

The Growth
of
International Arbitration.

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Outline of Thesis.

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With the arrival of man came dissensions, and the earliest record of the deeds of men is but one lengthened account of war, and discord settled by the sword. In the Garden of Eden, personal jealousy led to the first slaughter of man. It's thought of glory, no love of home or country, no redress of wrong, no vindication of the right, prompted Cain. In the cry of Goliath of old, "Give me a man that we may fight together, and I will slay him and ye shall be our servants and serve us," we find typified the thirst for personal glory and desire for conquest as truly as in any later day. In olden times, mere separation by language custom or nature served as a sufficient reason for distrust and enmity. The mere fact that two peoples were separated by mountain range or river seemed sufficient in itself to sow the seeds of hate. This unwise and unjust enmity between nations prevented, as a matter of course, any equitable adjustment of difficulties had such been possible otherwise. Pascal satirizes this inherent

enmity in the following: "Wherefore do you kill me?" cries some poor victim of his neighbor's sword. "What! do you not dwell on the other side of the water? My friend, if you dwelt on this side, I would be an assassin for then it would be wrong to kill you: but since you dwell on the other side, I am a hero, and it is just to kill you." Here we have an advanced phase of Isolath's motive - not for personal glory but for the aggrandizement of his country, for the glory of those who "dwell on this side the water."

War is the great menace to progress and humanity, the greatest of calamities and sorrows, most destructive to the best interests of humanity, bringing widespread disaster and death in its wake. Any efficient measure offered as a substitute or remedy for war should be hailed as the promoter of peace, happiness, and prosperity. We all realize the phenomenal progress made by civilized man during the last century in science, literature, industries and governments, and in no less degree has mankind

made progress towards "humane and mutually advantageous international relations" greater progress than during all previous centuries of human history. The moral force which is the outcome of advancing civilization, recognizes the bond of brotherhood between men and the tie of justice between nations, and this growing international sentiment will crystallize into the desire for the abolition of war and the introduction of arbitration as a means of settling disputed and difficulties between nations. This question is, today, one of vital and far-reaching importance. Never before were the people as a whole so aroused to a sense of the expediency, even necessity for some concerted decisive action upon this subject as they are in this decade, and never before were so many or so serious difficulties between nations settled by this mode of arbitration as during the last quarter of a century.

That nearly all Europe is in

a state of "armed neutrality" (odious but expressive phrase!) is conceded; that the South American Republics seem one seething sea of contention and revolution is admitted; that India is submitting to gradual but inevitable subjugation by England is undeniable; that the piteous cry of the oppressed Russian peasant reaches around the globe is, alas! too true; that even in this fair land of ours the gaunt wolf of Necessity nightly howls at the frail door of many a poverty stricken household is beyond dispute. and is this, then, judging the future by the past and present, - a time to prophecy "Peace on earth, good-will toward men"? We answer, Yes. The conditions enumerated, hard to admit and grievous to face as they are, - are conditions that have never been less true since the existence of those nations - those peoples. But, when before has the bounty of the world been showered upon the starving poor of a sister nation?

When such an abhorrence of active warfare as exists today in France, Germany, England, Russia, each dreading beyond the power of words to express, the evil hour when the first fatal blow is struck; when before such satisfactory and equitable adjustment of grievances as during the past score of years; when before has a whole hemisphere been represented in a Congress whose motive was to establish a perpetual peace between the composite nations; when before was such a project humanely planned and successfully inaugurated as the establishment of the Congo Free State; when before was there such international peace and unobstructed intercourse between all nations of the world, as exists today; when such religious toleration, such wide-spread interest in science and education; when before had the people so dominant a voice in the administration of governments; when, in short,

was such universal toleration, peace and prosperity as during this closing Nineteenth Century? So we may well say that never before were the people so aroused to the horrors of war and advantages of peace and the urgency for some peaceful, equitable and practicable mode of settling disputes and difficulties, as at the present time.

That all forms of government would concur in such a plan is at least indicated by the words of the King of Portugal written in 1864: "Congresses after war are ordinarily the consecration of the advantages of the strongest; and the treaties which result therefrom resting rather on facts than rights create forced positions resulting in that general uneasiness which gives rise to silent protests and armed demands. A Congress before war, with the object of preventing it, is, in my opinion, a noble idea of progress." Again,

the Emperor Alexander of Russia became so impressed with the desirability of such a Congress that it is said "he rose from his bed and wrote a plan whereby all crowned heads should join in a conclusion to submit to arbitration whatever difficulties might arise among them, instead of resorting to the sword." Emmanuel Kant, in 1795, embraced in a treatise "touching perpetual peace" the entire code, as we know it today, of international toleration and amity. Benjamin Franklin said: "There has never been a good war nor a bad peace. Better settle difficulties by the east of a die than by war." General Grant said: "I look forward to an epoch when a court recognized by all nations will settle international differences instead of individual nations keeping large standing armies as is done in Europe." M. Romero of Mexico says: "War has thus far been one of the greatest scourges which have af-

flicted the human race. But as long as the moral sense of civilized countries will not disapprove of war as a savage way of adjusting differences among themselves, not much advancement will be made by accepting arbitration in solemn treaties, especially if no method of coercion be agreed upon against such nations as may refuse to compromise their differences: and such a method can not be established without attempts against the sovereignty and independence of the respective nations." At the Treaty of Paris in 1856, the following article was inserted in a treaty agreed upon by five then leading powers of the world: "The plenipotentiaries do not hesitate to express in the name of their governments, the wish that states between which any serious misunderstandings may arise, should, before appealing to arms, have recourse so far as circumstances may allow to the good offices of a friendly power."

There was no adoption of any method by which such a course was made compulsory, and, as M. Romero says, "not much advancement has been made by accepting arbitration in solemn treaties, especially as this very clause was ignored in the difficulties between France and Germany in 1871, and again between Russia and Turkey in 1876. But the mere fact that such a declaration, made nearly forty years ago, has been repeatedly acted upon by different nations since that time, indicates a decadence of the spirit of rapacity and conquest, and a growth of the spirit of justice and equity, and of the power of public opinion toward the abolition of war and the establishment of arbitration as a means of adjusting difficulties. Reforms may come slowly but they surely come.

Since 1856, we have had wars, it is true; and it is doubtless no less true that nation will war against nation in the years to come,

but now the better element deplores what all mankind once applauded conquest by force and bloodshed. This is an eminently practical age. The dreams of chivalry and heroism of Arthur's age are past. War was once the recognized sphere for personal and national aggrandizement, but men no longer look for honor and adulation from the field of battle. War now means slaughter in its most degrading and deadly sense. The fearful destructive efficiency of the present mode of warfare, as is made possible by all manner of death-dealing missiles, means nothing of personal heroism - means victory to the side which can longest supply men to be mowed down.

There is little to gain and much to lose. Never before has there been such an awakening of the great mass of the people, such an inquiry into the right of might to rule the many, as at the present time. In the last ten years, the armaments

of Europe have been increased twenty-five percent, and absorb three percent of the earnings of all Europe. The whole armed force of Europe and the United States calls for four and one-half millions of men in the prime of life, while ten and one-half millions are subject to the call of their respective governments;—one-fifth of the able-bodied men of Europe and the United States ready to war to the death against their fellow-men upon what is deemed sufficient provocation. Why such an incubus upon the people as this mighty armed force proves? Will the end justify the means?

The legislators and jurists of the whole civilized world—even despotic Russia, degraded Turkey and conservative China—are seeking a solution of the same momentous problem. "How may disputes and grievances between nations be most equitably settled?" A just, feasible, and humane answer would be "By Arbitration." The active growth within nations of the

sentiment in favor of this mode of adjusting difficulties is demonstrated by the willingness of employer and employed to submit disputes of an industrial nature to a Board of Arbitration and to abide by this decision. In the United States Congress, Apr. 4, 1890, a resolution was passed by both Houses by which: "The President be, and is hereby, requested to invite from time to time, as fit occasions may arise, negotiations with any government with which the United States has or may have, relations, to the end that any disputes arising between the two governments which can not be adjudged by diplomatic agency, may be referred to arbitration and be peaceably adjusted by such means." The legislatures which have already passed similar resolutions in favor of arbitration represent one hundred and fifty millions of people.

The first object of all international relations is to avoid the possibilities of war; the second is to establish peace, to promote friendship and cultivate

free and unobstructed intercourse between nations. How then, may these objects be best attained? Ex-Minister Phelps calls naval strength "the right arm of diplomacy," and says without an equipped army and navy a nation's only means of defense is "the soft answer which turneth away wrath. To this may be replied that the innate principle of arbitration is based upon a sense of moral right and justice, not of expediency or power. Gradually "the right arm of diplomacy is ceasing to be a question of best disciplined troops and heaviest artillery and is becoming one of moral reason which seeks the best and most equitable welfare of all concerned.

Woolsey says: "Arbitration may be secured 1. By mediation; 2. By standing courts; 3. By private or compromissory arbitration." Mediation may be secured, and is of especial use in preventing war by the proffered or sought intervention of friendly powers, and obedience to their decision. While effective and much

used in minor matters and between minor parties as a means of settling serious differences between nations, it would undoubtedly be found lame, tardy and inefficient. Arbitration by standing courts has in it the element of compulsion of obedience, and this principle of compulsion must be maintained by the very means sought to be abandoned - by military force, and this force might very easily be despotically used by the stronger powers for the intimidation or subjugation of the weaker ones. That such advantage has been so used by stronger nations is shown by the dismemberment of Poland by its three powerful neighbors, each appropriating its stolen portion; by the danger of a similar fate which Switzerland has averted for long only by eternal vigilance and a patriotism almost sublime, and the increasing sense of honor which would lead neutral nations to combine to resist any such

shameless proceeding: in the absorption of Turkey, "the sick man of the East" who, too inert to protect himself and too degraded to be otherwise than benefitted by such absorption, fails to appeal to the humanity of neutral governments. By private arbitration is meant the present voluntary submission of disputed points to a delegation from one or more powers and obedience to the decision rendered, if made in accordance with the conditions and facts as placed before it. It is this form of arbitration with which men are most familiar. The following examples are cited.

In 1856, there were assembled at Paris, representatives from Austria, France, Great Britain, Russia, Sardinia, and Turkey, at which the formal declaration of the wish of these representatives as voicing that of their governments was made in favor of arbitration as a mode of settling difficulties. To show how willing to acquiesce in a right and just decision most nations

are, a further act of that Congress prohibiting privateering, was endorsed by nearly every other Christian state in the world:— in Europe by all except Spain, in the Americas by all except a few of the South American Republics, Mexico and the United States, whose endorsement was delayed by technical objections which time has not sustained. This almost universal acquiescence in a matter of prime importance would encourage us to believe that the difficulties in the way of an International Court of Arbitration are by no means insurmountable. That decisive steps have been taken in this direction is proved by the successful meeting and termination of the Pan-American Congress at Washington in 1891, which met in Washington one object of which was to establish a uniform means of settling all difficulties arising between any American nations by a standing Court of Arbitration. Although such a Court was not established, the interest and unanimity of sentiment

conclusively showed that such a Court is not only possible but an assured fact before the dawn of nineteen hundred.

To Americans, the mention of Alabama Claims means a more or less bitter retrospect of the part taken by Great Britain during the Civil War. Of all that led to the difficulty, it is not pertinent to the subject to speak, but the manner of settling the difficulty marked an era in international arbitration. Here we had an example of two great nations each conscious of its strength but neither desirous of war, submitting to neutral powers the settlement of vast interests by a proceeding then unique. The question was not left to neutral sovereigns for adjustment but a genuine Court of Arbitration was established by a Convention, the Joint High Commission then in session in Washington, which referred the Alabama Claims to a tribunal of arbitration composed of Chas. Francis Adams of

pointed by the president of the United States; Chief Justice Cockburn appointed by Queen Victoria; Count Sclopis appointed by the King of Italy; M. Stämpfli by president of Switzerland; and Viscount d'Almeida by the Emperor of Brazil. Learned legal talent was employed on each side to inquire into and present the claims of their respective governments, the several members of the Court acting in a judicial capacity. This picture of two powerful nations voluntarily submitting to such a settlement and each accepting the decision without serious demur as rendered by representatives of nations much weaker, marked an era in advancing civilization, and established the practicability of arbitration as a just, feasible and satisfactory mode of settling disputes between nations. Aside from this, it marked the introduction of a new mode of effecting arbitration and advanced the idea of a permanent Court of Inquiry regular-

ly constituted and established to which Court all disputes arising between nations should be submitted for arbitrament.

The Bering Sea Controversy decided on August 13, 1892 - less than ten months ago - is so recent a settlement, such a long-standing contention and so important in its bearings, that it well deserves mention here. The tribunal was formed in February 1892, meeting at Paris and being composed of two members named by each the President of the United States and Queen Victoria, one each by President of French Republic, Kings of Italy and Norway and Sweden. After a lengthy correspondence and full presentation of all views of the case, the decision was made in accordance with justice and as such was accepted by both nations. Of more importance than the mere settlement of a disputed question is the peaceful, equitable adjustment of a very annoying international question in which

the parties in opposition had been especially irritated and antagonized; yet without serious fear of open war, two of the leading nations of the world peacefully abide by the decision of a Court of Arbitration, the proceedings of which were so quietly conducted that scarcely one in one hundred of the citizens of the two countries were aware of the existence, mode of procedure or result of such a Court.

We have then the two modes of adjusting difficulties - each having demonstrated its feasibility and efficiency by that best of methods experience - (the element of permanency being lacking). One is to form an International Congress - composed of representatives from all civilized nations, these doubtless being statesmen and diplomats, - to which Congress all disputed questions arising between nations shall be submitted for adjustment; the second is to constitute a Court of Inquiry

composed of the most eminent jurists from all civilized nations, it being the province of this Court to inquire into and adjust all difficulties between nations. The difficulties in the way of either method are: 1. The unequal advancement in civilization attained by different nations; 2. Different views of right, justice and morality conscientiously held by different nations; 3. The rebellion of independent sovereign bodies against coercion or control by any organization however constituted; 4. The want of an authoritative exponent of the theory upon which decisions may be based. — the constitutionality, if such a term may be used, — of the judgment or decision of the International Congress. But as we have already abundantly shown, these objections by no means make it impossible that such a body of men, learned in international law and ethical principles, may be constituted, maintained and obeyed. The decision of a majority of people of a majority of civilized nations, as voiced by a majority of this Congress of Arbitrators,

might well be accepted as the absolute right and justice of the disputed question. The second objection stands directly in the way of the establishment of such a Congress, but not of its efficiency when once established. The third objection is a serious one and one probably advanced by the more despotical nations in view of the marvelous growth of representative forms of government within the past century; this growth not being limited to Republics but revolutionizing all forms, notably that of England, France, Russia, Germany, Italy, Mexico, Turkey, and South American governments. But this very fact is the surest proof that the day is approaching when such a Congress may decide and receive obedience, in international disputes. A possible danger is that in case of lack of harmony or actual revolt, the final decision must inevitably be by the sword, and this might lead to the most disastrous, widespread and bloody war in the history of the world. Such a contingency

is very improbable, and such an issue might almost certainly be avoided.

As the United States has taken so active a part in the issues of the day, aside from warlike ones; as this country has always advocated peace and championed liberty and justice; as she has demonstrated her ability to resent injury and injustice, from the time of the subjugation of the Dey of Algiers to the declaration made a year ago that further encroachment upon the terms of the modus vivendi in the Bering Sea dispute meant war; as she has preserved a strict neutrality during the many dissensions in Europe within the past century; as in thirty-four out of sixty-eight arbitrations, the United States has been one party, and has invariably abided by the final decision; in view of all these facts, the United States seems eminently fitted to take active lead in advocating arbitration as the best means of adjusting differences, and urging the

convention of an International Congress
for the purpose of carrying into effect
some definite plan whereby such courts
of International Arbitration may be es-
tablished - and whose decisions will be-
come the accepted will of the people.
Well may all mankind exclaim with
Tennyson:

"For I dipped into the future far as human eye could see,
Saw the Vision of the world, ^{and} all the wonder that would be;
Heard the heavens fill with shouting, ^{and} there rained a ghastly ^{deed},
From the nations' airy navies grappling in the central blue;
Till the war-drum throbbed no longer ^{and} the battle-flags were furled
In the Parliament of man, the Federation of the world;
There the common-sense of most shall hold a fretful
realm in awe,
And the kindly earth shall slumber,
wrapped in universal law."