

## JUSTICE BETWEEN INDIVIDUALS AND THE BEHAVIOR OF STATES

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WE HAVE pointed out that the State is merely a multiplication of individuals. As such it is, or should be, allowing only for such different situation as a partnership presents when contrasted with that of a single individual, controlled by the same fundamental laws, subject to the same rewards and punishments, as a mere human being, and endowed with the same ambitions, desires, and passions. Nevertheless, in the discovery and application of the law as applied to the single man and to the group called a State, greatly different degrees of progress have been made. In the course of the centuries it can be truthfully said that inquiry into the rights, duties, and penalties for wrongdoing, so far as the individual is concerned, have advanced infinitely more than have inquiries as to the same matters with regard to States.

For an indefinite number of thousands of years mankind has bloodily fought its way, until it has reached a point where many fundamental legal rights have been made manifest to the stupidest so-called lawgiver because of the punishment following upon their denial. We have learned that all have a right to life as between themselves, though we have not extended this conception to embrace the individual in his relations with the State. We know that a man is entitled to liberty—that is to say, to go to and fro as he pleases; to employ himself or to be employed in any gainful way; to enjoy such amusements as he will. Incidentally, we have proclaimed in our constitutions, for his benefit and for the benefit of all, that he may publish by print or word of mouth his ideas on any point whatsoever. The written law has recognized his right to acquire property, but has declared that he may not do so through violence or by fraudulent device condemned by law.

We have made these and other advances, but it remains true, and we must bear in mind the fact, that even these lessons have been imperfectly learned or are imperfectly comprehended in all their implications. To a degree, the exact truth of any conclusion we may have reached is vitiated because of this fact. Merely by way of suggestion, as the full argument is quite aside from our purposes, it may be said that while we enjoy freedom of speech usually, at any rate, as to religion, we may not indulge in it in an unrestricted manner as to the conduct of the government under which we live. Particularly is this true in war times, when government, while willing that people should be critical as to the ideas underlying other institutions than itself, fiercely proclaims its actions as outside of the range of ordinary discussion.

So also, while we rightfully recognize the existence of property, the word itself has not received its final definition, and the nature of property is at all times subject to re-examination. This, we will remember, was decidedly the case as lately as the war between the States, and we will not forget that an infinite amount of property was destroyed without compensation (that is, not regarded as property) when the Prohibition Amendment was adopted.

Again, our conception of honesty is largely conventional. If the written law tells us that a certain line of conduct in a given case is dishonest, it is usually right, and we accept it. With equal submission we regard that as honest which the law gives its stamp of approval or at least which it does not formally reprobate. This saves the labor of thought. Nevertheless, accurate conceptions as to private honesty do multiply with the rapid increase of personal relationship.

However imperfect may be our conceptions about right and wrong, as affecting individuals, and whatever changes the future may have for us, this branch of law is better understood than is international law, which has many valuable lessons to learn from it. For this situation there are excellent reasons. As stated, knowledge of law on the personal side has been developing for thousands of years. When we treat, however, of growth in knowledge of law in its international phases, we must remember that its history is a short one. During the time of Roman supremacy, after the rude contests of earlier years, all outside the Roman pale were barbarians, not forming real nations. Until the Middle Ages, a foreigner was almost invariably regarded as an enemy. These considerations, without undertaking to develop them, forbade increase in knowledge of any true international law among the Romans.

During the early Middle Ages the nations for the first time began to recognize themselves as entities between whom some sort of relation must exist. But it was then the courtier, the immediate servant of the king, who was the agent through whom these relations were carried on and who led the professors, controlled by feudal conceptions, to lay down with unconscious sarcasm what they called the law of nations. Our later developments, as has been pointed out, show the defects of the origin of this branch of what now is only so-called science—defects which are obvious enough to all except those who are too close to it to see. International perceptions are, perhaps, slower in part because such relations are of necessity fewer and do not command the vigorous examinations that acute and immediate personal interests dictate in private affairs.

If we have, through fire and blood, wrought out a theory of human rights as affecting the individual which, while defective, offers nevertheless the best working basis we have, why should we not apply a like theory directly to the State? If we take this course, forgetting the prepossessions which affect us because of conditions as they are, we shall be forced to conclude that that which is dishonest in the man is dishonest in the State; that which is cruel in the individual is cruel in the State; that which is contemptible in the one is equally contemptible in the other. No bias of patriotism should blind us as to the essential nature of national acts, and no blindness induced by custom should prevent our seeing the obvious.

A conclusion from all this is that there is a duty imposed upon those who would influence in the lines of justice the affairs of nations—and this includes every individual in our land—to demand that Uncle Sam should be, according to the best theoretical and practical standards, a gentleman and an honest man. And, after all, true international law has no requirement other or

greater than this. It has no mystery about it. It calls for nothing except clear and clean thinking.

There is a copy-book saying, to which we give formal assent, that "honesty is the best policy." If this be true with regard to individuals, slight examination will show that it is true as to nations. The trouble has been that governments, proud in their own conceit, limiting criticism from within, impatient of it from without, convinced of the righteousness of their actions, and lacking the cool, steady control of ideas of justice worked out and laid down within the books of international law, have run riot over the rights of their neighbors.

Let us apply the rule we have just suggested. If, to illustrate, that dictate of honesty which prohibits a man from forcibly possessing the goods of his neighbor had prevailed as between nations, would the victor, after success at arms, inflict upon the loser the loss of territorial power, the delivery over of moneys obtained from the subjects of the losing country, or hold the defeated nation in bondage of debt running over indefinite years? If, for instance, international law had been "on the job," would it have failed to recognize that a government is a mere agency, acting for others; that the fines and penalties levied upon a government were, in point of fact, not levied upon the government at all, but upon each individual whose purposes it was created to serve? Would not international law have seen that the successful contestant was taking money from each individual represented by the unsuccessful government? Would it have been able to square this conduct with the most ordinary principles of honesty? Would it not have seen that the infliction of a penalty upon the loser government was *pro tanto* reducing its subjects to a condition of slavery? For all that slavery does is to take without recompense the unwilling labor of one man for the benefit of another.

In the presence of this situation, the law-writer calmly says that such is the fortune of war and such is the right of the victor. By what right is this said? By no right, except it be that superior power is recognized as right. But power and right do not spell the same thing. If it be said that a State, by the mere fact of its existence, can convert that which was wrong in the individual into something commendable on its part, we may ask at what point the subtle alchemy which reverses the character of acts begins to operate. The private individual has, we shall agree, no social right to kill or steal. This act is unsocial and under the ban, therefore, of a natural law, even when men are living outside the jurisdiction of formal statutes. We will agree, further, that no two individuals possess that right. We will, perhaps, agree that when a group of men are united into a village community, they are but fortuitous collections of human beings who are not endowed with the mysterious power of transforming original wrong into right. They may not, therefore, rob and slay members of a neighboring village.

We will hesitate to declare, and we will not tolerate among ourselves, that a city can rightfully, because of its jealousy of a neighbor, destroy its inhabitants, but we suddenly discover that when several cities unite and call themselves a nation, the restraints which had controlled the individual, or the little group, or the little village, or city, no longer exist. An enlargement of the

numbers and a change of name, it would appear, have a certain moral efficacy—rather elusive, it must be confessed, but very satisfying to our desires for gain and power—so that we never examine to discover if there is any weakness in our chain of argument. As practical men, we accept things as they are and, with the folly so often incident to practical statesmanship, we ignore the necessary results of our actions.

If we turn to the results of our line of conduct, particularly as exemplified in the most modern examples, we find that it bears its own peculiar punishment, and thus its wrongful character is demonstrated. We shall show that this is especially true today. Under the old feudal conception, the subject was merely the chattel of the lord and not an integral part of the State. The prince, by his voluntary action, could transfer his subjects from his control to that of other potentates without exciting thought or resentment on the part of people, who were thus treated as cattle. Of old, therefore, the reactions might have been slight and practically non-existent. Feudalism might have permitted this line of conduct with little demur, but today a democratic law of nations is coming into play.

Let us take a recent example from the history of our own country. In 1898 Spain, because of a superior force, yielded her corrupt sovereignty over the Philippine Islands to the United States. As it is argued, we quieted our conscience by paying Spain \$20,000,000. Spain was herself an interloper and a foreign power in the Philippines, even though she had exercised control there for three centuries, the Spanish people, the while, being punished during every year of those three centuries, in that they were compelled to send armies to those islands and to expend relatively enormous sums on navies to insure their subjection and retention.

As the result of the conduct pursued by us, 5,000 American lives were lost in the Philippines, and year by year our naval expenses, as well as our army budgets, have been enormously increased by an attempt, like that of Spain, to subdue and preserve our forcible acquisitions. Our exploits in the Philippines, including the strangling of a budding republic, have thus vastly increased the steady burden of taxation in the United States; and every worker, however modest his income, and every man of wealth, whatever his possessions may be, finds himself compelled yearly to part with appreciable sums of money for having maintained what some call the tawdry glory of our imperialistic venture.

The evil, we are told, does not stop at this point. We have set an imperialistic example to Japan. Further, if we have been troubled because of tenseness of relations with that dynastic country, many say it is almost wholly because we have interjected ourselves into the affairs of islands inhabited by an alien people and many thousand miles away from us, making Japan fear our imperialism as a present danger. Our punishment appears to have been direct and certain.

Some among us again argue that we are salving our consciences with the thought that we have treated the Filipinos better than some other exploiter nation may have treated the peoples of Asia or Africa which have come under its power. We have, they say, taught the Filipinos sanitation. We have given them education. We have inculcated ideas among them that they did not

before possess, as to those principles of government which most appeal to us. All this is doubtless true. The hollowness of our excuse, it is claimed, is exposed, however, when we ask ourselves as a people whether we would have been willing to have spent on education and sanitation in the Philippines, without political control and without hope of economic gain, the money we have parted with for their possession. The answer must be promptly in the negative. The development of the Philippines in the fashion which we use as an excuse, we are told, renders our future punishment all the more assured, for that every Filipino whom we train according to our ideas must ask himself why our practices in the Philippines in matters of government have not accorded with the principles we maintain as valid at home. Thus he grows to be a more and more intelligent and dangerous opponent of American rule. In the end it is claimed, as manifest to all who will not shut their eyes, that the Philippines will gain their independence from us with no thanks returned to America.

If our exploit in imperialism is in violation of fundamental international law and involves, as said, a strong-arm taking of political power for economic benefits, and should seem too painful a subject to pursue, let us ask ourselves the net gain to Germany, in the long run, through the taking of Alsace-Lorraine. Assuredly this was one of the elements which made, some time or other, another Franco-German war a practical certainty. It gave an added impetus to Germany's course of military development and consequent imperialistic adventure, which would have been largely lacking if these lands had not been taken.

If we need other evidence that violations of natural right indulged in by nations carry with them an appropriate punishment, and therefore stand condemned in the forum of real international law, whatever professors may say or fail to see, let us turn to India. We find that this country, vast in population, was first seized by England for the benefit of a trading corporation, and that gradually the workings of the corporation were taken over by the English Government. It is believed that for two centuries it has been exploited, as we say in common parlance, for the benefit of England. In fact, this belief has but the semblance of truth. India has been held for the benefit of the English army; for the benefit of that small section of English society which has furnished its civil servants; for a small circle of commercial exploiters, and to the detriment of the average man of England. For what has this adventure produced? Its retention has made necessary an enormous navy and an increased army. Gibraltar, which has no proper relation to England, has been taken to keep the naval route clearer. The same reason has justified the holding of Malta, with no natural geographical or other relation to England.

Again, England, by doubtful methods, took hold of Egypt and made a subject nation of millions of people who knew England only to hate her. Aden was added to the list to help complete the line of protection. The impoverished and suffering millions of the English Islands, many of them stunted in their physical growth and mental development, attest the failure of the English in this imperial enterprise. It is true as ever, that "hell is a city much like London."

We may say all this with genuine admiration for the superior progress in establishing and rendering secure their rights England's subjects have made during the centuries. To England we owe much of the political and social advancement we enjoy and which we fondly believe superior to that enjoyed by the citizens of other nations. She, herself, has failed to carry into international relations those ideas of right action which she has been compelled to recognize as paramount between man and man, and the handwriting on the wall grows more and more distinct.

It is a dreary, sordid history we have to review when we consider the degrading growth and corrupting decay of governments which have indulged in foreign conquest—a history from which men have so far learned little and international law, as taught, has learned nothing. Take the instances which naturally spring first to one's mind. We have Spain, with its wonderful colonies, and Portugal, with a like career, each, after infinite expenditure of men and money, flattering itself with the story of its greatness, only to sink reduced to a low scale of relative standing among the nations of the world. England, in a more modern way, followed their example. We have the United States feebly tracing the same course, tormented by conscience and suffering materially. All these things have been done in the name of the glory of the kingdom, or empire, or we might claim for the United States that of the American people. Each instance has brought unearned and undeserved wealth to the rulers and to a select few. Each instance has spelt poverty and moral degradation to the immense mass. Such violations of real international law, if one's taste be not too particular, may seem commendable in autocratic government. They have nothing in common with democracy, the duty of which is to secure the well-being of the common man, above all things else.

The universal results of these attempts to subject alien and foreign nations to the rule of the conqueror, with the resultant injury and ruin of those taking this course, point to the existence of a natural law of nations infinitely more sacred than the words of the printed page.

We will be told that this may be true, but it is all too idealistic for a practical world. But practical men, ready to take momentary advantage of opportunities for material gain, have brought enough destruction upon the world. Idealism should have its day. Meanwhile we will not forget that millions of men have offered up their lives for false ideals. Our duty to discover the true ones in international affairs is imperative.

## THE TREATIES, A COMPLETED JOB

On March 31, less than two months after the adjournment of the Conference on the Limitation of Armament, the State Department forwarded identic notes to Great Britain, France, Italy, Japan, Belgium, Portugal, The Netherlands, and China, advising them that this government was prepared to exchange ratifications of the treaties to which they were parties. That was the culmination of the great undertaking commenced on Saturday, November 12.

The ratification of the several treaties framed by the Washington Conference proper was accomplished in the Sen-