, advancing clients' estate-planning interests. Using courses in property mainly for policy analysis of social distribution problems, or for instruction in the less difficult to grasp law of shaping and financing shopping centers and subdivisions, did not seem to us to be a wise balance of the available curricular time.

But it was often with the outrageous old stuff that we had our fun. George more than once had to correct my recollections, enthusiastic but fallible, of the great gems of future interests law: the stern standard for indestructibility required by the rule of *Purefoy v. Rogers;*[5] the disastrous effect on intention of legal, but not physiological, female octogenarian fertility;[6] the invulnerability of reversionary interests to the Rule against Perpetuities,[7] compared to the destructibility of contingent remainders[8] and the vulnerability of executory interests (shifting uses) to the Rule. We cheered the innovative court that fashioned the Rule Against Perpetuities and recited the judicial response to counsel's question: "But where will you stop?"[9] Before long, we would recite one or another of the *Langdell Lyrics,* perpetrated by W. Barton Leach and his students,[10] often figuratively (and sometimes literally) filling our cups to Baron Turton.[11]

---

[5] 85 Eng. Rep. 1181 (K.B. 1670).

[6] *See* Jee v. Audley, 29 Eng. Rep. 1186 (Ch. 1787).

[7] *See* Proprietors of the Church v. Grant, 69 Mass. (3 Gray) 142 (1855); J. GRAY, THE RULE AGAINST PERPETUITIES § 41 (3d ed. 1915).

[8] *See Purefoy,* 85 Eng. Rep. 1181 (K.B. 1670); Clobberie's Case, 86 Eng. Rep. 476 (Ch. 1677); Pells v. Brown, 79 Eng. Rep. 504 (K.B. 1620).

[9] The Duke of Norfolk's Case, 22 Eng. Rep. 931 (Ch. 1682). In the Duke of Norfolk's Case, Lord Nottingham held that an estate that must vest within a life in being is not too remote and refused to go further as to fixing an outer limit, thus answering counsel's question: "I will tell you where I will stop: I will stop where-ever any visible Inconvenience doth appear . . . ." *Id.* at 960. This outlook has been lauded even by nonspecialists in future interests as a fine statement of the "Common Law Tradition," about which Karl Llewellyn used to sing on occasion. Needless to say, on visiting England Professor Haskins was wont to journey to the Howard properties below London, which were involved in the case.

[10] The Langdell Lyrics are a funny but doggerel collection of verse about future interests cases. The case of the "Fertile Octogenarian," Jee v. Audley, 29 Eng. Rep. 1186 (Ch. 1787), was remembered thus:

> Can women bear at eighty?
> Ask any obstetrician; he will say,
> "My dear old fellow, hawdly!"
> But you will smile and cite him *Jee & Audley!*

[11] In Long's Case, 89 Eng. Rep. 381 (K.B. 1694), Baron Turton let a posthumous child take a remainder after A's death in X to A for life, remainder to A's first son in tail. W. Barton Leach's casebook, CASES AND MATERIALS ON THE LAW OF FUTURE INTERESTS (1st ed. 1935), records that "the judges [below and the conveyancers' bar] . . . very much blamed Baron Turton for permitting the case to be found [so] where the law was . . . clear and certain." *Id.* at 92. This produced the lyric referred

Professor Haskins, as is well known, has paid his social dues both in Pennsylvania and elsewhere in this country by influencing and guiding the modest modernization of future interests law that has taken place over the last several decades. Of law school governance and operations I shall not write here, save to say that Professor Haskins was a wise and well-adjusted colleague whose support and counsel were very helpful to me when I was recalled from retirement to serve as interim dean. Were I still at the Law School, I should miss him greatly as a colleague.

---

to in the text:

> Come, let's fill the cups to Baron Turton,
> Who though the law was fixed and certain
> Would rather help a little foetus
> Than round out Charlie Fearne's dull treatus!

The reference is to C. FEARNE, AN ESSAY ON THE LEARNING OF CONTINGENT REMAINDERS AND EXECUTORY DEVISES (10th ed. 1845).