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INTERNATIONAL JUSTICE.

The dogs of Constantinople, we are told, have their own territorial limitations. They follow a stranger to the limit of their wards, but invariably halt upon the frontier with as much deference to the boundary as a French soldier at an outpost of the German Empire. It is not difficult to understand how these limits have been established. Originally, the hungry animals roamed everywhere, seeking after food; but, in time, they fell into habitual rounds, and became attached to certain places where there were exceptional chances for a dinner. Newcomers were attacked and driven away, and these in turn established themselves in less desirable quarters, repelling invasion with a similar ferocity. Thus originated a division of the city into canine wards, or, to change the figure, tribal aggregates were formed, and territorial limits were established by frontier battles, which fixed lines of permanent compromise between the bands of contestants.

Every sensitive being tends to exercise its native powers and gratify its native appetites. This brings it in conflict with other creatures; and, if it survives, it must adopt a course of behavior toward its fellow-creatures of the same and of different species which will insure its escape from their rapacity or revenge. Thus, for every order of beings, a course of conduct is marked out which is most advantageous in the struggle for existence. The formula descriptive of this course—that is, the rule according to which the being acts—is the natural law of that being's life.

Man has had no exemption from these universal conditions of existence; and, when he reached the level of reflective capacity, he found himself already a member of a society shaped for him by the forces of nature, and was compelled to conform to certain rules of action which had been unconsciously introduced. Society is the creature as well as the creator of custom; and, in its natural sense, "law" is the parent rather than the child of social existence. "Long before any supreme political authority has come into being," says Sheldon Amos, "a series of practical rules determine the main relations of family life, the conditions of ownership, the punishment of the more violent forms of moral wrong-doing, and the adjustment of contracts. The mode in which such rules are formulated seems to be the following: A spontaneous practice is first followed, and, if good and useful, is generally copied over and over again, the more so as habit and association always render the imitation of an old and familiar practice easier than inventing a new and untried one."[1]

But at last a stage is reached in the social evolution of man at which a distinct verbal formulation of custom in precepts or maxims becomes desirable; and, when law has attained this expression in propositions, all that is necessary to modify or create it is the power to enforce compliance with new requirements upon the individuals who form the community. When this point of development is reached, a new force enters into society. From that moment it becomes possible to transcend actual custom by setting up ideals of justice, which shall henceforth react upon practice with the elevating power and logical consistency of principles of equity rationally applied. All that is then needed to establish *theoretically* the dominion of reason over human action is the transfer of legislative authority from the hands of arbitrary individual rulers to the sovereign people, or their direct representatives, by constitutional provisions. For the accomplishment of this task many centuries have been required, but the growth of legislative privilege has been, in late years, more rapid than the development of legislative capacity. For the *practical* perfection of the work of legislation, however, there is still needed a higher development of popular intelligence, which alone can raise the standard of the law-making power.

Parallel with the evolution of law as an institutional growth, there has been a corresponding development of the idea of justice. Primarily, this idea arises from the experience of inequality, and at first appears in the negative form of equalizing inju-

[1] The Science of Law, p. 49.

ries inflicted. Deprivation of the common objects of desire by the exercise of superior force was an early human experience. The impulse to regain that which was taken away or, if this was impossible, to make an equal reprisal led to a state of warfare which was rendered the more intense the longer it continued. The communistic or tribal nature of primitive property made every invasion of individual rights a tribal insult, to be avenged in kind. The murder of a man involved his next of kin in the obligation, extended at last to the entire tribe, to slay the murderer, and every lesser injury required a corresponding retorsion. Thus grew up the *lex talionis*, universal at all the lower levels of humanity. So far there was absolutely no idea of justice, except as the equipoise of injuries. This conception is far from being outgrown in the present civilized States of Christendom, and runs through our statutes, our codes, and our theology, wherever the idea of retributive justice appears. It is essentially a purely negative notion, an equation of evils and injuries, not a positive conception of indestructible obligations binding men and nations to deeds of mutual beneficence.

The early and negative notion of justice is wholly material, and expresses a relation between measurable things and quantities. According to this idea, there is no debt of injury that cannot be paid, and none that should not be. Duty consists in inflicting an equal injury upon an enemy. A little extra damage may safely be done, as he will be certain to retaliate, and whatever is done against him now will be so much to our credit on the next account. Such a conception, of course, contemplates perpetual antagonism as following from a law of nature, and therefore, to be expected. There is no logical stopping-place in a series of settlements upon this theory, where every truce is only a rest in preparation for a new aggression.

But the positive and modern idea of justice is at every point in opposition to this crude compensation of evil with evil. It is a rational conception, based upon the idea of personality as a power of infinitely expansive tendency. *Every human being has an inherent right to become all that his nature and capacities permit of his becoming, as he develops toward the realization of his own ideal.* Unnecessary restriction of this development cannot be justified on any rational ground. The only interference that can be permitted is that which necessarily results from the conflict of rights in the process of individual expansion. The freedom of the individual is absolute, except as it interferes with the equal freedom of other individuals, and to find, determine, and fix

with authority the limits of this freedom, as restricted by the equal freedom of all, is the problem of justice.

This conception applies equally to men and nations. Like every human individual, every free, independent and sovereign State has a tendency to expand, to exercise its powers, to develop its resources, and to realize its national destiny as apprehended by itself. International justice is the problem presented by the moral and physical necessity of finding, determining, and fixing with authority the limits of this freedom of growth and expansion as restricted by the equal freedom of all independent and sovereign States. It is a problem of colossal magnitude and of supreme importance to human welfare. Within a few months we have seen the two greatest nations of the earth, speaking the same language, accepting the same religion, animated by the same legal, institutional, and humanitarian traditions, counting their battle-ships, enumerating their available forces of men and artillery, and estimating the extent of their financial credit if, in an expected crisis, there should be a declaration of war between their respective governments. Prior to the appearance of the morning newspapers which sent a thrill of astonishment and dismay through more than a hundred millions of human beings, there was not on either side of the Atlantic the faintest suspicion that war was a possibility. And, in reality, it was not possible except through a criminal blunder; for the good sense and friendly spirit of these two peoples were such that deliberation alone was needed to show to both that such an enterprise is unnecessary, unwise, and unreasonable. But the bare possibility that two civilized nations could be flung into the arena of battle by the accidents of diplomatic mismanagement or misunderstanding over a question which does not seriously affect the interest of either country shows that it is not untimely to consider deliberately the condition of those international relations which could be so easily disturbed, and whose disturbance would involve the best part of humanity in the barbarities and atrocities of primitive tribes of savages seeking to efface one another from the surface of the earth.

The establishment of international justice upon a basis as secure and peaceable as that of municipal justice in civilized states would not seem to be a chimera, and yet it is invested with difficulties of considerable magnitude. Three conditions at least must be fulfilled before a system of perfect international justice can be created and rendered fully effective: (1) a code of Internationl Law must be formulated, and recognized as binding

upon sovereign states; (2) a method of adjusting differences by the application of this code must be devised; and (3) a means must be discovered of enforcing the decisions arrived at through the method of adjustment. These three conditions involve quite unequal degrees of inherent difficulty, and present different stages of approach to realization. For the sake of clearness, it may be well to consider them in the order of statement.

I. The Codes of International Law.

1. The recognition of international rights has been almost exclusively confined to modern times and Western civilization. The ancient absolute monarchies of the Orient, even more than those of the present, were intolerant of all national pretensions except their own, and lived in a state of almost uninterrupted warfare with their neighbors. Their ignorance of distant nations and their feuds and quarrels with adjacent peoples rendered peaceable intercourse almost impossible, and the idea of justice between States was therefore unborn.

The Greeks recognized the independence of other States, both Hellenic and non-Hellenic, and had diplomatic intercourse with them to a limited extent; but they were accustomed to regard all foreigners as barbarians. Their customs in war were extremely cruel, and their policy in peace did not extend beyond the unification of Greece against the barbarian world. In their domestic alliances, dictated by community of blood and civilization, they attained a conspicuous degree of federation. "Among the Greek cities and States a certain recognition of international justice was shown by the action of the Amphictyonic Council, an institution more religious than political, for the pacific adjustment of disputes. That council had doubtless some influence in restraining the savagery of intestine wars by binding its members not to destroy any of the Amphictyonic towns, not to turn away their running waters, and not to commit theft in the temple of Delphi, the common center of the confederacy."[2] But the authority of the council was confined to the twelve Hellenic nations associated in the worship of the same gods.

The Romans established far wider foreign relations than the Greeks, but in their treatment of other nations they were not governed by any body of justice. "Blinded by the desire for universal dominion," says Leone Levi, "the Romans did not see that any International Law did or could exist, and, if they apprehended its existence, they certainly did not acknowledge its

[2] Leone Levi, "International Law," p. 10.

authority nor observe its doctrines."[3] The *jus gentium* was, indeed, better known to them than to any other nation of antiquity, but they understood by it those natural principles of justice that underlie all national customs in common, and are, therefore, applicable to all men and countries. But they did not apply these great principles as between States, probably for the reason that they did not distinctly recognize the equal and reciprocal rights of all nations, especially as against themselves. Their *jus feciale*, applied by the *collegium fecialium*, was intended to control the conduct of their armies toward other nations during war, and the declaration of war was in the power of this college. But the fecial law was not founded upon the *consent* of other nations, and was, therefore, in no proper sense, a form of international law.

During the whole of the period between the downfall of the Roman Empire and the close of the Dark Ages some of the Mediterranean cities maintained more or less intimate commercial relations, and the first movement toward the formation of codes of law applicable to foreign intercourse seems to have originated from the requirements of maritime commerce. Everywhere upon land there was some kind of local authority, but the sea, "that great common of mankind," beyond the jurisdiction of any king, was the open field of piracy and plunder. What the Christian religion, originally so full of peace and the spirit of human unity, had failed to do when rendered a political power by official adoption, the interests of trade attempted to accomplish, and justice upon the sea was the first step toward justice among the nations. "The Jugements of Oléron" was a body of regulations governing the navigation of the Western seas, believed to have been drawn up in the eleventh century. It was long recognized in most of the Alantic ports of France, and was afterwards incorporated in the maritime law of Louis XIV. "The Consolato del Mare," or "Customs of the Sea," was a more pretentious collection of rules pertaining to commerce and navigation both in peace and war. Its provisions regarding prize law long prevailed in the maritime code of Europe, and have been reaffirmed in many treaties. Other sea laws, such as the "Guidon de la Mer," the "Laws of Wisbuy," and the "Ordinances of the Hanseatic League," mark the wider extension of the maritime laws and policy of the Mediterranean. All of them are believed to contain elements extracted from the oldest known maritime code, the "Rhodian laws."

[3] International Law, p. 11.

Among the causes that contributed to the development of International Law we must mention the decay of feudalism. Dating back to the migration of the Teutonic tribes into Western and Southwestern Europe, in the third and sixth centuries, this system of land tenure was unfavorable to the existence of sovereign States. The fiefs had been at first precariously held, being without any guarantee except possession. By the connivance of the more powerful chiefs, titles had become annual, then for life, and at last hereditary. At the height of feudalism the kings held only a nominal and military jurisdiction, and, in assuming hereditary crowns, they had sanctioned an hereditary partition of territory which rendered them dependent upon their feudal barons. With the emergence of the modern States system from the ruins of feudalism, sovereignty became concentrated in the hands of a few powerful rulers; and really sovereign States began to assert their rights, and to secure them by treaties and conventions.

The institution of chivalry originated the code of knightly honor, and was permeated, sentimentally at least, with principles of courtesy and justice. It was indirectly promotive of the development of International Law by creating a universal comity among members of the knightly profession, and by securing the better treatment of slaves and captives, and the keeping of faith with strangers and enemies.

The most potent influence upon the early period of International Law was undoubtedly the Roman Church. As the political power of Rome declined the Church grew into an organization of great central authority and influence, practically universal throughout Europe, and gradually assumed the imperial functions of the decayed empire, strengthened by spiritual pretensions that gave it command over every individual mind in Europe. The Roman law, the greatest system of jurisprudence that the world has ever known, universalized and adapted in the Canon Law, continued its sway over the greater part of Europe. The history of the Holy Roman Empire records the absorption of the political power of its temporal head by the originally coördinate spiritual head, until the Pope came to be recognized as the embodiment of imperial jurisdiction. He became the arbitrator of international disputes, and his representatives were the omnipresent agents of a united Christendom. The œcumenical councils, were, in a sense, international congresses, which served to preserve the peace of Europe. With the breaking out of religious wars, in which Catholicism and Protestantism were

arrayed against each other, and the consequent subdivision of Europe into Catholic and Protestant States, the papal influence in the settlement of disputes gradually subsided, and has now almost vanished from the earth. The necessity of securing international rights by other means than war, however, was undiminished; and the formulation of the principles of equity between sovereign States became the more imperative.

Where religion had failed, science was invoked, and Hugo Grotius, a Protestant jurist and publicist of great experience and noble genius, in 1623 published the first systematic work on International Law, under the title *De Jure Belli et Pacis.* The Law of Nations was based by Grotius upon the eternal principles of natural justice, but he was a profound student of the Roman Law, and his work may be considered as resting upon historical as well as natural foundations. His treatise has been translated into all languages, and "has elicited the admiration of all nations and of all succeeding generations." As Halleck has said, "Its author is universally regarded as the great master-builder of the science of International Jurisprudence."

2. It is easy, in the light of the foregoing sketch, to see what are the sources of International Law, although, as Leone Levi has said, "As it is now recognized, it is the creation of comparatively recent years—the result of the combined influence of philosophy and ethics, religion and civilization, commerce and political economy, to say nothing of the action of accelerated means of communication, such as railways, steamships and electric telegraphs."[4]

Following the order of certainty in the determination of what International Law at the moment actually is, we may say that its first source is treaties and conventions. As nothing can be internationally binding which does not have the *consent* of nations, voluntary and written compacts are the most certain and efficacious in securing rights. Whether or not these embody the highest conception of justice often depends upon the strength or weakness of the signatory powers which have given their assent to treaty provisions. Whenever the obligations are reciprocal, the presumption is that they are mutually regarded as just.

The decisions of municipal courts upon international questions and the municipal statutes of sovereign States are, of course, authoritative for these States upon the ground which they definitely cover; as, for example, laws relating to naturalization,

[4] International Law, p. 1.

extradition, neutrality and piracy. As these differ widely in different countries, there arises the important branch of jurisprudence known as the Conflict of Laws, for which provision should be made in the formation of a code.

Another source of International Law is the judgments of international tribunals, or courts of arbitration. These may fairly be regarded as precedents which may be invoked by sovereign States, as municipal decisions are by individuals.

Still another source is to be found in diplomatic correspondence and other State papers as related to particular subjects of dispute. These are often inaccessible, being regarded as confidential and sometimes as containing State secrets. Most civilized countries now publish large portions at least of this class of documents.

Next in authority, perhaps, is the Roman Law, especially in those countries whose municipal codes are based upon it. In England and the United States, whose municipal law is influenced by English custom as expressed in the Common Law of England, and not so deeply affected by the Roman Law as that of the Continent—a tendency to reject its distinctive maxims has often appeared, and the text-writers on International Jurisprudence have, accordingly, been grouped into two schools, the Continental and the Anglo-American. This distinction is, however, now passing away, and the text-writers are approaching uniformity upon the cardinal principles of the Laws of Nations.

For the non-professional student of the subject these text-books are the chief source of information; but they have only that authority to which the recognized ability of their authors entitles them. It is a notable fact that two of the most able and most widely accepted text-writers of International Law have been Americans, Wheaton representing the North and Calvo the South American Continent.

Lastly, to complete the sources of International Law, mention must be made of what may be called the Divine Law, which includes those ultimate principles of reason and those fundamental ethical conceptions upon which the whole system of human justice finally reposes. Because it is the most general, it is the least certain as a source of definite prescription; for it is the *application* of these great principles, not their reality or obligation, that divides opinion and generates dispute.

3. The definite codification of International Law has been undertaken by several competent hands. In 1867 Mr. David Dudley Field brought before the British Association for Social

Science a proposition to frame an international code. Mr. Field was personally qualified for such an undertaking by long experience as a codifier of municipal law. He produced what is in reality a complete treatise on the subject, although it bears the modest title "Outlines of an International Code." One feature of Mr. Field's code is the introduction of the principles of arbitration in the settlement of international disputes. His work attracted great attention in Europe, and has been translated into French and Italian. In 1873 he assisted in forming an international association for the purpose of reforming and codifying the Laws of Nations, with special reference to the substitution of arbitration for war. He had also been a member of the peace conference at Washington in 1861, and presided at the great peace convention in London in 1890.

The celebrated Swiss jurist, John Kaspar Bluntschli, famous throughout the world as a writer of works on jurisprudence, has also undertaken the preparation of an International Code, published in 1874, under the title "Le Droit International codifié."

In 1887 the same task was undertaken by Leone Levi, the well-known Jewish economist of London, whose work as a law reformer extends to other branches of jurisprudence. His book on "International Law" in the "International Scientific Series" is, in reality, a code, although it is designated in the subtitle as "Materials for a Code." Its scope is wider than that of Field or Bluntschli, who confined themselves to the natural portion of the Law of Nations. Levi includes also the positive portion, supporting his code with a digest of treaties. He also presents a plan for the settlement of international disputes, which will be considered in another connection.

None of the codes described above has been officially adopted by any nation, so that, in the technical sense, there is at present no absolutely authoritative code of International Law in existence. And yet it would not be correct to say that the Law of Nations is a mere branch of ethics or collection of moral precepts. Treaties and conventions have created a body of definite and binding obligations which may be regarded as strictly legal in their effects. The time has come, however, when an international commission should be authorized to prepare a code; and this should be made binding by a general treaty among civilized States giving it authority as International Law.

II. The Methods of Adjusting Differences.

It is evident that the mere existence of a body of rules and maxims recognized as applicable to international relations, how-

ever equitable and elaborate, is practically useless unless there is an efficient method of applying it to the conflicting interests and disputes of nations.

1. The first and most obvious method of adjusting differences is that of diplomatic negotiation. The right of legation is one of the oldest and best established of international usages. Embassies for making agreements and conventions with foreign powers were employed by the most ancient States, and in a rudimentary form are customary even among barbarous peoples. The extent to which a sovereign State maintains permanent legations in foreign countries is an evidence of its political wisdom. The idea of permanency of representation through ambassadors and ministers has grown with the development of means of communication, until it has become the universal custom of civilized states to maintain legations in all the countries with which they have intimate relations of trade or general intercourse. The mere fact that a State is thus represented often secures it against discrimination that would otherwise be exercised; and the value of a diplomatic agent consists less in what he may be able to adjust than in what he may be able to prevent. The diplomatic history of every country would illustrate the utility of the personal presence of a qualified representative at each of the great capitals of the world. This advantage, however, depends largely upon the intellectual, social and linguistic qualifications of the envoys chosen. It is also seriously diminished by sending out diplomatic agents of lower rank than those accredited by other powers to the same government, thus condemning them to juniority and subordination in the diplomatic corps, and stripping them of the social dignity and influence which might be serviceable to their government. Still another impediment to this means of adjustment is a chauvinistic temper in the foreign office, where ignorance or discourtesy may cost a country valuable rights or bring upon it humiliation and contempt.

2. A second method of adjusting differences is that of voluntary or invited mediation by a third party. At the Congress of Paris, in 1856, the representatives of Austria, France, Great Britain, Russia and Turkey, recommended that "States between which serious disagreements might arise should, before appealing to arms, have recourse, as far as circumstances admit, to the good offices of friendly powers." This is a very moderate and highly qualified recommendation; but it indicates a growing love of peace and a sense of responsibility for war.

3. A third way of avoiding the sacrifice of national rights

without incurring the consequences of battle is arbitration, which differs from mediation in the degree of judicial formality with which it is conducted.

Arbitration of disputes between governments was practiced to some extent by the ancient Greeks, and it is thought that the Athenian Symmachy had from the beginning a common tribunal at Delos, where the treasury of the allied States was located. But the range of this method of attaining justice was certainly very limited in ancient times.

During the Middle Ages the Pope often intervened as arbitrator, and was frequently the referee of the ecclesiastical councils which deposed and excommunicated princes, settled questions of tolls and taxes, and decided rights of sovereignty.

Among modern States the application of arbitration has not been extensive, although Vattel about the middle of the eighteenth century commended it as a "reasonable and natural mode of deciding such disputes as do not directly affect the safety of a nation." About seventy modern international cases have been settled by arbitration, nearly half of them between the United States and other countries. The most important of these was the settlement of the Alabama claims against Great Britain. Provision for this settlement was made by the Treaty of Washington, in 1871, which provided for a commission of five arbitrators, before whom the case of each nation was argued by distinguished counsel. The commission rendered a decision in which both countries acquiesced, awarding an indemnity of $15,500,000 to the United States.

Distinguished sovereigns and military men have been earnest advocates of arbitration and able jurists have proposed plans for extending its application. General Grant once wrote, "I look forward to an epoch when a court recognized by all nations will settle all differences." General Sheridan said in a public address, "I mean what I say when I express the belief that in time arbitration will rule the whole world." According to Sir Lyon Playfair, the late Emperor Alexander of Russia was so impressed with the importance of the peaceable settlement of international disputes that "he rose from his bed in the night, and wrote a plan that all crowned heads should join in a conclusion to submit to arbitration whatever differences might arise among them instead of resorting to the sword."

On October 31, 1887, a memorial, signed by more than one-third of the members of the British Parliament, and representing more than seven hundred thousand workingmen, was presented

to President Cleveland, requesting his good offices in behalf of peace. The President sent the memorial to Congress, and on the 4th of April, 1890, a concurrent resolution was adopted by the Senate and the House "that the President be, and is hereby, requested to invite, from time to time, as fit occasions may arrive, negotiations with any government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two governments, which cannot be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by such means." As Sir Lyon Playfair has said: "To the United States the lovers of peace look with hope and confidence that she will take a leading part in the promotion of peace by international arbitration. Her growth is the great fact of modern history. She is a country of boundless resources, and has shown that she can carry on great and successful wars, so that her intervention as a peacemaker could not be misinterpreted."

We may now examine briefly the plans that have been proposed for a wider extension of this method.

(1) The plan of David Dudley Field embraces the following programme. When an agreement cannot otherwise be effected, a Joint High Commission of ten, chosen in equal numbers by the litigants, shall report within six months their efforts to reconcile their principals. This is merely preliminary. If they are unsuccessful these parties shall give notice of the result to the other nations that have accepted the code, and the latter shall provide for a High Tribunal by the nomination of four persons each, from whom the contestants may eliminate, by successive rejections, those whom they do not approve, until the number is reduced to seven. These seven are to compose the court. The code provides for a compulsory resort to this procedure. If any State accepting the code shall begin a war in violation of it, the others are bound to resist the offending nation by force.

(2) The programme of Leone Levi proposes a Council of International Arbitration, to which each State adopting the code is to nominate a number of members selected from persons of high reputation and standing, to serve for a fixed period of years. The council is to be declared existent as soon as any two States have concurred in its organization. When organized, other States will be invited to nominate members. On the occurrence of any dispute between the States the council will call a meeting and offer its assistance. When the contending States have accepted the services of the council, this body will nominate some

of its members, and each of the litigant States will nominate other persons, to form a High Court of International Arbitration for adjudicating the dispute; and the award shall be binding upon the States. The High Court shall be constituted with regard to the character and locality of the dispute, and shall exist for the one case only. Physical force is not to be resorted to, either to compel reference to the council or to enforce compliance with the award. The dispute, however, whether referred or not, is to be considered by the council, and its judgment is to be communicated to all the States represented by it. The council will make rules of procedure for itself and for the High Court. The seat of the council is to be a neutral city, such as Berne or Brussels. The cost of maintaining the council shall be borne equally by the concurring States, but the cost of the High Court by the contesting parties in equal shares.

III. The Means of Enforcing Judgment.

The evident weakness of these plans of arbitration is their inefficiency in securing compliance with judgment when rendered. Municipal law is enforced by definite penalties, which are applicable by the executive branch of government. Both of the schemes just described for the establishment of an International Court leave it absolutely powerless to enfore its decisions. And here it becomes evident that sovereign States differ essentially from any other parties at law, and this distinction is seen to lie in sovereignty itself. Here arises the most difficult problem in the task of instituting international justice.

1. A solution that has been many times urged, but which is practically as chimerical as it is ideally perfect, is the universal federation of States. Castel St. Pierre contemplated a perpetual alliance or league, of which all the States of Europe should be members. War was to be rendered impossible, except in case of revolution, and all nations were to be united as the guardians of peace. Jeremy Bentham, the great English jurist, toward the close of the eighteenth century sketched the plan of a General Congress consisting of two deputies from each State. Military establishments were to be reduced in some fair ratio, colonies were to be abandoned in order to eliminate a frequent cause of strife, and refractory States were to be put under the ban. A fixed contingent of troops was to be at the command of the Congress to enfore its decrees. About the same time the great German philosopher, Immanuel Kant, published an essay entitled "Zum Ewigen Frieden," proposing that no State should be

merged by sale, exchange, gift or inheritance in another state; that no State should interfere with the affairs of another, that standing armies should gradually cease, and, finally, that all States should adopt republican constitutions and enter into a confederation, conferring upon every man a citizenship of the world.

Such speculations are dreams rather than plans, and yet when we consider that as late as 1818 Lord Ellenborough declared the right of English litigants "to settle their disputes by combat," it would be adventurous to predict the impossibility of equal advances in the social sense of nations. Still, it is hardly credible that sovereign States will in any way abridge their sovereignty by a mode of federation that would deprive them of independence. As Sheldon Amos has said, "The States of Europe do not at present wish to submit themselves to any central force, nor even to create such a force out of their own body by the most adequate representative system imaginable." And yet he feels compelled to add that all indications "point to the gradual elaboration among States of what may be properly called a supreme political authority. What form this authority will take," he continues, "it may be impossible for us, in this generation, so much as to guess; just as the members of an early, spontaneously developing village-community had no materials from which to construct a notion of civil government in its later sense."[5]

2. Another proposed mode of securing the acceptance of the decisions of an international court is the voluntary disarmament of nations, rendering the resort to war less probable by diminishing the military spirit. A nation preoccupied with industry, devoid of military ambition, and temporarily unfitted to engage in military operations, it is argued, will be more readily disposed to accept a judicial decision than a State which is constantly prepared for war, influenced by the martial spirit, and confident of success in case of a conflict. This is undoubtedly true; but the fact is also an argument against disarmament to a State surrounded with enemies, and liable to be exposed to foreign aggresion if its standing army is reduced.

There are, however, so many reasons for the reduction of military forces, that a just convention based upon the plan of proportionate reduction would be an inestimable blessing to mankind. The enormous taxes required to maintain the standing armies of Europe, the abstraction of so many productive agents

[5] Science of Law, p. 327.

from industrial pursuits to serve in the army, and the constant menace to peace which military ambition inevitably offers are certainly good reasons for at least a relative disarmament of nations. But there can be little hope of this so long as the perpetuation of dynasties is esteemed a matter of importance, for it is on this account rather than for national security that standing armies are required. A general adoption of republican constitutions is a step in political evolution which must precede any considerable reduction of standing armies. This aid to the enforcement of the judgments of international courts belongs, therefore, to the future rather than to the present, and cannot be counted upon in the formation of immediate plans for arbitration. And so it becomes evident since nations will not abrogate either their sovereignty or their means of self-defence, that reliance must be placed upon the moral and the social means of enforcing such decisions. As the movement is an ethical one, it is probably in every way best to attempt to advance it by purely ethical considerations, which have at least one great advantage—that they appeal to what is best in men universally, and are most effective when they are addressed to the reason and the conscience in whose interest they are urged.

In conclusion, the following plan of procedure seems to commend itself as not altogether hopelessly impracticable for securing to civilized nations the administration of justice without resort to the costly and frequently unjust arbitrament of battle:

(1) The negotiation of a general treaty extended to all sovereign States willing to enter into it, but primarily adapted to the requirements of England and the United States, having for its sole object the establishment of a permanent International Court, and requiring no other signatory powers to give it effect than the two named above.

(2) The appointment of an expert commission by the powers accepting the treaty to codify in separate codes the Laws of Nations, (*a*) as a body of rational jurisprudence or abstract justice, and (*b*) as a body of positive law now existing in treaties and conventions.

(3) The adoption of a plan for the formation of a permanent International Court, with jurisdiction covering all forms of dispute between the contracting nations which do not involve the sovereignty or independence of these States.

The International Court should of course be constituted upon lines to be determined by a representative commission of experts after the most deliberate discussion. The following propositions,

however, seem to be sufficiently well established to deserve the respectful consideration of such a commission:

(1) All the sovereign States having a part in the treaty should have an equal number of representatives in court. This follows directly from the sovereign character of the States which may be signatory to the treaty. To apportion representation would abolish equality before the court. This principle has been recognized in the formation of our Senate, in which Rhode Island and Delaware have an equal number of Senators with New York and Pennsylvania, although the former are comparatively insignificant in territory and population. The questions adjudicated by a court are not questions of power, but of justice; and a small State may have as good a cause as a great one.

(2) The judicial office should be held for life, providing for removal in case of corruption, incapacity or extreme old age. This would render possible the creation of a judicial body minutely conversant with International Law, precedent, and political history, and at the same time would place the court above selfish considerations.

(3) The court should have jurisdiction over all cases not affecting the autonomy of the contracting States. Provision should be made for private as well as public redress, under proper conditions of preliminary attempts at mediation. All questions effecting the autonomy of States should be beyond the jurisdiction of the court, otherwise it might become the medium of depriving States of their sovereignty, and the suspicion of this would make the establishment of the court impossible.

(4) The court should sit in a neutral territory. This would facilitate justice by rendering impossible, or at least difficult, the attempt to influence the court by public opinion or otherwise. Both Switzerland and Belgium are neutralized by existing conventions, and one or the other could be chosen, as the character of the case might require, for the holding of the court.

(5) The transactions of the court should be open and public, and all its proceedings should be recorded and published. Justice is fond of the light, as injustice is of secrecy. A greater care is taken in reaching a decision when all the grounds and conditions of it are universally known.

(6) All petitions, pleadings, and decisions should be in writing. This accords with the practice of the highest courts, and rules out ambiguity of statement, the effect of personal influence, and appeals to the feelings, while it conduces to precision, deliberation, and permanence.

(7) Refusal to submit to the court a case within its jurisdiction, or to comply with its decision, should be followed by the permanent exclusion of the offending State from its privileges and protection. This is a provision of the utmost importance, for it will solve the problem of enforcing the decisions of such a court. In effect, it outlaws the lawless. It presents to every State a choice between obedience to the code and deprivation of its obvious advantages. The effectiveness of this provision undoubtedly depends, in a egrat degree, upon the extent to which the code is accepted; but it cannot be doubted that, if the most powerful nations were united under the jurisdiction of the court, it would become a moral impossibility to refuse or violate its requirements.

When we consider how jealous the German and Italian States were of one another and of any supreme authority, much less than a century ago, and follow the history of German and Italian unity to its present consummation, we learn two important lessons. The first is that, when the ambition of monarchs is checked by constitutional limitations, wars become less easy and frequent; for the people are able to restrain public ministers from courses of conduct hostile to the welfare of the masses. Another lesson is that, with the growth of popular intelligence, traditional claims to sovereignty fade into smaller proportions and less flaming colors, and industrial and commercial well-being becomes the prime consideration of statesmen. We may, therefore, confidently expect that, with the development of constitutional government and experience of its benefits, there will follow a gradual breaking down of those merely local conceptions of sovereignty which are so powerful in the cruder states of society; and universal equity, secured by legal institutions, will continue to become dearer to the minds of men. The law of political evolution seems to be that larger areas and populations tend to be unified under homogeneous constitutional forms, whose inner analogy or hidden identity is ever becoming more apparent. To the vision of the poet there has already appeared "the parliament of man, the federation of the world." Such foregleams of coming events are never realistically accurate; but the spontaneous activity of the imagination is always controlled by the existence of elements that are about to combine, not, indeed, as in the dream of the poet, but according to nature's own law of change and progress.

All that has yet been said or written upon this great problem probably constitutes little more than the rude scaffolding of that great temple of international justice whose dome will yet shelter

the nations of the earth from the wrongs of oppression and the horrors of battle. But its foundations are laid in the moral nature of humanity; and, although—like a vast cathedral grown old with passing centuries—it is still uncompleted, we may bring our unhewn stones to lay upon its rising walls, in the faith that its invisible Builder and Maker will shape them to a place in the permanent structure.

David Jayne Hill.