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Book Review: Dominion of Sea and Air

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This is an essay of diagnosis, protest and warning against the present international order, its organization, its principles and its policies. It offers suggestions of a solution for the amelioration or avoidance of the conflict, open or incipient, which international relations of the present day make, in the author's view, inevitable. The author assumes the premise that in international relations the rule of the jungle more or less prevails; that in time of war law is set aside and that the growing destructiveness of the weapons of war, with the growing contempt for established legal doctrines protecting the rights of neutrals and non-combatants, threaten the existence of civilization itself. The old state craft, she says, must go. Her suggested solution is to establish a "commonage of the sea and air" by which the sea and the air shall be free from appropriation or attempted appropriation by any power in time of peace or war, and that the area of war shall be confined strictly to the territory or waters of the belligerents. War should no longer be conducted on the high seas or in the air, which shall be under the control of all the nations, particularly neutrals. Neutrals shall have a certain right of asylum and shall be unmolested on the seas and from the air. This she believes—by confining the conflagration, if it comes, to narrow limits—would stifle war in short order. She deprecates the increasing power which belligerents have arrogated to themselves and which the neutrals seem to have tolerated. She is very positive in her prediction of future wars and of the devastation they will effect.

The author's horizon is broad. She examines the political constellation throughout the world and draws some startling conclusions. She finds that Great Britain, in order to maintain her maritime supremacy, the value of which is challenged by the control of the air, has brought into the orbit of British policy the United States in the Atlantic and Japan in the Pacific. She denounces the Four Power Treaty as a scheme for the subjugation of China. She has a good deal to say about modern imperialism and the struggle for oil. She maintains that the "enforcement of peace" is essentially tautological, and pleads for a cooperative peace, to be effected by taking the mastery of the seas out of the possible goal of national ambitions. She is fearful that Italy will incite war through her policies in the Mediterranean. She considers the League of Nations and the so-called World Court, if regarded as instruments of peace, as essential hypocrisy. She says that nations now, as heretofore, are interested in an imposed peace, which is inconsistent with genuine or continued peace. She sees mainly the desire and policy to increase war weapons and not to diminish them, an assertion in which she is confirmed by the fact that the Radio and Aircraft Conventions of 1923 have not been ratified by a single power. One of her main objections to international law is founded on the belief that it does not rest on "natural law". While opposing the League as in part a professed superstate, interfering with the freedom of each state, she nevertheless demands a "common superior"; and this "common superior" she sees in a "justiciable code" and similar codes which shall obey the "teachings of the jurist Seneca", the "law of nature" of Burke, Hegel's "first cause", Hill's "perpetual law" and the "higher law", whatever that may mean.

The book is interesting. It exemplifies a peculiar combination of realism and romanticism, disillusionment and hopeful aspiration. It will stimulate thought. It exhibits curious lapses, however, which excite some doubt as to the adequacy of the author's background in the field of international law and relations. What is the principle of "demesne" upon which rests the English common law, a principle which she desires to see adopted in international
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law? Neutrals have not always been abandoned to the unrestrained violations of belligerents, as witness the Russo-Japanese war and many wars of the 19th Century. She is over-impressed by the fact that the United States abandoned its trusteeship over the rights of neutrals in the late war and by the violation by both sets of belligerents of the rules of maritime war. She gives to international law practically no weight whatever; in this she adopts a popular lay error. On the one hand, she decries the power and propriety of any superior dictating to any nation what it may do; on the other hand, she demands a "justiciable code of law" with the power of enforcement "such as will gain the respectful obedience of nations". What and whose power of enforcement? These questions are unanswered.

Who is to be the "common superior"? The League? She says the League has stultified itself in too many ways, notably by its inability to maintain the "principle of compulsory jurisdiction as a condition of membership", the term "jurisdiction" being used in the sense of compulsory adherence to the League. Yet the "common superior", she avers, must be recognized, otherwise war is the only recourse. Her alleged reliance on "natural law" and the "higher law" as a guide for nations probably means little more than regard for the principle of "live and let live" in international relations, noteworthy, as she correctly indicates, by its absence from the policy of industrial nations. She has an exaggerated view of the place of treaties in American constitutional law.

That there is value in the suggestion that the sea and air should no longer be within the area of belligerent action and that this would aid in diminishing war will hardly be denied. She condemns the League theory that hereafter neutrality shall be a thing of the past and that the whole world should go to war against the politically condemned pariah. The phrase "aggressive war" probably comes from the vocabulary of propaganda, and not from law or political science. The author demands "law and order" in international relations as it approximately exists within the nations. The freedom of the sea and air in the wide sense in which she uses the term she wishes to see enforced by the "common superior", but is vague as to who that shall be, and how the enforcement is to take place. She would deny to every belligerent the privilege of sitting at the peace table, but would have peace terms declared and enforced by the neutral nations acting through the "court of commonage". She concludes that peace will not be possible until nations act on the principle of "cui utriusque tum ut alienum non laedes."

She pays more attention to the immediate political firmament and the psychological factors governing policy than to the underlying economic factors. Emphasis upon these would not have changed her conclusion that the world is now organized on a more distrustful and competing basis than for some time, and that the growth of armaments reflects the growth of distrust. Perhaps experience alone will convince of the unwise of the present policies and bring about the result that the author desires to see adopted. Her book serves the useful function of stimulating thought along lines of possible solution without necessarily gaining adherents for the proposals advanced, or winning confidence in their practicability.

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Written with the avowed intention of producing a purely deductive, theoretical study of the shifting and incidence of taxation, this volume by Professor Brown is remarkable for its comprehensive range and its felicity.