

MODERN WARFARE AND THE LAWS OF WAR

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MORE than four years have elapsed since the Armistice. The Peace terms have been settled, and Germany has begun to pay. The problems of the present are centred in Tokio or Constantinople rather than in Berlin, and the old alliances of Europe are undergoing readjustment.

For eight years we have been considering international problems in the shadow of a world war, and the natural prejudices inherent in conflict have been intensified by deliberate propaganda. But those problems, while arising out of the Great War, should now be considered from a scientific rather than a patriotic point of view. For example, International Law came out of the struggle sadly battered and torn. Those dents and tears must be carefully examined, for it may well turn out that they mean much to the laws governing the next war. It is, of course, difficult to think dispassionately about such questions as the sinking without warning of merchant ships or hospital ships, and the bombing of defenceless towns. These are brutal outrages, against which British instinct revolts. Yet such facts must be analyzed, if we are to determine what the usages of actual warfare are, and what they are likely to be in future.

International Law is a peculiar field of jurisprudence. It cannot be reduced to the Austinian conception of the command of a Sovereign to a subject, enforced by the former's might. We must rather look upon it as a body of rules governing States that acknowledge no institutional superior. These States are supreme, and subject to the Law alone. Breach of its rules does not involve punishment, because there is no Super-Sovereign by whom punishment will be inflicted. The only physical sanction for the rules is war itself, and this is essentially self-help. An infraction of International Law may well entail merely the feeble protests of the aggrieved State, friendless and forlorn, legally equal, but inferior in influence, wealth, and military strength. Thus the chief guarantee is the force of world opinion, and the value of this is moral rather than legal. International Law has no compelling power; yet it is

different from International Morality. The definition of its rules is authoritative; obedience to them is claimed as of right, and is rendered *ex debito iustitiae*. It governs the vast field of international relations, and without it intercourse between States would be impossible. But, because it lacks a Super-Sovereign formulating its rules and enforcing obedience, it is without the permanence and rigidity that mark the ordinary law of the land.

The rules of International Law do not wait for legislative enactment. Custom and practice act directly in replacing outworn doctrines. States do not meekly endure rules that unduly restrict their liberty, awaiting a conference at which these may be reconsidered. No State will see its existence imperilled in order to adhere to a restrictive formula, and no State will obey a restrictive formula unless it can rely upon a like obedience by competing Powers or adversaries. For example, Germany at bay did not await an international conference before releasing poisonous gas or sinking the *Lusitania*, and no State can in the future safely rely upon any convention or rules to prohibit submarine warfare. Thus fundamental changes in circumstances that remove the rational basis of international laws or conventions must be recognized as rendering them no longer obligatory.

War has undergone such fundamental changes. In the past it was essentially a conflict between armies. For example, when a dispute arose between France and Prussia, the French armies took the field as champions of their country's honour. The issue of the war depended, first and last, upon the prowess and strength of the country's military forces. The line between combatants and non-combatants was easily drawn, and the services of the latter were of comparatively little moment. Indeed, the laws of war grew up around the conception of a duel between opposing armies, in which the civilian population consisted of innocent—though somewhat partial—spectators. They were influenced also by the theory that war should be made as pleasant as possible. But the experience of these last years has rudely shattered such amiable fictions. Modern war is no such duel between professional fighters, but a life and death struggle between contending nations.

We have seen the peoples of the world organized as vast socialistic machines, with but one purpose,—the purpose of battle. Men, women, and children are but parts in the machinery. The work of those among them who happened to be in khaki or in gray was more spectacular, but—from the strategic point of view—not more important than that of the farmer or the farmerette, the munition-maker, the clerk, the clergyman. Every efficient man or woman

who was doing necessary work was as much an effective unit in the nation-in-arms as the pilot or the gunner. Hence the laws giving immunity to non-combatants seriously hampered the achievement of the sole end of war,—submission of the enemy. These facts, together with the development of new instruments of warfare such as gas, aeroplanes, airships, submarines, oblige us to reconsider many of the restrictive rules that were universally accepted ten years ago.

It is hardly necessary to refer to chemical warfare. The use of gas is now definitely sanctioned by custom. Its effect upon the joys of soldiering is known only by those who have been subjected to it. We must bear in mind that in future wars gas of far greater intensity will be employed, on a scale of which we do not yet dream. Moreover, it is almost certain that the gas will be directed primarily against the civilian population. These bombs will hardly be wasted upon armies equipped with respirators, when defenceless towns are open to attack. Submission of the enemy would be more readily achieved by the gassing of politicians and plutocrats than by forcing gunners and sappers to put on protective masks.

The bombardment of undefended towns by naval, military, or air forces was expressly prohibited at the Hague in 1907. This was among the most glaring breaches of International Law committed by the enemy, and it is one of the most striking illustrations of the unreliability of unduly restrictive rules. Fifteen years ago the bombardment of undefended towns was regarded as unimportant, and it was indeed difficult to conceive of such a measure at that time as having any military value. For only innocent civilians were affected by it, and the horrors of war were thus greatly increased with no substantial advantage in defeating the enemy. But the development of the aeroplane, the dirigible, the submarine, and the long range gun, together with the fact that non-combatants are now no longer innocent, has completely altered the situation. There is little doubt that the warfare of the future will be directed most of all against non-combatants at the vital centres of the country. The chief fighting force will be the air service, and it is quite impossible to apply the old methods to a type of warfare that depends on principles entirely different.

In the past, by land and on sea the military and naval forces of a State formed a complete screen preventing the enemy from getting at the State's territory or its civilian population. The enemy fought to penetrate this, or to compel the surrender of the defending army or navy. If they succeeded, the "non-combatants" were at their mercy, and must yield or be annihilated. In the wars of the future it will be impossible to establish a line that cannot be

penetrated at will. The aerial fleet will not fight its opponents in order to have the civilian population fall into its hands. It will avoid the defending forces, and so accomplish its purpose with all the greater despatch. And the same reasoning applies to naval warfare. The invention of aircraft and the submarine has scrapped the navies of the world. A great fleet has some value for defensive purposes, and is even essential to a State that fondly hopes to maintain its sea-borne commerce during hostilities. But it has little offensive value, because it cannot compete with mobile artillery on land, and the real enemies of the future—the submarine and the seaplane—do not fear it.

During last century sea-power could control the sea and enable a maritime State to preserve its communications unchallenged. In the Great War the British navy was able to control the sea-borne commerce only because of Germany's blunder in concentrating her energy upon Dreadnoughts instead of submarines. Her vacillating policy in regard to the submarine was indeed the greatest mistake she made. If the Kaiser had in this matter listened to the counsel of von Tirpitz and carried out that Admiral's scheme, it is probable that the war might have been won in 1915 or 1916. The same point may be emphasized in regard to the hospital ships. The sinking of the *Glenart Castle* meant that one more transport had to be taken from the necessary work of carrying troops and supplies, in order to fill the place of the hospital ship that had been lost. It was another step towards compelling "the submission of the enemy", and we must expect that in future a State at bay will not regard legal niceties or agreed restrictions.

Most of the immunities of the medical service are similarly anachronistic. Six months are required to train a combatant officer, and six years to educate a medical officer. The military work of the latter is indirect, but vitally important. It is very doubtful whether the protection assured by the Geneva conventions to the medical service can be relied upon in coming conflicts. After all, the failure of the humanitarians to soften war, and to limit the scope of its operation, may not be an unmixed evil. War is hell, and the modern sugar-coated hell is not much better than the old fire-and-brimstone variety. A complete realization of the character which it must bear in the future,—of the indiscriminate bloodshed, mangle and poisoning,—will make politicians and people alike more ready to forego national ambitions in order to achieve international peace. The public must face facts, if world opinion is to be vitalized. Another great war would certainly destroy civilization, and this can be prevented only by the overwhelming mass of public sentiment.

The time is ripe. Millions of men have seen and experienced the horrors. We have in the League of Nations a tangible institution, and through its development we may save ourselves. The time, the money, the energies, the prayers of mankind must be devoted to this new crusade. Men must be prepared to see their own country's ambition thwarted for the common good. Statesmen must be willing to reconsider in a spirit of conciliation the possible points of conflict. A world-wide spiritual revival must come to pass.

In an earlier issue of *The Dalhousie Review* a member of the Editorial Board attempted to belittle the League. He sneered at it as lacking in moral force, as "a product of the professorial study, not of the school of men and real affairs." But, when one recalls that the framers of the Covenant were Lord Robert Cecil and General Jan Christian Smuts, it seems unnecessary to say more. The movement has behind it the moral force of millions of men who have seen war's reality. But the politics of the nations are still controlled by men who have suffered only vicariously or by hearsay. This state of affairs will pass. It is unfortunate that the proportion of men in the United States who faced the hopeless agony of year after year of bloodshed is not so great as it is in our own country. If there had been six million Americans who had confronted the actualities of an interminable struggle, President Harding would never have ventured upon his campaign to kill the League.

Nevertheless, despite the lukewarmness of the great country to the south, and the sneers of the sceptical older generation, the movement towards international peace is growing in strength. The misery of to-day and the bitterness of yesterday are burning into the hearts of men. Ten years ago the worst insult that could be hurled against a statesman or a party was in the phrase "Peace-at-any-price fanatics." To-day few responsible leaders would admit that any price can be too great for peace.