

INTERNATIONAL LAW AND ORDER

MANY ADJUSTMENTS must yet be made in order that peace between nations may be placed upon a secure and firm foundation. It is common ground that they must subject themselves to rules which will preserve justice and equality. This is implicit in the idea of a league of nations or in proposals for federal union. The topic invites a reconsideration of the nature of international law and of the principles to which its rules should conform, and it is to that enquiry which Mr Jackson H. Ralston has addressed himself in his latest book*. His long experience as an advocate, and as a judge in the practice of domestic law as well as in the capacity of an arbitrator in international disputes well fits him for this task. He surveys the nature of law in general and of international law in particular and the main subjects with which international law is concerned. His work is both critical and constructive, and is animated by the belief that, as men have created the causes of strife, so men can bring about the conditions which will make for peace.

The two principles which form the starting point of the enquiry are that the true concern of all law, whether national or international, is the welfare of individuals and that the object of law is to guide men in accordance with moral principles. The state has been regarded by writers on the law of nations as the entity with which they are concerned, but the state is only a concourse of individuals organized for certain purposes. So far as international law has an effect it is in the end upon the men and women who constitute the society. The state is not a moral entity. The state cannot have rights in morals which contravene the rights of individuals whether members of that state or of another state.

What used to be called "the formal science of positive law" was concerned merely to analyse laws as they existed without regard to their justification; it was concerned with law as a rule forcibly imposed. The modern emphasis is shifted to the content of the rule of law, and to the question whether it is a rule of right. Mr Ralston quotes Krabbe's remark in *The Modern Idea of the State*: "Constraint is justified by the necessity of maintaining the law, but it can never bestow legal quality upon a rule which lacks it. Mere force, whether organized as in the state or unorganized as in an insurrection or revolution, can never give to a rule that ethical element which belongs essentially to a rule of law."

The assumption that the state is an entity which is higher and more important than man instead of being merely the instrument of man is the source of many errors and false doctrines. This is so both in national and in international relations. Within the nation it leads to totalitarian ideologies which inculcate blind submission and obedience to a caucus which controls the state, to loss of liberty and initiative, to exploitation, and ultimately to stagnation, retrogression, and ruin both of state and people. In international relations it has similar consequences. Might is substituted for right. The strong nation demands special privileges for its citizens who choose to live within the jurisdiction of another nation. It thus impinges upon the sovereignty of the weaker nation. Although the equality of states and their absolute independence are the theoretical basis of the current systems of international law, in practice that equality is not acted upon or respected. It necessitates that states should bind themselves to

practise and to be judged by uniform rules. But the strong states refuse to abide by judicial process in regard to what are designated as "national" or "vital" interests. They insist upon arrogating to themselves the right to judge their own cause, and so they withdraw from international tribunals or from arbitration the very questions which give rise to war.

Against all this Mr Ralston puts forward the view that the validity of international law depends upon how it treats the individual, and that it must deal equally with all individuals, no matter of what state they are citizens. He agrees with Krabbe that "International law is distinguished from national law not in respect of its origin and foundation, but in respect of the extent of the community to which its commands apply. And the incomplete and less perfect character of International Law does not lie in the fact that it rules over 'sovereign' states and is therefore rooted in the will of these states. It lies rather in the defective organization of the sense of right which tends to regulate the community of civilized nations."

The most important relations between nations, or rather between the citizens of various nations, are those relating to trade and production. It is in wrong rules of law relating to these that the source of most international conflicts is to be found. In times of peace nations obstruct the trade of themselves and their neighbours.

"Presuming, stupidly enough and contrary to the fact, that we can benefit ourselves by increasing the cost of commodities which, in the absence of artificial restraint, would be obtained most cheaply in other countries, we restrict our international trade by taxes, called 'protective,' upon importation, and in so doing limit our pacific intercourse with our neighbours. When we adopt a protective tariff we say that we do not care to trade with them except under hampering conditions. Perhaps we tell them that their labour is pauperized and at the same moment pauperize it still more by refusal to trade. Insult and injury go hand in hand."

A particular illustration of the disturbance caused by restrictions upon trade is found in the insistence of many inland nations upon the necessity of having access to the sea, because having that they have a wide choice of markets in which to buy or sell goods without passing through customs barriers to reach the sea. The cry for access to raw materials is in part due to the same cause. The classic example of the benefits of freedom of trade within a large area is the United States. Mr Ralston asks: "Is there a citizen of Vermont who is distressed over the fact that Vermont has no immediate access within their own jurisdiction to the Atlantic Ocean? Would any denizen of New Hampshire be willing to fight, supposing it otherwise feasible, against citizens of Pennsylvania because of a desire to obtain for his state direct control over beds of coal and iron? . . . This American peace is not due to the fact that we have a common executive, a Congress, and a Supreme Court, useful as all of these instrumentalities may be. It exists because any citizen of the United States equally with any other citizen has a right in perfect freedom to pass state borders with all his family and property; to import and export from place to place within the limits of the United States any sort of property he pleases without hindrance from any state authority; to gain access to and from the seas without any local interference whatsoever."

Let us ask ourselves in all seriousness: if these conditions had not existed, could the United States have continued to hold together merely by reason of the

* *A Quest for International Order.* By JACKSON H. RALSTON. John Byrne and Company, Washington, D.C., U.S.A. Price \$2.

fact that it has a Congress and a Supreme Court? And if we answer this question in the negative, how can we expect to maintain peace between nations which do not give the same freedom to one another's citizens?

Restrictions upon trade may take other forms than tariffs, quotas, export duties, and other interferences with exchange. They may arise also from the monopoly of natural resources. In colonies, protectorates, or other controlled territories, the controlling power may allow some of its nationals to acquire large tracts of land which are the source of minerals or other raw materials. They are thus placed in a position of great power and profit, and are able to levy a toll of rent upon the citizens both of their own and of other countries. In this case, as in the case of tariffs and other trade restrictions, we see that the injury is done to the citizens both of the country which is supposed to profit by the practice and of other countries.

The injurious effect of land monopoly (as of protectionism) arises from the defects of national law, not from the defects of international law; but it is capable of poisoning international relations. So we come back to the fundamental point that the concern of law, whether national or international, must be with the individual. To quote Mr Ralston again:—

"But what has International Law to do with all this? We start our thesis with the assertion that the unit of International Law is not the nation but the common man. His welfare must be its chiefest concern. This demands equal share in all the gifts of nature and equal opportunity now denied him in the interior law of his nation. Still more emphatically is his well-being disregarded in the so-called law prevailing between nations. Real law cannot work in such fashion. There will be no true reform in International Law till this begins at the grass roots, as it is sometimes put. But conditions can be improved in the manners we have pointed out.

"We have discussed reform in this respect as lying within the field of colonial territories over which the world is struggling to-day. We have not touched the equally important field of resources within the States recognized as to-day organized and integral governments belonging to the society of nations. Of course, no world-wide reformation can be complete if this most important portion of mankind is ignored. As to this field, however, the individual states must answer the problem. The penalty, if they do not do so, is destruction of government as now organized, with some new and vastly different set-up being brought into existence."

Although its extreme detachment may at times be a little irritating to those who form part of embattled Europe, this is a valuable and careful study which deserves to be read. It is a piece of constructive reasoning which points to the solution of the problem of international order in amendments of both national and international law that will secure the equal liberty of movement of persons and goods across all frontiers, and the equal access of all men to the natural resources which should be the equal heritage of all as the only means by which they can live their lives.

A civilization which tends to concentrate wealth and power in the hands of a fortunate few, and to make of others mere human machines, must inevitably evolve anarchy and bring destruction. But a civilization is possible in which the poorest could have all the comforts and conveniences now enjoyed by the rich; in which prisons and almshouses would be needless, and charitable societies unthought of. Such a civilization only waits for the social intelligence that will adapt means to ends.

HENRY GEORGE in *Social Problems*.

NO SCARCITY IN NEW GUINEA

THE CONDITION of labour in New Guinea is described by a missionary, the Rev Arthur Kent Chignell, B.A., in his book, *An Outpost in Papua* (John Murray), from which is taken the following extract:

"The New Guinea man, as I know him, does not overwork, since he is driven by no hard necessity to labour for another man's enrichment, nor hampered by the difficult circumstances of civilization. His wants are few and simple, and he has 'free access' to the sources at which these wants find easy satisfaction—a few hours' work each day will supply him with a good house and sufficient food and all the clothing that he needs in this gentle climate. In a *Review of Foreign Missions*, published by the United Boards of Missions of the Provinces of Canterbury and York, in 1908, I read that in the Anglican Mission in New Guinea, there are some hundreds of converts, and they are taught to work for their living. Was ever such nonsense? As if the native had ever done, or dreamed of doing, or ever had the chance to do anything else but 'work for his living.' There is not much that we can teach him in that line, for Mother Earth is most kind to him, and he has so exactly succeeded in 'adapting himself to his environment.'

"Everyone has enough, and perhaps a little to spare. He has plenty of business of his own to attend to, and there is no very obvious reason why he should of his own free will leave any of it to wait upon the foreigners. But granting that he does not work very hard at present, and that 'work' is a fine thing in itself (I am thinking of the sort of work that you and I do so steadily, because it is our pleasure or our duty, or simply because we cannot help it, rather than of the sort of work that the white man wants the Papuan to do), and supposing a considerable number of New Guinea men to be persuaded or compelled to work very hard indeed at some productive undertaking: for whose benefit is that work to be done? Hardly for his own, since his needs are already supplied by his own labour, and there is really no reason why he should work any more for himself than he does already. He could not eat any more, or live in more houses, and he would be worse off with more clothes than he has at present. Is he to work, then, for the benefit of the white man, whose social conditions certainly make him want all that he can get? There is plenty to be got in New Guinea, if we can only persuade someone to get it for us. In a few years, as the country gets opened up, and white men come here in crowds, attracted by the promising openings for enterprise and capital in an unused, fertile country where there seem to be plenty of 'hands,' there will inevitably be difficulties about land and about labour, and the white man will be irritated when he sees these natives apparently doing very little, and yet coolly refusing to labour for him.

"In the abstract, a little more work, and a little harder work, might not be bad for these copper-coloured friends of mine, but I do not want to see 'the lazy nigger made to work' (as the white man sometimes puts it) for the enriching of men who really do not care twopence about the native here—or hereafter; nor should I care to see my own countrymen attempt to teach the Papuan how to rearrange his times for work and play, and his methods, nearly perfect at present, of supplying the needs of himself and his family, until they have solved the problem of the unemployed in London and the rest of England, and the other problem of the loafers in Sydney and other parts of Australia."