BOOK REVIEWS


This volume seems to the reviewer to resemble more closely a study in metaphysics, than one dealing with twentieth-century human beings, with politics, and with international law. While great respect is entertained for the persons who participated in the volume, it seems difficult to believe that it could be seriously supposed that peace, or anything like peace, is to be achieved by the methods advocated in this book.

The thesis is this: That the Kellogg Pact has pledged the nations to outlaw war; that the pledge is ineffective without "sanctions"; that in every war, more or less, it is possible to pick the "aggressor" who breaks the pledge; that, inasmuch as the United States has excluded the use of armed force in the application of sanctions, it should now associate itself with other nations to use a joint boycott against the "aggressor," thus avoiding force and yet paralyzing the aggressor by fear of consequences or actual defeat, and thereby assure peace. The supposed advantage of the plan is that the "teeth" in the Kellogg Pact are to bite softly.

To sustain this thesis and establish its validity, if any, the committee of distinguished citizens who lent their names to this enterprise enlisted the aid of a teacher of international law at Princeton to study the legal and political aspects of the proposed boycott and of economists to study its economic effects. In a number of prefaces the studies are introduced by distinguished publicists, who, except for Mr. Dulles, seem not to doubt the validity of the thesis. One introducer says, "The situation is so simple that one would think a child could understand it." It is altogether too simple, as abstractions sometimes are. Even family relations are more complicated than the international relations here assumed; imagine what would happen to marriage if it were operated on a formula to keep the peace. We look in vain for any discussion of the political world around us or an appreciation of the factors which brought it to its present pass and which need intelligent consideration. Nor do we find any discussion of the necessity for negotiated change in the status quo, as an alternative to violent change. The preservation of the status quo seems alone to be identified with "peace."

Apart from the gossamer assumptions as to what the Kellogg Pact legally binds the signatories to do—which, the reviewer submits, is practically nothing at all except to assert that whenever they use arms they have acted in self-defense—certain formulas are set up to determine the "aggressor." The writer responsible for the "legal" view states (page 67): "It should be emphasized that, in order to determine the aggressor, it is not the intrinsic merits of the dispute which deserve primary consideration... [It is only necessary to determine] the responsibility for the actual outbreak of hostilities." Thus the embarguing powers are invited to engage in action possibly ruinous to themselves and promising new panics not necessarily against the party which may be in the wrong, but in support of that party, because, forsooth, the party in the right was "responsible for the actual outbreak of hostilities." The British Government refused to sign the Geneva Protocol in 1924 on the very ground that this type of formula was a snare for the unwary and a trap for the innocent. The assumption that there is a right and a
wrong in most wars, moreover, is rather hazardous. So, neutrality as a concep-
tion, regarded by informed students as perhaps the greatest achievement in the de-
velopment of international law, is now derided as an anti-social and perhaps lawless
interference with the proposed embargo upon the "aggressor." But, we learn,
neutrality is not to be replaced, but merely to become partiality, i.e., neutrality is
to become unneutrality. The fact that such a conception would require every nation
to arm to the teeth is not perceived. For a sounder view of the concept "aggressor"
in history and for an analysis of its futility in practice, the reader may be referred
to Devere Allen's article "The Slippery Aggressor," in The World Tomorrow
for June, 1930. The term "aggressor" is, the reviewer submits, one of the most
shoddy and shallow, if not dishonest, conceptions foisted upon the world in the
modern era of peace by formula. It awakens in many minds a kind of emotional
morality which enables indignation and violence to clothe themselves in the mantle
of righteousness. Even if there were a way of determining that elusive chameleonic
"aggressor," it is not unknown that aggression has occasionally been constructive,
as, for example, the action of the United States in connection with the Panama
Canal. To stop it might be politically inexcusable. Aggressive personalities have
even been praised. The common law admits much aggression if the motive is
defensive. The whole thesis of the book, however, depends upon the capacity
to determine at once a fact, "aggression," which historians are likely to wrangle
over for decades and then reach no agreement. Yet we must have "a formula mak-
ing it possible to determine automatically the 'aggressor'" and this "certainly can-
ot injure the interests of the United States" (page 141). International law re-
ceives short shrift. "The whole edifice of peace which has been constructed with
such efforts is cracking and people are beginning to despair of ever getting rid of
war." Hence the rescue squad.

The economists whose tables and conclusions constitute the second part of
the book undertake to point out the effects of a boycott on the countries which
establish it and which would have to suffer it; and while they are as gentle as
possible to the thesis of the book, they seem effectively to demolish it. They show
that large industrial powers are not likely to be greatly bothered by a boycott, that
it will be perhaps more harmful to the boycotting nations in losing their invest-
ments and trade than to the nation boycotted, that the citizens of a boycotting na-
tion are not likely to submit to economic losses for the sake of an alleged principle,
that it would hardly be possible to keep the boycotting nations in line, and that
it is doubtful whether the necessary unanimity will ever be found either as to the
"aggressor," as to the articles to be boycotted, or as to the method of carrying on
the boycott, etc. Some of the legal and political effects of a boycott, to which the
legal writer in this volume pays practically no attention, have been pointed out
by Mr. Hyde and Mr. Wehle in their article on boycotts in the January, 1933,
issue of the American Journal of International Law. The economic tables and argu-
ments may prove useful to militarists in showing how successfully to strangle a
nation. The boycotters, however, would let food ships through in order to spare
the civilian population and perhaps the feelings of ex-President Hoover. The fact
that the boycott would almost inevitably be regarded as an act of war by any self-
respecting nation able to resist, and that the citizens of the boycotting nation
might have to take the consequences, is not considered.

Thus, in the name of peace, warlike measures are proposed which, were they
ever to be adopted, would enlarge the area of conflict and keep the world in more or
less perpetual turmoil. The notion that the threat of outside force will keep the
peace, is not sustained by any practical experience of international relations; even in the case of small powers, their courage and temerity have sometimes been promoted by a threat of joint action, and for them, this great machinery is hardly needed. The major premise of the study is, it is respectfully submitted, as faulty on the legal and psychological side as its elaboration is romantic in its practical aspects. Perhaps it is not unfair to say that one of the objects of the book is to show how the United States can be brought into the scheme of sanctions on which the League of Nations is supposed to rest. But it will not have escaped attention that hardly had the Report of the Committee of Nineteen denouncing Japan been issued, though carefully avoiding the term “aggressor,” than Great Britain declared an embargo on arms, not against Japan, but against both belligerents, on the ground that “under no circumstances” would Great Britain be dragged into a conflict with either belligerent. And when the embargo was lifted, neutrality was still the keynote of the policy. The major responsibility of every government is to its own people, and that alone is likely to prevent the execution of general schemes for alleged universal security by threat or hostility. And more recently, two of the introducers of this volume are reported in the press to have deprecated the taking of sides by outside parties in the Sino-Japanese struggle and to have questioned the wisdom of the Committee of Nineteen in adopting a technique of conflict. The New York Times adds the final touch by suggesting, in an editorial of March 2, that “it is obvious that China does not answer to the definition of a nation, as contemplated in the Covenant of the League of Nations.” That is all that the Japanese have been trying to say, the reviewer understands, from the beginning.

The thesis of this book could be dismissed as fantastic, were it not so destructive and harmful. Taught to the younger generation as a supposed practical program, it necessarily distorts the realities of international life and possibly disables them permanently from making any sensible contribution to harmonious relations between the nations.

Edwin Borchard*


The main title of this work conveys a somewhat erroneous impression, which the sub-title, however, corrects in a measure. The volume does not deal with the substance of legislative regulation, but with the various legislative devices by which regulation is effected.

The work falls into five parts: Part I treats of forms of legislation, special and general, criminal and civil, regulatory and declaratory, and so on. Part II treats of such legislative devices as “prohibition by way of disability,” “registration and certification,” “selection and exemption,” “compacts by the states,” “federal concessions to state control of commerce,” “uniform state laws,” etc. Part III is on “phraseology and terms.” It is devoted to legislative terminology and judicial interpretation thereof. Such topics as the following are treated: “political phrasing,” “the question of literal validity,” “restrictive interpretation,” “extensive interpretation and analogy,” “constitutional style requirements,” “precisely measured terms,” “indefinite terms,” and so on. Part IV deals with “the technique of penal legislation,” and Part V with the “technique of civil legislation.”

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