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IN HONOR OF PROFESSOR-AMBASSADOR  
COVEY THOMAS OLIVER

JOHN NORTON MOORE†

One of the advantages of careers in law and diplomacy is that distinguished practitioners need never retire. Happily for both professions, the occasion of Professor Oliver's retirement from service as Acting Dean and Ferdinand Wakeman Hubbell Professor of International Law at the University of Pennsylvania certainly will not mark his departure from either profession. Indeed, one can expect from Covey's prolific nature that we can look forward to even greater contributions in the future.

Every generation of international lawyers produces a few persons of intellectual and moral stature who kindle the flame and light the way for others. Covey Oliver is such a person. One can say without rhetoric that Covey is at once a lawyer's lawyer, a philosopher of breadth and vision, an idealist and reformer, and a pragmatic diplomat with consummate skills in the art of the possible.

As an international lawyer Professor Oliver's contributions are too numerous to catalogue, and any list of his accomplishments would quickly become outdated. For me, however, he has made particularly enduring contributions in two important areas. The first is his work on the nature of international law and its role in international relations. Here he succumbs neither to the "legalists" nor the "anti-legalists," but rather enlightens us all as to the real strengths, weaknesses, and opportunities of international law. Consider the following classic paragraph:

It is obvious . . . that Mr. Kennan has a concept that concepts are of the greatest importance. With this I certainly agree; and this is why I think it important to examine very carefully Mr. Kennan's concepts of law, the international community, diplomacy, and national interest. It is important to keep in mind, also, that Mr. Kennan blames what he calls an American "legalistic-moralistic approach to international problems" for our past mistakes in foreign policy. This certainly is one hundred eighty

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† Walter L. Brown Professor of Law and Director, the Center for Oceans Law and Policy of the University of Virginia. Formerly Counselor on International Law to the Department of State, Chairman of the National Security Council Interagency Task Force on the Law of the Sea, and a United States Ambassador to the Third United Nations Conference on the Law of the Sea. B.A. 1959, Drew University; LL.B. 1962, Duke University; LL.M. 1965, University of Illinois.

degrees out of phase with those who have had the idea that the past errors may have resulted, at least in part, from a lack of law and its organized application, rather than from overdoses of "legalistic-moralistic" thinking.<sup>1</sup>

I believe that the greatest single obstacle to increasing the effectiveness of international law is the widespread failure of key diplomats and foreign policy leaders (such as George Kennan in his famous attack on a "legalistic-moralistic approach") to understand the potential of international law in foreign policy (as well as its shortcomings, most of which they understand quite well). This failure will not be reversed by vague hopes about "world peace through law" nor by exaggerated emphasis on judicial settlement of international disputes. Similarly, it will not be reversed by timid acceptance of the Morgenthau-Kennan-Kissinger myths about the nature of law and the role of international law. On this issue of central importance for international lawyers Professor Oliver has vigorously taken on the "anti-legalists" and exposed their lack of intellectual clarity in understanding law.<sup>2</sup>

A second enduring contribution of Covey Oliver to international law has been his scholarship and activism in the area of the constitutional aspects of foreign affairs, particularly the roles of Congress and the President. At the time of the misguided "states rights" attack on the treaty power, Covey stood as a pillar against the Bricker amendment. It is not generally understood how a handful of international lawyers, with Covey a leader among them, prevented a crippling amendment to the Constitution that would have emasculated the treaty power of the United States.<sup>3</sup> It was, though, a near miss and we are all indebted to Covey's good judgment and activism.<sup>4</sup> Covey, as always, exhibited his balance and good judgment more recently when the attack on the treaty power resurfaced in a different perspective in the debate on the Panama treaties. The risk today seems to be that, in overreaction to the mistakes of our Indo-China experience, we may too greatly curtail presidential power in the conduct of foreign affairs. I am con-

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<sup>1</sup> Oliver, *Reflections on Two Recent Developments Affecting the Function of Law in the International Community*, 30 TEXAS L. REV. 815, 824 (1952) (citation omitted).

<sup>2</sup> A few other contemporary scholars also deserve recognition in this respect, most notably Professor Myres McDougal, Judge Hardy Dillard, and Professor Richard Falk.

<sup>3</sup> See, e.g., MacChesney, McDougal, Mathews, Oliver & Ribble, *The Treaty Power and the Constitution: The Case Against Amendment*, 40 A.B.A.J. 203 (1954).

<sup>4</sup> As this example shows, "relevance" and "activism" did not originate in the 1960's nor were they the exclusive province of students.

fidant that Covey will be a leader in clarifying constructive ways to promote an appropriate congressional-presidential balance without returning to the excesses of the past or exchanging them for excessive congressional claims.

As few have been privileged, Ambassador Covey Oliver has had as distinguished a career as has Professor Covey Oliver. He entered the Foreign Service in 1942, and subsequently served in many important posts, including United States Ambassador to Colombia (from 1964 to 1966), Assistant Secretary of State for Inter-American Affairs and United States Coordinator for the Alliance for Progress (from 1967 to 1969), and Executive Director of the International Bank for Reconstruction and Development (1969). This mix of scholarly background and diplomatic experience has no doubt been a contributing factor to Professor Oliver's extraordinary intellectual contribution to the relation between law and diplomacy. Perhaps his scholarly background also contributed to his extraordinary success as a diplomat. If we are wise, we will continue to call on Ambassador Oliver for important diplomatic assignments.

Finally, in addition to his extraordinary accomplishments as an international lawyer and as a diplomat, Covey Oliver is a person of great strength, conviction, and humanity. I have been privileged to know him, to admire him, and to be his friend. His insight, his speaking ability, and his dynamic booming voice cut through confusion as dry ice through a fog. Here is a man with the conviction of Winston Churchill and the humanity of Woodrow Wilson. I shall continue to look to him to keep some of the fog away from us all.