

Address by Professor Kronstein at the
Institute Luncheon November 4, 1964

Mr. Chairman, Friends!

For a number of years now, around this time, the new fellows and associates of the Institute have met at a luncheon in this Club with some leading officials of Georgetown University and former fellows of the Institute who live here in Washington and who are members of the Board of Advisors of the Institute. We have repeatedly used this opportunity to clarify in our own minds the basic ideas guiding us in our daily work.

This year we have a special opportunity to restate the purpose and end to which our work is dedicated: the examination of some problems raised by organizations in national and international trade. The Committee of Restrictive Trade Practices of the Organization for Economic Cooperation and Development, to which the United States, Western Europe and Japan belong, has requested our Frankfurt friends, in cooperation with us, to prepare a study. This study is to include a factual analysis of the functions of international cartels of the post-war period and is to suggest legal solutions on a national and international level. It will be most rewarding indeed to coordinate the European group of experts set up in March 1964 with the American and Japanese groups and to compare our analysis of cartels which began early in 1964 with the corres-

ponding results of outstanding experts in the different participating countries.

An objective legal analyst will only approach any given undertaking after he has clarified in his own mind his philosophical and jurisprudential aims. We are interested in cartels which may be defined as the cooperation between different independent business organizations, because we want to know more about the positive potentialities as well as the negative dangers of modern organizations. The impact of one of these organizations under consideration is seen by the technological cooperation, or lack thereof, within modern organizations which determine who, or even which nation, has access to modern developments of any kind including medicine, for example, and who does not have such access. The integration into a large combine, defined as an integration of different legal personalities under one command, may determine that a formerly most active and lively organization becomes a dead body, though mechanically operating. The analyst of modern international cartels and corporations realizes that he is dealing with only one type of social organization among many. Labor unions, organizations of universities or even law professors may express similar symptoms. Our particular study of cartels will lead to a better understanding of all organizations including those generally believed to be outside the realm of reproach, and we hope that the study will provide the necessary impetus for separate analyses.

In the 1930's the jurisprudential critic, generally concerned himself with the relationship of the individual or corporation to government, but neglected the relationship of the individual to social organizations. This is particularly true of the natural law critic. It was overlooked that in many instances one could not even speak in terms of a relationship between the individual and societal organizations but that in reality societal organizations had subjected the individual. Since the natural law critic of the 1930's looked for formulated rules of natural law instead of looking for a guide outlining the limitations which govern all human behavior, especially the exercise of power, he was unable to advance to the present problem

Today's analyst of the various types of organizations, however, will find that even the smallest and seemingly most unpolitical organization becomes either ineffective or lives only for the sake of its own self-perpetuation if it is not guided and limited by a definite *raison d'etre*, a concept which may best be described by the theological term "pneuma". Wrongly understood, the pneuma of an organization is seen as a justification of most dangerous Darwinistic concepts, that is, organizations existing for the sake of existence, and responsible to no one. Rightly understood, it leads to the realization that each and every organization is subject to the principle of the hierarchy of values. The pneuma of each organization in itself

becomes a factor of limitation on the one hand and a push in the right direction on the other. The student of powerful organizations soon realizes that power in itself or a mechanical existence strangles the potentiality of the members of the organization. As soon as the reason for existence becomes the existence itself, the organization has no right to live one day longer and, for ideological purposes, is dead. An internally and morally dead organization, whether governmental or private, economic or educational, is a threat to those on the inside as well as those on the outside. The modern international cartel by participating in the building of proper channels for the technological development of underdeveloped countries or groups within highly developed countries brings out the heart of the problem discussed here. As an example we point to the oil cartel: the spirit in which it was created originally might have been for the benefit of an underdeveloped country and even for the benefit of a highly industrialized nation. Any transformation of this spirit, however, which is bound to follow as the reasons for existence disappear and mechanical operation sets in, leads to deadly dangers.

An Institute such as ours is continuously confronted with (1) the factual analysis of social organizations; (2) determining the reason for which these organizations exist; (3) whether that reason was and still is justified in light of the aims of a society protecting individual freedom and economic development.

In such an undertaking the Institute must consider the legal rules emanating from such organizations and those under which they operate, the historical, philosophical and sociological aspects involved and whether the ends of society are furthered. It is clear that such a task can only be achieved in cooperation with experts in the particular fields, political scientists, legal historians and economists. It is also clear that such a cooperation cannot limit itself to a national level but can be entertained only on an international scale.

An Institute such as ours has a twofold purpose: (1) an ideological purpose, and (2) an educational purpose. In connection with the latter it is the Institute's purpose to confront our young friends from both sides of the Atlantic with the existence of the above indicated problems and to confront ourselves with the inquiry whether educational systems adequately prepare young lawyers to face and deal with these problems; and, if not, what can be done to remedy the situation.

As an honest and objective analyst of societal organizations we have to subject ourselves and the Institute to the same examination with which we examine others and according to the same standards. For this purpose and on the occasion of our Tenth Anniversary, a report outlining the Institute's past activities is presently being finished. On the basis of this report and on the basis of our stated aims we believe that the Institute is justified in its existence and will continue to exist for another ten years, wherever that may be.