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.

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 the 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, mankind would become one single State and, consequently, what today is known as International or Interstate Law would develop into a system of internal legislation; 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. V. LASSON, Princip und Zukunft des Volkerrechts (Berlin, 1871). For a discussion on Lasson’s ideas: V. LASSON, Studi su la guerra e la pace (Milan, 1959) may be consulted.

Richard Schauer
Loyola Professor
Appointed To Bench

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 different 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 will, however, 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 existence.
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. TUITTELELEAPAGA FOFOGAOALII

Samoan, 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 were the victors. 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 alterations 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.

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

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 swore, "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
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 the legal training 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.
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 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. Arbitrariness will in itself not be a rational principle as it can be either perfectly straight or distorted, and thus can have no ethical value. To add, it is 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 sto pacta*), 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 morality, but it must be modified, especially in the case of modernization, which 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 circles. It is in this sense that 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 pertaining 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 unitary 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 relative terms: the relation, that is the relationship between the State and the individuals composing it. It has been admitted, and now even officially 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. It is under 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 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 international 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 from 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 are accused of this practice, of 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 all, who in the name of practice, natural law, and the idea of 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, semperiter... Nec erit alia lex Romae, alia Athenis, alia nunc, alia tunc..."

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

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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 prejudices, already proved erroneous by logical criticism, the universal truths dictated by reason are rejected and not even the "heavenly voice" of conscience is heed ed; 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 order 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: "ex eundem esse et 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 its 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 misunderstood 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 that have in other words, 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, so that 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, contributary, 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

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 only to give due expression to 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 the 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 organisation 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 themselves 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’

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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, or 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 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 Beljar, 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 predecessors 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 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.*
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. Kenny, past California Attorney General.

Mr. Kenny, 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 Advokate," presented by Mr. Thomas Lesege, 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 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.

International Court:

JURISDICTION BY CONSENT ALONE

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...ance of an agreement. Thus in effect the agreement can be informal. The Court may only wish 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 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 act 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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...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 alit 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 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 he would say, "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 hieroglypic taboo or tapu (ta-poos).

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, change of white justice with its traditional mummery 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 Courts, 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 malama 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. 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.

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 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 amount? 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-and-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.
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 a 'Suit' can have no jurisdiction over 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 no jurisdiction over the disputants before it. The greatest weakness perhaps is the lack of a true compulsory jurisdiction over the parties before it. 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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.
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 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.

... After giving two of the best years of his life to the IAG in the Philippines, Bill Falkenhainer is quite satisfied to resign from the military to practice law in the grand manner.

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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, was a student of the literal 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 paralyzingly cautious. He is cautious and, 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.

The demonstrative or persuasive type is of a more robust 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 fusion or unification of form and substance.

Finally, there is the t.onsorial 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 from the full-time faculty member in charge of the program, and his goal is the composition of a thesis or article of law 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 fellows are Doug Gray and Bob Charbonneau from the 2nd year day class, Bob Jagiello, Mike LeSage—Contracts, Tom 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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