

the admissibility of evidence chiefly of a verbal kind in establishing the existence of such conspiracy, has never been challenged by the opponents of the Smith Act."<sup>10</sup> That challenge has not been made because Section 3 of the Statute does not condemn conspiracies to overthrow the government but conspiracies to advocate such overthrow. When Congress amends the antitrust laws to condemn conspiracies to advocate monopoly, the ritualistic liberals will be compelled, perhaps, to face the issue which Mr. Hook presents, but for the present they will feel justified in reminding him that orthodox doctrine as it existed before *Dennis* would have told us that although conspiracies to promote unlawful advocacy may be made criminal by the legislature, advocacy may be made unlawful only when it presents an immediate danger to society.

Doubtless these criticisms of Mr. Hook's thesis will seem to some excessively legalistic. It may be urged that to reveal the inadequacy of his understanding of the law of conspiracy is not to undermine his fundamental point that the methods and affiliations of the Party leaders take them beyond the protective reach of conventional doctrine. Public opinion, however, will be gravely misled if it accepts Mr. Hook's comforting formula as sufficient. There is real danger that law and public opinion will follow divergent paths into constitutional confusion if the lawyer uses the word "conspiracy" in one sense and the public gives it a very different meaning. Experience has taught us that constitutional law is rendered ineffective when judges misconceive the convictions of the society which they serve. The publicist does corresponding harm when he misconceives the substance of legal doctrine. When he condenses misconception in a phrase he compounds that harm.

MARK DEWOLFE HOWE†

THE TIDELANDS OIL CONTROVERSY. By Ernest R. Bartley. Austin: University of Texas Press, 1953. Pp. x, 312. \$5.00.

POLITICAL scientist Bartley undertakes to show via history that the Supreme Court's disposition of the "tidelands" cases was "incorrect as a matter of law."<sup>11</sup> His argument is that, by virtue of the law of nations, England in 1776 held sovereignty over a strip of the sea around its possessions; this sovereign interest carried with it ownership of the sea bed; when our thirteen colonies left the Empire they acquired *pro tanto* these sovereign and proprietary interests; as later states joined our union they joined on equal footing with the original states and so acquired, and still hold, corresponding interests in a three-mile belt along their own shores.

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10. P. 99.

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1. P. 278.

The basic difference between Court and author relates to the status of international law in 1776; did England have off-shore sovereignty to which the thirteen colonies separately could succeed? The Supreme Court found that "[a]t the time this country won its independence . . . there was no settled international custom or understanding among nations that each nation owned a three-mile water belt along its borders."<sup>2</sup> Correctly or not, the Court does not reach this conclusion, as Mr. Bartley charges, "from a reliance on *Queen v. Keyn*."<sup>3</sup> Only after making the finding does the Court even mention *Keyn*; and then only to show that a century after the colonies had departed "there was still considerable doubt in England about [the] scope and even [the] existence"<sup>4</sup> of off-shore sovereignty. Possibly *Keyn* is vulnerable, but by stressing so minor a point in the Court's position Mr. Bartley does not hide the tendency of his own examination of the precedents to prove the "nebulous" character of tidelands law in 1776.

But even if each of the thirteen original states acquired a sovereign's proprietary interest from Britain—Mr. Bartley admits<sup>5</sup> that *United States v. Curtiss-Wright*<sup>6</sup> is squarely the other way—there is still a difficulty. If international sovereignty and property came with one another to the states in 1776, were they not by the same token given up together in 1789? Mr. Bartley avoids the question with the answer that "there was in the Constitution no express delegation of jurisdiction over this area to the national government."<sup>7</sup> There certainly was an express delegation of international sovereignty!

Another "error" of the Court, according to the author, was "its assumption" that national defense and our position in the family of nations "required [judicial] *expropriation* of the oil in the marginal sea."<sup>8</sup> Mr. Bartley sees inconsistency between this concern for our international standing and the Court's refusal to let the "government" seize the steel mills in an international emergency. But, of course, the steel seizure case dealt only with the President's, not the Government's, power to seize. In view of the national war, treaty, and commerce powers it is not likely that the conduct of our foreign affairs would have been jeopardized had the Court gone Mr. Bartley's way in the "tidelands" cases. But our international relations must be financed, as well as conducted. Conceivably, the Court was thinking economic resources while talking constitutional powers. It is just possible that some States' Rights critics of the Court are doing the same.

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2. *United States v. California*, 332 U.S. 19, 32 (1947).

3. P. 278.

4. *United States v. California*, 332 U.S. 19, 33 (1947).

5. P. 30.

6. 229 U.S. 304 (1936).

7. P. 39.

8. Pp. 278-9 (emphasis added).

The so-called "tidelands" in fact constitute a three-mile strip of the sea bed below the low water mark.<sup>9</sup> The interests involved thus spring from relations between sovereign nations as sanctioned by international law. Mr. Bartley deals with the whole affair as a purely domestic problem in federalism.<sup>10</sup> Thus he bypasses a line of decisions, beginning at least as early as *Ware v. Hylton*,<sup>11</sup> to the effect that federalism ends where our international relations begin. Boldly assuming that this "external sovereignty" is free, not only of federalistic restraints, but of all other constitutional limitations as well, Mr. Bartley makes quite a parade of horrors.<sup>12</sup> But his assumption is not shared by the Court.<sup>13</sup>

Mr. Bartley stands on States' Rights with his head in the clouds. Indeed he is so far in the clouds that he can see as the economic interest at stake only "a few thousand barrels of petroleum."<sup>14</sup> Few will find hyperbole in this remark. Many may find the voice of a special pleader for the interests of a few states.

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LEGAL EDUCATION IN THE UNITED STATES. By Albert J. Harno. San Francisco: Bancroft-Whitney Co., 1953. Pp. v, 211. \$3.50.

*Legal Education in the United States* is a survey history of the subject. Its opening chapter deals with our English legal heritage with particular reference to the common law and Blackstone in the field of substantive law, and to the Inns of Court and the apprenticeship system in the matter of legal instruction. This little book then passes on to the establishment of law professorships and the founding of the first law school, the Litchfield School, with its substitution of the lecture-textbook for the apprenticeship method of preparing for the practice of law. It concludes with the beneficial impact of the American Bar Association, the Association of American Law Schools, and the American Law Institute on legal education.

Much of the book is devoted to an appraisal of the case method of teaching law, innovated in 1870 by Christopher Columbus Langdell at the Harvard Law School, which has since become the prevailing method in our law schools. In connection therewith, it concerns itself with such problems as the quantity and quality of students, the financing of schools, large classes, pre-legal education, the overcrowded curriculum, the inadequacy of preparation

9. P. 5.

10. Pp. 3, 281.

11. 3 Dall. 199 (U.S. 1796).

12. Pp. 275-6.

13. See, e.g., *United States v. Pink*, 315 U.S. 203, 228 (1942).

14. P. 275.

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