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Recollections of Professor Bishop as a Teacher of Teachers of Transnational Law

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RECOLLECTIONS OF PROFESSOR BISHOP AS A TEACHER OF TEACHERS OF TRANSNATIONAL LAW

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It will be interesting to me to see, should this modest tribute survive editing, whether others writing in this Symposium have also chosen to single out Bill Bishop's influence on a post-World War II generation of teachers of international public law, conflict of laws, comparative public law, and admiralty: men and women who have in considerable part been led, aided, or influenced by him into one or several aspects of the global normative science, named "transnational law" by one of his own great teachers (and mine), Philip C. Jessup.[1] If others have also sounded this theme, reiteration of it can reasonably be expected to reinforce merited recognition, stemming from the varied focii of the recognizers. I have chosen to emphasize Bishop's major role in the modern development of transnational law, mainly because it seems to me to be too important an aspect of his contribution to risk possible omission.

In taking this course I have not been able to resist, for the benefit of those who remember him best for his endearing personal characteristics, to drop as a note hereto[2] a recollection of my being taught, not only much law but also a modicum of astronomy, by Professor Bishop

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1. P. JESSUP, TRANSNATIONAL LAW (1956).

2. There follows an excerpt from a personal recollection of Professor Bishop which I wrote at the request of his daughter, Dr. Elizabeth Bishop, for a gift to him of such writings on his eightieth birthday:

> In as much as Bill's achievements in his specialties-at-law are so very well-known, I wish to call attention to his knowledge of and skill in communicating basic principles of astronomy. (There were two Bills at Paris, one already there when Assistant Legal Adviser Bill Bishop arrived. Hence the name by which we of the *Amerikanski Delegatsia* knew "our Bill": *Bill Bis.*) *Bill Bis*, I soon learned, was one of those sons who make a father happy by sharing his enthusiasms. Hence, two characteristics of the son: a love for science, especially astronomy, and a loyalty to Michigan, the latter foredooming Penn's wish to add him to a faculty then in reconstruction.
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> *Bill Bis* and I found ourselves in London, with work to do at the original chancery on Grosvenor Square. After dark *Bill Bis* and I took a walk, down toward Berkeley Square — our cables had gone to the code room, and the evening was before us. As we walked toward the Square, a fine full moon was out, and I remarked that I had never understood why we see only one face of our binary. Bill-the-Teacher happened to note at our right a small mews at the end of which was a chapel with a small, dry fountain in front of it. He said, in that

— a lesson I recall fondly whenever Luna is prominent in the sky. The note tells also of an aspect of Bishop's conditioning experience that enriched his scholarship, judgment, and sense of responsibility: his service during a classic period in the Office of the Legal Adviser to the Department of State.

My first vivid recollections of Bill began with his posting to the United States Delegation to the Paris Peace Conference of 1946 as Legal Officer of the Delegation. I, a law teacher of some five years experience in taxation and administrative law,[3] and by 1946 an officer on the newly-developed economic side of the Department of State, had not been much involved with international public law since a pre-law political science course. Taught out of Hudson's venerable casebook,[4] my most lasting recollections of that course were of the case in which the sexual peccadillos of various East Indian gaekwars and other potentates were ruled immune from suit. World War II put me into economic warfare issues: trading-with-the-enemy-acts, vesting and blocking of enemy and enemy-vulnerable economic interests, high seas interceptions of non-prelicensed neutral shipping, blacklists, gray lists, statutory lists of interdicted persons, and the like.[5] I was dimly aware that a good deal of this (for example, as to blockades and neutral shipping) might not square easily with the Declaration of Paris of 1856; but I was not bureaucratically engaged in legal matters, being in "line operations" rather than legal advisory status.

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wonderful, resonant voice of his, "If you'll just come down to the fountain there, I'll show you why it is that we never see the other side of the moon."

Down we went — perhaps another person or two was along — and there in the bright moonlight *Bill Bis* placed me/us on one side of the fountain and then he, arms straight out from his sides, as if airplane wings, began circling about the fountain, looking me/us in the eye as he did so. After full circle he stopped and said, "You see, I did rotate on my axis by just going around the fountain! You can see this if you recall which way I was looking when I started and which way when I finished."

A fine, memorable lesson never forgotten; and useful years later when Neil Armstrong forgot the "a" before "man" in his landing script! Professor Bishop would have been a classroom master in any field, but I doubt that he ever had a round law school classroom to circle 'round! Pity!

3. And, the young being vulnerable in the 30's, a decanal assignment to Real Property I, from *Quia Emptores* to the closing of class gifts.

4. Well-taught by Professor Charles Timm, who probably had gone a year or two to law school. I learned to brief cases, on the typewriter, useful to this day. The studybook was M. HUDSON, CASES & MATERIALS ON INTERNATIONAL LAW (American Casebook Series, West, 1929). An interesting account of the genesis of this studybook is carried in J. T. Kenny, "The Contribution of Manley O. Hudson to Modern International Law and Organizations," Ph.D. dissertation, University of Denver, 1976.

5. The World War II measures were modeled on the World War I economic warfare system, pioneered by the United Kingdom. These systems were claimed by the states using them to be legally justified departures from earlier international law and practice, because they responded retorsively to German efforts at submarine and surface interdiction of the high seas. The World War II system was considerably more extensive than and operationally clearly grounded on the concept of total war, which had not been so flatly articulated in the 1914-18 world struggle.

It was Bishop, at Paris in 1946, who brought me back to cognition of international legal issues. The Conference was originally intended to conclude a new European peace with anti-allied belligerents — including Germany. Treaties were made, in an environment of increasing tension between the Soviet Union and the West, with Bulgaria, Finland, Hungary, Italy, and Rumania. The array of legal issues was rather vast: boundaries; ceded territory; disposition of German assets in other enemy countries; remedies for injuries to allied nationals' economic interests located in enemy territory from war damage, including allied bombardment from the air; the manner of dealing with the happenstance of which pile of looted monetary gold the Germans used first; the elements of other types of looted property restitution; the effects of war on pre-existing bilateral and, especially, multipartite, treaties; and many more. It was with respect to pre-war multipartite treaties that I first heard the firm, clear, strong, measured voice of Bishop in delegation conference. A few days later, I heard him again, this time on the vexing question of whether allied nationals' equities in Italian corporations were entitled to compensation from Italy for a proportion of the war damage suffered by the enterprise. The latent law professor in Oliver awoke, thanks to Bishop.

In retrospect, it was entirely to be expected that a junior law teacher on leave and one already destined to teach law[6] (Bishop) tended toward the rapid development of a cronyism about the third branch of American law, often referred to by the late Dean (and great scholar) Charles T. McCormick[7] as "that most enviable branch of the legal profession." The relationship was enriched in my favor by Bishop's enthusiasm for admiralty and conflict of laws, which my own greatest law teacher, George W. Stumberg, had fanned — only to become oxygen-deprived due to my initial teaching assignments, especially by the fogs of the reorganization provisions of the old Internal Revenue Code and certain once-thought-crucial administrative law mysteries.[8]

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6. After taking his college and law degrees at Michigan, Bishop was briefly a research and teaching assistant there, and thereafter a legal office associate in New York City, a lecturer in politics at Princeton, and a graduate student at Columbia prior to joining the Office of the Legal Adviser, Department of State, in 1939. In 1947, the year after our service together at Paris, Bill went to the University of Pennsylvania Law School, only to decide to hasten home to Michigan in 1948.

7. My distinguished second dean at the University of Texas Law School, who kindly carried me on leave from 1941 to 1948.

8. Until, happily for all concerned, I was relieved by Kenneth Culp Davis in 1939. The American administrative law of the primitive period in which I served it was dominated by issues of delegation of power, judicial review of administrative agency quasi-judicial actions, and, in the background, the brooding omnipresence of "Old Court" five-to-four contentions about substantive due process in the field of economic and business regulation.

In the environment of delegation life at Paris,[9] Bill, H. Alberta Coleclaser (legal aviation specialist), and I were the only lawyers, as I remember; and I was, in effect, emerging from a quasi-economist orientation. Bishop led me back to the law-as-a-discipline-savoured, especially as to those linkages of law stuff that became Jessup's transnational law. When Bill became a law professor, he taught three of these links (international public law, conflicts, and admiralty). He was also very much involved at Michigan with another one, comparative law, first through the great Yntema tradition, then Stein's.[10] As to comparative law, it seems to me that Bishop definitely encouraged attention to the comparative aspects of non-criminal public law, which only today is beginning to get the attention it deserves.[11] The concept of "foreign affairs law," embodied in the 1965 RESTATEMENT and elaborated and updated in the 1987 RESTATEMENT was, I realize now, implicit in both Bishop's interests and in his casebook. It took me longer, but eventually I was able to join the fortunate few international public law specialists who also teach conflicts and law of the sea. But for Bishop's influence, I might never have done so. As to this debt, I know I am not by any means Bill's sole beneficiary among American legal educators.[12]

Now, to another aspect of Bishop's influence: his generous placement services. Whatever his reasons, Bill must have decided to try to save Oliver from both taxation teaching and the Foreign Service.[13] Here, again, I know that I am not the only American law teacher to have been surprised by a decanal call out of the blue that, if traced, would lead back to Bishop. He was certainly at least one of the intervenors who induced the following vignette, which I repeat for new

9. Billeted for ten months at the Hotel Meurice, no less. (The Sovietska Delegatsia, however, was at the Plaza Athene.)

10. Eric M. Stein, *inter alia*, carried the tradition on at Michigan, especially in the vital new field of European community law. Professor Bishop once sounded me out as to doing Latin-American comparative law at Michigan, his school having one of the very finest collections in this country of legal materials from the portions of the Americas east and south of the United States. As he generously assumed too much as to my scientific qualifications — as distinguished from linguistic ones — nothing came of this but gratitude.

11. International transactions law, private and public; international trade law, national and international; diplomatic protection and direct foreign investment; international monetary law, etc. *Cf.* SWEENEY, OLIVER AND LEECH, THE INTERNATIONAL LEGAL SYSTEM, Ch. 16 (3d ed., 1988), *passim*.

12. Professor Bishop was a leading figure in early postwar meetings on the teaching of international law. *See* Note, *Institute for Law School Teachers of International and Comparative Law*, 42 AM. J. INT'L L. 432 (1948); Note, *Institute on the Teaching of International and Comparative Law*, 42 AM. J. INT'L L. 884 (1948); Note, *University of Michigan Law School Forum on International Law*, 42 AM. J. INT'L L. 885 (1948).

13. In those days a career in Government was an attractive alternative, especially as to pay.

generations of Dean Prosser's[14] "Lovelorn" — those wishing to be called to law teaching — if any there be who still wait and wish:

In the late spring of 1949 I was fully cleared and three days from oath-taking to enter the career Foreign Service. Having inherited a messy problem that others had cheerfully left to me while going on to newer things, I found myself, with two determined (and angry, or seemingly) Swiss officials in tow, attempting, before the Assistant Attorney General for Alien Property, one David Bazelon, to settle the G.A.F. case,[15] a really big one in the annals of alien property vesting disputes.

General Bazelon's secretary entered apologetically to say that there was a very insistent caller for "Mr. Oliver of the State Department." Over the reception telephone, Dean Prosser invited me to Berkeley to teach. Thinking "taxation," I said: "But Dean, you've Stanley S. Surrey (then tops in tax)!" "I don't want you for tax," responded Prosser. Oliver: "Well, I'm not sure I want to teach Property or Future Interests again." Prosser: "Not those; international law." Oliver: "International law? — Dean! I've never taught it, nor written a line about it!" Prosser: "Well, they tell me you've been violating international law since 1942; so we think you might be able to teach it!"

The upshot was that I never took the Foreign Service oath but bumbled instead into the University of California loyalty oath to-do of 1949-50! Thus I come to how Bill Bishop, through his casebook, taught a good many of us, the new post-World War II wave of international legalists, how to get started.

In preparation of this memento I have spent pleasant hours at the Library of Boalt Hall in Berkeley reviewing the casebook situation for international public law as it existed for the Fall Term, academic year 1949-50. At that time the latest Hudson's casebook was thirteen years old; Dickinson's, twenty; Fenwick's, twenty-five. While in 1951 and 1952 new editions of all three of these older books came out,[16] the

14. Prosser, who became famous at Minnesota Law School, was induced to leave a new appointment at Harvard to replace international law scholar Dickinson as dean at Boalt Hall. Prosser may have got wind of me from Bishop, as well as others; but, happily, he then remembered that I had, when he was a summer school visitor at Austin, taken him down the cold Comal River at New Braunsfels, Texas on an inner tube.

15. The United States had vested as enemy (German) property what even then was a half-billion dollar enterprise, General Aniline & Film Corporation (GAF). It was rumored that directorships and other patronage benefactions were not unknown in the administration of vested property, which had been an investigated scandal after World War I. The Swiss Government claimed that the holding company that controlled GAF was genuinely Swiss; the United States that it was a cloak for I. G. Farben, the notorious German dyestuffs combination.

16. At that time, I fear, I was still too far from the complete literature of the period to have

situation in late July, 1949 was, for a beginner, truly frightening — until Bill Bishop, whom I called in agony, let me use his brand new, four volumes of mimeographed study materials. Newly returned to his *alma mater* from the University of Pennsylvania, Bishop had found it necessary to produce teaching materials that would include, *inter alia*, the United Nations Charter, NATO, and the like. Never had I so needed *tabulae in naufragio* as those four volumes, bound in green and buff cardboard, and complete with Table of Contents (but no index). Thus, for one neophyte, and I am sure for many others over the span of the Bishop casebook, help came just in time.

Despite the appearance in 1951 and 1952 of updated editions of the older casebooks, Bishop's materials, beginning with the first printed set in 1953 (Prentice-Hall Law School Series) and running through the editions of 1962 and 1971 (Little-Brown), kept a leadership position until a later wave of international law casebooks began to share the field in the seventies and eighties. For well over two decades, many a student was taught from Bishop, and many of today's teachers of international public law would admit — or have admitted — their indebtedness to Bill's pioneering modernizations. This is so, despite the fact that Dickinson's splendid 1950 edition of the classic out of which Bishop studied,[17] Wolfgang Friedmann's very rich and literate set of materials,[18] and still others more closely held were susceptible to wider use than was made of them.

Until used in teaching or otherwise probed imaginatively, Bishop's casebook may seem to some to be conventional in structure and traditional in jurisprudential concept. One self-proclaimed newthinker referred to the Bishop book as "just another Fenwick." Nonetheless, and despite differences in taste, Bill's various editions are painstakingly accurate, rich in detail, and usually link rationally and in an essentially evolutionary way to the problem, doctrine, norm, or principle in the particular focus of presentation.

In relationship to predecessor works, Bishop's casebooks, more like Dickinson's than Fenwick's or Hudson's, emphasized United

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considered the excellent study book of Professor Herbert W. Briggs, and others of potential utility to me.

17. In 1927, then Michigan professor Edwin D. Dickinson published his SELECTION OF CASES AND OTHER READINGS ON THE LAW OF NATIONS, 4 volumes, mimeographed. Bishop, who took his law degree in 1931, must have studied international law with Dickinson out of Dickinson's LAW OF NATIONS (McGraw-Hill 1929). In the Preface to this edition, Dickinson wrote: "the book aims to present the Law of Nations Chiefly as It is Interpreted and Applied by British and American courts . . .," thus repeating, including capitalizations, Charles Cheney Hyde's title to his highly influential text of the inter-war period.

18. The "ancestor" of the so-called "Columbia casebook," later published by Henkin, Pugh, Schachter & Smit.

States-generated legal inputs, i.e., those aspects of domestic public law that tie to national affairs operations and to customary and treaty-based international norms, as seen or applied in the light of the United States constitutional system. Bishop does not much use functional presentations, as for example, as to transnational economic law, terrorism, or, considering time factors, human rights.[19] A teacher as user is not led much; but neither is he preached at or disparaged for differing from the casebook's view.

Bishop's teaching book is his most important work in terms of lasting influence, direct or indirect. Whether it sees a fourth (or more) editions, or not, this is so, because it came on scene at a time of urgent need and has done most worthily in meeting that need.

But, beyond the successful classroom teacher, accurate compiler, and careful scholar, there is in the hearts of many — some with much time still ahead of them — the memory and the influence of Bill Bishop *the person*: generous friend, discreet mentor, studious tour guide, gentle savant. What Bill *was* could not have been better stated than he did as to his colleague, Professor Eric M. Stein, on the retirement of the latter:

> How does Eric Stein, as a person, impress one who has enjoyed the privilege of knowing and working with him for almost thirty years? I would say that I think of him as a *friend*, one who is always glad to do whatever he may be asked to help with — and a little more. . . .[20]

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19. *Cf.* Bishop, *The Place of Helsinki on the Long Road to Human Rights*, 13 VAND. J. OF TRANSN. L. 249 (1980). In this introduction to a conference on Human Rights and the Helsinki Accords, Professor Bishop refers, with obvious satisfaction, to the "amazing development in international law . . . with respect to international legal protection of human rights . . . almost unheard of before World War II. . . ." *Id.* at 251. *See also International Law, 1906-1981*, 75 PROC. AM. SOC'Y INT'L L. 1 (1981), *passim*.

20. Bishop, *Remarks on the Retirement of Professor Eric M. Stein*, 82 MICH. L. REV. 1157-59 (1984).