

The Harvard Law School Record

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PRICE TEN CENTS

TEN GET A IN SECOND YEAR EXAM B Averages Earned By Twenty Percent; Two Fail To Pass

Of the 442 men taking examinations at the end of their fourth term, ten achieved averages of 75 or better, thus making the coveted A average. In percentages this amounts to 2.2 per cent of the class.

Ninety-two students, or 20.8 per cent of the class made B averages. All men with averages of 69 or better are in the upper quarter of the class, while an average of 66 or more places a man in the upper half of the class and a grade of 64 marks the division between the third and fourth quarters. The middle man of the class has increased his average about one and one-half points over his second term average.

Two hundred and ninety-one men made C averages, placing 65.6 per cent of the class in the C category, while 46 of the fourth termers received a D average. Only two of the 442 men taking the examinations failed.

Vice Dean Hall remarked that these figures probably varied only slightly from the results of previous fourth term examinations since each class has substantially the same average from the fourth term through graduation.

The only sizeable variations in grades between classes is usually found at the completion of the first year according to Mr. Hall. At that time the unfit are weeded out, and classes, depending on the number of applications from which the members are chosen, are apt to vary as to the number of men failing at the end of their first year. After this elimination or natural selection process has taken place, the results of examinations are remarkably consistent.

No figures were available for the Sales examination at the end of the third term, for the academic standing sheets are only compiled at the end of the first and second years and at graduation.

Seavey Asks For Capable Leaders To Save Democratic Way Of Life

At the recent commencement exercises of its School of Law, St. John's University, Brooklyn, awarded Professor Warren A. Seavey the honorary degree of Doctor of Laws. Noting his distinguished record both as pedagogue and as scholar, and listing his previous awards ranging from the French Officer d'Academie to the Chinese Order of the Double Dragon, the citation stated that Seavey "has had a notable influence in the shaping of the law, especially in the fields of Torts and Agency. He is recognized as a wise and kindly counselor, as well as a skillful teacher."

Seavey also delivered the principal commencement address. He congratulated the graduates upon being among the few to reach the end of their educational road where so many of their fellow starters had dropped by the wayside. Therefore they need not be concerned about their personal opportunities.

"First, if you know what you would like most to do, do that; if you do not know, find out. Do not hesitate to choose for fear of not being able to make a living. With your education you can live decently at any occupation."

Turning to broader problems, Seavey said that the intelligent and capable must take the leadership in forming public opinion as well as in entering public employment. "The danger inherent in a democracy is that the vote of the ignoramus and the corrupt is of

Evolution of Palestine Mandate Reverses Its Aims, Student Shows

The policy of the British government in Palestine during the years following the First World War had its immediate origin in events which occurred during that struggle. The war resulted in the military occupation of Palestine and in its ultimate control by Great Britain. It gave rise to negotiations with the Arabs, the Allies, and the Zionists which molded English policy for the future.

We cannot understand the nature of the problem without recalling the Palestinian campaign during that war. For the greater part of that entire period, Turkey occupied Palestine and it was because of Britain's efforts to oust Turkey that much of the difficulty has arisen. To accomplish this, Britain sought to enlist the aid of several groups and it was because of conflicting promises and inducements to them that she finds herself today in her embarrassing situation.

First of all Britain made commitments to the Arabs, the interpretation of which has given rise to much controversy. For reasons of military and political expedience, Britain favored, at least outwardly, the aspirations of the Arabs for independence. Many notes were exchanged attempting to define the exact areas which the new Arab state would include. That the future of Palestine did not occupy a prominent position in the minds of either the British or the Arab negotiators seems evident from the fact that neither Palestine nor the Sanjaq of Jerusalem was mentioned by name in the correspondence between Russia and Sir Henry McMahon, the representatives of the two powers. Over the question of whether Palestine was excluded from the Arab area, gallons of ink have been spilled. The British maintain that it was and the Arabs maintain that it was not.

BALFOUR DECLARATION

However, British promises to the Zionists have caused the greatest controversy. At first the World War appeared to be a tragic blow to the aspirations of the Zionists. Their international solidarity seemed to have been broken and their organization was divided by the lines of battle. They still maintained a bureau in Copenhagen but by very necessity its activities were extremely limited. Other organizations

were created in various countries, especially in the United States under the leadership of Louis D. Brandeis, who became Chairman of a Provisional Committee.

Pressure was put on the British government, which eventually resulted in the Balfour Declaration, the final form of which was incorporated in a letter which Lord Balfour sent to Lord Rothschild on November 2, 1917:

"I have much pleasure in conveying to you, on behalf of His Majesty's Government, the following declaration of sympathy with Jewish Zionist aspirations which has been submitted to and approved by the Cabinet.

"His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use their best endeavors to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities or the rights and political status enjoyed by Jews in any other country.

"I shall be grateful if you would bring this declaration to the knowledge of the Zionist Federation."

PALESTINE MANDATE

The foregoing statement of facts should not mislead one in the analysis of the legal position of Palestine under the League of Nations. The title under which Great Britain holds Palestine is derived from the decision of the Principal Allied Powers at San Remo, and from the Palestine Mandate.

The second paragraph of the preamble of the Mandate for Palestine is as follows:

"Whereas the Principal Allied Powers have also agreed that the Mandatory should be responsible for putting into effect the declaration originally made on November 2nd, 1917, by the Government of His Britannic Majesty, and adopted by the said Powers, in favour of the establishment of a national home for the Jewish people, it being clearly understood that nothing should be done which might prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country."

Article 2 of the Mandate is as follows:

"The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as

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PBH, LAW WIVES SCHEDULE DANCES

Plans for informal dances have been announced by the Law School Committee of Phillips Brooks House and the Law Wives. The Phillips Brooks dance will take place on Saturday, July 12, while the Law Wives party is scheduled for July 5.

Lew Tobin, will play for the Phillips Brooks dance at Cowie Hall. Set-ups and beer will be available at moderate prices from 8 to 12 p. m. Tickets are on sale at Gannett House, in the Yearbook Office, from 1 to 5 p. m. daily. A sell-out is anticipated, and therefore all students are urged to purchase tickets early to avoid disappointment. If the demand is sufficient, a supplementary dance will be arranged.

The Law Wives dance will take place at Kendall House, and there will be a charge of 50 cents a couple.

Persons who own good dance records and are willing to lend them are asked to contact Mrs. Bush, who is at Kendall House from 11 a. m. to 2 p. m. every day.

Tables will be set up in the card room for those who wish to play bridge. Beer will be served throughout the evening, and there will be a light supper at 11 o'clock. All students in the Law School are cordially invited.



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STUDENT ADVISERS SELECT NEW MEN

PETITIONS

Hemenway: Any student who would play squash in Hemenway during the summer is requested to drop his name in the RECORD box with the word "Hemenway" after it.

Domestic Relations: Any student who would be interested in taking a domestic relations course, if offered during the next two terms, is requested to place his name in the box with "Domestic Relations" after it.

LAWYER GUILD PLANS MADE

Group To Examine Legal And Political Problems

Robert J. Silbertstein, national secretary of the National Lawyers Guild, addressed the first summer meeting of the Harvard Chapter at Kendall House last Friday. Recalling the difficult years after his graduation from Harvard in 1930 when jobs were scarce and many graduates were doing day labor, Mr. Silbertstein traced his own experiences against the background of the general economic picture of the legal profession in the last 20 years.

The Harvard Chapter of the Guild is the newest organization in the Harvard Law School. Its purpose is to go beyond the classroom study of law in preparation for work in the profession. Interested students will be provided with information and experience along two lines. The first will involve career problems, the practical work that is done day to day in the different types of offices, and the where and how lawyers get started. The second will involve examination of current important issues to acquaint students with recent changes in the law not covered by the curriculum. These will be studied with reference to the political and economic problems with which they deal. These two aims will be accomplished by discussions with practicing lawyers, group research problems, and co-operation with the placement and advisory panels that have been set up by the National Guild in most of the large cities. Throughout the summer meetings will be held bi-weekly on Friday afternoons at Kendall House, with a formal election of officers at the next meeting on July 11. Present temporary officers are Fred Fisher, 3L, Al Fenderson, 3L, and George Spiegel, 2L.

The Guild is a supplement to the American Bar Association to which many

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COMPTON FAVORS TRAINING PLAN

At Faneuil Hall last Friday night, in his first public appearance since the issuance of his report as Chairman of the President's Advisory Commission on Universal Training, Dr. Karl T. Compton, President of M. I. T., reemphasized his belief that universal training is necessary both for adequate national security and for strengthening the United Nations as an instrument for world peace.

Dr. Compton prefaced his plea for universal training by pointing out that the only real security will be gained by the abolition of war through a reign of law. He asserted, however, that at present the United Nations is not in a position to maintain this "reign of law." Thus, until Russia's aims become clear, or the United Nations becomes sufficiently strong, prudence requires the United States to have military might.

Since war might come in four different ways: a direct atomic attack—feasible within four to five years; aggressive tactics by a great power in any part of the world; violations of the Monroe Doctrine; or policing action against some

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Board To Work On Case Revision And New Training Film

The Board of Student Advisers announces the appointment of new men to fill positions vacated by graduation and by the loss of seven members to the *Law Review*. To qualify for these vacancies on the Board, all the students but one had seventy-four averages and two terms of participation in the Ames arguments. Those selected were:

Fifth Term: Joseph Babash, Rutgers '41; Roger P. Stokely, Harvard '42; Edwin L. Tolles, Jr., C.C.N.Y. '43.

Fourth Term: Walter H. Beckham, Jr., Emory U. '41; Alan Palwick, Harvard '43; Herbert L. Sherman, Jr., Brown '43; David I. Wendel, California '42.

Third Term: Stanley A. Freedman, Harvard '43; Roger C. Henselman, Harvard '42; Leland J. Markley, Colgate '44; Cyrus A. Neuman, Michigan '43.

Since only second and third term courts require its supervision during the summer session, the Board of Student Advisers is free to turn its attention toward preparations for a heavy fall calendar in the courts of Ames. The Board's program consists of case writing, case revision, handbook revision, and production of a training film.

In the work of case revision, John J. Shea 3L, Chairman of the Board, stresses the valuable help contributed by the student judges who fill out fact criticism sheets after having tried their cases. By pointing out the flaws encountered in the cases by judge and counsel and by indicating where the case writer has included too complex a problem for the student who is expected to handle it, fact criticism sheets have been important guides in creating new facts and in revising the old. "They have been so helpful to us in planning our first year program for the fall," Shea says, "that we hope judges, particularly student judges, in the qualifying round will be similarly cooperative in furnishing constructive criticisms of second year facts."

As part of the summer program, the Board's handbook for law club work, *Introduction to Advocacy*, is now in the final stages of revision under the direction of James W. Perkins 3L, first year chairman. The new edition will be available to incoming first termers in September.

Also, the Board is assisting Albert L. Goldman, Faculty Assistant in charge of the Ames Competition, in the preparation of a forty-five minute moving picture concerning legal research and the use of the law library. It is expected that this film will be completed in time to be shown to the entering autumn class.

CONTRIBUTIONS

The columns of the RECORD are open to articles and features both by students and alumni. Anyone wishing to submit material may do so either by mailing the article to us, or by bringing it directly to the RECORD office. Regardless of the point of view from which an article is written if it is well done, and expresses the sincere stand of the author, the RECORD will print it.

In general, the subject matter must be of interest to the lawyer in the broadest scope of his activities.

We are particularly anxious to secure contributions from alumni which will be of interest to those studying law.

Contributions should be addressed to the Editor of the RECORD, Austin Hall, Harvard Law School, Cambridge 38, Mass. Since the RECORD is a non-profit organization, no payment can be made for material which is used.

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CHANGES OF ADDRESS should be sent to the RECORD office, Austin Hall, Cambridge 38, Massachusetts, at least three weeks in advance to insure prompt delivery.

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Editorials

The Committee on the Curriculum is presently engaged in scrutinizing the premises and practices of legal education in this School. The Committee has asked for expressions of student opinion on the continuing validity of these premises, but the Chairman, Professor Lon Fuller, reports that the response has been practically nil. He would like to hear from more students.

A confidential preliminary report has been published by the Committee. It was released recently to a chosen few—none of whom were students in the School. If the Committee wants student opinion on these matters, why not let them see a copy of this report?

A student might even challenge premises unchallenged to date. A few suggestions have already been widely discussed among students. Perhaps the examination blue-book should be identified by a number instead of a name, to avoid the possibility of the influence of unconscious factors in the grading process. Perhaps the blue-book itself ought to be returned to the student to help him understand his own shortcomings and strong points, and also to guard against professorial malfeasance and negligence, which while extremely rare are not unknown. At least one professor is rumored to grade his papers solely on the basis of the first portions of the first three questions. He doesn't read the rest of the paper. Perhaps the professor could prepare an analysis of his examination questions, after the ordeal, to aid the student in self-diagnosis. Perhaps preliminary exams in the first semester would assist a first-year man in getting a hold on himself while there is still time.

Whatever the premises and practices re-examined, the student's peculiar viewpoint is worth the consideration of the Committee on the Curriculum. His perspective is poor, but his observations are first-hand and his feelings are strong. No vague willingness to receive student opinions can be as effective as sending copies of the preliminary report to students, using the same "random sample" system employed for the alumni, and prevailing upon the established student organizations to aid the Committee in determining what the student thinks about the premises by which he learns.

C. O. P.

Letters to the Editor

To the Editor of the RECORD:

I enjoyed the article in the last issue on "Restrictive Covenants and the United Nations Charter" very much, even though it was way over my second term head.

There is one important point, however, which I'll be damned if I can make head or tail of. Does the writer imply that United States courts have to go all the way to the UN Charter in order to find some support against a finding allowing a citizen to be deprived of a freehold because his skin is heavily pigmented?

Why didn't the appellant just stand firm on the statute prepared by a convention of revolutionaries in Philadelphia in May, 1787, and ratified in 1789, which I had always thought accepted by the courts of this country along with the older common law of England?

I believe there were some provisions added to this law in 1865 or thereabouts which would have made his case even stronger.

I should appreciate elucidation on this point.

R. A. RUBIN, II

To the Editor of the RECORD:

This letter is a protest against your publication, in the May 7 issue, of the article "How Black is Red?" by George C. Bryan. Not only does it represent a point of view which is dangerous to the welfare of this country, but it is also full of exaggerations, half-truths and deceptions.

I do not object to the RECORD's supporting any point of view which is capably argued, but Bryan's article is not a capable argument. I regret that the course of study here has left me so little time to keep up with current affairs, or I would consider the article in detail. However, I have been able to read a newspaper a day, and once in a while to dip into various weekly magazines. Even this comparatively scanty amount of reading is still sufficient to prove to me that Bryan is way off base.

The RECORD ought to publish much better articles than Bryan's; it has done so before, so I know it can.

DEFOREST SPENCER JR., 2L

Off the Record

SHAKESPEARE A LA MAGUIRE

A student who was recently subjected to Professor Maguire's Evidence exam based on "Othello" has found some solace in Shakespeare—amended: (Act I, Scene III, lines 202-205)

"When remedies are past, the griefs are ended
 By seeing the worst, which late on hopes depended.

To mourn a mischief that is past and gone
 Is the next way to draw new mischief on."

So rise above your paltry fifty-six
 And think about the host of nifty tricks
 You'll have at hand to baffle adversaries
 When evidential problems are your worries.

If bitterness doth rankle in your breast
 An aftermath of failure in the test
 Withhold your gripes about John M. Othello
 It can be worse—i. e., that E. M. fellow.

Think on the knowledge that in you reposes:
 The one who holds the key to *State v. Moses!*

R. W. C.

A TOUGH QUESTION

A friend of ours who just made *Law Review* swears that the third question of the last torts exam read somewhat as follows:

"3. A, B, C, and D are individuals. What torts?"

The Book Shelf

A. P. GIANNANI: *GIANT IN THE WEST*
 Julian Dana, Prentice-Hall, \$4.50, 345 pp.

In the long-gone years of Queen Elizabeth's reign, when the printing press was yet a hand-operated machine, and a collection of fifty books a library of which any nobleman might be proud, most writers depended for their livelihood upon the largesse of an aristocratic "patron," who courted the muses and popular acclaim through an annual allowance to one or more poets, playwrights, or essayists. It was customary for the artist to dedicate his works to his benefactor, to produce for him upon demand sonnets and long classical allegories, and to set out in prose or verse accounts of his lord's virtues, wealth, and distinguished lineage for the edification of future generations. I do not claim that the author of this book is on A. P. Giannani's personal payroll. The resemblance, however, between Mr. Dana's biography and the aforementioned eulogistic histories of noble patrons is a startling one.

The book, as a whole, was to this reviewer uninteresting. It is one, to my mind, of only localized importance—and that not due to its true intrinsic worth. A. P. Giannani is unquestionably one of California's leading citizens; he is probably its most influential one. The attempt has been to portray Amadeo Peter Giannani as a California Paul Bunyan, a financial Lochinvar with the almost divine purpose of bringing security and well-being to the people of America, a banking Moses whose message to the awaiting world tells of the supremacy of branch banking over unit banking. We are presented with a picture of a man who has made no mistakes, committed no errors in a meteorically successful business career stretching from 1885 to the present day. One by one the enemies of Giannani rise to oppose him, snarl, and are trampled to the earth. His virtues are those of the heroes of Horatio Alger novels; his faults, insofar as Mr. Dana makes note of them, are well-nigh nonexistent. Christian history informs us that but one man lived a life without error; were one to accept Mr. Dana's biography at face value, the conjectural possibilities it would open are amazing.

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Gallery

JULIUS H. AMBERG Mid-Western Lawyer

After a talk with Julius H. Amberg, L.L.B. '15, one easily understands why he made one of the highest averages at Harvard Law School (only those confidential files in Langdell can tell who made the highest), and how he was able to be both runner-up in the Ames Competition and Note Editor of the *Law Review*. (Robert P. Patterson nosed him out the first year and was named President, but Amberg was graduated first in his class). The ambition, cleverness, energy, and imagination which carried him to the top at Harvard are still, at 57, the dominant characteristics of this mid-western lawyer.

Amberg's originality in writing exams first drew the attention of the faculty when he answered a question for Professor Pound with a short dialogue in two scenes. The principal characters were the three English judges who had first laid down the three conflicting views on the problem. Amberg always organized his answers in the way the particular professors considered proper. His answers for Professor Edward Warren were short and concise, assuming the law to be definite and simple to state. For Pound his answers would be more complex—often stating a majority view, the way the law is, and a minority view, the way (Pound thought) the law ought to be. "That sort of thing isn't really necessary," says Amberg, "unless you are trying to beat out a man like Bob Patterson for top honors."

Amberg was born in Grand Rapids, Michigan, where his great-grandparents had first settled in 1836. He attended city schools and Colgate University, where he got in the habit of making all A's, before he came to Harvard. On graduation from the Law School he decided to return to Grand Rapids rather than head for the law factories of New York. After a year's clerkship with Butterfield & Keeney, he was made a partner. The present name of the firm is Butterfield, Amberg, Law, & Buchen.

Amberg has a general practice, and says he specializes in not specializing. He was elected president of the state bar in 1939, and has written articles for the *Harvard* and *Michigan* law reviews. He likes trial work and in one case won the largest judgment (\$2,375,000) ever awarded in the Western District of Michigan. He advises students who want to be trial lawyers, "The only way to learn how to try a case is actually to try one—but if you familiarize yourself with the facts and law of your case you will do all right. If the case involves a lot of complicated facts and you understand them better than anyone else in the courtroom, you will be in command of the trial before it ends."

Amberg was married in 1916 and his charming wife is an extremely energetic and intelligent person. He has two children—David, who is in the fifth term at the Law School (and also an editor of the *Law Review*) and Hazel, Vassar '45, who works for the State Department in Washington.

Outside of his large practice Amberg himself has found time to do a great deal of welfare work in his community. He served on the Community Board for many years, including six terms as president, is chairman of the medical committee of Butterworth Hospital, headed a city committee which studied the need for a change in the local relief methods, and from 1933 to 1936 he was chairman of the Kent County Relief Commission.

During both wars Amberg left private practice to work for the War Department. In 1917 he assisted Felix Frankfurter, then advisor to the Secretary of War, before service with the Navy as S 1/c. In 1941 he was called back to Washington, this time as Special Assignment Secretary of War, where he was in charge of procurement legislation and served as chief liaison between WPB and the War Department, assisted with fraud and anti-trust matters in which the Department of Justice was also concerned, was final reviewing authority on price regulation and in many contract matters, and represented the War Department in all Congressional investigations. He has been credited with helping to preserve the secrecy of atom bomb development in the face of threatened Congressional and other investigations into the vast projects under construction. His success in this work won him the Presidential Medal for Merit.

Amberg advises students not to worry about learning enough law to be successful lawyers. "Unfortunately," he says, "a lawyer's success depends more on his personality and his ability to transact business with dispatch, than it does upon how much law he knows. In law school a student should try to develop a legal mind, that is, develop an ability to analyze a problem thoroughly and arrive at a correct conclusion. Actually, you need to learn by heart only the few illogical rules of law. The other principles you can figure out and test by research if you have learned to think like a lawyer."

J. P. L.

Sub Judice

THE ACID TEST: WAS IT A FORESEEABLE RISK?*****

Johnny Flaherty and Tony Sarrentiano were buddies at the New York State Training School for Boys at Warwick, N. Y. They shared the same cottage dormitory while undergoing the rehabilitation process afforded by the institution. Both were under 16. Some unknown incident breached their friendship and quarrels ensued. Ultimately, goaded by the taunts of his fellows, Tony challenged Johnny to a boxing match, in accordance with the custom of the school, but, fearing an ignominious defeat, Tony failed to keep the appointment. But he was not idle during the appointed hour, for he used it to good advantage in removing from the fire extinguisher located in the cottage, a vial containing acid. This he poured on Johnny's pillow, apparently expecting thus to wreak his revenge, but when Johnny prepared for bed he discovered that part of his pillow had disappeared, so he asked the supervisor for another. Neither Johnny nor the superintendent knew the cause of the hole, and another pillow was substituted for the one damaged. About 1:30 a. m. that night, Tony, a light sleeper, visited the fire extinguisher again and returned to Johnny's bedside, emptying the vial's contents over the sleeper's head and face. "Serious and painful injuries naturally ensued."

Johnny's guardian ad litem sued the State of New York for negligently caused injuries, losing in the Court of Claims, winning in the Appellate Division, and finally losing in the Court of Appeals. The Court of Appeals felt that the school authorities had no reason to anticipate the use of the acid as an instrumentality of assault, no such incident having occurred in the previous history of the institution. The State is to be held only to a duty of taking precautions against those risks "reasonably to be perceived." *Flaherty v. State of New York* Law Report News, (N. Y.) Vol. 8, No. 36, p. 3, May 22, 1947.

CERTIORARI MAY BE AN INADEQUATE REMEDY*****

The limited scope of review customarily granted to disappointed litigants before administrative tribunals has been held to be an inadequate remedy affording a basis for injunctive relief through a plenary suit in equity—so said the N. Y. Court of Appeals in a 4-3 decision handed down on May 22, 1947. A public utility had been fighting the establishment of allegedly confiscatory rates by the state Public Service Commission, but it was a losing battle. An appeal was dismissed: "Appellant contends that it is entitled to the exercise of the independent judgment of a court as to the law and the facts with respect to the issue of confiscation and that such a review has not been accorded because of the limitations imposed by the state practice in certiorari proceedings. Appellant has no standing to raise this question as appellant itself sought review by certiorari and has not invoked the plenary jurisdiction of a court of equity and it does not appear that this remedy is not available under the state law."

Relying on this advice, the public utility refrained from instituting certiorari proceedings and brought a plenary suit in equity to enjoin confiscation of its property, claiming that as a matter of constitutional right it was entitled to a fair opportunity of submitting the issue of confiscation to a judicial tribunal for determination upon its own independent judgment as to both law and facts. Considerable reliance was placed on *Ohio v. Ben Avon Borough*, 253 U. S. 287, and the N. Y. Court of Appeals agreed with the appellees that it and the *St. Joseph's Stockyard* case had not been overruled. As to the wicked ogre of the Administrative Law (and other) classes in this institution devoted to legal training, the court merely said, "We find nothing inconsistent with such a practice (plenary suit in equity) in the oil and gas cases." *Federal Power Comm. v. Hope Natural Gas Co.* 320 U. S. 591.

The three dissenters were more concerned with recent Supreme Court decisions in the field, which to their minds had weakened the so-called Ben Avon doctrine. Those of us who have struggled with the implications of the *Hope Natural Gas* case may find something strangely familiar in the exhausting sentence, "And how are we to reconcile with the majority opinion in the present case the Supreme Court holdings . . . that a commission is not bound to the use of any single formula or combination of formulae in determining rates, that whenever a commission rate order is challenged in the courts the question is whether that order viewed in its entirety meets legal requirements, that the result reached, not the method employed is controlling as to the legality of the rate, that it is not the theory but the impact of the rate order which counts, and, finally, that if the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry is at an end." (sic) [?]

The conclusion of the majority was, however, that the public utility was entitled to maintain its plenary suit in equity and that the complaint stated facts sufficient to constitute a cause of action. *Staten Island Edison Corporation v. Milo R. Maltbie et al.*, Law Report News (N. Y.) Vol. 8, No. 36, p. 3, May 22, 1947.

Alumni Notes

Alumni are especially invited to forward contributions to this column to the Record office, Austin Hall, Cambridge (38), Mass.

LL.B. '03—Among recipients of honorary Doctor of Laws degrees at the Yale commencement was *Judge Thomas W. Swan* of the federal circuit court, and former dean of the Yale Law School.

LL.B. '11—*George W. C. McCarter* of Newark, N. J., chairman of the law reform committee of the New Jersey State Bar Association, has recently taken part in the activities of that association at its annual meeting. At the 49th annual session, held earlier this month, consideration was given to a resolution by the law reform committee urging a change in the present setup of the chancery court in New Jersey. The committee recommended that under the state constitution, now being revised, a Supreme Court be established with a Chancery Division to which judges are permanently assigned. Proponents of this plan argue that this will preserve the advantages of the separate court of chancery while eliminating undesirable features.

LL.B. '23—*Airline Foods Corp.* has elected *John R. Bartels* as a new director. He is the company's general counsel, and a partner of the New York law firm of Lundgren, Bartels & Lincoln.

LL.B. '25—*Arthur D. Welton, Jr.*, of Winston, Strawn & Shaw, Chicago, has been elected a director of the Toledo, Peoria & Western Railroad.

LL.B. '25—*David W. Peck*, LL.B. '25, recently named presiding Justice of the Appellate Division, swore in *J. Edward Lumbard*, LL.B. '25, as Justice of the Supreme Court of New York on June 24. Justice Lumbard was a former Assistant U. S. Attorney General.

LL.B. '26—Gov. Robert Bradford has named *Reuben L. Lurie* to be a member of the Massachusetts judicial council. Lurie, a member of the state parole board and former vice-president of the Law Society of Massachusetts, acted for five years as an auditor for the Suffolk Superior Court, and was chairman of the parole board from 1940 to 1944.

LL.B. '30, S. J. D. '33—*William H. Hastie*, governor of the Virgin Islands, has been named by President Truman as a U. S. Commissioner of the Caribbean Commission. The purpose of the Commission is to coordinate the economic activities of the region.

LL.B. '36—*Hyman W. Rosenthal* was recently discharged from the U. S. Army, and has announced the reopening of offices for general practice at 35 Court St., Newark, N. J.

LL.B. '41—The engagement of Miss Betty M. LeVeque, of Columbus, Ohio, and *Richard Petersen Niehoff*, has been announced. Niehoff, who also attended the Law School of the University of Glasgow, Scotland, served during the war in the field artillery in Europe. He is a member of the Columbus law firm of Bricker, Marburger, Evatt & Barton.

LL.B. '42—Miss Martha Elizabeth Urquhart, of Birmingham, Ala., and *Herbert Mayhew Lord* were married in New York City on June 14. Lord is with the law firm of Burlington, Veeder, Clark & Hupper in New York.

LL.B. '43 (47)—*John Henry Monahan* is in the office of David J. Cohen, 11 Beacon St., Boston.

STUDENT BOARD SEEKS JUDGES

The summer session of the Ames courts is seeking judges. This week third year men have been invited by the Board of Student Advisers to serve on second term courts and high ranking students have been requested to sit as associate justices in the third term qualifying round.

In order to organize this session efficiently, it is imperative that students receiving postcard offers to serve on the bench return an acceptance or a rejection to the Board immediately. It is desirable also that third and fourth term men who would like to participate as associate justices submit their names to Roger C. Henselman 2L or to the secretary at the Board office.

The need for capable men for the summer bench is illustrated by the fact that there will be 65 second term arguments requiring a total of 38 sets of judges. There will be in each set a chief justice from the sixth or seventh term and two associates from the fifth term or perhaps the fourth or the third.

In round two, brief conferences are scheduled for July 1 and 2; exchange of briefs will take place on July 10 after which justices may obtain their copies; 38 arguments in subdivision A have been planned for July 16 and 27 in subdivision B for July 17.

The qualifying round is still in the process of organization under the direction of George Minkin 3L. At the present time, it appears that there will be 45 arguments. Comprising the bench will be a member of the Boston Bar as chief justice, a member of the faculty as associate justice, and a student chosen from the Review, the Board, Legal Aid, or from veterans of quarter or semi-final arguments.

In round three, facts will be issued periodically beginning on July 2. Arguments have been scheduled on weekday evenings to avoid complicating the week-end; they will be held on July 23, 24, 28, 29, 30, and August 5 and 6.

GUILD—(Continued)

of its members belong. President of the Guild is Robert W. Kenny, former attorney general of California. Among its national leaders are Senators Claude Pepper, Wayne Morse, and James Murray; law professors Frederick K. Beutel, Dean of the University of Nebraska Law school, Thomas I. Emerson of Yale, and Walter Gelhorn of Columbia; and lawyers Wendell Berge, Osmund Fraenkel, Mitchell Franklin and Earl Dickerson.

Local Beaches Beckon Scholars To Start Summer Recreation Program

If you've finished tomorrow's assignment in Torts, or yesterday's in Trusts, or if you've given up on Evidence, here are some hints on how to spend your spare time around Boston. With the weather finally warm enough for swimming, boating, picnics and sundry other activities, there are many places nearby that are guaranteed to take your mind off books.

BEACHES

Revere Beach: Lockers are available for a charge of 25 cents. Take subway to Scollay, then to Maverick Station, then take Revere-Ocean Ave. car to the beach. Carfare 10 cents.

Magazine Beach: Lockers will be available starting June 28th, 10 cents for adults, 5 cents for children. Located on the Charles River, a short distance from the Charles St. station on the subway.

Some of the less crowded beaches outside of the metropolitan area are at Lynn, Swampscott, Marblehead and Magnolia. These beaches, all along the North Shore, can be reached by taking the subway to Haymarket Square, and then changing for the appropriate bus of the Eastern Massachusetts Street Railway Co.

SAILING AND BOAT RIDES

For ex-sailors there is an opportunity to do some sailing on the Charles River. Take the subway to Charles St., then walk to the nearby Community Boat-house. Those who can raise the sum of \$25 and pass a routine sailing test can use the dinghies for the rest of the summer season. While such a pastime is not guaranteed to bring back memories of the USS Missouri, it's good sport and a good way to get a sunburn.

Those preferring a less strenuous form of maritime recreation, can take advantage of the Nantasket boatrides. The charge for the round trip (1 1/4 hour each way) is \$1.00 on weekdays, and \$1.50 on Saturdays and Sundays. Boats leave from Rowe's Wharf, which can be reached by taking the subway to South Station, and then walking a short distance along Atlantic Avenue. Boats leave Boston at 10:15, 11:15, 1:30, 3:00, 5:00, 8:30; leave Nantasket at 12:00, 1:30, 3:30, 5:30, 7:00, and 11:00. Nantasket has a nice beach, and an extensive amusement area.

PICNICS

Two opportune places to take the family or girl friend are Riverside (Norumbega Park) and Blue Hills. The former has facilities for canoeing and boating, tennis, golf, and even for cooking refreshments at open fireplaces. Group outings can be arranged at very reasonable rates by contacting the Metropolitan District Commission office at Riverside. To reach the park, take the Lake

Street-Commonwealth car to the last stop, and then transfer to a connecting bus at the depot.

The Blue Hills also affords a wide variety of activities, but it is more difficult to reach. Take subway to Ashmont Station, then Mattapan car to Mattapan Station. Local bus then connects directly with the park.

GOLF AND TENNIS

The metropolitan area is sprinkled with golf courses, many of which are available to the general public. The nine-hole Fresh Pond course can be reached from Harvard Square by taking the Huron Avenue trackless trolley to Fresh Pond Parkway. Green fees are \$.75 on weekdays, \$1.50 on Saturdays, Sundays, and holidays. The 18-hole Brookline Municipal Golf course charges \$1.25 on weekdays, \$1.50 on week-ends and holidays. Take subway to Kenmore Station, then Chestnut Hill bus to the end of the line, then Hammond Street bus to the course. The Leo Jerome Martin Memorial course, sometimes called the Riverside course, can be reached by taking the Lake-Commonwealth car to the last stop, and then taking a bus to Auburndale. Green fee is \$1.00 on weekdays, \$2.00 on Saturdays, Sundays and holidays. Incidentally, this golf course is part of the Riverside picnic area, and other activities are available. (In case mother doesn't play golf.)

Tennis enthusiasts can get a workout at the nearby Radcliffe courts. The charge is 25 cents per hour at all times, and the courts are open from 9 a.m. until dark seven days a week. Reservations should be made in advance by calling ELI 8807. Also ideally located are a number of courts at the Business School. Holders of participation cards play free, while all others can use the courts for 35 cents per hour. Reservations can be made a day in advance at the courts.

SPECTATOR SPORTS

For the information of those who don't read the front page of the local newspapers, Boston has two major league ball teams, and one of the clubs is always in town. Fenway Park can be reached by taking the subway to Kenmore Station, while the Lake Street or Watertown cars pass by Braves Field. Both teams accept mail orders in advance. The RECORD will list games every week in the calendar section.

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SEAVEY —(Continued)

ward. But once they had accepted it, they could not throw it off. For the whole organization, with its closely knit government, its use of gangster methods, is built to withstand internal pressures as well as external propaganda. I have confidence that the people of China and India have too much sense to accept its specious promises, but that is a possibility which we cannot ignore. Within a few generations the Eastern Hemisphere may well be the most powerful, as it is now the most populous, and this, in communist control, is not a pleasing prospect. We may soon find ourselves an island of democracy in a world of communism unless we recognize and meet the issues."

Vividly portraying the contrast he sees between American principles and those of the communists, Seavey discussed the rights of the individual in a democracy. He stated that "courts, which you may think of as being chiefly places in which lawyers argue and seek to take money from one person in order to give it to another, are, in fact, the protectors of our liberties. It is the independent judge who prevents the Legislature from enacting laws which abridge the freedom of the individual; it is a free judiciary which prevents the executive from usurping the functions of his office."

Insisting that America can hope to eradicate communism only by preventing the conditions under which it thrives, Seavey predicted that repression will not be effective. "Writing in statute books that communists cannot hold office or become members of labor unions will not succeed." Awareness of the danger and strengthening our own democratic faith and practices are Seavey's answer to the crisis.

From Columbia Law School, where he is teaching this summer, Professor Seavey has informed the RECORD that "students here are about the same as in Cambridge—they fall into the same obvious traps, eager, ingenious—all the qualities which make teaching exciting."

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Calendar

THE LEGAL WORLD

Holiday

There will be no classes on Friday and Saturday, the 4th and 5th of July. Classes omitted on the 5th may be made up as the instructor finds it convenient.

Informal Dance

Tickets to the informal dance at Cowie Hall on July 12 are on sale in the Yearbook office, first floor of Gannet House, through July 11 between the hours of 1 and 5 p.m. The price is \$2.40 per couple.

Law Wives Dance

The Law Wives are sponsoring an informal dance at Kendall House on Saturday, July 5, at 8:30 p.m. Refreshments will be served. All students are invited. Admission will be \$.50 per couple.

THE UNIVERSITY WORLD

Sunday Evening Club

The Sunday Evening Club is sponsoring an outing to historical Concord on Sunday, July 6. All students are invited. Those going are advised to bring box lunches and are to meet at Phillips Brooks House at 3 p.m.

Woodberry Poetry Room

The Woodberry Poetry Room on the top floor of Widener Library is open Monday through Friday from 2:30 p.m. to 5:00 p.m. It has available a collection of books, magazines, manuscripts, and phonograph records of Twentieth Century Poetry.

Summer Film Program

The Harvard Liberal Union is sponsoring a series of film evenings to be held every other Tuesday through August 19 in the Music Building (Paine Hall), beginning at 8:00 p.m. The next one will be on July 8 when the French film *Le Courier De Lyons* and a color cartoon based on Ruth Benedict's *Races of Mankind* will be shown. Subsequent evenings will feature documentary films, Russian films, and, lastly, an evening of Charlie Chaplin films. Series tickets are \$2.00; single admissions are \$.60, available at the Coop or at Phillips Brooks House.

THE OUTER WORLD

Summer Theatre

The Boston Summer Theatre is now showing in the air-conditioned New England Mutual Hall a production of Maxwell Anderson's *Joan of Lorraine*, starring Madge Evans. This is the play in which Ingrid Bergman was so successfully starred in the New York theatre season just ended. The run at the Mutual Hall will continue through July 5.

The Cambridge Summer Theatre in Brattle Hall opened its season on Monday, June 30, with Tennessee Williams' prize-winning play, *The Glass Menagerie*, featuring Julie Hayden, who starred in the original New York production, and Helen Mackellar.

Concerts

Gardner Museum Concerts: Thursday, July 3, Victoria Samuelian, soprano, Kwong-Kwong Tung, pianist, and Dolores Rodriguez, accompanist; Saturday, July 5, Uni Sprengling, violinist, and Hazel Hallet, pianist; Sunday, July 6, John Herrick, baritone. Weekday concerts begin at 2:45; Sunday at 2:00.

COMPTON—(Continued)

"small nation which might spark world conflict, our national program should be correspondingly comprehensive. Six components were outlined: a united people, intelligence service, scientific research, industrial preparedness, regular armed forces, and universal training. Of all these, a powerful air force capable of instant world-wide action on a large scale, Dr. Compton felt most important. But, since an enemy would undoubtedly capitalize on the weakest link in our defense, all six were necessary.

Answering the argument that the atomic bomb renders ineffective a large trained force of men, Dr. Compton asserted that universal training alone would satisfy the following needs: men to operate the "push-button" warfare, manning of advance bases simultaneously with atomic operation, and for final victory and consolidation, men to occupy enemy countries promptly. No other ways of getting this manpower have been successful since the National Guard is only at one-eighth of its strength, and the armed forces can get only one-third of their required enlistments.

Palestine Mandate Aims Reversed

(Continued from Page One)

laid down in the preamble, and the development of self-governing institutions, and also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."

The principle of the policy of the Jewish National Home is first enunciated in the second paragraph of the preamble. The wording refers to the Balfour Declaration and substantially repeats this declaration. What is the scope and meaning of the term "National Home" as set forth in the preamble?

JEWISH STATE SEEN

A perusal of the entire preamble would seem to indicate that activity on the part of the Jewish settlers and a certain administrative governmental system to aid Jewish settlement were foreseen as necessary to the establishment of the National Home in Palestine. The end of this development, evidently, was to be the establishment of an independent national existence of Palestine in accordance with the provisions of Article 22 of the League of Nations Covenant. If the Jewish immigration was fast enough or sufficiently numerous, the State that would come into existence would be a Jewish State. The Royal Commission states that this was the understanding of the Balfour Declaration by the Jewish people. It was also the interpretation of the British Government, author of the Declaration. See *Report of the Royal Commission* 24.

It seems highly probable that the authors of the phrase "establishment in Palestine of a National Home for the Jewish People" had in mind that this would call for positive action and that the Mandatory would assist in a dynamic process which would lead to the creation of something that was not yet in existence, i.e. the National Home. On the other hand, the two other principles stated in the preamble and in Article 2 of the Mandate (i.e. self-governing institutions and safeguarding the civil and religious rights of all inhabitants of Palestine) seem to have been inserted for the purpose of protecting an existing status quo against destruction and arbitrary expulsion of other people. It seems that these two provisions impose negative obligations and imply that the measures taken to further the positive obligation of establishing the Jewish National Home should not include that type of measure that may infringe the civil or religious rights of non-Jewish communities already in Palestine. A reasonable interpretation of these safeguards would seem to be that they were meant for the protection of a future minority which would need protection after the Mandatory has carried out its responsibility of placing Palestine under conditions that will "secure the establishment of the Jewish National Home" under Article 2.

IMMIGRATION PROVISIONS

The most important obligation of the Mandatory to introduce conditions that will secure the National Home is formulated in Article 6 of the Mandate: "The Administration of Palestine, while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish immigration under suitable conditions and shall encourage in co-operation with the Jewish Agency, referred to in Article 4, close settlement by Jews on the land, including State lands and waste lands not required for public purposes."

It will be noted that the language here is positive, unequivocal and obligatory. The word "shall" is twice used and seemingly for a definite purpose—to establish special privileges for the Jewish people in reference to the matters stated. It will also be noted that there are no corresponding provisions for facilitating the immigration or the settlement of non-Jewish people from other countries. From this Article, only one interpretation seems possible, i.e. it is only in connection with the Jewish people that the Mandatory is under an obligation to facilitate the entry and absorption of persons not yet within Palestine. This interpretation is strengthened if the policy of establishing the National Home is recalled.

RESTRICTIVE INTERPRETATION

The first restrictive interpretations of the National Home clauses are found in the British Statement of Policy of 1922: "The tension that has prevailed from time to time in Palestine is mainly due

to apprehensions, which are entertained both by sections of the Arab and by sections of the Jewish population. These apprehensions, so far as Arabs are concerned, are partly based upon exaggerated interpretations of the meaning of the Declaration favoring the establishment of a Jewish National Home in Palestine made on behalf of His Majesty's Government on 2nd November, 1917. Statements have been made to the effect that the purpose in view is to create a wholly Jewish Palestine. . . . His Majesty's Government regard any such expectation as impracticable and have no such aim in view. . . . the terms of the Declaration referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home but that such a Home should be founded in Palestine."

In 1929, after the Palestine disturbances of that year the Shaw Commission was appointed by Lord Passfield, then Secretary of State for the Colonies, to determine the causes of the outbreak. In the report to the Parliament following the investigation the Committee said:

"On our reading of the White Paper of 1922 the primary duty which it laid on the Palestine Government was one of holding the balance between the two parties in that country. There was no clear direction to assist either party in the fulfillment of their aspirations. . . . It may well be argued on behalf of the Administration that it has discharged to the best of its ability the difficult task of maintaining a neutral and impartial attitude."

After the Palestine disturbances of 1929, there was a severe recession in that country. The Mandatory had decreased the number of Jewish people eligible for immigration and in a report to Parliament by Sir John Hope Simpson who had been instructed to investigate the deplorable economic conditions there stated as a justifiable reason for this restriction:

"Article 6 of the Mandate, however, directs that the rights and positions of other sections of population shall not be prejudiced by Jewish immigration. Clearly in cases in which immigration of Jews results in preventing the Arab population obtaining the work necessary for its maintenance, it is the duty of the Mandatory power, under the Mandate, to reduce, or, if necessary to suspend, such immigration until immigration will not affect adversely the opportunities of the Arab for employment."

INJUSTICE TO ARABS

There is evidence to the effect that the British officials regarded it as their duty to minimize what they considered an injustice to the Arab people. If this feeling is justified the procedure to remedy the matter would seem to have been a revision of the mandate by the League of Nations which would conform to equitable conceptions as to the notion of the balance of political forces prevailing at the time. This was never done and it seems that the officials have read their desires into the valid legal mandate instrument and gradually transformed the regime of the Mandate by means of interpretation. It is important to note that an instrument aiming at making the Jewish people its main beneficiaries has been interpreted and applied so as to make the Arabs its main beneficiaries.

These instances of restrictive interpretations do not stop with the British statements of policy cited above. In the much discussed White Paper of 1939, the Secretary of State stated:

"His Majesty's Government believe that the framers of the mandate in which the Balfour Declaration was embodied could not have intended that Palestine should be converted into a Jewish State against the will of the Arab population of the country. . . ."

This statement is followed by a lengthy quotation from the previous Statement of Policy of 1922, and further states:

"But this statement has not removed doubts, and His Majesty's Government therefore now declare unequivocally that it is not part of their policy that Palestine should become a Jewish State. They would indeed regard it as contrary to their obligations to the Arabs under the mandate, as well as to the assurances which have been given to the Arab people in the past, that the Arab population of Palestine should be made the subjects of a Jewish State against their will."

Thus it has been seen that the Palestine Mandate as a legal instrument was overshadowed by the political and emotional issues that were involved in the administration of the mandate. This has been accomplished by the various restrictive interpretations placed upon the mandate by the British officials.

MANDATE SCHEME REVERSED

As a matter of administrative practice, this attitude seems to have resulted in a reversal of the regime that was intended by the mandate. It is revealing, in this connection, to go over the various ordinances enacted by the Palestine Administration and the orders in council made by the mandatory. An examination of the yearly reports on the administration of the Palestine by the League of Nations shows that there are no enactments specifically designed to assist the development of the National Home. See the summaries of these enactments in the *Reports by His Britannic Majesty's Government on the Palestine Administration* from 1922 through 1938. (These reports were made to the Permanent Mandates Commission.)

The clearest evidence of the Mandatory's attitude in connection with its specific functions to assist the development of the National Home is found in some of the answers returned by the Mandatory to the questions put to it by the permanent Mandates Commission:

Question: What measures have been taken to place the country under such political, administrative, and economic conditions as will secure the establishment of the national home for the Jewish People?

Answer (1938): The affairs of the Jewish community during 1938 continued to be largely dominated by the state of insecurity and by the uncertainty which existed in regard to the political rupture of Palestine.

Question: What measures have been taken to facilitate Jewish immigration?

Answer (1938): The total number of immigrants registered during the year was 15,263, of whom 12,868 were Jews and 2,395 were non-Jews.

The report for 1938 also states: "Persons granted visas for Palestine are liable to be refused admission on arrival at the frontier if the Immigration Officer is not satisfied that they are persons who may lawfully be admitted to Palestine." The report shows that from 1932 to 1938, 229,000 Jewish people were refused entrance under this prerogative.

When asked what the mandatory has done to let the Jewish Agency exercise its specific functions, the replies invariably indicate what the Jewish people have done themselves in this respect. This is also true in regard to the mandatory's activities of a general character, such as in the fields of education and health. There is almost no evidence of help by the mandatory, in these matters,

to foster the development of the National Home.

On the other hand, a survey of the annual reports of the Mandatory and of the Minutes of the Permanent Mandates Commission, shows that the "rights and position" of the non-Jewish sections of the population have been constantly applied in a very liberal and prompt manner. For instance, before any measures were introduced in respect to placing the country under conditions securing the National Home, and before any preparatory steps of local self-government were taken, a Constitution of Palestine was instituted that envisaged the creation of a legislative Council with an Arab majority. A year later, the mandatory, considering that the special privileges of the Jewish Agency, guaranteed by the mandate, were unjust to the Arabs, had attempted to establish the "Arab Agency" not provided by the mandate. Indeed, the introduction of a Legislative Council which would transform the entire country of Palestine into an Arab State with the protection of the Jewish minority was revised several times by members of the Palestine Administration, as the best solution under the mandate. There are also repeated instances of acquiescence on the part of the Mandatory to intervention by the Arab States, a position that would seem untenable under the mandate.

SOLUTION NO NEARER

As a result of all these practices and interpretations, the situation in Palestine has been completely reversed from that contemplated in the Mandate. The Jewish people, who were granted under the Mandate the special privilege implied in the establishment of the National Home, found themselves gradually reduced to the status of having guaranteed civil and religious equality. On the other hand, the Arabs, to whom these rights were guaranteed, have gradually emerged as the community which claims to govern the country. And the National Home, which in 1917 and shortly afterwards was interpreted as leading to a majority of Jewish people, is finally interpreted as meaning a state with an Arab majority.

In all the present day literature on the subject, there does not appear to be a satisfactory solution to the Palestine problem. There is one thing that is certain, however, to wit: there are approximately 2,000,000 Jewish people who are now homeless waiting to enter Palestine. It may be assumed that the Inquiry Commission will propose steps to meet the present emergency, which most authorities think the British and American governments will endorse. The larger issue remains and cannot long be avoided.

By William Blake, 3L

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