

The Harvard Law School Record

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CALLAHAN ADDRESSES MEETING

Attorney Outlines Method Of Defense In Criminal Trials

Herbert F. Callahan, prominent criminal attorney and defense counsel in the Goodale case, addressed an overflowing open meeting of the Lawyers Guild at Kendall House on Friday. Attacking the view that criminal lawyers are "sharpies" and "obstructors of justice," he stated that most criminal lawyers are men of high caliber and character. The accused criminal is entitled to all the protections of the law and is innocent until the state has proved him guilty beyond a reasonable doubt of all the constituents of the crime charged. The lawyer's job is to assert these protections, not to judge him. However, where the defendant is clearly guilty he is usually advised to plead guilty and make the best "bargain" possible with the court.

As a trial specialist he is called in after the issues of the case have been well fixed by other attorneys. He stressed the importance of slavish attention to technical detail, and a complete and exact grasp of all the facts.

Mr. Callahan then outlined the step by step details and problems of the defense. He ignores psychological theories on the selection of jury and takes the first, twelve intelligent-looking men who are drawn. During the state's evidence he takes advantage of all rules of evidence. By way of cross examination, when he senses that a witness is lying or exaggerating, he attacks his background to show interest, bias or criminal record. Tangling with an expert requires a thorough knowledge of his writings so that contradictions can be spotted. Mainly though he tries to broaden the expert's testimony to include facts favorable to the defense.

In capital cases he always puts the defendant on the stand, knowing that despite defendant's constitutional rights a jury is bound to inquire instinctively why he doesn't take the stand if he is innocent.

Rattled Reporter Rummages For Rationale Behind Langdell Hall

Every term I have been spending the first week or so trying to find some simple method of getting from one end of Langdell Hall to another, without exposing myself to the vagaries of New England weather, or wasting precious energies on climbing up and down stairways. To date, I haven't been very successful, but since I still have a few terms of search left, my chances are not overly discouraging.

Meanwhile I got to thinking whether there wasn't possibly a good reason lying around somewhere as to just why the designers of Langdell Hall made it so hard to get from one end of the building to another. Unhappily, I asked the editor of the *Record* whether he happened to know. It seems that the editor has all of his nine o'clock classes in Langdell North, his ten o'clock classes in Langdell South, his eleven o'clock ones back in the North again, and so on. The thing has caused him many sleepless nights, and has become an obsession with him. So, as soon as I mentioned it, he gleefully assigned me to find out the rationale behind this feature of Langdell Hall.

I read all through my Property notes where I get some of my best rationales and bits of local color, but couldn't find a thing. So I called the architectural firm that designed the building. Outside of the fact that they thought Lang-

Possibility Of Antarctic Mineral Wealth Spurs National Rivalries

By RICHARD YOUNG, 3L

The Antarctic is the last great region of the earth to be explored, and the last where national territorial claims may seriously conflict. So long as it was but an icebound waste in the most remote quarter of the globe, this unsatisfactory legal status made little difference. Today, nations are seeking profitable uses for the area.

In proportion to their success, the Antarctic's legal and political importance will increase. In view of such possibilities, now is none too soon to determine the international difficulties in Antarctica.

The area of the Antarctic continent is variously estimated at from three to five million square miles. Entirely surrounded by ocean waters, it is isolated by great distances from other continents, the closest by far being the tip of South America some 600 miles away. While an ice cap of huge but undetermined

thickness covers almost all the terrain, recent reports of bare ground, open lakes, and retreating glaciers lend support to the theory that the continent is becoming warmer. Meanwhile it is impossible for ships to approach the mainland through the ice pack except during the summer season, though under proper precautions they can stay through the winter, frozen in, without mishap.

NATURAL RESOURCES

Until recently, the only known natural resource of commercial importance in the region was whaling, of which it has been the chief world arena. This is still the only business activity, but depletion of the stock has led to increasingly restrictive regulation, both by the states of the ships engaged and by international agreement. These arrangements are the leading example of formal international legislation operating in the Antarctic today. Of greater future importance, however, may be the mineral resources of the continent. As long ago as 1913 mica and ores of iron, copper and molybdenum were discovered near Cape Denison, in the present Australian sector claim. Coal in quantities sufficient to suggest that large deposits may exist was found by the expeditions of Scott, Shackleton and Byrd, and where there is coal there may be oil. With the gradual exhaustion of resources elsewhere in the world, the importance of such deposits is bound to increase. Most important of all, the possible presence of uranium cannot be ignored, and its discovery would certainly make the Antarctic overnight a vital strategic area. Marine and mineral re-

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CRUISE AND DANCE SPONSORED BY PBH

Completed plans for an evening cruise dance have been made by the Law School Committee of Phillips Brooks House. The steamship "Steel Pier," operated by the Provincetown Steamship Lines, has been chartered for Saturday evening, August 9.

The cruise will begin at 9 p. m. leaving from Foster's Wharf, at 370 Atlantic Ave., and will end at midnight. Parking space is available for cars in the vicinity of the wharf, and the dock on Atlantic Ave. is a five minute walk from South Station subway. Students wishing to go should plan to be at the dock between 8:30 and 8:45 p. m.

The ship has three decks, an open promenade deck on top, a middle deck for dancing, and a lower deck containing a bar and cafeteria. Music will be furnished by the ship's band while mixed drinks will be served in the bar at the regular prices.

Since the committee expects a large attendance, it is suggested that tickets be purchased early. They will go on sale Monday, July 28, at Gannett House and will cost \$3.45 per couple, tax included.

BUGLE BLASTS BOARD 4 TO 1

Pitchers' Duel Exploded By Softball Phenomena

Two fluke line drives in the fourth and eighth innings resulted in ejecting the Student Board from 1947 possession of the coveted Tallman Cup by a 4 to 1 decision. After nine tight innings, Professor Field as chief umpire handed down the judgment for the *Review*, depriving the Board of a trophy which, when it can be found, is awarded to the annual winner of the Bugle-Board softball classic.

The contest this year was a pitchers' duel between Jazzy John Scott of the Board and Invincible Irv Schneiderman of the *Review* who hurled a four and six hitter respectively. With two men on base in the fourth inning, Blasting Bob Fuchs drove a hard grounder which took a freak hop, eluded two Boardmen, and allowed the two Bugle runners to lope in for a score. Again, in the eighth, it was Fuchs at bat with two men on base, two outs, two strikes, two balls; he connected with the next pitch and Energy Ed Tolles raced in from third for an easy out when the ball unexpectedly bounced eight feet into the air. While the Board gazed with open mouths at this flagrant breach of Newton's law, and meditated over its impact on the canons of softball, two Buglemen stealthily crossed home plate.

The lone score for the Board was chalked up by Dapper Dave Wendel, rookie left fielder up from the Legal Aid Farm, assisted by John Scott's infield smash.

The Board was not discouraged. Conceding the Tallman Cup to the *Review* after nine innings of play, they challenged the Buglemen to play so long as the daylight and the beer would last. Result of the second unofficial game was *Review* 11-Board 1. Jack Shea, playing manager of the Boardmen commented in the dugout after the game, "My kick is against the drafting system.

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EDUCATORS ATTACK CASEBOOK METHODS

HEMENWAY

Two weeks ago students who desired to play squash in Hemenway during the summer were requested to place their names in the *Record* box. However, student demand was not great enough to make feasible the opening of Hemenway.

The fact that only 24 names were received seemed to vindicate the decision of the Athletic Association to keep the gym closed for the summer.

LEACH FAVORS MERGER PLAN

Unification Of Command Held Essential Measure

Participating in the United Nations Association radio forum last week, Prof. W. Barton Leach, Air Force Colonel, supported the armed forces unification plan now awaiting House action.

Professor Leach's main contention was that unification was essential to restore the type of control over the armed forces that the Constitution contemplates. The Constitution provides for singleness of control under the President as Commander-in-Chief. In Washington's time, such singleness of control was a reality. The great increase in burdens on the President since then, however, has progressively diluted the "one-man commander" system; so that today there is a committee-type operation of the services. As he sees it, the new plan would implement the Constitutional requirement by giving a civilian official, the Secretary of National Defense, the same unified control that the early Presidents effectively exercised. Thus, unification is not a new, radical scheme, but a return to an old established one.

One of the other three speakers on the forum, Navy Lt. Putnam, representing his own personal view, not the Navy's, claimed that the merger did not go far enough. He asserted that unification on all levels was necessary. Adopting a domestic relations analogy, Professor Leach opposed this suggestion as requiring a "too short engagement before the marriage." Should such complete amalgamation be forced on the

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Student Conference Hears Criticism By Garrison And Frank

For two days, July 11 and 12, in New York, some 140 delegates from 45 of the nation's law schools assembled for the National Law Student Conference on Legal Education. The avowed purpose was "To give expression to students' ideas on current methods of teaching law and their judgment of the efficacy of these methods to fit the lawyer for his place in society." The conference was opened in plenary session at the New York County Law Association Building by the Chairman Harold W. Solomon (Columbia) who affirmed the modern student's ability to make such an appraisal.

The keynote address was given by Lloyd K. Garrison, long prominent in legal education (former Dean at Wisconsin and former President of the Association of American Law Schools). An advocate of the study of law in "the grand manner," Mr. Garrison felt that the deficiencies in legal education were more than merely pedagogical. He ventured to give expression to the as yet inchoate gropings of the student delegates. "The demands of society on the lawyer as practitioner have changed more rapidly than the shape of his education." The revolutionary alterations in our environment have shaped the need for the lawyer's "grasp of the dynamics of social life" and a devotion of his "efforts of imagination and will to preserve society."

He recommended a definite reduction in the time for case study (to perhaps one and a half years), and a utilization of this time to extra-legal material in related subjects to lead to "a cultural expanse of the lawyer's understanding." He suggested a possible comprehensive cultural as well as legal examination before graduation from law school. As an example of the needed synthesis, he spoke of "the supreme indifference" of Anglo-American law to criminal law. Only through the lawyer's concert of sociology, psychology and criminology with his knowledge of the 'law' would remedial policy be effected. Mr. Garrison put the burden on the law schools;

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Harvard B-School Offers Students Fancy Plant, Realistic Study, Jobs

You've heard those rumors about the Harvard Business School. There the students stay for only four semesters, they live in luxury, they are pursued by giant corporations offering top management posts at extravagant salaries—or, at least, so the stories go. Is the grass really that green on the other side of the Charles? To find out, the *Record* sent a foreign correspondent across the river. His report follows.

So far as creature comforts are concerned, a mere listing suffices to establish the student aphorism that "at the Business School you're treated like a customer; at the Law School you're treated like a stepchild." Aside from plentiful bachelor dormitory space, some permanent apartments for couples, convenient dining facilities, and an adequate parking lot—the "B. School" (as it is called by its students) boasts of such on-the-grounds niceties as a beer and sandwich grille, a post office, a barber shop, a theatre ticket service, a branch Coop, an up to date collection of hometown newspapers, lounging rooms, a grand piano and record players, and tennis courts.

The Law School, no doubt, could offer the same facilities if given the same opportunity to become a multi-million-dollar memorial gravestone for some contemporary Croesus. George F. Baker's gift of brick and mortar, however, is

the least significant of the differences between the two schools.

DIFFERENT CASE SYSTEM

The kind of cases used and the method of teaching from them most clearly illustrate the divergent approaches of the Law and Business Schools. Fortunately for the B-Schooler, his future occupation pays heed to the past only so far as it offers practical guidance in the present. He is entirely free of the clammy grasp of *stare decisis*. Since there are no one or two million cases already written up by some five or ten thousand judges, the business professor must search out and write up his own material. It is claimed that this has a number of advantages.

For one thing, the faculty in the process of acquiring case material is continuously in touch with the operating level of modern business. There is no antiquarianism. A spirit of realism runs

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Editorials

HYGIENE DEPARTMENT

Harvard's Hygiene Department does not provide the medical care which the student needs. Apparently too much of the student's Infirmary Fee is devoted to the support of an expensive administrative hierarchy, and too little is devoted to the care of the student when he is ill.

The plan of Dr. Bok's department is to care for minor ailments. For anything more serious than scratches, bruises, or colds, the student is referred to a specialist. The fee of the specialist must be paid by the student. All surgical costs and drugs must be paid for by the student. Even dental work, although scheduled by the Hygiene Department, is charged to the student at exorbitant prices. The infirmary Fee does entitle the student to a hospital room for one week, exclusive of all additional fees.

The student at Harvard University is a member of the healthiest age group of our population. However, the benefits which he receives from his Hygiene Department fee are less than the benefits received by an *entire family* under group insurance plans such as the Blue Shield, for a roughly comparable fee.

The \$45.00 per year paid by students to the Hygiene Department ought to provide full coverage for the student in the event of illness of any kind. Except in the case of lingering illness, the student ought to be assured of adequate medical care, including surgical services and drugs.

We believe it is possible, perhaps through arrangement with the Medical School, to provide students with dental, surgical, and hospital care, including the cost of drugs and operating room fees. We believe that it is essential that this be done soon. Many men now come to Harvard with limited financial resources. The Hygiene Department ought to offer them insurance against appendicitis, and other unexpected illness, rather than serve as a reference bureau to a competent specialist.

The situation needs investigation. President Conant is the only person with sufficient authority to look into the matter. His investigation need not be directed at placing blame for the present dearth of care which the student receives for his medical dollar. Rather, it should be directed towards establishing a model scheme, which will offer the student security in case of physical disaster.

R. H. W.

Letters to the Editor

To the Editor of the RECORD:

The letter written recently by DeForest Spencer Jr. protesting the RECORD's publication of George C. Bryan's article on Russia, "How Black is Red?", demands a few lines in reply. At the outset Mr. Spencer ably disqualifies himself as a competent critic of the article by admitting his own paucity of knowledge. It is not at all clear by what standard he then deems himself qualified to charge Bryan's presentation with "exaggerations, half-truths and deceptions."

But even more objectionable is the fact that Mr. Spencer arrogates to himself the responsibility of deeming Bryan's view-point "dangerous to the welfare of this country." Upon re-reading the article I found it to be, in the main, an attempt to present the cold facts on the other side of the story—facts which are not easily accessible to the reader who, apparently bent with the worries of law school survival, must confine

his sources of knowledge to the local daily newspapers and an occasional "dip into weekly magazines."

If nothing else is to be gained from a study of the law, it is hoped that a student of the subject will at least recognize that the primary task of the lawyer is a search for truth. It is the lawyer's responsibility to analyze all the facts with detachment and to lead others in attaining that adjustment of interests which enables men and nations to live together in peace. It is indeed to be regretted if the proverbial Harvard Law School mandate of "eating, living, and sleeping law" has led many "Mr. Spencer's," for want of time to reflect objectively on non-legal issues, to adopt a closed mind on this crucial issue of international relations.

MILTON P. KAYLE, 2L

To the Editor of the RECORD:

What is the basis of grading a student's work for one term in the Law School? Is class work counted? Is it solely the final exam which determines a mark? Does past record enter into the picture? (The last question is asked advisedly because at least in the case of grading the second term exams the professors have each student's mark on the Criminal Law exam in front of them before marking the paper). If the basis is supposed to be the final exam and nothing else, which I believe is the theory, it is suggested that at least one change can be made which may give all students a feeling that the grading is as objective as it can be in a law school. Why not adopt what might be called the "number-name" system?

As a student enters an exam hand him a card with a number on it and a place for him to sign his name. He will place his name on the card and the number on the blue-book. The cards and blue-books will be handed in separately and the professor will never know which exam he is grading until he has finished grading all the papers. The cross-checking is a pure ministerial duty which can be performed with a minimum of training.

And all the students will feel just a little happier about the whole thing!

JAMES F. LOVETT 3L

To the Editor of the RECORD:

I noticed that in your abstract of the Mississippi case headed "Justice by the Numbers" you failed to capitalize the word "Negro."

Names of races are capitalized, as Caucasian, Negro, Mongolian, just as names of nationalities, such as English or Abyssinian. Names of colors are not capitalized, as white, black, or yellow.

I am surprised that the RECORD would be caught in an error of elemental grammar.

PAUL J. WOODMAN

Please refer to the original report. The word was copied verbatim.—Ed.

Off the Record

A FIRST TERMERS' HOLIDAY

On Monday night, I made good time,
With flattery so sweet;
And then arose the sudden thought,
Of an action in Deceit!

With Tuesday's date I knew full well,
Her heart on me was bent;
But then alas, her age I learned—
It was below consent!

With Wednesday's girl, I prayed and pleaded,
But she was wise and firm;
"Your pleas I bar," said she to me,
"Your code I will not learn!"

Now Thursday's gal agreed to park,
But then I didn't risk it;—
Her lawyer Dad might bring a suit,—
"Per quod servitium amisit."

Friday night I drove down the shore,
And tried to make some peach;—
When she demurred, the cops concurred,—
"No breach along the beach!"

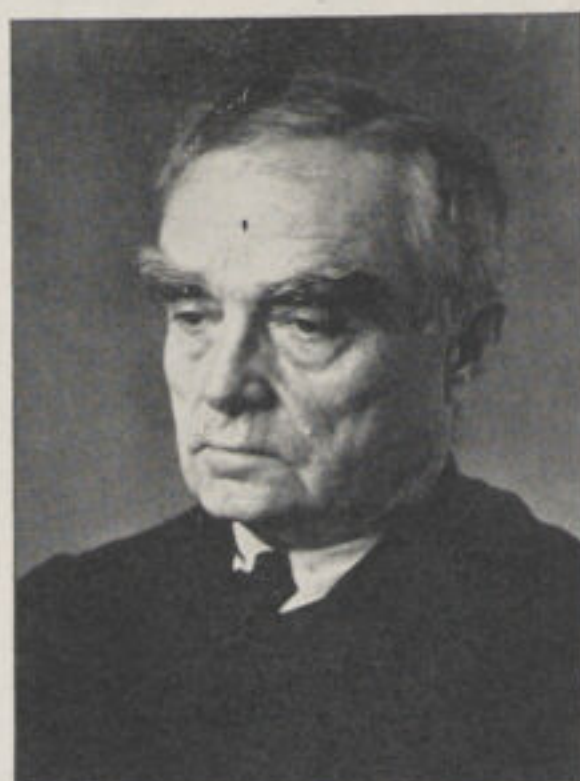
Saturday night, I longed to leave,
The sundry woes of the lex;
But alas, alack! my aching back!—
She didn't believe in sex!

By Sunday night, as last resort,
I made offers unilateral;
But she had read a Contracts book,
And said, "Sorry, That's collateral!

So now I'm back to dear old Law,
My thoughts where they belong;
It sure is good to get on back,—
Having been away so long!

J. S., 1L

Gallery



LEARNED HAND Circuit Judge

"The greatest, living, English-speaking judge," was *Life's* description of Learned Hand. On meeting him, however, the first impression one receives is not that of being in the presence of the foremost intellect on the bench today, but rather of having met a truly friendly man.

Judge Hand's comradely wit, his deep interest in all that pertains to the legal way of life and his abundant energy, occasionally exploding in a sharp slap of his knee to emphasize a point, soon impress one that here is a man who has made the law his wife and has never regretted the marriage.

His conversation is mellow with judicial anecdotes and reflections. Descended from two generations of lawyers and judges, and graduated from Harvard College ('93) and Law School ('96), he started practice in Albany. It has since been said that he was born to be a judge, but at that time the future was discouraging for the young lawyer. He felt that he was not as successful as he might be, but hesitated starting anew in New York City for fear of being lost in the shuffle. Finally, afraid of being stuck where he was, he decided to take the chance.

Judge Hand feels for himself that New York City is an addiction which he wouldn't like to have taken away from him. "There are contacts here that can't be gotten anywhere else; people come here from all over and one gets a lively touch with things," he says.

As for the training in the large New York law offices, he thinks that it is valuable for the end product, but that it is an "awfully severe school." But he believes that those who survive are able men. "If you have the stuff to take it, it is a very good school," is his judgment.

When asked for advice that he might give to young lawyers, he quickly replied, "I don't know what to say." After a moment's thought, he added, "It's all a matter of chance. Very discouraging when you start—can't see where you'll get a toe-hold, but eventually God in His benevolence kills off the old ones. If we all lived to one hundred and fifty, no one could get a start. Somehow it all clears up."

Coming to New York City in 1902, Hand became managing clerk for the firm of Burrill, Zabriske & Burrill. By 1909, he was appointed a District Judge by President Taft. Taft was soon to regret the appointment, however, because Hand supported Theodore Roosevelt for the Presidency in 1912 against Taft and Wilson. He also ran (although unsuccessfully) on the Bull Moose ticket for Chief Judge of the New York Court of Appeals.

Judge Hand learned that the life of the trial judge was a tiring experience. Cases dragged into days simply because, as he saw it, a trial is necessarily a contest, and all contests have their rules. It was very difficult for him merely to sit and listen to the interminable fighting of counsel. He was led to write that, "a judge's life . . . has in it much of drudgery, senseless bickering, stupid obstinacies, captious pettifoggery, all disguising and obstructing the only sane purpose which can justify the whole endeavor."

In December, 1924, President Coolidge appointed Hand to the Second Circuit Court of Appeals, and in appellate work, he found his place, although he now admits that he doesn't get quite the same pleasure in writing an opinion as he used to "one hundred and fifty years ago." He agrees with Holmes that the fun of it is that you can get in a generalization every once in a while.

As with Holmes, it seems to be Judge Hand's concept of the judicial process that a judge's most important attribute is a certain impartial temper of mind. The concept of "fair play" rather than of natural justice, or of any eternal immutable truths in law or life, should be the judge's guiding principle. He recalls the time he visited Holmes in Washington, and having ridden to the Supreme Court with him in a horse-drawn carriage, he called out as "The Great Dissenter" entered the building, "Do justice." Holmes stopped immediately, straight-

Sub Indice

"REFINE" AND "CLARIFY" AND THEN
COME TO SEE US, MR. PETRILLO

Recent newspaper headlines announced the decision of the Supreme Court on June 23, 1947 that the Lea Act (the Anti-Petrillo Bill) was constitutional. The newsmen's conclusion, possibly the only one open to them under the circumstances, would seem subject to considerable qualification after a reading of the majority opinion of Mr. Justice Black, but newspapers have to tell their readers something concrete, and supposedly they made the best possible guess. It is certain that the words of the statute, "in excess of the number of employees needed by such licensee to perform actual services" are now determined to be sufficiently definite to avoid being repugnant to the Fifth Amendment. Likewise, it seems clear that the statute does not deny equal protection of the laws to radio broadcasting employees as a class. The statute is satisfactory on the first ground since it conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. The Constitution requires no more. It affords equal protection because "Whatever may be the limits of the power of Congress (to enact laws?) that do not apply equally to all classes, groups, and persons, we are satisfied that Congress has not transgressed those limits in the provisions of this statute which are here attacked." (Sic)

Essentially, however, the decision is a procedural one involving the issues raised on a direct appeal from a District Court under the Criminal Appeals Act. The information filed against Petrillo in the Chicago District Court alleged that he had coerced a radio broadcasting company into employing three more men than were needed to perform actual services by (1) causing three musicians, previously employed by the station, to discontinue their employment, (2) by refusing to permit other members of his monopoly union to work for that station, and (3) by placing a single picket in front of the station. According to our reading of the Supreme Court opinion, the defendant's motion to dismiss merely challenged the information on the ground that the Act on which it was based contravened the First, Fifth, and Thirteenth Amendments and the court found that the statute, if read in such a way as to divorce the information from the statute, was not too vague and did not deny equal protection. What this means is difficult to say, but we are again informed that the court will not decide constitutional questions in advance of necessity, and that "Many questions of a statute's constitutionality as applied can best await the refinement of the issues by pleading, construction of the challenged statute and pleadings, and, sometimes, proof." (Sic)

Thus the questions of how far so-called "peaceful picketing" may constitutionally be limited by an Act of Congress, and just what status the Supreme Court will assign to the "right to strike" as a constitutionally protected right remain open questions, and Mr. Petrillo's case goes back to the District Court at Chicago. (U. S. v. Petrillo, C. C. H. 12 Labor Cases 51,956).

IT PAYS TO BE KIND TO THE TENANTS

For approximately five years prior to his death, one Boleslaw Skurzynski rented a furnished room from the complainant in Hoboken, New Jersey. A search of his room made the day following his death by the Hoboken police produced seven bank books representing total deposits of approximately \$13,000. According to the undisputed testimony of one Giulio Mastro Pasqua, a friend of the decedent and the occupant of an adjoining room in the same house, Skurzynski had, in his presence, handed two bank books to the complainant declaring: "Here is two books; I give them to you. If anything happens to me, you can have this two books for yourself." The complainant contended that the gift was valid as a gift *causa mortis*, made when the decedent was in the last stages of a fatal illness and made with a donative intent. The court supported the contention of the complainant, pointing out that a *donatio causa mortis* is to be distinguished from one that is *inter vivos* by its revocable nature. The former may be revoked by the donor, while the latter type of gift is irrevocable. While a *donatio causa mortis* is absolute in form and there is a complete delivery to the donee, the transaction is inchoate, and the property remains in the donor until his death. "Our cases hold that the delivery of a savings bank book with the intent to make a gift of the deposit therein recorded whereby the donor relinquishes the dominion and control of the account, transfers title to the fund." *Borthwick v. Skurzynski*, 139 N.J. Eq. 520 (April 15, 1947).

ened up, and, beckoning with his finger, replied, "Come here, young fellow. That's not my business . . . I'm not here to do justice; I'm here to play the game according to the rules."

E. F.

Alumni Notes

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

Several members of the class of 1925 held an informal reunion on the occasion of the induction of their classmate, J. Edward Lumbard, Jr., as a Justice of the Supreme Court of the State of New York. Justice Lumbard was sworn in by Justice David W. Peck, LL.B. '25, who himself recently received an appointment as Presiding Justice of the Appellate Division of the Supreme Court for the First Department.

Bethuel M. Webster, also LL.B. '25, was chairman of the Judiciary Committee of the Association of the Bar of the City of New York, which reported with respect to the above appointment. Others of the class present at the induction ceremony included Robert A. Jones, Robert D. Marcus, Lewis A. Spence, Hon. Raphael P. Koenig, and Eli Whitney Debevoise.

LL.B. '27—Brooks Potter, of Boston, treasurer and a director of the Family Society of Greater Boston, has been elected as president of the Family Service Association of America, a federation of 240 family service agencies in the United States and Canada.

LL.B. '43 (47)—Lansing B. Lee, Jr. is opening his own offices for the practice of law in Augusta, Ga.

LL.B. '47—Robert Eldon Dick is with the Pacific Gas and Electric Co., 245 Market St., San Francisco, Calif.

LANGDELL—(Continued)

closed some summer, and wanted to make sure that they got their body-building anyway."

Another said that the idea had been suggested by all of the Professors of Harvard sitting together. It had come about after an examination period during which only 47% flunked out, and the Professors were afraid that things were getting too easy around the school.

I asked a *Law Review* man who was in the process of writing a case note on the negligent emissions of infants. "Very simple," he said, "the idea was designed by a Torts professor to illustrate the principle of *Res ipsa loquitur*. Besides there was no duty to act." He then broke into Latin, so I let him get back to his case notes. Quite a few of the students had no theories on the subject but offered comments freely. (Unfortunately, the *RECORD* couldn't print these comments, since the Watch and Ward Society is a subscriber). One man with a 59.0 average, was sure that the reason for the single doorways was to keep up the policy of not letting students know whether they were coming or going. He even cited a case in point.

These theories were quite illuminating, and I jotted them down in my Jud Rem notebook, but I knew that none of these explanations would satisfy the editor,—he being a fastidious fact fanatic. All other sources of information failing, my search eventually led me to Dean Pound's office, and sure enough, my quest for knowledge was satisfied. It seems that back in 1926, when the North and Middle sections were being added to the original building, Dean Pound had effected a great many of Langdell's excellent features, such as the excellent lighting, the seminars, the study cubicles, and the roominess in the library. But on two items, the Dean was overruled and the architect was given his way. One item was the metal railing in the court room. Dean Pound informed the architect that a common law court room had a wooden railing, but the architect had once seen a court room with a metal railing, and it had won his heart. The other item was the matter of connecting the three wings. What the architect's reasons were are not clear, but at any rate, Dean Pound was overruled, and the wings of Langdell Hall remained unconnected. (One of the staff, who comes from Texas, suggested that the architect was a Yale man, but this is strictly a minority opinion.)

At any rate, the editor has to dash about from one wing to another, ruining his health and temper. It hasn't helped his humor, either,—he thought this story wasn't at all funny.

J. S.

MOEURS CONJUGALES



La Plainte en Adultere

"Magistrats, mon client est sur de son fait. Mais cette conviction personnelle ne lui suffisait pas, il fallait encore qu'il la fit partager à votre tribunal, au nombreux auditoire qui nous entoure. . . . à la France entière. Telle est la tâche que je me suis chargée d'accomplir dans l'intérêt de mon client, et je crois avoir réussi à rendre la chose claire à tous les yeux. Maintenant il ne manque plus à mon client que de voir sa . . . position sociale constatée par un jugement authentique, et vous êtes trop justes, Magistrats, pour lui refuser cette dernière satisfaction."

B-SCHOOL—(Continued)

through all the studies. After all, if it be true that the clients of a really good lawyer never end up in court, most of the material studied in law schools and available for legal research is simply the horrible examples of what you shouldn't do. Students under the orthodox case system never see the handicraft of the true masters of their profession. There is little discussion of how capable men are actually handling their law practices. (But see Leach's "Planning and Drafting of A Will.")

Business School cases are typically statements of particular problems involving one or more company officials at a particular time in a particular organization. Though disguised, all cases are drawn from actual business experiences. They can be compared to a case book which includes only the statements of facts in great detail and lets the students argue out for themselves the decision.

Law students who have also attended the Business School say these realistic problem-type cases arouse a livelier and more generally participated-in discussion than is common at the Law School. Since recitations are a factor in the final course grade, there is also a more thorough daily preparation by the students. Little time is devoted to the facts of the cases. Most of the discussion centers around what can and should be done. Here, probably, is the reason why law cannot be taught in as lively a fashion—working with decided cases and feeling the weight of authority, law students try to understand some particular judge's solution rather than the implications of the problem.

The whole objective of the Business School is to teach men how to get things done. The theory of the school is that administrators are not born but made—and that they can be made by putting the student through a series of realistic business situations.

SCHOOL-STUDENT RELATIONSHIP

There are numerous other differences in spirit between the two schools. The Business School tries to admit only men likely to do the work effectively—considering "character, intellectual capacity, seriousness of purpose, maturity, leadership, potentialities, and other favorable personal qualities." Personal interviews weigh as heavily as grades in admission. When a man does poor work, the first reactions are that he is justifiably distracted by some personal problem or that the school is doing a poor job of putting across its product. Only reluctantly will they conclude the student lacks interest or ability.

Because of the closer contact there between the student and both faculty and administration, there is much less of the worry, misdirected effort, and mild neurosis to which so many first year Law School men fall prey. With

twice as many teachers, four times as many administrative officers, and substantially fewer students than the Law School, there is more of the small college ease of access to the throne. Of course, the Law School shows a small profit on its operations whilst the Business School despite a substantially higher tuition has been running at a large loss.

Examinations are fairly frequent and a considerable amount of report writing is assigned. Since the written work is graded by a female corps under the general supervision of the instructors, this is not a heavy burden on the faculty. Extra time is left to discuss individual student problems.

There are no standard pat answers or solutions by precedent to the Business School "essay on a case" exams, so last-minute cramming is useless. Grades are de-emphasized by having exams early and often enough that the student knows where he stands. The admission policy has already removed the fear that some large number will have to go because more were admitted than were expected to make the grade. Consequently there is much more a feeling of students driving themselves than of their being pushed.

Further, a "grievance procedure" is well-established and any student complaints are promptly explained or remedied. The large staff of assistant deans tries to keep in touch with student sentiment and keeps the students "sold" on the school.

ALUMNI

The Business School's placement record has not fallen far from 100% even during the worst depression years. The placement office, which works with job-changing alumni as well as the graduates, year round, is ferreting out junior-executive openings. Their "men-wanted" bulletin board now lists more than thirty jobs ranging from the manufacture of soap to the business management of a metropolitan church. One of Boston's top-drawer law firms is currently seeking a B-Schooler for its trust investment department. Current Business School graduates are receiving about \$15.00 per week more than their legal counterparts. The Alumni Bulletin lists openings for older men ranging from \$3000 teaching in a Southern college to \$12,000 in a mid-western industrial company.

REPUTATION

There are only two graduate schools of business in the country and, since the other (Stanford) is deaned and partly staffed by Harvard alumni, Harvard Business School's reputation necessarily is tops. It is the pioneer in the replacement of apprenticeship by academic training in what they like to call "the newest of the professions." The Business School today stands in the position Harvard Law School stood when it was just old enough to have proved the superiority of its methods, just young enough to have had no serious competitors.

E. G.

EDUCATION—(Continued)

the students' educational foundations were being set, and they must be correlated to the high position in society which the law presumes.

The guest speaker at the concluding plenary session, Judge Jerome N. Frank ended the conference on the same note of dissatisfaction with existing pedagogy which had been the impetus to the initial gathering. He inveighed against Langdell—"that brilliant neurotic"—and the "pseudoscience of the case method" which had "choked legal education." A vigorous opponent of the method of indirection which set up education as law libraries "quarantining" experience to books, he called for "an unequivocal repudiation" of this vicarious system and established "litigation as the ultimate reference for the lawyer."

And here Judge Frank stressed the appreciation of trial courts as the experience of the law: the importance of its 'fact' concept and the subjectivity to be recognized as a conditioner of these facts. In litigation the lawyer correlates practice and theory and demonstrates his utility to his clients as well as to society generally. He desired the law school's return to the skills of the law in action, an apprenticeship likened to the intensive training in theory and 'real' practice in medical schools. This would not mean trade schools, for astuteness in dealing with 'facts' in itself requires an integration of non-legal skills and studies. With the ultimate reference set in the courts in action, the 'lawyers' school would create the greater scope of reference with which to assume the lawyers' responsibility.

(Coverage of student panel discussions will appear in later issues of the *RECORD*).

LEACH—(Continued)

services, Professor Leach feared that it would prove to be a case of "a good friendship broken by a bad marriage."

As to the arguments of the other two speakers; namely, the danger of the militarist idea gaining currency through the military domination of the National Security Council and the danger of fascism from a "concentration of authority with military elements," Mr. Leach also questioned their soundness. The fact that the National Security Council would have four civilians representing the military forces as against only one each representing foreign policy and the internal economy was no cause for alarm. In the first place, though responsible for security in the broadest sense, the Council would have only advisory functions. And further, citing the former civilian heads of the service branches, such as Root, Stimson and Patterson, Professor Leach denied that these persons are of the sort that are likely to be militaristically inclined. As to the danger of concentration of military authority itself, he asserted our unmilitaristic, politically effective citizenry was an adequate safeguard.

SOFTBALL—(Continued)

Just when I have Bean Ball Ben Forman and Jabbering John McNaughton in shape to handle the battery assignment, the *Review* snatches them. It's conversion, that's what it is!"

Manager John Bledsoe of the Bugle was non-committal. "I have no comment to make," he said, "in regard to the current rumor that my club will turn professional."

L. C.

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Calendar

THE LEGAL WORLD

Ames Competition

Qualifying Round (third term) Argument-Argument 1-will be held next Wednesday, July 23.

King's Bench

The following schedule has been received: July 16, Wednesday, King's Bench Smoker at Kendall House, 4:30 P. M. July 19, Saturday, Ball game at the Business School, 2:30 P. M. July 20, Sunday, a Beach Party. July 22, Tuesday, Smoker at Kendall House, 4:00 P. M.

Southern Law Students

Southern Law Students meet tonight at 7:30 P. M. at Kendall House.

THE UNIVERSITY WORLD

Sunday Evening Club

The Sunday Evening Club will meet at Phillips Brooks House July 20 at 7:30 P. M. before departing for the Esplanade Concert.

Summer Film Program

The Harvard Liberal Union presents two documentary films, *Night Mail* and *The Nazis Strike*, a U. S. Army Orientation Film of how war came in 1939. The showing is on Tuesday, July 22, in the Music Building (Paine Hall), beginning at 8:00 P. M. Admission is \$60. Tickets are available at The Coop or at Phillips Brooks House.

THE OUTER WORLD

Summer Theatres

The Boston Summer Theatre: Miriam Hopkins, will continue in John Van Druten's comedy "There's Always Juliet" through Saturday, July 19. The play is being presented at the air-conditioned New England Mutual Hall.

Beginning Monday, July 21, Bela Lugosi wings his way through *Dracula*, the vampire thriller made famous by Mr. Lugosi on both stage and screen.

The Cambridge Summer Theatre: Freddie Bartholomew, English child star now grown up, appears in the comedy delight *Pursuit of Happiness*. The play will run through Saturday, July 19.

Miriam Hopkins leaves Boston to entertain Cambridge theatre-goers with *There's Always Juliet*, commencing Monday, July 21, at the Brattle St. Playhouse in Cambridge.

Concerts

Gardner Museum Concerts: There is music at 2:45 P. M. on weekdays, and at 2:00 P. M. on Sundays at the Isabella Stewart Gardner Museum.

Tomorrow, July 17, Marian McCree, soprano, and Buckner Gamby, pianist, will give a recital. Saturday, July 19, Uni Sprengling, violinist, is accompanied by Hazel Hallett at the piano. Sunday, July 20, Joseph Bell, baritone, sings.

The museum is open on Tuesdays, Thursdays and Saturdays from 10 to 4; Sunday from 1 to 4; admission is free.

Esplanade Concerts: Arthur Fiedler conducts at 8:30 the 19th season of his free, open-air Esplanade Concerts in the Hatch Memorial Shell on the Charles River Esplanade near the foot of Mt. Vernon Street, a short walk from the Charles St. Station. These concerts will be given for one more week each night except Monday.

Baseball

Major League Games in Boston: The Braves play St. Louis tonight. Friday, July 18 and Saturday, July 19, Pittsburgh visits Braves Field at night. Pittsburgh again enters the Wigwam for a double-header on Sunday, July 20.

The Red Sox will play Chicago on Tuesday, July 22, in the afternoon, at Fenway Park.

LEGAL BEAGLES

LEAD BALL CLUBS

In the third week of play, the Legal Beagles lead the 20 team Langdell Softball League with three straight wins. Morris and the Counselors have moved into second place and Hastings and the Independents are in the third spot.

Standing of the Clubs as of July 10.

Legal Beagles won 3-lost 0, Counselors 2-0, Morris 2-0, Hastings 1-0, Independents 1-0, Chancery 1-1, Sheriffs 1-1, Revisers 1-2, Arsonists 0-1, Divinity Hallers, 0-1, Lincoln's Inn 0-1, Tax Dodgers 0-1, Blackacres 0-2, Perkins 0-2. Athletics, Forum, Legal Aid, Trover Boys have yet to play.

Late Result: Review 1-0, Board 0-1.

Nations Vie For Antarctic Wealth

(Continued from page 1)

sources appear at present to be the most important assets. Unlike the Arctic, it is not an aerial highway between great population centers; consequently the problem of international air rights does not appear serious today. But one must be cautious in such statements; the next twenty years may see developments in Antarctica now unthought of.

TERRITORIAL CLAIMS

Definite official claims to slices of Antarctic territory have been made in the last 40 years by the British (including Australia and New Zealand), Norway, France, and Chile. Argentina also considers itself as having sovereign rights over a portion which it has not yet specifically defined. The United States has never advanced any official claims in the region (the assertions by Byrd, Ellsworth, and others never having received governmental adoption), and has never recognized those put forward by other States.

All claims in Antarctica thus far have been formulated in terms of sectors—i.e., pie-shaped areas delimited by two boundary meridians meeting in an apex at the Pole. Of the various claims, those of the British Commonwealth are by far the largest, amounting to about two-thirds of the continent. They comprise four segments: the Falkland Islands Dependencies (created in 1908), lying south of those islands and of South America; the Ross Dependency of New Zealand (1923), south of that Dominion; and the huge Australian Antarctic Territory (1933), stretching across the entire southern edge of the Indian Ocean past Australia to a point almost south of New Zealand. This last claim is split into two parts by the intervening small French claim of Adelie Land (1924), almost due south of Australia. The Norwegian claim (1939) lies south of the Atlantic, and the Chilean (1940) south of South America, overlapping in part the Falkland Islands Dependencies. Altogether the claims take up all of Antarctica except a piece still unclaimed about 60 degrees in width lying south of the Eastern Pacific.

The claims of the British Commonwealth and of France have been mutually recognized. The Norwegian claim in terms recognizes the British claims, and it is to be presumed that Britain would grant reciprocal recognition to the Norwegian claim. Argentina and Chile, while not in full agreement, have admitted that each has rights of sovereignty in the polar areas. There is an actual conflict among the existing claims of the British and Chileans and the potential claims of Argentina, all of which embrace the Palmer Peninsula area south of Cape Horn.

THEORIES OF ACQUISITION

In connection with determining the validity of these claims a brief reference may be made to the generally accepted doctrines of international law relating to the acquisition of title: discovery, formal annexation or taking of possession, occupation or control, and geographical propinquity.

Discovery is now well settled (outside the polar regions) to confer no title, though the opposite may have been true in earlier times. Usually coupled with formal acts of annexation, it is said to give an "inchoate title"—a right to occupy the area discovered, but this right will lapse if not exercised within a reasonable time.

Formal annexation may be performed either by a Government at home or by a person acting in its behalf on the spot; but the effect in either case appears to be much the same. Gestures of this kind, whether or not preceded by discovery, likewise can confer at the most no more than an inchoate title.

Effective occupation or control is the key requirement of the orthodox modern doctrine. The difficult question here is what constitutes effective occupation, and this will necessarily vary with the particular circumstances of each case. Settlement is claimed by some writers to be essential, but this is not always true, as in the case of certain uninhabited islands. The most important element is that the claiming State must intend and be able to exercise authority within the region claimed: there must be a measure of control adequate to maintain order and to insure protection to the nationals of other States whose authority the claiming State professes to exclude.

Geographical propinquity deals with the nearness, and not the adjacency, of the claimed region to the claiming state or a recognized territory thereof. It has had generally very little recognition except as a makeweight argument.

A subsidiary question attached to a territorial claim based on any of the foregoing grounds is the necessity of notification to other States of the claim advanced or the action taken. Notification presumably will have the effect of estopping notified States, after the lapse of a reasonable time for reply, from objecting to a claim advanced. But notification does not make an otherwise invalid claim valid, nor does lack of notification make a good claim bad.

ANTARCTIC THEORIES

Because of their inaccessibility, extreme climatic conditions, and lack of population, it has frequently been argued that the polar regions should be subject to less strict rules of international law governing the acquisition of territory than those generally applicable. States have advanced in those regions claims that would be incontrovertibly bad anywhere else, and jurists have long been divided on the validity of such assertions. On the one side are those who insist that polar claims should be required to comply fully with all the usual standards; if these are not met, the lands must remain *terra nullius*. On the other side are those, advocates of the sector theory, who would make it possible to acquire all lands, discovered and undiscovered, lying within the bounds of the area claimed; or who would make discovery alone a basis of title. Considering briefly the application to the Antarctic of these less stringent rules, the following points emerge.

Discovery. Laying aside for the moment preconceived theories and considering the matter *de novo*, it can plausibly be said that discovery should be a sufficient basis for establishing a valid claim on that inhospitable continent. It implies a definite interest and activity on the part of the discovering State; it attaches to a specific geographical point; and the contribution it makes to general knowledge should be rewarded by title. Since there are no inhabitants to be dealt with, it is superfluous to impose further requirements in regions remote and full of hazards.

There are, however, serious practical difficulties in the way of accepting this view. Thus, without some subsequent activity, should a single act of discovery bar for all time other States more ready and able to use and develop the area?

Formal Acts of Appropriation. A formal annexation or taking of possession has been frequently made on the spot in the Antarctic regions, both by commissioned agents of Government like Admiral Ross and by private individuals like Shackleton and Ellsworth. Formal action has the merit of making a claim open and definite, and hence it may be said to add a certain amount of weight to an assertion previously lacking it. It no doubt strengthens the arguments in favor of a title based on discovery, and removes many of the objections for vagueness urged against the latter. It does not settle, however, such questions as whether a formal claim, unsupported by other acts, should preclude all other States indefinitely from making use of the region claimed, however desirous and capable of doing so they might be.

Geographical propinquity. The concept of geographical propinquity has obviously played an important part in south polar claims. It is indeed a cornerstone, to all appearances, of the Chilean claim, and has been relied on by Argentina in discussing its rights in the region. The attachment of the Palmer Peninsula area to the Falkland Islands, of the Ross Dependency to New Zealand, and of other British claims to Australia each displays its influence. Only France and Norway have no recourse to this argument.

Strictly speaking, there is no such thing as propinquity between the Antarctic and other continents, for between the nearest points—Tierra del Fuego and the Palmer Peninsula—there are at least 600 miles of open ocean, and distances elsewhere run into the thousands. Being nearest is far from being near under such circumstances. To profess to exclude other States on such a

ground, regardless of the high seas intervening, must be as futile as it is unsound.

Acts of Administration or Control. The only Antarctic mainland claim at present which might be upheld under the general rule of effective occupation is that of Britain in the vicinity of the Palmer Peninsula, where a fairly continuous activity has been carried on for a number of years. In the absence of further information, all the others appear to fall short of the requirements. Yet should they still be upheld even though they fail to meet the strict requirements of the general rule?

"Yes," their proponents declare, because it is impossible to maintain in much of the south polar regions the effective, continuing control which the rule demands. How then, they ask, are these regions ever to be subjected to sovereignty? The answer would seem to be simple. If the international standard cannot be satisfied in the Antarctic, then the Antarctic must go unclaimed. Fictitious assertions of title serve no purpose save to bring prestige to the claimant, and may well hinder the development of the region by others. If the Antarctic must be *terra nullius de facto*, it should be *terra nullius de jure*.

But there would seem to be a further and more satisfactory answer. In the light of modern developments, effective occupation of the Antarctic no longer appears to be the impossibility that it once was. Aircraft and radio can put all parts of it in quick communication with each other and with other continents. The hardships of polar life are being increasingly mitigated by constant improvements in food, clothing and shelter. The reports of ice-free oases indicate possible areas of more equable climate. If the demand for raw materials were to call for the development of the continent's resources, who would deny that modern ingenuity would quickly solve the problems of permanent, even if uncomfortable, inhabitation? If this is true, there is less need than ever for a relaxation of the standards of international law at the very moment when scientific progress makes it possible to comply with them. (Effective occupation in the Antarctic would call for frequent expeditions or permanent stations under the standards of the general rule. The personnel of such establishments would presumably be scientific, and the benefit to be derived from such activities is an additional argument for insisting on such occupation as a prerequisite to title.)

THE FUTURE

Authorities, regardless of the views they propound, agree that the present legal situation with respect to Antarctic territories is filled with difficulties. Those in favor of the present claims are aware of the weakness of their position; those opposed wish to put an end to a state of affairs they consider to be entirely unsound. With the prospect that the Antarctic will assume increasing importance in the next few years, it becomes of more than academic importance that the problem be settled.

In a strictly legal view, by far the greater portion of the Antarctic has not

been validly claimed up to the present time, and is still *terra nullius*. One possibility for the future, consequently, is to allow the establishment in orderly fashion of legally valid claims through the unilateral actions of whatever States may be interested. While this would be preferable to the existing confusion, it would doubtless not prevent numerous disputes from arising, especially where a claimant State of today might conceivably be displaced by an actually occupying State of tomorrow. Such a controversy might well receive attention from the United Nations under Articles 34 and 35 of the Charter, but more satisfactory methods of adjustment ought to be established in the first place.

A second general approach is to reach a solution by agreement among the interested States. This might be done in any of several ways, or by a combination of them. Professor P. C. Jessup of Columbia has suggested the advantages to be derived from referring the problem to the International Court of Justice for a determination of the applicable law, pointing out that interested States other than the litigants could doubtless intervene under Article 62 of the Court's Statute. It might very well be done by an international conference, with or without such a prior judicial decision. This line of attack has the advantage of not ignoring the standing in the Antarctic possessed by the present claiming States, a fact which has some political, if not legal, significance. A convention resulting from such a meeting could settle the division of the continent in any way that seemed desirable, after the manner of, but perhaps even more specifically than, the Act of Berlin of 1885 with respect to Africa. The achievement of such a project might well be an item of agenda for the United Nations.

A third possible solution would be to place the entire Antarctic region under the administration of the United Nations, in accordance with the provisions of Articles 77 and 81 of the Charter. This could be accomplished by an agreement among all interested States to renounce whatever rights they possess in favor of the world organization, which could then establish an appropriate administrative agency, perhaps in the nature of a high commission. Such a plan has obvious merits for bringing about the equitable development in the general interest of the last great unknown region. If such a resource as uranium were to be found there, it would be highly desirable to have Antarctica under an existing international control. At the least, an international regime would end what now promises to be a fertile field for national rivalries.

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