

THE LAWLESS LAW OF NATIONS:

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CHAPTER IV.

An exposition of the prevailing arbitrary international legal system in relation to its influence upon civil liberty, disclosing it as the last bulwark of absolutism against the political emancipation of man.

Sterling E. Edmunds is a well known member of the St. Louis Bar, who, as a former newspaper man, possesses the art of writing the English language clearly, concisely and with dramatic effect. Since becoming a lawyer Mr. Edmunds has specialized in that particular field of jurisprudence known as public international law or the law of nations. On this subject he has written and lectured extensively and is recognized as an authority.

When he wrote "The Lawless Law of Nations" Mr. Edmunds wrote an unconventional book in an unconventional manner is unconventional because it frankly reveals that the system or institution which for many generations has been a favorite in the world of educated and official thought. The manner is unconventional because it frankly reveals that the book is written for a purpose. The conventional way of writing books now-a-days is for the author, however decided his views, to pretend to be impartial and to assume an attitude of unemotional aloofness toward his subject. Mr. Ed-

munds has returned to the manner of an earlier age when men were supposed to write books for the purpose of making converts. Mr. Edmunds is an advocate. He does not pose as a judge. His book produces the same effect that is produced by the argument of an honest, scholarly and eloquent lawyer who has the unpopular side of a case but is convinced that his side is right and has prepared himself skillfully, patiently, confidently. Mr. Edmunds in his political philosophy is an old fashioned Jeffersonian democrat. He believes in the honesty, wisdom and fairness of the average individual in society. He believes that government should do just as little as possible in the way of interference with the natural freedom of the individual. Those who accept this political philosophy will heartily approve of the book. Even the others, even those who believe "governments" are wiser, fairer, better than "peoples," will have to admit that Mr. Edmunds has made out an exceedingly strong case. It is a stimulating pleasure to read Mr. Edmunds' book, even if one does not agree with all of his conclusions.

The key-note of "The Lawless Law of Nations" is sounded in the first sentence of the first chapter, which is as follows:

"There is to be found in the whole realm of legal learning no more anomalous collection of fallacies, no more deceptive body of affirmations masquerading under the name of science, than that pseudo-branch of jurisprudence which, for nearly three centuries, successive historians have presented to us under the title, the law of nations or international law."

In attempting to prove this bold assertion Mr. Edmunds adopts a very simple method. He takes up the various theoretical divisions and sub-divisions of international law, as

formulated in books, and compares the enunciated law with what has actually happened in human experience, chiefly since the time of Napoleon and very considerably since the beginning of the great war. In this way he has no difficulty in proving that those principles of international law which tend towards strengthening imperialistic nationalism are the only ones that have been obeyed by the great powers, while those principles of international law which tend towards limiting nationalism have been constantly disregarded by the great powers. Mr. Edmunds is certainly right in one of his conclusions, namely, that there is nothing in international law, as actually practiced, which interferes in the slightest degree with the development of imperialistic nationalism,—the most obvious and most sinister phenomenon of modern time.

From a lawyer's viewpoint the most notable feature of Mr. Edmunds' book is his attack on the dogma of sovereignty. Outside the ranks of professional jurists and political scientists the name of the Frenchman Jean Bodin is completely forgotten. And yet, as Mr. Edmunds makes plain, since the Middle Ages few men have had greater influence on history than Bodin. Before Bodin published his monumental book "De la Republique" in 1577, it was impossible for Europeans to think of kings or states as being independent, one from another. This was due in part to the feudal system, in part to the Catholic Church, and in part to the Holy Roman Empire. Bodin was a lawyer, a 100 per cent Frenchman, and a profound admirer of Louis XI. And so Bodin presented a legal justification for the complete political independence of European monarchies. Bodin's book was translated into every European language, and Bodin's idea, the new idea of

nationalistic sovereignty, swept over Europe like a prairie fire. Bodin's idea of nationalistic sovereignty is the basis of all modern law, national as well as international. Story, the great American jurist, defined sovereignty as "the union and exercise of all human power possessed in a state." Every independent state possesses all human power. That is a maxim of modern law.

Mr. Edmunds clearly shows that sovereignty has two phases, an internal phase and an external phase. In its internal phase sovereignty, that is, governmental absolutism, has been tamed by democratic constitutionalism. There must be a search warrant. There must be a jury trial. In its external phase, sovereignty, that is, governmental absolutism, is the same wild beast it always was. What Mr. Edmunds objects to is the orthodoxy of sovereignty. The sovereign state has been forced by the people to limit its internal authority through internal constitutionalism. But in external affairs each sovereign state is still supreme, absolute, irresponsible, uncontrolled. This doctrine is legal, orthodox, valid, conventional, respectable, patriotic. That is what Mr. Edmunds does not like. The people of each modern country have limited the danger of sovereignty in internal affairs. Will the people, not the state, the people, limit the danger of sovereignty in external affairs? That is Mr. Edmunds' big question.

In the last chapter of his book Mr. Edmunds writes: "In the preceding chapters it has been the endeavor to dissipate the fog and mysticism that surround the sovereign state, in its modern suppositions glory, and to expose the miserable system of fallacies and deceptions through which little groups

of determined and ambitious men, in the cloak of the sovereign state, still work their absolute wills upon mankind in all external political action. It is not, perhaps, a conscious conspiracy; rather it is an institution lingering from other days which evolved easily out of the universal spirit of power-worship among an oppressed and illiterate humanity. Herbert Spencer remarks that associated humanity has larval appendages analogous to those of individual creatures, and that like other organisms the social organism has to pass, in the course of its development, through temporary forms, in which sundry of its functions are fulfilled by appliances destined to disappear as fast as the ultimate appliances become efficient. If the sovereign state is such an appendage in the social organism, it may be asked, "Is it not time it take its place in the past, along with its immediate predecessor, the absolute personal sovereign, whose scepter it so quietly assumed on his departure?"

Another feature of Mr. Edmunds' book, bound to attract the attention of thoughtful lawyers, is his plea for a return to something like the law of nature. Mr. Edmunds clearly shows that Hugo Grotius, "the father of the law of nations," based his entire system upon the assumption that there was such a thing as natural law, which existed independently of state action, in addition to voluntary law, which was the expressed will of sovereign states. It is probably true that Grotius, when he published his great work in 1625, was trying to build up an influence to control the dangerous dogma of sovereignty,—the dogma that each one of many European states was absolute and irresponsible. This effort, the effort to control the uncontrollable, was carried on later by Pufen-

lorf, Wolff and Vattel, who following Grotius recognized natural law as something independent of and superior to voluntary law. Then came the French Revolution and its outrageous excesses committed in the name of natural law. Then came the reaction, and with the reaction came a denial that there was any such thing as natural law. Under the name of analytical jurisprudence in Anglo-American circles, and under the name of positivism on the Continent, the prevailing idea among jurists is that law is merely an attribute of states. No state, no law. That is the formula. All law is voluntary law. There is no natural law. Such is the orthodox view.

Mr. Edmunds dissatisfaction with the orthodox view is made apparent in the following quotation: "From the nineteenth century onward we are assured by a constant succession of so-called international authorities that the law of nations is founded first, in the practices of sovereign states, a plurality of like acts thereby creating customary law; and second, in treaties, special and general, thereby creating special or general conventional law. Whether these practices and treaties are moral or immoral, just or unjust, whether they violate reason or the natural law, is no longer the concern of legal science, the positivist writers tell us. Morality, justice, humanity,—these are terms known to ethics but no longer known to the law of nations since its divorce from the law of nature. Thus Austin asserts that a law may be unjust but it is nevertheless binding; wherefore to resist it may be virtuous but can never be legally right. And as late authority as Sir Frederick Pollock declares: 'Though much ground is common to both, the subject-matter of law and ethics is not the same. The field of legal rules of conduct does not coincide

with that of moral rules, and is not included in it; and the purposes for which they exist are distinct.' By the same process of reasoning that deduces the existence of a valid rule of the law of nations from the like practices of sovereign states and clothes any act, however outrageous with the sanctity of law as soon as there are imitators, the repeated bank robberies and other crimes inflicted upon us would repeal our Criminal Codes."

Mr. Edmunds has not confined his reading to the classics of jurisprudence. He has thoroughly studied the current history of international affairs, since the beginning of this century, as revealed in official reports, newspapers, magazines and recent memoirs. He has also traveled widely and has had opportunity to converse with many sagacious observers. As a result, Mr. Edmunds has formed a decidedly low opinion of diplomats, and in his book he does not hesitate to express this opinion. "Stipendiaries of government," "politicians whose profitable positions of power are endangered," "individuals who have won political power in order to live luxuriously out of the earnings and wealth of others," "privileged possessors of power," "small groups of wilful and ambitious men corrupted by power,"—these are some of the terms he applies to the modern creators and guardians of international law. Furthermore he backs up his opinion by concrete historical incidents. In describing the spoliation of Persia by Russia and Great Britain, he says: "Not only did the Russians put down all opposition of the civil population of Persia by ruthless slaughter, but it is revealed that the American financial adviser, Morgan Shuster—an exasperating obstacle to Russian plans—may have been

in danger of being secretly put out of the way." And in a footnote he quotes from a published note by the Russian Ambassador at London to St. Petersburg, dated November 5, 1911, as follows: "Grey and Nicholson appreciate that the chief difficulty at the moment is Shuster. The London Cabinet would have no objection if he were to disappear altogether."

If Mr. Edmunds writes another book it is to be hoped that he will follow the trail of modern diplomacy still more diligently and show us to what extent that trail is identical with the trail of modern commercialism. In the present volume Mr. Edmunds has by no means ignored this particular subject, but his references are in rather general terms, as for example the following: "In Guatemala, Nicaragua, Bolivia, Santo Domingo, Haiti, and elsewhere our government is now a virtual guarantor of private loans through a representative appointed to administer the customs and revenues under the terms of loan contracts. In most of these cases the manifestation of interest by our government followed upon the discovery of oil or other natural wealth, and the grant of concessions for exploitation."

From what has already been said it can be readily imagined that Mr. Edmunds is not enthusiastic about the League of Nations. In his eyes it is unworthy of confidence for two chief reasons, (1) it leaves untouched the dangerous dogma of sovereignty; and (2) it is a league of diplomats, not a league of peoples or even a league of parliaments. Mr. Edmunds' references to the Permanent Court of International Justice are discriminating and especially valuable at this time. He shows that the Court, as actually established by the League of Nations, is quite different from the Court as proposed by

Elihu Root and the other eminent lawyers who at the request of the League of Nations drafted the preliminary statute for its creation. Elihu Root and the other lawyers proposed that the Court should have some compulsory jurisdiction. To quote from Mr. Edmunds: "The proposals were too progressive for the great powers who dominate the League of Nations. The very nature of the League, as a military alliance, or as a sort of super-sovereign, made the acceptance of the proposal for compulsory jurisdiction in even legal questions unthinkable. What would become of the advantage of irresistible combined military power if the possessors of that power admitted the superiority of law, and the right of a court to subject the great and small alike to its principles? So that proposal was stricken out by the League, and the Court's jurisdiction was made voluntary, that is, the States were left without any obligation to use it or to recognize it."

Mr. Edmunds' book is a well manufactured volume of 450 pages, with an elaborate index to about 700 separate topics. The extensive and accurate foot-note references to historical, legal and diplomatic literature, especially that published since the great war began, give the book an additional value for scholars, entirely apart from the author's text. "The Lawless Law of Nations" would be an admirable volume for prescribed collateral use in connection with a regular university course in international law.

TYRRELL WILLIAMS.

