War and a Code of Law

IN the minds of those who seriously question the project to revise international law and provide an international court so that recourse to war shall be a crime, the difficulty connected with forming a code of law to govern the conduct of the court is likely to loom largest. I am quite ready to admit that those who favor the plan easily tend to fix their faith in the general idea and trust to the future to solve the concrete difficulties when once the basic idea is accepted. But this disposition is quite offset by the corresponding tendency of those to whom the idea does not appeal, to fix their minds on the difficulty of making a code and to see nothing else. In any case it must be remembered that it is no part of the business of those who are urging trial of the plan to propose in advance a ready-made code. For it is part of that plan that the code shall be drawn up by expert jurists representing the various nations. There is no dodging the issue in declining to state in advance just what the conclusions of the assembly of jurists must be. It is a fair demand, however, that the general difficulties in the way of the jurists themselves be faced in discussion of the project. First of all, it is necessary to discriminate between genuine difficulties and those which in the end will probably turn out to be imaginary, and to this point alone this article is directed.

Mr. Lippmann has urged with force and skill that the making of a code of international law is essentially a political legislative act, so that it involves the "setting up of a world legislature. The conference which was to make the code would have to lay down laws affecting the very existence of governments and the destiny of nations." So he charges those who oppose any plan that involves a super-state with a glaring contradiction. For they are really asking, according to him (if they only knew what they are about), for "a supercourt and a superconference to legislate a supercode."

The question of consistency is not nearly so important, of course, as the question of fact, but the issue of fact may be approached by the road of the issue of consistency. For the accusation of inconsistency may be turned about. The position taken by Mr. Lippmann proves altogether too much for any one who believes in the existing League Court and in American adherence to it, who believes in it in anything but a Pickwickian sense, or as a cellar entrance into the Council of the League. Would it have been necessary to have had a code covering all kinds of political disputes between nations as an antecedent of the competency of even the Hague tribunal to pass upon the clause of the Austrian ultimatum that Serbia wished to refer to that tribunal? Would political legislation affecting the very existence of governments have been required to enable the existing League Court to pass upon the construction of the Treaty of Versailles so as to determine judicially whether or not the French invasion of the Ruhr was authorized by its terms? Would it have required a superlegislature and a superstate code to hold back the action of Italy in bombarding and seizing Corfu until a court had passed upon Greek responsibility for the murder of commissioners and the proper liability of Greece for the atrocity? If so, the objection of Mr. Lippmann logically makes any court an impossibility and profession of faith in one an insincere farce.

The question is of importance because it points to the issue of fact. It is quite clear that the three incidents cited are precisely the sort of thing that now precede wars, and equally clear that the sole indispensable condition of their submission to a court is the willingness of nations to submit them. They were not submitted to an international court. The reason, however, was not because there was no supercode in existence. The existing state of international law, whatever its imperfections, would have sufficed to secure a judicial hearing and decision, were it not for the one fundamental imperfection in that code against which the outlawry project is directed; namely, its legalizing of resort to force which enables any nation that thinks it can get away with it to constitute itself the final judge in its own cause. In reality the chief difficulty in discussion of an international code adequate for the purposes of a court is a subtle psychological one. Unconsciously we tend to project into the future situation all the attendants of the present system of legalized war, and thus fail to recognize the extent to which difficulties spring from the legalizing of war, and would disappear were war outlawed. One will come, I believe, to very different conclusions about the difficulties in the way of developing an adequate code according as he considers the actual antecedents of the wars that the world has endured in the last fifty years, or as he conjures up all possible conflicts of national interests. If he pursues the latter method, he will be likely to come out where Mr. Lippmann stands; if he takes the former course, he will see that these conflicts of interest resulted in war because war is now an authorized way of securing a settlement of disputes. Then he will acknowledge that the difficulties in connection with formation of a code are largely technical, and concern for the most part just those questions of procedure which jurists are accustomed and competent to deal with.

To prove this point conclusively it would be necessary to take up the immediate antecedents of each of the wars of the last fifty years. In lieu of such a consideration we may appeal to the general belief that even arbitration if it were universally resorted to would prevent most wars, for it would provide time for passion to cool; it would prevent that almost fatalistic forward push of conflicting interests into war that now exists; it would provide publicity to unify and direct that enlightened public sentiment and judgment of the world which now is at the mercy of prejudice, clamor and propaganda.

Even more pertinent is consideration of the actual relation that obtains between the outbreak of war and the undoubted and undeniable conflicts of interest that exist and that will long continue to exist. There has been friction, for example, between Japan and the United States; and enough, to make some persons at least on both sides of the water talk about the prospect of war. Nominally much of this friction has been associated with our laws restricting immigration. Consequently one who thinks in general terms about international disputes may come to the conclusion that the international code would have to legislate upon the question of immigration, and point, as does Mr. Lippmann, to the extreme improbability that the United States Congress would ever entrust such legislation to an international assembly. But as matter of fact, Japan itself has regulations governing immigration into its territories as drastic as those of the United States, as well as strict laws regulating the alien ownership of real property. The history of diplomacy demonstrates that the issue of immigration is not the *cause* of war; friction on this point is merely utilized to arouse popular feeling to the point of supporting a war that is really waged for quite other reasons—in this case presumably economic causes connected with control of the Asiatic mainland.

It may be replied that to form a code that would regulate such economic conflicts would be even more difficult than one regulating immigration. The answer to this objection is that it would be totally unnecessary. The outstanding fact is that the avowed purposes of modern wars are never coincident with their actual causes. No one can conceive either Japan or the United States publicly avowing that its real object was the economic control or monopoly of China, and going to the Court for a decision on that case. By the nature of the case the only questions that could be taken to a court are avowed objective issues. The present legalizing of war makes possible a complete confusion of these avowed issues with hidden and unavowed conflicts of interest, honor and prestige. But the only causes that a court would pass upon and that a code has to cover are the reasons which a nation is willing openly to expose to the world; and resort to war after the court had decided the case against the nation would be a public confession of hypocrisy, and of an underlying predatory disposition. So far then is it from being true that an international code would have to pass upon all important questions of national prestige and honor, that the converse is true. Questions of prestige and honor are now of inflammatory importance because of the legalizing of war and the absence of a court; they will remain the main reliance in the technique of enlisting support of a war waged for unavowed reasons until war is outlawed. Then they will suddenly lose their present importance, except for a nation that is willing to defy by criminal action the decision of a court and the public opinion of the world.

I cannot conceive that any one will deny that the real causes of important modern wars are different from the avowed reasons for them, or that the gaining of popular support for most wars depends upon the power of foreign offices and the press to confuse the two. One of the chief grounds for belief in outlawry of war is that the creation of the judicial substitute for war would render it hard to keep up this confusion. We may take some instances from the list of causes of war put forth by Mr. Lippmann. "Are the natural resources of undeveloped countries the property of the natives to have and hold as they see fit, or have European and American nations rights in them?" This is an important and difficult question, but since it leads to war only as a concealed and not an avowed cause, the code would not have to legislate upon it. Can any one imagine that Germany would have seized Shantung upon the publicly avowed ground of control of raw materials? The alleged cause, the murder of nationals, is on the contrary precisely the sort of thing that a code and court can deal with. What would have happened in the Boer trouble, if the British had stated that their purpose was command of natural resources? "May Mexico confiscate American oil property?" I can readily imagine that under certain circumstances, oil might be the *real* cause of war between Mexico and the United States: I cannot imagine that the American people would ever go to war with Mexico if the avowed cause of the war were to support American oil interests, nor can I imagine any American government admitting this to be the cause of a war. On the other hand, property disputes are just the sort of thing that courts are always dealing with; it needs no radically new code to enable an international court to deal with them. "Do nations which happen to block the access of other nations to the sea owe any duty to landlocked peoples, which ought to limit their sovereign rights over their own ports and railroads?" I am far from denying that this is a genuine and important problem. But nations

avowedly grab ports and go to war to get them, because of past national history, of interest in their nationals who are said to be a majority of the population and so on, not because of the economic claim. And since the latter issue would not go to the Court it does not have to be considered by the code.

To get a picture of the dependence of the possibility of securing support for war upon covering up economic causes with idealistic reasons, we need only recall that at one time the mere suggestion that the late World War was at bottom an economic conflict was almost enough to land its author in jail. Provision of a judicial substitute for war would almost automatically tend to disentangle the nominal and alleged reasons from the underlying conflict of interests, and make it necessary to refer the latter to the proper organs for dealing with them, namely, the agencies of negotiation and political adjustment. For, as I have said before in these columns, the friends of Outlawry do not urge it as a substitute for political means, but as the method of securing that division of labor between legal and political agencies that will alone enable both of them to function effectively. Any one who realizes the difference between the present system of lawless and anarchic international political action and political action as it would become when associated with law, will also perceive that, given the expression in law of the popular abhorrence of war, the difficulties in the way of developing a code for the purposes of a court are quite manageable. Discussion of its actual scope and content it such a technical matter that I gladly leave it to lawyers.

JOHN DEWEY.

The Scripture Lesson:

Sanderson of Oundle in a Youthful Mirror

BEFORE I go on to a discussion of the latest, broadest and most interesting phase of Sanderson's mental life, I would like to give my readers as vivid a picture as I can of his personality and his methods of delivery. I have tried to convey an impression of his stout and ruddy presence, his glancing spectacles, his short, compact but allusive delivery, his general personal jolliness. I will give now a sketch of one of his Scripture lessons made by two of the boys in the school. Nothing, I think, could convey so well his rich discursiveness or the affectionate humor he inspired throughout the school. Here it is.

SCRIPTURE LESSON.

Delivered by F. W. Sanderson on Sunday, May 25, 1919, and taken down word for word by X and Y, and subsequently written up by them.

Limitations of space and time have prevented them from including all the lesson. Omissions have been indicated. They apologize for the lapses of the speaker into inaudibility, which were not their fault. They do not hold themselves in any way responsible for the opinions expressed herein.

ANALYSIS OF THE PORTIONS COPIED

Characteristic portions in the Gospel of St. Matthew.

Obstinacy of the Oxford and Cambridge Schools Examination Board.

Character of the devil, according to some modern writers.

First act of our Lord on beginning the Galilean Ministry.

Empire Day.

Subject of the Scripture lessons—St. Matthew, chaps. iv and v.

(The Temptations, the commencement of the Galilean Ministry, the first portion of the Sermon on the Mount.)

"(The headmaster enters, worries his gown, sits down, adjusts his waistcoat, and coughs once.)

"The—um—er—I am taking you through the Gospel of St. Matthew. I think, as a matter of fact, we got to the end of the third chapter. We won't spend much time over the fourth. The fourth, I think, is the-er-er-Temptations, which I have already taken with you—a rather-er-very interesting-ah-very interesting-er-survival. That the Temptation Narrative should have survived shows that there is probably something of value in it or I do not think it would have survived. There are two incidents of very similar character of-er-very-er-similar character and-ah-different to a certain extent from everything else-er-ah. There is a boy in that corner not listening to me. Who is that boy in the corner there? No, not you—two rows in front. I will come down to you later, my boy. There are two incidents in the Gospel Narrative which are similar in-er-character and which I have for the moment called "Survivals"—very characteristic, namely the somewhat surprising narrative of the Temptation of our Lord, and the other the account of the Transfiguration. These are different in form and character from other narratives, just in the same way as the account of our Lord sending messages to the Baptist differs from others. Er—yes—that last one I should put them together as coming from a similar