

## Belligerents and Neutrals

THE CONFLICT BETWEEN THEIR INTERESTS IN  
TIME OF WAR.

By E. S. ROSCOE.

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It is impossible that maritime wars can be waged without producing conflicts between the interests of belligerents and those of neutrals, and the difficulty of reconciling these divergent interests is enhanced because there cannot be, as in the sphere of municipal law, a steady legal evolution as the years go by. Periods of warfare are abnormal times, and during the intervals between them many changes in the commerce of the world take place. International law in relation to belligerents and neutrals has, therefore, suddenly and unexpectedly to accommodate itself to these changes.

The most striking example of this is to be found in the case of what are rather erroneously termed by international lawyers continuous voyages. In days when commercial transactions were simple, and when scientific methods of world transit did not exist, one can understand that, if the destination of a neutral ship were a neutral port, cargo would not generally pass outside the neutral country. If it did, it would only be partially or by slow and painful stages. Therefore the neutral port was not only in theory the destination of a cargo landed in it, it was in fact the real destination; thus legal theory and commercial practice were at one. As soon, however, as land transit of goods by means of steam became general, commercial practice adapted itself to the modern state of things.

Through-bills of lading became common and international business transactions grew up, the result of which has been that the port at which goods are discharged is no longer a test of their true destination. In every great European port many hundreds of tons are transshipped from ocean liners to craft which make shorter voyages of a coastal nature, and an equal amount is transferred from steamer to rail and thence carried to centres in the Continent of Europe. It is obvious, therefore, that, having regard to the older doctrines of maritime prize law, a conflict between neutrals and belligerents in respect to the right of the latter to seize goods whose ultimate destination is enemy territory was bound sooner or later to arise and to be the cause of international friction.

The term continuous voyage as applied to the prize cases under this head in the Napoleonic wars was strictly accurate. It was, under existing conditions, illegal to send cargoes from A to C, legal from B to C. Cargoes were, therefore, ingeniously sent from A to B and thence reshipped to C. Various devices were adopted to give an appearance of reality to the transaction, but the British Prize Court looked to the facts of the case, and if the transaction was, in fact, a contin-

uous voyage from A to C, the cargo was confiscated—the crucial question being not what was the true destination of the goods, but what was their original starting point.

By the time of the Civil War it was becoming obvious that, under modern conditions, the old idea that the destination of a ship was also the destination of the goods was based on a false assumption. The Supreme Court, therefore, could not, without throwing aside the truth of facts, accept the actual destination of a ship as the real destination of her cargo if it was clearly otherwise, and so, both for the purposes of the law of blockade and of contraband, the Court based its decisions on the *real* destination of the goods. That the particular decisions of the Supreme Court which relied on real destination as the proper test of destination under the law of prize should have frequently been criticised adversely by several writers on international law, shows only that the letter rather than the rationale of decisions is often too much regarded by legal text writers.

More than thirty years elapsed before the contention between neutrals and belligerents on this point again emerged, but it cropped up in a fragmentary way in the course of the Boer War. Another ten years elapsed, and it is evident in the Declaration of London, where, as is so frequent in conventions and committees, there is a manifest compromise. It was one between the opinions of those who would boldly rest their case on the only logical ground, namely, real destination, and those who were in favor of definite but less drastic rules. Such rules are bound in time of war to break down because, once it is admitted that a belligerent has a right to prevent certain articles from reaching his enemy, such right cannot be restricted by rules which rely for their efficiency on decisions or opinions given in different times and under different circumstances.

The same conflict and the same necessity for deciding cases by broad principles applied to the actual circumstances of the time are obvious in regard to contraband. In the Declaration of London aeroplanes were placed in the list of conditional contraband; in 1914, Great Britain placed them in the list of absolute contraband. This is a single instance only, but it is sufficient to show how science may render some rules of international law obsolete.

Primarily and in theory, as has been stated, these points raise conflicts between neutrals and belligerents, but it is equally obvious that, under some circumstances, the cause of one belligerent may also be the cause of the neutral; in other words, it may be both to the interest of a neutral and of one belligerent to endeavor to prevent the application of principle to practice, and to endeavor to minimize belligerent rights which are sound on principle. This places a neutral Power in a delicate position, for an ardent assertion of a neutral right may very well become in reality an active assistance to a belligerent.

## Democracy Versus the Melting-Pot

A STUDY OF AMERICAN NATIONALITY.

By HORACE M. KALLEN.

### PART I.

It was, I think, an eminent lawyer who, backed by a ripe experience of inequalities before the law, pronounced our Declaration of Independence to be a collection of "glittering generalities." Yet it cannot be that the implied slur was deserved. There is hardly room to doubt that the equally eminent gentlemen over whose signatures this orotund synthesis of the social and political philosophy of the eighteenth century appears conceived that they were subscribing to anything but the dull and sober truth when they underwrote the doctrine that God had created all men equal and had endowed them with certain inalienable rights, among these being life, liberty, and the pursuit of happiness. That this doctrine did not describe a condition, that it even contradicted conditions, that many of the signatories owned other men and bought and sold them, that many were eminent by birth, many by wealth, and only a few by merit—all this is acknowledged. Indeed, they were aware of these inequalities; they would probably have fought their abolition. But they did not regard them as incompatible with the Declaration of Independence. For to them the Declaration was neither a pronouncement of abstract principles nor an exercise in formal logic. It was an instrument in a political and economic conflict, a weapon of offence and defence. The doctrine of "natural rights" which is its essence was formulated to shield social orders against the aggrandizement of persons acting under the doctrine of "divine right": its function was to afford sanction for refusing customary obedience to traditional superiority. Such also was the function of the Declaration. Across the water, in England, certain powers had laid claim to the acknowledgment of their traditional superiority to the colonists in America. Whereupon the colonists, through their representatives, the signatories to the Declaration, replied that they were quite as good as their traditional betters, and that no one should take from them certain possessions which were theirs.

To-day the descendants of the colonists are reformulating a declaration of independence. Again, as in 1776, Americans of British ancestry find that certain possessions of theirs, which may be lumped under the word "Americanism," are in jeopardy. This is the situation which Mr. Ross's book,\* in common with many others, describes. The danger comes, once more, from a force across the water, but the force is this time regarded not as superior, but as inferior. The relationships of 1776 are, consequently, reversed. To conserve the inalienable rights of the colonists

\**The Old World in the New.* By Edward Alsworth Ross. New York: The Century Company. \$2.40 net.

of 1776, it was necessary to declare all men equal; to conserve the inalienable rights of their descendants in 1914, it becomes necessary to declare all men unequal. In 1776 all men were as good as their betters; in 1914 men are permanently worse than their betters. "A nation may reason," writes Mr. Ross, "why burden ourselves with the rearing of children? Let them perish unborn in the womb of time. The immigrants will keep up the population. A people that has no more respect for its ancestors and no more pride of race than this deserves the extinction that surely awaits it."

## I.

Respect for ancestors, pride of race! Time was when these would have been repudiated as the enemies of democracy, as the antithesis of the fundamentals of our republic, with its belief that "a man's a man for a' that." And now they are being invoked in defence of democracy, against the "melting-pot," by a sociological protagonist of the "democratic idea"! How conscious their invocation is cannot be said. But that they have unconsciously colored much of the social and political thinking of this country from the days of the Cincinnati on, seems to me unquestionable, and even more unquestionable that this apparently sudden and explicit conscious expression of them is the effect of an actual, felt menace. Mr. Ross, in a word, is no voice crying in a wilderness. He simply utters aloud and in his own peculiar manner what is felt and spoken wherever Americans of British ancestry congregate thoughtfully. He is the most recent phase of the operation of these forces in the social and economic history of the United States; a voice and instrument of theirs. Being so, he has neither taken account of them nor observed them, but has reacted in terms of them to the social situation which constitutes the theme of his book. The reaction is secondary, the situation is secondary. The standards alone are really primary and, perhaps, ultimate. Fully to understand the place and function of "the old world in the new," and the attitude of the "new world" towards the old, demands an appreciation of the influence of these primary and ultimate standards upon all the peoples who are citizens of the country.

## II.

In 1776 the mass of white men in the colonies were actually, with respect to one another, rather free and rather equal. I refer, not so much to the absence of great differences in wealth, as to the fact that the whites were *like-minded*. They were possessed of ethnic and cultural unity; they were homogeneous with respect to ancestry and ideals. Their century-and-a-half-old tradition as Americans was continuous with their immemorially older tradition as Britons. They did not, until the economic-political quarrel with the mother country arose, regard themselves as other than Englishmen, sharing England's dangers and England's glories. When the quarrel came they remembered how they had left the mother country in search

of religious liberty for themselves; how they had left Holland, where they had found this liberty, for fear of losing their ethnic and cultural identity, and what hardships they had borne for the sake of conserving both the liberty and the identity. Upon these they grafted that political liberty the love of which was innate, perhaps, but the expression of which was occasioned by the economic warfare with the merchants of England. This grafting was not, of course, conscious. The continuity established itself rather as a mood than as an articulate idea. The economic situation was only an occasion, and not a cause. The cause lay in the homogeneity of the people, their *like-mindedness*, and in their *self-consciousness*.

Now, it happens that the preservation and development of any given type of civilization rests upon these two conditions—*like-mindedness* and *self-consciousness*. Without them art, literature—culture in any of its nobler forms—is impossible: and colonial America had a culture—chiefly of New England—but representative enough of the whole British-American life of the period. Within the area of what we now call the United States this life was not, however, the only life. Similarly animated groups of Frenchmen and Germans, in Louisiana and in Pennsylvania, regarded themselves as the cultural peers of the British, and because of their own common ancestry, their *like-mindedness* and *self-consciousness*, they have retained a large measure of their individuality and spiritual autonomy to this day, after generations of unrestricted and mobile contact and a century of political union with the dominant British populations.

In the course of time the state, which began to be with the Declaration of Independence, became possessed of all the United States. French and Germans in Louisiana and Pennsylvania remained at home; but the descendants of the British colonists trekked across the continent, leaving tiny *self-conscious* nuclei of population in their wake, and so established ethnic and cultural standards for the whole country. Had the increase of these settlements borne the same proportion to the unit of population that it bore between 1810 and 1820, the Americans of British stock would have numbered today over 100,000,000. The inhabitants of the country do number over 100,000,000; but they are not the children of the colonists and pioneers: they are immigrants and the children of immigrants, and they are not British, but of all the other European stocks.

First came the Irish, integral to the polity of Great Britain, but ethnically different, Catholic in religion, fleeing from economic and political oppression, and—*self-conscious* and rebellious. They came seeking food and freedom, and revenge against the oppressors on the other side. Their area of settlement is chiefly the East. There they were not met with open arms. Historically only semi-alien, their appearance aroused, none the less, both fear and active opposition. Their diversity in religion was out-

standing, their gregarious politics disturbing. Opposition, organized, religious, political, and social, stimulated their natural gregariousness into action. They organized, in their turn, religiously and politically. Slowly they made their way, slowly they came to power, establishing themselves in many modes as potent forces in the life of America. Mr. Ross thinks that they have their virtue still to prove; how he does not say. To the common-sense of the country they constitute an approved ethnic unity of the white American population.

Behind the Irish came the great mass of the Germans, quite diverse in speech and customs, culturally and economically far better off than the Irish, and *self-conscious*, as well through oppression and political aspiration as for these other reasons. They settled inland, over a stretch of relatively continuous territory extending from western New York to the Mississippi, from Buffalo to Minneapolis, and from Minneapolis to St. Louis. Spiritually, these Germans were more akin to the American settlers than the Irish, and, indeed, although social misprision pursued them also, they were less coldly received and with less difficulty tolerated. As they made their way, greater and greater numbers of the peasant stock joined them in the Western nuclei of population, so that between the Great Lakes and the Mississippi Valley they constitute the dominant ethnic type.

Beyond them, in Minnesota, their near neighbors, the Scandinavians, prevail, and beyond these, in the mountain and mining regions, the central and eastern and southern Europeans—Slavs of various stocks, Magyars, Finns, Italians. Beyond the Rockies, cut off from the rest of the country by this natural barrier, a stratum of Americans of British ancestry balances the thinnish stratum on the Atlantic sea-coast; flanked on the south by Latins and scattering groups of Asiatics, and on the north by Scandinavians. The distribution of the population upon the two coasts is not dissimilar; that upon the Atlantic littoral is only less homogeneous. There French-Canadians, Irish, Italians, Slavs, and Jews alternate with the American population and each other, while in the West the Americans lie between and surround the Italians, Asiatics, Germans, and Scandinavians.

Now, of all these immigrant peoples the greater part are peasants, vastly illiterate, living their lives at fighting weight, with a minimum of food and a maximum of toil. Mr. Ross thinks that their coming to America was determined by no spiritual urge; only the urge of steamship agencies and economic need or greed. However generally true this opinion may be, he ignores, curiously enough, three significant and one notable exception to it. The significant exceptions are the Poles, the Finns, the Bohemians—the subjugated Slavic nationalities generally. Political and religious and cultural persecution plays no small rôle in the movement of the masses of them. The notable exception is the Jews. The Jews come