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LOYOLA DIGEST

Vol. 5—No. 1

LOYOLA UNIVERSITY SCHOOL OF LAW

October, 1963

Natural Law: Foundation For A Community Of Mankind

By **GIORGIO DEL VECCHIO** (Professor Emeritus University of Rome)

To examine and if possible find a solution to the fundamentals of international law, it is best to commence with two basic and generally accepted factors which up to a certain point pose the problem. There is, among all men, a certain natural affinity (otherwise one could not speak of "mankind"), and though in actual fact, man lives grouped into different organizations, an effective worldwide unitarian system does not exist.

Yet there do exist between these organisations more or less extensive agreements and furthermore, without specifically agreed pacts, some common tenets which are revealed by usual practice and constitute the so-called international juridical community. However it is quite obvious that neither the agreements concluded between the various States nor the usually accepted standards, are sufficient in themselves to create a perfect system to make life uniform the world over.



Richard Schauer

Loyola Professor Appointed To Bench

Richard H. Schauer, professor of Personal and Real Property and conveyancing, was recently appointed to the Municipal Court bench in Los Angeles by Governor Pat Brown. Professor Schauer has been close to the bench prior to his appointment in that his father, Justice Schauer, is a member of the California Supreme Court. Prior to this time, Professor Schauer has also been engaged in private practice as a partner of the law firm Hurley, Glynn, Schauer and Criley.

If we keep to strict reality we are bound to recognize the fact that whereas it is only in individual States where there is a central power, that decrees the legislation which is enforced within its own territory, there is no such similar power yet in existence which would regulate relationship between the different States. The so-called International Law (which would be better defined as Interstate Law) owes its degree of imperfection to the very absence of a supreme power to effectively enforce it. If such a power were to be established, then mankind would become one single State and, consequently, what today is known as International or Interstate Law would develop into a system of internal legislature; thus the present day States would become subordinate parts to this system and strictly speaking, should not even be defined as States, if the word State is to be interpreted as an authority endowed with absolute supremacy. All this would be so, we repeat, if we are to keep to strict premises of positivism from the start, but if on the other hand we set out accepting other antecedents, then the problem presents itself in a rather different manner, as we shall see presently.

The imperfection and instability of international relationship at the present moment has induced some philosophers to deny that international law is in fact a law at all. Thus for example, according to Adolf Lasson, treaties between States do not result in a true juridical link, but only represent a relationship between their powers and would cease to be effective whenever one of the States so wished and could ignore them.¹

¹V. LASSON, *Princip und Zukunft des Völkerrechts* (Berlin, 1871). For a discussion on Lasson's ideas my *Studi su la guerra e la pace* (Milan, 1959) may be consulted.

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INTERNATIONAL LAW ISSUE:

NATURAL LAW & LAW OF NATIONS—

Professor Del Vecchio sees natural law at foundation for international law.

LAW IN SAMOA—

Napoleon Tuitieleapaga, Samoan Chief, traces stages of development from primitive to modern.

JUSTICE FALLS IN CUBA



JOE RODRIGUEZ of Fulgencio Batista's defeated army kneeling before priest in San Severino Castle courtyard at Matanzas. He was executed by the firing squad standing by.

(EDITOR'S NOTE: The author is a qualified expert on Latin American affairs. A native of Peru, he interviewed the instigators of a riot against Vice-President Nixon in Lima in 1958. His findings were forwarded to Secretary of State Dulles—B. A. Murray)

By **ERNEST A. VARGAS**

Is it possible that a whole people can subsist lacking their individual and collective rights? Can the law of men be respected, when the natural laws are not considered? Can a government lacking these principles be maintained?

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International Court: LAW, JURISDICTION, AND THE NEED FOR A STRONG ARM

By EDWARD SCHLOTMAN

The International Court of Justice is the successor of the Permanent Court of International Justice. Founded in 1946 and located in Geneva, its powers and functions are derived from the Statute of the International Court of Justice which is an adjunct of the Charter of the United Nations. Article 1 of the Statute states that the Court was established as the principal judicial organ of the United Nations.

Selection Of Judges

The first area of interest concerning the Court is the method of selection of the 15 judges. There is both a personal requirement and an international requirement which must be met in order to nominate a person for judge. The personal character requirement is found in Article 2 of the Statute, namely that the Court be "composed of a body of independent judges elected regardless of their nationality from among persons of high moral character who possess the qualifications required in their respective countries for appointment to the highest judicial office or are jurisconsults of recognized competence in international law."

Article 9 of the Statute states that the electors should also bear in mind that "in the body as a whole the representatives of the main forms of civilization and of the principal legal systems of the world should be assured."

People who fulfill these two requirements are nominated for election, not by nations nor by the United Nations, but by "National Groups." These "National Groups" are composed of four persons, each chosen by a country as its members on the panel of the Permanent Court of Arbitration. A nation who is not a member of the Hague Convention and who wishes a voice in the nominations can form a Group that conforms to the requirements of a "National Group" which can then nominate prospective judges.

The members of each "National Group" come from several countries besides that Nation which assembled the Group and they in turn can nominate only 2 persons from their own countries out of a total of 4 nominations by each Group.

The Secretary General of The United Nations transmits the list of nominations to The General Assembly and to the Security Council who elect the judges. Each body must elect the same persons by an absolute majority independently from the other body. There can be no formal communication between the two bodies. The voting continues until each body has elected the same men and enough of them to fill the vacancies.

A judge is elected for 9 years; one third of the Court is up for reelection every three years. The President and Vice President of the Court are elected for three years. The President, and in his absence the Vice President, directs the work of the Court and its proper administration. When the Court is not sitting the President has extensive powers to make orders for the procedure of pending cases. He must sign all formal orders, judgments, and advisory opinions for purposes of authentication.

In electing the judges a couple of unwritten laws are followed. One is that the 5 permanent members of the Security Council each have a seat. The other is that the remaining ten must be spread out for the rest of the United Nations. In 1946, Afro-Asia had one, Eastern Europe two, Western Europe two, Latin America four, and the British Commonwealth one. The only change recorded by 1961 was that Afro-Asia had two and Eastern Europe one.

There can also be up to two more judges sitting on the Court for a particular case. Each party to a dispute may nominate and have appointed a judge to sit during the case if that party is not already represented on the Court by a judge of its nationality. These are called Judges Ad Hoc and may be of the same or dif-

President's Message

By VINCENT STEFANO, JR.

For those of you who don't know, don't remember, or were never told, Loyola Law School of Los Angeles is almost fifty years old, and today is the only accredited, really metropolitan law school in Los Angeles.

The years which have passed have seen peaks and valleys of development until today, which finds the school on the threshold of a tremendous new era.

We, who have been here, have seen changes in just two short years, and the alumni who look back on their days of formal legal education find that people have come and gone, standards have changed—the observance of ancient customs being cast by the wayside to make room for the new modern trend. A look into the future sees a new building, expanded curricula, and all the things connected with a first rate law school of national stature.

We of the student bar, in keeping with the pace set by our predecessors, have dedicated our year to the normal things students attempt. Above all, however, this year's student bar is dedicated to the communicative aspects of student life. Too often law students look at their law school as a receptacle into which someone has placed their destiny—they merely come, take and leave. We are here to become attorneys, but the learning process requires that there be something given as well as taken. It requires dedication, and it requires that the individual, as well as learning the law, be able to apply it according to the mores of our society in keeping with the ethics of the profession. All these things require more than just "book learning."

We must inquire of our col-



Vincent Stefano, Jr.

leagues, professors, and associates about that which we do not know and are curious. In turn, we must be told by these people, and they by us.

While the student bar is going to strive to keep people aware of what is happening, it will behoove everyone connected with the law school to take it upon themselves to promote everything in this direction. We must take advantage of every opportunity which presents itself, both in and out of school, to develop ourselves and our school, whether we be student, faculty, alumni, or administrator.

ferent nationality than the nominating party.

Only States Are Parties

In trying a case the Court must decide if it has jurisdiction over the parties and the subject matter. Only states may be parties to a suit before the International Court of Justice. This rule excludes all the international organizations such as SEATO, CENTO, NATO, OAS, at present the European Common Market and even the United Nations and its Agencies. The Court's jurisdiction further depends on the consent of the parties. Article 36, Paragraph 1, of the Statute states that "The Jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties or conventions in force."

This jurisdiction by consent can be conferred in either of two ways: by specific agreement between two or more states or by a unilateral declaration. The specific agreement type of declaration is questioned only if one of the parties challenges the exist-

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1137 SOUTH GRAND

By CHARLES FINNEY

The fall semester finds first year students numbering ninety in both day and night divisions, totaling 180 for the first year. Assistant Dean Tevis informed the Digest that there are many on waiting lists. This problem will be circumvented by the enlarged facilities planned for the new building soon to be erected.

New Faculty Members

Besides welcoming all new students who pass through its portals, the school is pleased to announce the addition of four new members to the faculty: Mr. William Henry Dorsey Jr., from Washington University; Mr. Richard Rank from the University of Toronto, Canada; Mr. Martin Stone, beginning his teaching career at Loyola; and Mr. Laurence Packer Simpson, the New York University author of the first year law school student's bible, "Simpson on Contracts."

Interviewing Mr. Rank, Loyola's Law Librarian, I discovered that he has studied and taught law in many countries including Estonia, Germany, Sweden, Turkey, Canada, and the United States. He was born and raised in the small Baltic country of Estonia. He left there in 1943 shortly before the Russians re-established themselves in that government's seat. He came to the United States in 1952, and has since become a naturalized United States citizen. Mr. Rank is dedicating his efforts to the building of Loyola's library into one of the best in the nation. One of the major projects he will undertake is to increase the size of the law library from its present 40,000 volumes to 130,000 volume capacity in the new law library.

Honors Writing Program

A new program has been initiated at the school this semester. It is the Honors Writing Program under the direction of the faculty. The program includes extensive research and writing in subjects such as Administrative Law, Torts, Contracts and Trusts. Five honor students from the third year Day Division and fourth year Evening Division will be participating. These students have cumulative averages of 81 or higher.

The program will extend

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CENTURIES OLD SAMOAN INSTITUTIONS LIVE ON DESPITE GOVERNMENTAL VICISSITUDES

(EDITOR'S NOTE: The author is a duly registered and officially recognized Chief of the Government of American Samoa. Selected as secretary and liaison officer to a legislative delegation from American Samoa, he has represented his people in New Zealand, Fiji, and other islands. A student of Loyola, he plans to return to Samoa and serve his people and government.)

By NAPOLEON A. TUTELELEAPAGA FOFOGAOALII

Samoa, under the purely native legal system, never had a printed code of laws. The laws themselves are synchronous with the existence of the people. They were passed from generation to generation—at times repealed or amended, and at other times enforced—depending on the discretion of the ruling chiefs. Each village had its own set of laws, formed, enacted, promulgated and enforced by the chiefs who formed the legislative body, which also was the Court of Appeals and Equity. The maxim, "Everybody is supposed to know the law (of his country)" applied also in Samoa, but with some variations. Everyone was supposed to know the laws of his own village; and it was a disgrace for a family to have one of its members punished. If the culprits swore before the village court that he never was told of such a law, the judges would exonerate him and punish his matai (chief) instead.

When a meeting of the legislature was called, each chief propounded a subject to be debated for legislation. A decision was reached after heated altercations caused by the prevarications of some chiefs based on their desire to protect their relatives if they felt their people would be implicated in the crimes in question. The enactment of a law was not the result of a vote of the majority, but the result of an eloquent and forceful speech by a chief or orator. A member of the legislature who had many members in his family, and who was well-off, was usually listened to and always the victor. The "yes" and "nay" system was not known. After members had agreed, the subject discussed became law, and its punishment was then taken up. Thusly, both the law and its punishment were sanctioned and became official.

Promulgation was effected in a dual manner; first, each chief assembled his family and, after an exhortatory speech in which he mentioned the name of their ancestors who did nothing to abuse the family, and told stories to promote respect and loyalty, he then informed them of the minutiae of the meeting. This was followed first by solemn declarations of obedience, loyalty and respect, ob-

servance of and submission to the law, by individual members of the family; secondly, by an orator duly appointed by the

punishments; the sight of a missionary was the termination of any altercation, quarrel or an attempted crime.



District Judge Multavapelo

legislature, or by reason of rank and status such office devolved upon him, to go around the village and publicly announce the law and its punishment.

Advent Of Christianity

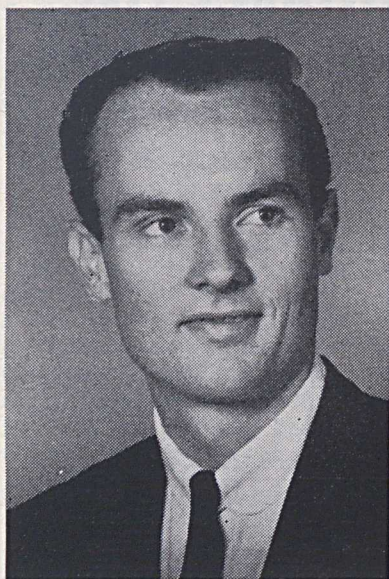
The advent of Christianity marked the dawn of a new era in the legal life in Samoa. People were struck with fear when they were told of Hell; terror spread throughout the islands, and the apprehensiveness and dread of the everlasting conflagration was more feared than the old

During this epoch a new method of detecting crime and apprehending offenders was introduced to take the place of the old system of swearing before the village court. This new method required the individual to swear on a bible placed on a coffin-like platform covered with a tapa cloth, this obviously to instill fear in all those who took the stand. Each family sent in a list of their property stolen, and on Saturday of each week the inhabitants from the age of 12 to 60, male and female, assembled in a place assigned by the court. All assembled, a chief or orator appointed by the legislators as the master of ceremonies addressed the villagers, informed them of the things stolen from each person or family, and emphasized the dismal consequences of making a false oath. The people were then called out one by one to take the oath. Squatting near the sacred platform, the affiant put his right hand on the bible and spoke aloud, "In the presence of God and the dignified court as well as our assembled villagers, I do solemnly swear that I did not steal any of the things enumerated." "Tell or Hell" was the slogan then, but the conservatives countered with the anti-slogan, "Tell and disgrace your family and matai." Thus, it was apparent that the Samoan's emotions and idealisms were controlled more by respect and fear of the chiefs and their families as well as by cultural and native environments.

The old method of making an oath was that, one by one, each

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INCOMING EDITORS



Tony Murray



Ernest Vargas

The Loyola Student Bar, in an April election named Tony Murray and Ernest Vargas as Editors-In-Chief of the Digest. Both third year students, they have worked together on past Digest publications.

Murray counts among his writing achievements the J. Rex Dibble Award, first place in the Loyola Moot Court Competition, a Student Fellowship in legal writing, and brief writing experience as a Student Legal Assistant for the California Attorney General's Office.

Vargas, also a legal writing

Student Fellow, brings to the Digest his five years of experience on school editorial boards, and journalistic skill gained from his contributions on Latin American Affairs to the U.C.L.A. Bruin.

This year the Digest features a new concept in format, dedicating each issue to a specific area of the law. This first issue is devoted to the field of "International Law," with subsequent issues designed to treat the topics of "Politics and the Law," "History of the Law," and "Philosophy of the Law."

Moot Team Faces National Competition

Working feverishly on this year's Moot Court problem are the three members of the Loyola Law School National Moot Court Competition team, Tony Murray, Charles Finney, and Charles Liberto. As last semester's finalists in the Scott Competition at Loyola, this team will represent the school in the National Contest beginning in mid-November.

Participation in the Scott Competition is voluntary and is based upon briefs submitted on a problem assigned in the spring semester of the Legal Writing II course. With practically all second year students participating, the value of this legal training is not underestimated. Competence in the art of oral advocacy combines with other legal skills to constitute the "total" lawyer.

From a national standpoint, Loyola has one of the finest records in the fourteen year old competition, winning half the regional championships during the first decade. The Fifteenth Region includes the law schools of Loyola, USC, U.C.L.A., and there is a possibility of expanding it this year to include the University of Washington and Willamette University. The teams prepare briefs and oral arguments for cases involving controversial topics of national import. This year's problem deals in part with questions of illegal search and seizure, coerced confession, and conduct of trial.

Although each school in the national competition writes a brief for only one side of the argument, a true test of oral advocacy is evident when, during the elimination rounds, a team may be required to present oral argument on what was originally the opposition's side. This demanding change of position is of great interest to the judges and the viewers, although often trying on the participant.

Exams: TEST OF KNOWLEDGE OR NERVE

By ANTHONY CASE

Each semester it seems to get just a little harder to prime for exams. Each time the student walks up the stairs after the exam bell has rung into either the typing or writing room he can't help but think, "Isn't this a tortuous way to be examined?" After spending over fifteen weeks in the classroom and countless hours outside in preparation and study he is faced with the "moment of truth," and, not unlike the corrido, such a testing system often becomes one of endurance and nerve.

Assuming that for the world outside law school grades must be used, which itself is a subject which could be the topic of a rather lengthy treatise, it would seem that over this fifteen week period some system of grading could be devised which would eliminate the gambling element now present in the testing system. The student now gambles that he will be prepared not only mentally but also physically, that some emotional disturbance won't befall him in his personal life that might upset him on that one day when he must take the exam. The student who might otherwise be quite collected gambles that he won't tie up during the exam and, due to worry, miss things he knows so well.

Why should this gambling element be present? Why should the whole semester's grade depend upon this one evening's performance? Why isn't the grade based on some sort of averaging basis on the performance of the whole semester? The answer usually given is that the bar is just like the testing system now used; but this answer assumes the necessity of the bar for electing those qualified to practice law and those not. This assumption is perhaps responsible for the cramming, non-averaged testing system which now plagues many law schools. Inherent in the method of examination given by the bar are all the nerve-rendering and non-averaging features of law school exams, compounded by the pressure which only the bar itself can produce.

At this point one may begin to question the bar examination itself. Is it necessary for accredited law schools within the state? What does accreditation stand for? Doesn't it mean that the law schools which are accredited are qualified for preparing students for the practice of law? It so, isn't the bar an

unnecessary duplication for those students, one that causes the evil of the present testing system? It would seem that an accredited law school over a period of three or four years is much more qualified to determine the eligibility of a man or woman to practice law than any three day medieval ordeal. Indeed, this three day ordeal seems to be a return to the Middle Ages, if not the Dark Ages. It substitutes endurance and physical strength for what should be a test over a period of years measuring the ability of a student to reason; not merely to see how fast he can write his reasoning down in the tension-filled exam room, but rather to see how well he can reason, and to what depths he can probe.

Once the unnecessary duplication presented by the bar is fully appreciated and dealt with the way could be made clear for a better and more comprehensive method of examination; one not based on a hit or miss, one day affair, but rather one that measures the capabilities of the student over the entire semester, year, or three or four years. A testing system could be used which is based upon daily classroom participation as well as the skill of writing as evidenced by a paper written by the student in a particular area of the course. Such a system would avoid the cramming at the end of the semester that is encouraged by the present system. The professor would have a far more representative quantum of the student's work upon which to make his evaluation.

If the necessity for an exam at the end of the semester is still thought desirable, it would seem that at least some part of this exam could or should be oral. The ability to reason out loud, and persuade those with whom the young attorney speaks, is certainly an important element which is not now being taken into account in the present testing system. It would seem that a conversation of an hour or two between the professor

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"...lasting peace can only be founded upon a law imposed by reason."

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However, the juridical validity of the treaties is accepted by the majority of authors, most of whom, as a matter of fact, consider this principle as the sole basis for international law. This doctrine goes back to the ideas affirmed in the Peace of Westphalia (1648), according to which the States would be completely independent and free from any enforced bond, except those which they voluntarily accepted. Hence the fundamental importance attributed to the maxim: *pacta sunt servanda*.

Much comment can be made in this regard. The will of the States, following this doctrine, would be simply arbitrary, to be exercised without any conditions or limitation, and remain valid just the same. This is in contradiction to even the most elementary juridical logic, as may be clearly seen by comparison with the dictates of civil law, which subordinate, as is well known, the validity of contracts to certain requisites: the capability of the contracting parties, the absence of faultiness in the consent and the lawfulness of the subject thereof. Arbitrary will in itself is not a rational principle as it can be either perfectly straight or distorted and thus can have no ethical value. To adopt it as the foundation for international law means to reduce the latter to a sequence of accidental and indefinitely changing facts, which would not be subject to any criterion of an universal nature. In other words, it would mean denying the existence of a bond between men, based on their common nature.

The maxim regarding the binding powers of a treaty (*pacta sunt servanda, juris naturae est stare pactis*) is undoubtedly plausible if interpreted in its correct meaning and within its proper limits, but it cannot stand on its own and must be deduced from a more general principle, which is the worth of the human person as a being having the power of reason and freedom. That maxim therefore, belongs in a system of rational truth which is not, however, generally accepted by the supporters of the doctrine just mentioned, who instead keep to a mere "positivism."

Given the rejection of a natural law and, furthermore, the lack of an organization which has an effective power over the individual States, international law would be reduced to situations of mere fact.

However, independently from that faulty theoretical construction, the sane reasoning of the more civilized peoples, especially after the tragic experience of the recent world conflicts, has shown itself as clearly recognizing the dictates of upright reason as an imperative law, as much for home rule as for international relations. It can be stated that the thesis of unlimited arbitrary will for the State, though still taught in many schools, has become behind the times in the most progressive constitutions as well as in the policies of international organizations, policies which on the other hand, up to now have only been partially put into practice. It is enough to recall, for example, the **Universal Declaration of Human Rights**, approved by the General Assembly of the United Nations on the 10th of December 1948, wherein it is fairly stated that "the recognition of the dignity appertaining to all the members of the human family and of their equal and inalienable rights constitute the foundation of freedom, justice and peace in the world."

If, as is apparent from many signs, mankind is heading towards the formation of a unitarian juridical order, notwithstanding all the obstacles which make the road towards this goal slow and difficult, the fact is surely due to the common aspiration to peace and the belief, which is coming always more widespread, that a lasting peace can only be founded upon a law imposed by reason: a law of justice and freedom. Whereas, the world would be condemned to perpetual instability and virtual anarchy if the dogma of unlimited arbitrary will for each single State, were accepted.

This dogma, which would exclude the obligation of the State regarding certain principles, already has been rightly adjusted in relation to internal legislation, that is the relationship between the State and the individuals composing it. It has been admitted, and now even official-

ly ratified by the constitutions of the more developed States, that the State must recognize the basic rights of the citizen, and that such recognition is a bond and a limitation to its actions, which would become illegal and therefore juridically impugnable in the event of transgression. This does not mean that the concept of sovereignty has been abandoned; rather that it has been rationally adjusted in a sense that sovereignty must no longer be interpreted as absolute power.

A similar adjustment also should be made regarding that which concerns the relationship between one State and another. Here, too, sovereignty must be conceived as "constitutional," or in other words subordinated to bonds and conditions which, having a universal value, in no way imply the belittling of one State in the sight of the others. It is a question of applying to international relations the same principles, brought to light by the theories of natural law, which have already found their way into the constitutions of many States.

In all human life individuality must be commensurate with sociality. In the same manner that the individual cannot but recognize himself as belonging to a society of his own kind, though his natural and rational rights remain intact and even corroborated by this fact, so must the State recognize its membership to an international or interstate order, on the unshaken basis of respect for the fundamental rights of mankind. This respect constitutes an essential obligation as much for every individual State as for the interstate structure: no State can claim *de jure* recognition if within its own internal legislation those rights have been violated; though a partial *de facto* recognition may be possible with reservation made for further adjustment on a more true and solid basis.

A very ancient mistake, in his time proved by Plato, is still deeply rooted, which is to put faith into things which come under the senses and not under the universal ideas that transcend them. This fundamental error keeps cropping up in different forms even in the field

of juridical science. It is thus that many jurists consider as "real" only the imperatives issued by States, or visibly existing authorities, and not those which come from human reason or human nature. It is remarkable, however, that even those who on account of this prejudice deny natural law, admit, implicitly, the imperatives of logic, grammar and often even those of morals, even though these have never been ratified by any government or any assembly.

As a result of this deplorable prejudice, some schools have turned deaf ears to the substantially concurrent assertions made by very many philosophers, including the greatest of them, who in the name of reason affirmed the sound value of supreme human ideals. It would take too long and be superfluous to repeat those assertions here; let us recall just a few, without forgetting to note that they are entirely consonant with the most inspired teachings of the Gospel, which proclaim the brotherhood of all men. The idea of the necessity for a society of mankind appeared, as is well known, as early as in the philosophy of the Stoics, and was magnificently expressed by Cicero in the famous lines, "Est quidem vera lex recta ratio, naturae congruens, diffusa in omnes, constans, sempiterna . . . Nec erit alia lex Romae, alia Athenis, alia nunc, alia posthac, sed et omnes gentes et omni tempore una lex, et sempiterna, et immutabilis continebit." Equally memorable, for example, are the analogous maxims pronounced by Seneca, ("aliquid esse commune jus generis humani" etc.) and later, by Dante Alighieri ("totum humanum genus ordinatur ad unum"), by Francis de Vitoria ("totus orbis aliquo modo est una res publica") and by many other philosophers, who, though taking different roads to reach their goal, nevertheless arrived together at their conclusions, affirming in this way the postulate of "una gran citta del mondo" (Vico), or "civitas gentium maxima" (Wolff), or "Weltrepublik" (Kant). It is not even necessary to recall other doctrines, even the most recent, which confirm this concept, and which have

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"...if justice should perish, it would no longer be worth their while for men to live upon the earth..."

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never been effectively overthrown by the arguments of those who do not accept them.

In the contrast between the reign of arbitrary will and the reign of reason, there are no intermediary solutions. If because of anti-philosophical prejudice, already proved erroneous by logical criticism, the universal truths dictated by reason are rejected and not even the "heavenly voice" of conscience is heeded; if only the arbitrary resolutions of those in government are admitted, and the validity of the manifestations of their "wandering" will considered, whatever these may be, then to build a juridical organisation of mankind on such foundations is a desperate enterprise as would be the building of a house on quicksands.

The thesis put forward by some of the ancient writers: "*exeundum esse e statu naturae*" is surely mistaken if taken to the letter, in as much as it appears to imply the hypothesis of a primitive extra-social state, which in actual fact has never existed; but it expresses a truth if taken in its deeper meaning as an assertion of the rational need for individuality being temperate with sociality.

This need—worthy of repetition—is as valid with reference to the individual persons as with reference to the individual States; and as the participation of the individual to the State does not diminish, but rather confirms his intrinsic dignity, so does membership of a universal society bring about no reduction, but rather an affirmation, of the authority of a State according to its true nature. Yet all of this must be on condition that the State, as much as the society of the States, both recognise and practice within themselves the rights based on human nature, which are summarised by the idea of **Justice**. This idea is a true category (*a priori*) of the spirit, and is not at all indeterminate or indeterminable as

some have opined; but correctly understood, contains a series of precise prescriptions, valuable as norms for all intersubjective or social relations. By this one does not, of course, wish to state that mistakes are not possible even in this subject, as much as in any other, because the human mind is never infallible, and it is often misdirected and dimmed by the most diverse passions. Thus it is the task of philosophers to point out the straight path which complies with the deepest vocation of our spirit.

Above all, justice wants the human being to be recognised and treated by others as if endowed with freedom, that is with a natural right, with respect to which there is perfect equality between all men. According to the same idea of justice, the various directions of human activity must receive specified precepts of that basic law, in other words, of harmonised freedom raised to a universal degree with regard to a possible co-existence (Freedom of thought, of speech, of work, of meeting, of association, etc.).

In accordance with all this the functions of the State must be determined, as it is the State which has the duty to confirm and protect the validity of the rights above mentioned, as undeniable reason for its very existence, as first and foremost reason for its activity, as limit and essential condition for its legitimate authority over the individuals. Justice thus presents itself in its various aspects, different but always coherent among themselves: as political, assistential, contributational, economic, educational, trade unionist, rewarding, remedying, international or cosmopolitan.¹

If we wonder up to what point any positive steps have been taken regarding these principles, especially regarding international law, we would find that such

¹Regarding these concepts one may consult my study on *La Giustizia*, the sixth Italian edition of which has recently been issued. An English edition (*Justice*) was published, with notes by A. H. Campbell, by the Edinburgh University Press in 1952.

up to the present time, have been very imperfect. Even the most remarkable of attempts in this regard, and that is the United Nations Organisation, is not free from serious defect. Though it has solemnly declared in its Charter and then more extensively in the Universal Declaration of Human Rights its intention "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person", it has not hesitated in accepting membership of States which openly fail to recognise such principles, both in their own internal legislation and in their relationship with other States. What is more, the same Charter, while it affirms that "the organisation is based on the principle of the sovereign equality of all its members", in evident contradiction grants a privileged position to some States and places others in a permanently inferior situation; a contradiction even more serious and unfair as amongst the privileged States there are some who do not in fact respect human rights at all, whereas in the second category there are those that do.

It would be in vain, if one were to examine that document in the hope of finding a specific reference to natural law, which nevertheless is the logical premise to a universal society of States; that law which consecrates the unity of mankind, thus imposing on each individual State the categoric obligation of adhering to a just international organisation. Erroneously however the Charter of the United Nations considers such adhesion as facultative. The root of the error is in having mistaken, here as well, arbitrary for freedom, having forgotten that freedom can only exist in harmony with reason and with its law.

In my opinion (I briefly point out here what I have already sustained elsewhere) a perfect international organisation should register all existing States (either following upon a

request or *ex officio*), but not to grant them all equal rights and equal functions, but rather to clearly distinguish the legitimate or in *justitia* States from those which are despotic. Only the first should enjoy the right to take part in the debates and resolutions by vote. With all due regard to justice towards the personality both of the individuals as well as of the States, I think that, at least for the deliberations of greater importance, a double approval should be required, that is from the majority of the States and from the majority of the populations by them represented, always bearing firmly in mind the principle that to both pollings only the legitimate or in *justitia* States would be admitted.

It is obvious that there is room for much debate regarding specific questions. What is of paramount importance is not to mistake the accessory for the essential, and essential is only that the world must be governed by reason, within the spirit of humanity, and not left helpless to the blind impulse of passion. Therefore we reject those doctrines which following a false concept of freedom, manage to bring about every possible abnormality.

Everyone knows and sees that not only justice and peace, but the existence of mankind itself is today placed in jeopardy by the will of the few who find their backing in those false doctrines.

We are not prophets, so we cannot foretell the events through which the world must go, however we stoutly trust that good will finally prevail over evil, right over might; for if, by great ill-fortune, justice should perish, (we quote Kant's words) it would no longer be worth their while for men to live upon the earth.

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Tyranny Reigns

'... Senores, I Feel As Though I Were In A Roman Coliseum'

(Continued from Page One)

Why An Exodus?

We have only to turn to the volumes of history to find the dilemma of the Latin American people beginning with their serfdom under the yoke of the Spanish *conquistadores*, on through the atrocity-ridden revolutions that have convulsed her in her surge for freedom.

One would conclude then that a people so oppressed would in time become hardened and endowed with a certain courage and faith in the future so as to give them the incentive to live on, or even an indifference towards the anarchy surrounding them. Why, then, in this period of history, and within our own hemisphere, do we find a mass exodus of thousands upon thousands of Cuban people?

In a letter to the Digest, J. Arthur Lazell, deputy director of the Miami Refugee Center, related that,

"The number of Cubans coming in here weekly is about 2,000. The figure is approximate because data is vague on the considerable quantity coming in in small boats—a veritable derring-do adventure, for many of those boats are not more than 12 feet long. And they get into open water, without charts many times, and without compass. Our Coast Guard picks them up as they can when they get adrift which is all too often. Castro's gang does everything it can to prevent these clandestine exits, and if the emigrants are caught they are gunned down like rabbits. It never will be known how many of them have been killed, either on the shore or in the water, for they also use airplanes to do the job. But still they come, and it has been said that if the water from here to there were only neck deep, instead of there being a hundred thousand or so Cubans here, there would be more than five million."

In spite of the anarchy, the bloodletting, and the years of terror and oppression under the Batista regime, no such flight

was ever experienced, nor did the people feel a need for it. That there was terror is unquestionable, especially for those who opposed the dictator openly. Hector Beijar, student leader of the Communist party in the University of San Marcos of Lima, Peru, in 1958, related to us that his close friend, the Student Government President of the University of Havana, had been shot in the back for leading an anti-Batista campaign.

"Tools Of Persuasion"

The present regime has not been unlike that of its predeces-

sors in the use of "tools of persuasion" and special "retraining" and "treatment" facilities which consist of nothing more than medieval torture chambers. Why then the sudden Exodus? Why the undertaking of such risk which may end in death?

members of the present ruling class there. The basis for this statement has its roots in an interview with a refugee* who left his homeland, his wife and children to come to a country where "the rights of the individual are still supreme."

Quoting a great American

trials held in the main boxing arena of Havana, when he uttered the words: "Senores, I feel as though I were in a Roman Coliseum."

Hundreds of new decrees issue forth from the seat of government describing new crimes, the majority of which are punishable by death within 48 hours of capture. These laws, however, are not to promote justice, but to prevent insurrections. It is certain that Castro's Judiciary and law enforcers are unaware of the words of Thomas Aquinas:

"A law that is not is a law in name only. Every human law has just so much of the nature of law as it is derived from the law of nature. But if in any point it departs from the law of nature, it is no longer a law but a perversion of law."

A law which has no foundation other than the will of a government may have the coercive force of law but it would lack moral authority. It would bind men, not through conscience but only through their fear of punishment for disobedience. "That force and tyranny may be an element in law," wrote Hegel, "is accidental to law, and has nothing to do with its nature."

People seek to subject themselves to control by a government in order to find an established, settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all controversies between them; and they seek an indifferent judge with authority to determine all differences according to that law. When this breaks down, their purpose is defeated and the government is no longer useful to them. Instability then sets in as the certainty and predictability of a well established system of justice deteriorates and is converted into absolute despotism.

"Where the law ends, tyranny begins."—(William Pitt.)

* Ed's Note—Refugee's identity not revealed as members of his family still reside in Cuba.)



IDENTIFIES MAJOR AT WAR CRIMES TRIAL—Maria Jacinta Galvez points to Maj. Jesus Sosa Blanco as she identifies him as commander of Cuban army troops in her neighborhood in Oriente Province during her testimony for the prosecution at the war crimes trial. She was the first witness to testify against Blanco as his trial began in the huge circular shaped indoor sports stadium.

sors in the use of "tools of persuasion" and special "retraining" and "treatment" facilities which consist of nothing more than medieval torture chambers. Why then the sudden Exodus? Why the undertaking of such risk which may end in death?

"Laws Are Dead"

One of the prime contributing factors may be the breakdown and disrespect of the law by the

lawyer and patriot, Alexander Hamilton, he explained that: "Laws are dead letters without courts to expound and define their true meaning and operation."

The sentiment of the Cuban patriots toward the present system of law under the Castro regime was typically portrayed by a defendant general under fire, in one of the first public

Ex Attorney General Discusses Defense Of Unpopular Client at St. More Luncheon

Carrying on the tradition of the past, the St. Thomas More Law Society will present, once again, the Speakers-Program at Loyola. One of the first of many to talk to interested students was Mr. Robert W. Kenney, past California Attorney General.

Mr. Kenney, of Stanford University and University of Southern California School of Law, is presently engaged in the general practice of law in the Los Angeles area. His record includes terms of service on the Municipal and Superior Court Benches. His topic covered the controversial area of "Defending the Unpopular Client."

The Speakers-Program this year will be conducted during luncheon meetings on selected Wednesdays, from twelve to two in the afternoon, in local restaurants. During the preceding scholastic period, past President Tony Murray directed the activities of the Society at dinner meetings, which were attended by students of the law, alumni, and faculty members.

Dinner topics have covered the areas of "The Morality of Tort Money Judgments," given by Mr. George West, attorney in the personal injury field; "The Moral Role of the Attorney as Counsel, as Opposed to Advocate," presented by Mr. Thomas LeSage, President of the Pasadena Bar Association; and "The Function of the Catholic Law School," interpreted by Father Richard A. Vachon.

Culminating last year's programs for the Society was the Annual Communion Breakfast, held in the Student Union Building of the Westchester Campus of Loyola University. In the name of the Society, retired California Supreme Court Justice



Robert Kenney

Thomas White presented the annual Thomas More Award to Loyola Professor and Superior Court Judge J. Howard Ziemann. The guest speaker Rev. Willis J. Egan, S.J., an authority on the life and literature of More, commented upon Robert Bolt's play "A Man for All Seasons." This year's activities for the Society will terminate in like manner.

Directing the programs will be President Tom Girardi and Vice-President Tony Murray. Representatives Marty Blake, Tim Sargent, Lyle Herrick and Tom Kestler will assist.

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International Court:

JURISDICTION BY CONSENT ALONE

(Continued from Page Four)

tence of an agreement. Thus in effect the agreement can be informal. The Court merely wishes to be satisfied that the parties are in agreement that the Court should hear the case.

Compulsory Jurisdiction

The second way to confer jurisdiction, a unilateral declaration emanating from a state and deposited with the Secretary General of the United Nations accepting the Jurisdiction of the Court for defined types of legal disputes in accordance with a special procedure contained in the Statute, has been given the misnomer of Compulsory Jurisdiction. The authority for it is found in Article 36, Paragraph 2, of the Statute, "The states parties to the present statute may at any time declare ipso facto and without special agreement in relation to any other state accepting the same obligation the Jurisdiction of the Court in all legal disputes concerning: A) the interpretation of a treaty; B) any question of international law; C) the existence of any fact which if established would constitute a breach of an international obligation; D) the nature or extent of the reparation to be made for the breach of an international obligation."

As can be seen this Article also sets forth part of the subject matter jurisdiction of the Court. The other part is any case referred to the Court by a state. This would allow a state to act for an individual citizen by espousing the claim in the exercise of its right of diplomatic protection of its citizens.

At the present 38 out of 107 states have accepted compulsory jurisdiction. The United States is one of the 38, but has qualified its acceptance by the Connally Amendment which in a practical sense means no acceptance at all.

Advisory Opinions

The third area of the Court's Jurisdiction is its competence to hand down advisory opinions. This is a power seldom seen in American Courts but one which has been used by the United Nations fairly often. Both The Security Council and the General Assembly have the right to request such an opinion on any legal question. This power is granted by the Charter of the United Nations. Other organs of the United Nations have the right to request an opinion if so authorized by the General Assembly. Today all principal organs of the United Nations except the Secretary General, the specialized agencies, the Interim Committee of the United Nations, and the Committee for the Review of Administrative Tribunal Judgments have been authorized.

In the General Assembly a two-thirds vote is the most needed for a request. In the Security Council seven out of eleven are needed, subject to the veto. The duty of the Court to hand down an opinion when requested is not absolute but discretionary.

Intangible Powers

The actual powers of the Court are somewhat intangible, necessarily so because of the sovereign nature of the members of the United Nations. The Court may, in the preliminary stages of a case, issue an Interim Measure of Protection. This is used to preserve the respective rights of either party. The Court must give notice of the measure which it suggests not only to the parties but also to the Security Council.

While a request for an indication of such measures may be made at any time in the course of the proceedings the Court will normally accede only if there is the possibility that the object of the litigation will be prejudiced by the action of the defendant states. It is quite similar to a preliminary injunction.

The power to have its orders executed is equally vague. Article 94 of the Statute states that, "Each member of the United Nations undertakes to comply with the decisions of the International Court of Justice in any case to which it is a party." Non member states must give a similar undertaking before being admitted to the Court for a particular case.

Article 94 further states that "if any party to a case fails to perform the obligation incumbent upon it under a judgment rendered by the Court the other party may have recourse to the

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Samoa

'...IF I STOLE THE THING— MAY I SPEEDILY DIE'

(Continued from Page Three)

of the suspects laid a handful of grass on a stone supposed to be the representative of the village god and said, "In the presence of our chiefs assembled, I lay my hand on this stone. If I stole the thing may I speedily die." The meaning of grass was silent imprecation that he and his family may all die and grass grow over their graves. If all swore, and the culprit remained undiscovered, the chiefs then wound up the affair by committing the case to the village *aitu* or ghost, and solemnly invoking him to hasten the destruction of the guilty party.

Fear A Weapon

A very potent factor in the maintenance of peace and order and control of the crime rate, was superstitious fear. Instead of appealing to the village court and calling for an oath, many were contented with their own individual schemes and imprecations to frighten away the thieves. When a man went to his plantation and saw that some coconut or a bunch of bananas had been stolen, he would stand and shout at the top of his voice two or three times, "May fire blast the eyes of the person who stole my bananas! May fire burn his eyes and the eyes of his god too!" This rang through the adjacent plantations, making the thief tremble and finally confess. Others cursed more privately and called in the aid of a devil priest or a medicine man.

In common disputes to test each veracity it was customary for one to say to the other, "Touch your eyes, if what you say is true." If he touched his eyes, the dispute was settled. It was as if he had said, "May I be cursed with blindness if what I say is not true." Or the doubter would say to his opponent, "Who will eat you? Say the name of your god." He whose word was doubted would then name the household god of his family, as much to say, "May god so-and-so destroy me, if what I say is not true." Or the

person whose word was doubted might adopt the more expressive course of taking a stick and digging a hole in the ground as if to say, "May I be buried immediately if what I say is not true." But there was another extensive class of cursed, which were also feared, and formed a powerful check on stealing, viz., the silent hieroglyphic taboo or *tapui* (ta-pooee).

European System

After Christianity came the American and European form of government, and thus Samoa had to undergo another legal metamorphosis. This new change put the people in a considerable state of bewilderment and disturbance as the shadow of western law loomed over their lives. The old judicial ideas and institutions had to be modified so as to allow for the new codes and courts, for the impersonal machine of white justice with its traditional mummary and fixed precedents often requiring esoteric exposition by the bench and by lawyers. Two kinds of delinquencies then emerged, the one comprising deviations from the correct patterns of Samoan behavior, the accepted standards of the native community, the other deviations from the alien and superimposed rules of conduct. Thus, the Samoan did not know which law to obey, the Samoan, Christian, or Papalagi (European). However, with the tenacious encroachment of western law and the evolution of time, and sparked by education, the people have now become aware of the efficacy of the Papalagi laws.

At present, the machinery of justice is operated exactly as in England and the United States, though not quite as up to date. We have Village, District, Probate and High Court as well as Courts of Appeals and Equity. There are numerous Samoan customs for breach of which the formal law has provided no redress. It is the policy of the courts to let as many as possible of these matters rest with the

local authorities by relying on the common sense and experience of the leaders. In such cases, the solution lies in striking a balance between protecting the old power of the *matais* and enforcement of the new codes so as to bring the Samoan behavior increasingly in line with that of the western society.

Whether the recent change in the political and legal life of the Samoan people will supplant materially the principles and the spirit of the stablest and most solid legal systems that the world has known, remains for the future to disclose. In contrast to the High, District, and Village Courts, the old Village Council, source of justice of the Samoan people, may for the moment, to the modern-minded person, seem an anachronism and a fantastic survival of the past. The peaceful and solemn circle of the Samoan chiefs in which the autocrats and historians of the modern world once studied the complicated Samoan life, may now appear to be relics of a discarded era. So also the theatre-like style of the interior fitting and the seating in the modern courts session rooms are in strange disharmony with the old solemn and smoke-filled Assembly House where the cultural, social and political pronouncements of the old patriots received continuous homage from time immemorial.

The earliest tradition of the Samoan legal system far antedates the arrival of the first white man on the shores of the *Lesiles des Navigateurs*; yet the Malayan and Indian system were long forgotten and buried under the sands of the various islands where the ancestors of the Samoan people called and rested during their migration to these South Seas. The institutions and assemblies of Samoa, in spite of repeated and continuous governmental and religious convulsions and vicissitudes, still live, in a virile country approximately ten centuries old.

Exams:

Oral Or Written?

(Continued from Page Four)

and the student would reveal a lot more of the student's knowledge than any written exam. Present would be the opportunity for the professor to probe more deeply certain areas, and also for a more effectively communicated exam on the part of both the professor and the student. Such a system would be more flexible and would allow the student and the professor to reason with each other rather than having the student trying to guess what the professor wants on the more formal written exam. Such a system would also eliminate the necessity of having the professor decipher in the wee hours of the morning the hieroglyphics turned in by the written scrawling hand of the student.

There is, of course, the objection raised by the oral examination that perhaps a certain amount of the teacher's bias toward the particular student would be evidenced in the grade and that the grade should be based upon a totally objective standard. But doesn't this totally objective standard really miss an element which should be included in the grading system—even though it might only be a small element? Isn't the ability to deal with people important too? Don't many clients come to lawyers because they have confidence in them and in their own particular way of doing business? Isn't personality an inseparable part of the lawyer—a part upon which people often place great importance? The greatest legal brain could be stored in an unethical lawyer, one with whom no one would want to do business, and one who, for all his knowledge, could do the profession a great deal of harm. Hence, it is suggested that this personality element should be interjected into the grading system.

Some day, perhaps, there will be a testing system which eliminates this gambling element of the one or three day hit-or-miss system, and in its place a system which is based upon a testing of the many talents of the lawyer over a period of time which will allow the professor to more adequately judge the capabilities of the student.

International Court . . .

WEAKNESS LIES IN SOVEREIGN NATURE OF ITS DISPUTANTS

(Continued on Page Eight)

Security Council, which may, if it deems necessary make recommendations or decide upon measures to be taken to give effect to the judgment." It has been said that the Corfu Channel case (Great Britain v. Albania) is the only case where a party has failed to follow a decision of the Court; specifically, Albania refused to pay Great Britain some 800 thousand pounds. In the Security Council to which the case was referred no action was taken.

Cases Before Court

Two cases which the Court has been working on and which are more or less typical of the type of case tried before the International Court of Justice are the South West Africa Cases (Ethiopia v. South Africa, Liberia v. South Africa). Ethiopia and Liberia instituted proceedings against South Africa relating "to the continued existence of the Mandate for South West Africa and its duties and performance of the Union as Mandatory thereunder" (The Mandate of the League of Nations of 17 December 1920 for German South West Africa). Ethiopia and Liberia alleged that the Mandate was a treaty in force and that South Africa is subject to the international obligations set forth in the Covenant and Mandate of the League and that the United Nations can exercise legally the supervisory functions previously exercised by the League. They further alleged that apartheid violates the Covenant and Mandate; that South Africa has changed the terms of the Mandate without permission; has arbitrarily and unreasonably suspended the rights and liberties of the inhabitants of the territory; that it has failed to give the United Nations annual reports; that it has failed to transmit petitions of the inhabitants to the United Nations General Assembly.

South Africa countered these accusations with a preliminary objection to the Court's Jurisdiction, maintaining that Ethiopia and Liberia had no locus standi since neither was a member of the League of Nations; and further maintaining that the Mandate was not a treaty or convention in force because of differences between the League Mandatory System and its successor the United Nations Trusteeship system, and therefore South Africa was not under the Jurisdiction of the Court.

On 21 December 1962 the Court decided that these differences were not such as to disable the Mandate; that it was still in force and consequently the Court was competent to decide the merits. The Case rests at that juncture at present.

Weaknesses

We have seen the Court as it exists, a select body of jurists nominated and elected under a complex system to ensure an international flavor sitting on the bench of a Court with wide jurisdiction to decide all manner of disputes between Nations. This is the ideal International Court. It is well to note now some of its weaknesses; weaknesses which are inherent due to the sovereign nature of the disputants before it. The greatest weakness perhaps is the lack of a true compulsory jurisdiction over the parties before it. Corollaries of this are that states who institute suits can have them dismissed at any time without prejudice; and lack of ability to see that its orders are enforced. A further weakness is that legal disputes which are heard tend too often to have heavy international political overtones. The South West Africa Cases for instance have strong connotations of political action in such areas as embargo, isolation, expulsion from the United Nations, revolution, and even war.

This is the Court, an essentially worthwhile body, but one which needs more respect and authority before it will ever be a force in the world.

PROFESSOR GOLDIE PRESENTS PAPER TO VIth COLLOQUIUM ON SPACE LAW

Mr. L. F. E. Goldie, member of this Law School's Faculty has recently returned from the VIth Colloquium on the Law of Outer Space held September 27-October 1 in Paris. The Colloquium is a gathering of the International Institute of Space Law and is held in conjunction with the XIVth Congress of the International Astronautical Federation. This year the meetings of the Federation were conducted in the UNESCO building in Paris.

In addition to general topics, and a number of old favorites which can be designated under the general heading of "How High Is Up?", several special subjects were discussed, including problems of liability for injuries occasioned by space activities.

Mr. Goldie's paper, "Some Problems of Liability for Space Activities," fell into this category. He argues that the standard of liability should vary with the type of relation—but not with some imaginary "zone." He suggests that strict liability should apply when the injury occurred on the surface of the Earth. That the various international agreements relating to liability for nuclear caused harms, and the concept of "channelling" to which they give practical effect, should provide the relevant analogies and principles, formed the basis of his argument.

Second, he argues that, in a contest arising out of injuries caused by a space vehicle to an aircraft, the proceedings should be weighed in the latter's favor—but not to the extent of imposing the type of strict liability envisaged in the first type of situation, i.e., that of a space vehicle injuring people or property on the Earth's surface. Accordingly he proposes that liability should be assumed against the space vehicle, but that liability should be subject to the right of the defendant operator to exculpate or exonerate himself by showing, for example, the plaintiff's or a third party's

fault, or a compliance with requisite standards on his own part. The relevant analogies in this proposal are to be found, amongst others, in the developing English concept of substantive *res ipsa loquitur*, and in Articles 17, 18, and 20 of the Warsaw Convention, 1929, which consolidated a number of civil aviation rules.

Thirdly, he suggests that, as between space vehicles, only fault liability should prevail. In contrast with the other sets of relations Mr. Goldie discusses, in which individuals seem helplessly exposed to the effects of space activities, here there is an identity of the types of risks assumed, an equivalence of skills, a reciprocal acceptance of the chances and possible harms of activities in outer space, and an equality of exposure to the unknown.

Although Russian scholars were not present, papers were sent to the Colloquium to be read at appropriate times. These tended to reflect a hardening of ideas in the Soviet Union advocating the legal validity of asserting territorial claim over celestial bodies. This was also reported in the news item in the Daily Mail, London, September 27, 1963 p.2, cols 3 and 4 which said, in part:

"The Russians today showed they were determined to write their own book of space rules, which will lay down who owns what in the universe.

Their code would allow the Gagarins and Titovs to plant the Soviet flag on the moon and the planets in the Columbus-Cook style."

Blackstone's Commentaries

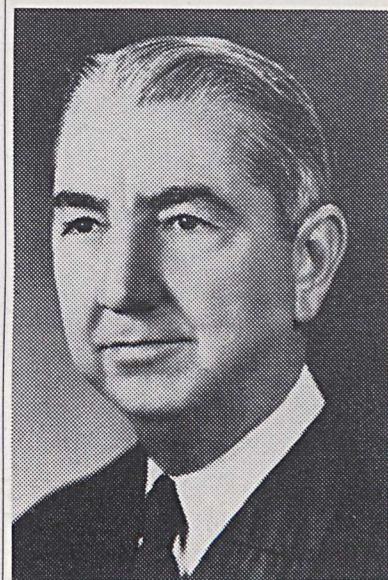
"Twas a field day, plus and prolonged, for the "Do it yourself" addicts, who mobilized in mid-August amid the plush surroundings of the Palladium to joust with the problems served up by that valiant race of men, the Bar Examiners of California, who assume nothing not in evidence. . . . They were there three days, sans the distinction normally identified with this center of Hollywood culture. . . . There were no bouncy blasts of maestro Welk nor 100-Dollar-Plate Dinners, with the mahogany groaning beneath the weight of luscious hors-d'oeuvres and political significance. . . . They were there on business unalloyed, each on his own, determined to demonstrate to a scrutinizing committee, their competence to practice law in the most populous State in the Union. . . . Patience must be their chief stock in trade until the results are announced in mid-December, — and of course, 'twould be different if the word came gift wrapped and breathing Christmas cheer. . . . In the meantime **HELEN LOUISE GALLAGHER**, '55. . . . She chose the Division of Corporations to be the beneficiary of her Loyola training. . . . Via the exam route, she recently moved into a vacancy caused by the appointment to the Bench of a supervising deputy commissioner. . . . It's all a progressive pattern of her record in Law School. . . . Wherever know-how is evaluated she'll be always out in front. . . . And what's that bit of wisdom,—"Coming events cast their shadow before," . . . And with what a glow of judicial wisdom she'd ennoble the ermine. . . . The unveiling of the portrait of the Chief Justice of the U. S., in Dept. I of the Courthouse, only a day ago—or so it seems, the way time is moving at the double, brought out a distinguished gathering of Loyolans. . . . **LOUISE BURKE**, '26, gave an added touch of quality to the representation. . . . He was appointed to the Court by the Chief Justice while he was Governor. . . . Like so many other unusual features in the career of this eminent jurist, the Bench sought out the man and the wisdom of his choice has been amply confirmed with the years. . . . his appointment as Presiding Justice of the District Court of Appeal was a natural, following his record at the trial level. . . . Another first was his serving for three years by vote of his confreres, as Presiding Judge of the Superior Court. . . . **BILL BRANDON**, '50, closed up shop for the afternoon and occupied a seat on the fifty-yard line for the ceremonies . . . while his former associate of the same professional vintage, **FRANCIS X. MARNELL**, represented the Judicial District of Huntington Park. . . . And, by the way, that "X" doesn't stand for an unknown quantity . . . he's been doing famously since climbing on the Bench. . . . Recently serving on the Superior Court . . . he left behind him an LP record, "Everybody happy." . . . The presence of **HON. JOHN SHIDLER**, '35, gave an added touch of solemnity to the gathering. . . . He was in complete accord with the entire proceeding and couldn't find even a tiny technicality, that might provide the basis of a dissent. . . . Inglewood is the locale of his judicial ministrations, where sympathetic understanding is always recognized as an "Amicus Curiae". . . . **FRED O. FIELD**, '41, was an avid notetaker in the beginning years of his law school days . . . and keeping up with Walter Cook in Contracts almost makes him a pro. . . . He's still doing it as General Counsel of the Los Angeles Medical Association and only a short time ago was the recipient of the accolade of the medico-legal Fraternity for making his notes available in the "Physicians Law and Consent Manual." . . . Herein is published the legal know-how of the medical profession and provides a ready answer to the queries of the busy practitioner. . . . And there's **TOM VIOLA**, '62, and **BILL FALKENHAINER**, '59, who now make two more in the office of Gilbert, Thompson and Kelly, popularly known on Spring Street as Roger Kelly's Loyola integrated firm. . . . Tom recently entered into one of those "for better or worse" mergers . . . after a couple of weeks in Hawaii, he discovered that all this gossip about two living as cheaply as one is just so much chatter. . . . So to make ends meet, he's now operating on a schedule that would make a 40-hour week look

JUSTICE CLARK ENCOURAGES EXPANDED TRIAL WORK AT ALSA CONFERENCE

Addressing delegates representing 98 of the 120 law schools across the nation, Justice Tom C. Clark of The Supreme Court of The United States urged more lawyers to go into trial practice. He proposed that students be used to interview litigants, locate witnesses, prepare trial briefs, research cases, and even attend court, all under the direct supervision of a lawyer, of course.

Justice Clark emphasized this point and said that we should even have law students act as investigators in indigent cases. This would give the student lawyer an interest in a real case as well as afford him an opportunity to develop courtroom presence. The contact with a real, rather than a moot case is the most important single ability that young lawyers should develop.

The occasion for this gathering was the 15th annual convention of the American Law Student Association, held in Chicago, Illinois in conjunction with the American Bar Association convention. Student Board of Bar Governors Secretary Ernest A. Vargas represented Loyola at the August meeting.



Justice Tom Clark

Justice Clark was one of many speakers who addressed the group on professional responsibility and ethics. Other aspects of the convention included seminars on legal writing and labor relations, and general sessions of the voting body.

The three principal objectives

of the American Law Student Association are to introduce law students to the activities of the nationally-organized legal profession; to assist law school student bar association officers in planning their programs for the benefit of their local membership; and, to transact the necessary business of the Association.

anaemic. . . . After giving two of the best years of his life to the JAG in the Philippines, Bill Falkenhainer is quite satisfied to resign from the military to practice law in the grand manner of the Kelly firm. . . . The Symposium at the State Bar as usual was voted the high spot of the Convention. . . . Largely responsible for this year's successful party was Prexy **JIM COLLINS**, '31, personally present with his sage comments and all-season humour . . . the first to arrive and the last to leave. . . . **JOHN MALONE**, '50 and **HENRY GRATTAN BODKING, JR.**, '48, were able lieutenants who turned in a professional performance . . . neither hurry nor flurry . . . just tranquility and happy results. . . . To be sure, the country lawyers from the hinterland were represented by two of the most eligible bachelors among the Alumni. . . . **LOUIE LaROSE**, '48, and **JOHN T. HOURIGAN**, '49, are so wedded to their profession and so infatuated with rural life, that only a miracle could entice either of them to change over to living on a community property basis or to exchange the abundant life in the open spaces for the classic chaos of the Civic Center. . . . Between Westwood and the Southwest **MARY GERTRUDE CREUTZ**, '54, is doing her noblest to meet the problem of bilocation . . . with more space in the phone book than "Standard Oil of New Jersey" she has the problem almost licked. . . . A delegate to the State Bar from the Southwest L. A. Bar, she made a speech in the general assembly that would have been a winner in any forensic competition. . . . **THOMAS V. LeSAGE**, '37, Prexy of the Pasadena Bar Association, established an excellent record in his law school days. . . . The second generation of this distinguished House is on the Honor List. . . . A confirmation of the Mendelian Law . . . or heredity runs in families.

Benjamin Cardozo: ANALYSIS OF LEGAL STYLE

By MURRAY ZARETSKY

Every student of law quickly discovers while reading cases that a certain justice shines more brightly than all others in logic, wisdom, and particularly, literary style. The excellence and beauty of the latter quality is so wonderful that a reading of his opinion is not unlike the aesthetic experience of reading a well written short story or poem.

Benjamin N. Cardozo, the late and revered Chief Justice of the New York Court of Appeals and member of the Supreme Court of the United States, was a student of the literary styles of the judiciary. One of his interesting insights involving the writing of legal opinions concerns the differences between majority and minority opinions. The style of the spokesman of the court is cramped and paralyzed. He is cautious and timid, even fearful of the vivid word or the heightened phrase. The dissenter, on the other hand, is a gladiator making a last stand against the lions. In his innermost soul, he maintains the impression that, in spite of everything, he was right. In a dissent, there is a looseness of texture and a depth of color rarely found in the majority opinion. Sometimes, of course, there is a suspicion of acerbity, but this, after all, is rare. More truly characteristic of the dissent is a dignity, an elevation of mood, thought, and phrase. Deep conviction and warm feeling are saying their last say with knowledge that the cause is lost. The dissenter speaks to the future.

Observing the form of predecessors and contemporaries, Cardozo found a variety of methods which lent themselves to a division into six distinct categories: (1) the magisterial or imperative, (2) the laconic or sententious, (3) the conversational or homely, (4) the refined or artificial, (5) the demonstrative or persuasive, and (6) the tonsorial or agglutinative.

The magisterial or imperative type is one which eschews ornament, lacking almost completely in illustration and analogy. Its strength is derived from its syllogistic nature. The sense of mastery and power which it conveys is demonstrated by such great opinions of John Marshall as *Marbury v. Madison*, *Gibbons v. Ogden*, and *McCulloch v. Maryland*. The magisterial justices were at once aware of their role as interpreters of legislative-made law and, conversely, of a need to protect against judge-made law.

The laconic or sententious and the conversational or homely

types are closely related. The use of maxims and proverbs is characteristic of legal system in the early stages of development. The maxim has declined in prevalence and importance because now the truths of the law have become too complex to be forced within a sentence. But there has been no abatement of recourse to the laconic or sententious phrase. The English judges were masters of the epigram and homely illustration. Our own Oliver Wendell Holmes, however, could vie with their best its merits, but also its dangers; ("smelling of the lamp") has in this style.

The refined or artificial, unless it is kept in hand, often approaches over-refinement or an artificial elegance of language. Properly employed, however, it lends itself to cases where there is a need for delicate precision.

The demonstrative or persuasive type is of a more robust and virile nature. It is not unlike the magisterial or imperative, yet it differs in a freer use of the resources of illustration and analogy and of the history of precedent. A more scientific approach is suggested rather than the divine revelation character of the former. The opinions of Charles Andrews of the New York Court of Appeals are good examples of this method. A sense of clarity and sanity is apparent to the reader. Here, also, we are able to see the fusing or unification of form and substance.

Finally, there is the tonsorial or agglutinative style. This is characterized by a dreary succession of quotations which close with a brief paragraph expressing a firm conviction that judgment for the plaintiff or defendant, as the case may be, follows as an inevitable conclusion. Happily, this style is slowly but steadily disappearing.

There are dull and unimaginative men who say that opinions in the law should be austere and condensed to their essential statement. Form, they maintain,

must be wholly subordinate to substance. They would have us believe that the two are divisible and independent. But, cogent analysis reveals that form is not superfluous verbiage adorning the essence of judicial opinions. It is rather an integral aspect of the essence itself. Insofar as substance is made strong or weak by form which is respectively strong or weak, the two exist as an inseparable entity.

One need look no further than to the opinions written by Justice Cardozo himself to observe the profound effect which form has on substance. The legal concept creating the basis for a judgment may be explained in a dreary manner, as it probably has been in the past, or it may be given its due articulation. Of the styles he noted, Cardozo was skilled in employing that one which served best to illustrate and urge his position. When difficult and complex constructs can be defined to their simplest terms and placed in a framework of clarity, the substance has been enhanced and our law is richer for it. The beauty of Cardozo's prose is undeniable but its greatest contribution is in helping us to understand the principles which have led to the decision. When we have been so informed, the cause for justice advances.

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(Continued from Page Three)

throughout the Fall and Spring semesters, and the purpose is to give the participants an opportunity to engage in a major research and writing project under the supervision and guidance of a member of the full-time faculty. The goal is the composition of a thesis or article of law review quality; an incidental hope is that some of these articles may be published.

The student members of this program and their respective research and writing fields are Tom Girardi—Torts, Mike LeSage—Contracts, Tony Murray—Constitutional Law, Leslie Newlan Jr—Torts, and Bill Rylaarsdam—Constitutional Law.

Teaching Fellows

Recently Title Insurance and Trust Company presented Loyola Law School with two grants of \$10,000 each. One grant is for the building fund. The second grant has made possible the legal writing program which was initiated this semester with second, third and fourth year students as the instructors. The grant from Title Insurance and Trust will supplement the incomes of these Student Fellows.

Professor Goldie is the full-time faculty member in charge of the program, and he will be assisted by Professor Rank.

The student fellows are Doug Gray and Bob Charbonneau from the 2nd year day class, Bob Jagiello, Mike LeSage, Ernest Vargas, and Tony Murray from the 3rd year day class, and Fred Louer and Bill Rylaarsdam from the 4th year night students.

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