

as a loss, but as a source of hope, in that realism has at last come into its own and evangelism, not intrinsically unworthy, has been saved for useful, instead of unintentionally destructive, ends. Idealism, to be effective, must be attached to facts and reality, without which it ceases to be a virtue. John Bassett Moore in "An Appeal to Reason" has merely exposed illusions and fantasies and has pointed out the rational road to the cherished goal of peaceful relations. Instead of attributing to such an authoritative mentor and experienced statesman unelevated motives or a want of enlightenment and idealism, the world should be grateful for so clear-headed an exponent of reason and practical judgment in dealing with foreign affairs. Here speaks the guide, philosopher, and friend of a confused humanity, pointing out the only well-marked and tangible road to salvation.

EDWIN M. BORCHARD

GEORGE V LAND

By an Order-in-Council dated February 14, 1933, Great Britain has for the third time asserted sovereign rights in the Antarctic upon the sector theory. The Falkland sector was created as a result of official acts of July 1, 1908, and March 2, 1917, by which "all islands and territories whatsoever" between longitude 20° W. and 50° W. south of latitude 50° S., and between longitude 50° W. and 80° W. south of latitude 58° S., are to be known as the Falkland Islands Dependencies. The Ross sector was created by the Order-in-Council of July 30, 1923, and comprises all islands and territories south of latitude 60° S. and between longitude 160° W. and 150° W. This sector was allocated to New Zealand. The recent Order-in-Council sets up a sector larger than the two earlier ones combined: "All the islands and territories other than Adélie Land situated south of the 60th degree of South Latitude and lying between the 160th degree of East Longitude and the 45th degree of East Longitude." Thus Great Britain by the so-called sector principle has laid claim to sovereign rights to all islands and territories, whether discovered or not at the date of the Order-in-Council, within a zone comprising more than two-thirds of the globe south of 60 degrees with the South Pole at its center, with the exception only of Adélie Land in extent undetermined.

The recent Order-in-Council states in the preamble that His Majesty has "sovereign rights" over all the islands and territories within the sector. Upon what principle are these sovereign rights based? Upon no other, certainly, than discovery. At the Imperial Conference of 1926 it was stated that there were certain areas "in these Antarctic regions to which a British title already exists by virtue of discovery." The areas within the present zone include Enderby Land, Kemp Land, Queen Mary Land, King George V Land, Oates Land, together with "the area which lies to the west of Adélie Land and which on its discovery by the Australian Antarctic Expedition in 1912 was denominated Wilkes Land." The allocation of the sector to Australia is in recognition of the work of Australian explorers, Sir Douglas Mawson in particular.

That the claim is based wholly upon discovery is further evidenced upon the reservation of title in favor of France as to Adélie Land, a title to which France has never claimed upon any other basis than its discovery by Admiral D'Urville in 1840, who gave the name Adélie Land to that part of the Antarctic coast which he had sighted. The extent of France's claim is not disclosed. While no Frenchman is known ever to have set foot upon it and D'Urville never claimed to have discovered a continent, Adélie Land has not only been formally annexed to France, but a decree of November 21, 1924, announced that Adélie Land was henceforth to be within the administrative jurisdiction of the Governor of Madagascar. One might forecast the future and envisage a Franco-British joint commission undertaking the delimitation of their common frontier in Antarctica, their respective claims being urged by the Governor-General of Australia and the Governor of Madagascar. The joint commission which Spain and Portugal agreed upon under the Treaty of Tordesillas in 1494 involved scarcely greater absurdities.

The adoption of the sector idea in Polar regions, as a matter of fact, attempts to set up claims in advance of discovery, for notoriously at the date of the Order-in-Council, and now, there are islands and a large part of a vast continent not yet discovered and mapped. Again the parallel with the rival claims of Spain and Portugal is suggested. The Pope *ex certa scientia* undertook to divide between those two Powers, *omnes insulas et terras firmas inventas et INVENIENDAS, detectas et DETEGENDAS*, an assumption which England did most to destroy. This recalls the words of Queen Elizabeth to Mendoza:

For that their (*i.e.*, the Spaniards) having touched only here and there upon a coast, and given names to a few rivers or capes, were such insignificant things as could in no way entitle them to a propriety further than in the parts which they actually settled and continued to inhabit.

This was a suggestion of the doctrine of effective possession which came to prevail, thanks largely to Britain's sea power.

The claim based upon discovery actually made is open to challenge. A part of the coast of Antarctica lying within the new sector was, it is true, seen by D'Urville, but another part of the sector was seen by Wilkes, of the United States Navy, at a point some three hundred miles farther west from where D'Urville sighted Adélie Land the day following. While not a few British geographers have sought to discredit Wilkes' discovery, the name Wilkes Land appeared upon maps other than American as early as 1846. To say, as Mawson has, that the Wilkes expedition did not once set foot upon Antarctic shores is equally true of D'Urville's, and all other expeditions until that of Borchgrevink, 1898-1900, and he, by the way, was a Norwegian, although his ship was British. No claim seems ever to have been made by the United States based upon Wilkes' discovery. On the contrary, Secretary Hughes in 1924 questioned the validity of claims to sovereignty based upon discovery unless such discovery were followed by actual settlement. As a geographical rather than as a political question, it seems odd that the name Wilkes Land, as indi-

cating a long stretch of the coast line of the Antarctic Continent, should be replaced by a Wilkes Land, a designated and restricted area "discovered by the Australian Antarctic Expedition in 1912" and so named by Sir Douglas Mawson.

There are difficulties as to the sector doctrine other than objections to claims based on possible future discovery. To what extent does the sector claimed involve jurisdiction over non-land areas where there are perpetual ice fields? To what extent may it permit the control by a country of expeditions for discovery or assumption of monopoly of hunting licenses or the exploitation of the resources of the sea, over ice as well as the land within the area?

The doctrine that discovery is any more than one basis of inchoate title has long been discredited for those portions of the earth's surface which are in fact habitable by man, *i.e.*, susceptible of occupation. Whatever else the decision of the Permanent Court of International Justice may have determined, it added little to the doctrine of effective possession. The status of Greenland was in effect assimilated to that of an historic bay, and the tests of effective possession were minimized in the face of a situation involving territory most of which is uninhabitable by man. In Antarctica the historic factors involved in Greenland are lacking. The long period of uncontested claims to sovereignty (as was the case of Greenland) is also lacking. But the attitude of the court in the East Greenland Case may be of support to a state which is seeking to strengthen its claim to territory upon bases other than effective occupation.

Effective possession is in general necessary for sovereign title to territory, but in Antarctica effective possession is impossible. Therefore, it may be claimed that sovereignty may be acquired without effective possession by means of discovery. Upon discovery, furthermore, a claim may be made to territory supposedly contiguous but not yet discovered within limits which are arbitrary and are surveyable by no present means. It ought to be noted that the claims of Great Britain to the Australian sector have been challenged by Norway.

A different conclusion based upon another theory may be suggested. The Antarctic area, not being susceptible of possession, is not *terra nullius* but, like the oceans, it is *res communis*. Therefore, no title in favor of any state is good, for none has the adequate basis of effective possession. The entire area is essentially international in fact, and its future international character might well be established by general agreement and the conservation of its resources guaranteed.

J. S. REEVES

#### IMMUNITY OF THE PROPERTY OF FOREIGN STATES AGAINST EXECUTION

The State Department announced on October 5, 1933, that the United States and Sweden had arrived at an agreement through the payment by Sweden of \$150,000 in settlement of the claim presented by the United States on behalf of