

## Book Reviews

THE OUTLAWRY OF WAR: CHARLES CLAYTON MORRISON (foreword by John Dewey). Willett, Clark & Colby, Chicago, Ill. 1927. Pp. 300+xxx. \$3.00\*

This is distinctly not a book on Pacifism. It is a book on Outlawry of War. It will undoubtedly be criticized violently by many who have never read it. It will also be criticized by many who have read it, but who comprehend neither the conception of "outlawry" nor the notion of law. But to all who have, not necessarily a technical, for such is inessential, but an intelligent idea of the end, nature and growth of law, the proposal explained in this book will furnish the subject for long and thoughtful consideration.

To the intolerant mind, committed to the view that any idea is without merit which challenges the existing order of things; and to the mind which fails to grasp the essence of the proposition to outlaw war; nothing said in this book will carry weight or conviction. But to the mind genuinely interested in any intelligible program to abolish war, and one eager to investigate the merits of ideas, regardless of their interference with received knowledge and custom, a little explanation and a little honest reading will provide a satisfactory basis for the consideration of the outlawry conception.

Under present dogmas of international law, war is a respectable, respected, and even honored institution among nations for the settlement of international disputes. As the author puts it, war is about the most lawful thing in international law, for the great bulk of international law consists of the "law of war." The genius of the outlawry proposal is that it makes war unlawful, that it makes the nation which resorts to it an international criminal, and that it substitutes an international court of justice for the international court of war.

War is to be outlawed by international law, through the mutual agreement and pledge of the nations never to employ it. All disputes are to be submitted to a permanent court with affirmative jurisdiction, competent to hear all disputes arising under international law. This court is not one with jurisdiction concurrent with the court of war; not one from which an appeal can be taken by a disgruntled nation to the war court of military force; but a supreme court with final authority exercising a general and affirmative jurisdiction, and applying an accepted juridical code to which war is foreign and external, and which makes a resort to war an international crime.

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The lasting merit of the scheme is to destroy the institutional basis of war; to scatter its respectability; to dissolve its legitimacy; to desocialize its position among the peoples of the world.

It will not do to dispose of this conception with the dogmatic statement that the plan cannot work because the nations will go to war anyway, court or no court, law or no law, if the result of the litigation is distasteful to them. It is true, that the whole groundwork of the plan is the good faith of the nations in giving their mutual word never to resort to war. The author, quoting the infallible logic of S. O. Levinson, the "indefatigable apostle" of the outlawry proposal, points out how all treaties have depended for their efficacy on nothing but the plighted word of the "high contracting parties" rather than upon the military power of the nations to enforce the treaties. Thus three situations between treaty-making nations A and B are possible, and three only:

- (1) A and B are equal in war strength.
- (2) A is stronger than B.
- (3) B is stronger than A.

It is obvious then in the first situation neither nation could enforce the treaty; in the second, B could not enforce it, and in the third situation, A could not enforce. Consequently, the sanction involved in international treaties depends upon the good faith of the contracting parties, and nothing more.<sup>1</sup>

And treaties have been efficacious. Few wars have been caused by treaty violations, most surely not the world war, for the violation of Belgium's neutrality occurred only after war had started; and was defended, rightly indeed from the German viewpoint, under the war system, as a necessary war measure.

So there is to be no compulsion about this plan to attain international peace through outlawry of war. The author exploits the exposure of the fundamental fallacy underlying most modern peace thinking, namely of trying to compel peace by the instruments and agencies of war. The essence of the proposed plan rests in the sovereignty of law. Law, not as a mere command from a political superior to a political inferior; law, not the product of or dependent on the State; law, not as the weapon of governors to keep in subjection the governed. But the law here invoked to banish war, is the law that is above and superior to and binding upon the State; law under which Coke and the common law judges convinced the King that he himself must rule; law, superior even to the holy and god-like

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<sup>1</sup>P. 182.

voice of the people. This is the law, the majesty of which depends neither upon the police nor upon militias; upon armies nor marines; law, the conception of which for three thousand years among civilized peoples has brought to account the enemies of society and dragged kings and emperors before the bar of justice. This, indeed, is what is meant by the law that will be invoked to place war forever beyond the pall of human recourse.

Distinctions are made between international law as now applied by arbitration tribunals, for such are the Hague Tribunal and the League Court, and a received code of international law, accepted by and representing the will of the nations, applied by a court organized upon purely juridical principles, with the inevitable result of building up a lasting jurisprudence the legal materials of which will gradually evolve into a systematic body of international principles of justice.

Occasionally Mr. Morrison becomes dogmatic in his enthusiasm; sometimes he is actually erroneous in his illustrations and analogies. His sociological history is sometimes inaccurate, as when he declares that "there is not known to human society any method by which an established institution may be gotten rid of except by outlawing it."<sup>2</sup> But this is quibbling. The book is written, on the whole, with imagination and a unique critical insight. It is based upon a sound sociology and a valid juristic philosophy. What is more, it is a noble book envisaging a high and attainable ideal and written with a fine passion. It is a distinct contribution to modern peace thinking. It deserves to be widely read. Not the least meritorious feature about it is the foreword by John Dewey who, having a thorough conception of law and of outlawry, unqualifiedly endorses the proposal to outlaw war.

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<sup>2</sup>P. 213.