

BLACKFRIARS

Vol. XXI

JANUARY 1940

No. 238

THE SANCTION OF WAR

THERE can be no lasting peace in international affairs until the nations of the world learn to worship God. Worship is the chief act of religion, which is not confined to church or reserved for certain occasions, but is a life-long task and a whole-time endeavour characterized by swift readiness to obey. The universe cannot escape from the laws which hold it fast to God's throne. Governments cannot hope for order and peace unless they follow nature's rules. For obedience to law is the pledge of justice, the foundation of peace. There is no medium between law as a dictate of reason and lawlessness with violence for its sanction. When violence is the rule in national life anarchy is its fruit, and when this is carried beyond the borders of the nation¹ the world is plunged in war. Man was not made for servitude, since he is freeborn, and when his freedom is placed in jeopardy by the lawless domination of force, the primary law of his nature urges him to fight for his existence as a free man. As it is with men and families, so it is with nations. The law of men and of states, unless it is to be a pure tyranny, is one of liberty making for full co-operation and a protection against the bondage of servitude. The dignity of human destiny requires the liberty to serve in obedience to authority under the reign of law. The law of nature is by origin divine, since God is the author of nature. All merely human laws, if they

¹ In this paper we use the terms 'state' and 'nation' to describe those bodies politic which have attained to a degree of self-sufficiency so as to warrant the enjoyment by them of full sovereignty. Nationality in the strict sense is commonly a chief factor in the formation of a state, though this is not always so.

are to be worthy of the name, are but the application of the law which nature dictates. The highest sanction of law is freedom under divine sovereignty and the personal sense of responsibility. Moreover, a deep personal reverence for the sanctity of law is a natural safeguard to social and international order, which is essential to the common well-being of mankind and is closely bound up with true patriotism.

In his recent encyclical Pope Pius XII reminds us that there is no fear 'lest the consciousness of universal brotherhood aroused by the teaching of Christianity, and the spirit which it inspires, be in contrast with love of traditions or the glories of one's fatherland, or impede the progress of prosperity or legitimate interests. For the same Christianity teaches that in the exercise of charity we must follow a God-given order yielding the place of honour in our affections and good works to those who are bound to us by special ties.'²

International society arises as a natural necessity to foster and to guard the common interests of nations, which Christian teaching should consolidate. Common welfare of world society implies and presupposes the recognition of mutual rights and obligations among nations, and a spirit of co-operation in the use of the world's resources made available through friendly intercourse. But if one nation is to be prevented from exercising coercive measures in seeking for ascendancy over others, friendly intercourse must stand firmly on the principles of international law and good-faith. The nation, indeed, that elects to become an outlaw to the amity of nations by trampling ruthlessly on lesser peoples must learn by defeat to regard as sacred the rights of her neighbours. Assuredly no nation is entitled to accept defeat as her portion under the threat of lawless violence bringing her into subjection and dishonour. The breaking of domination imposed by force

² *Summi Pontificatus*, Oct. 20, 1939.

and bad faith becomes a justifiable cause for the taking up of arms, and then a just war is the sanction of law.

At the present moment, Germany, true to her own philosophy, claims in practice that the German State alone is the source of law and right, and accordingly repudiates all laws of different origin or universally binding moral principles, to which every nation, without exception, is obliged to submit.

'The idea,' says the Pope, 'which credits the State with unlimited authority is not simply an error harmful to the internal life of nations, to their prosperity, and to the larger and well-ordered increase in their well-being, but likewise it injures the relations between peoples. For it breaks the unity of supra-national society, robs the law of nations of its foundation and vigour, leads to violation of others' rights, and impedes agreement and peaceful intercourse.'³

It may be too easily assumed that civilization, as we understand it nowadays, is identical with Christianity. Because our culture and even our law is largely moulded in what was once Christian, it does not follow that society is on the whole more than nominally Christian. Many positive factors have long been and are contributing to the active framing of life anew on a non-Christian if not an anti-Christian scale. The Pope, however, in a radio address broadcast on August 24, 1939, thought well to draw attention to the fact that ancient Europe is the product of the Faith and Christian genius. Consequently it may be safely said that those who are concerned to maintain and safeguard Western civilization against aggression, even though they themselves may not be always fully conscious of Christian ideals, are to that extent fighting for a cause which enters vitally into the Christian scheme. In the circumstances it is irrelevant to point to certain forms of injustice in our own social system, or to look with favour towards certain satisfactory results of the régime with which unhappily we are now at war. The Holy Father

³ *Summi Pontificatus*.

himself recognises it to be quite true that power based on weak and unsteady foundations ' can attain at times under chance circumstances material successes apt to arouse wonder in superficial observers.' But it is doomed because constructed upon an hidden or open disproportion between the greatness of the material and outward success and the weakness of the inward value and of its moral foundation.'⁴

One of the fundamental principles of Christian statecraft which at least in ideal we yet retain in this country, is the doctrine of the citizen's personal freedom. An invasion on personal liberty, except for the common good, is recognized as a violation of an inborn right which in fact is granted by the natural law. Similarly the invasion of one nation on the national life of another is a violation of natural rights, as well as being a menace to the common welfare of civilized peoples.

Coercion and the use of force cannot breed freedom or peace. The claim to freedom reposes on the natural law which is the essential foundation upon which God made the universe. The natural law is written by the supreme lawgiver in the conscience of man and is made articulate in the rational propensities essential to his nature. By positive enactments of civil law states make their own the dictates of natural law, through the promulgation, confirmation, and enforcement of the natural law. This is true both of national and international society. Moreover, because the civil laws of states and international law in like manner share in the sanctity of natural law and are therefore sanctioned by God, they are to be held binding in the court of conscience, and are judged by moral considerations.

Undoubtedly every state has the right by the law of its nature to maintain and develop without let or hindrance its own national life. International law commonly recog-

⁴ *Summi Pontificatus.*

nises and sanctions the right of each state to exist. But it is insufficient for the requirements of the natural law that the peoples of states should be kept at a mere subsistence level. Each state has a natural right to develop its own distinctive human and cultural life independent of extraneous oppressive influences from other states. All these primary rights are fortified by the sanction of international law, which more closely determines and defines the rights and duties of the general body of states in their mutual relations and dealings.⁵ Such dictates of the natural law of nations are immutable and inviolable because, being derivatives of the eternal law of God, they are spontaneously recognised by reason as necessary and universally right. There can only be diversity in application to new situations arising out of varying circumstances, and which are met by international agreement.

The failure of treaties is unescapable as long as their validity and binding-force is held to rest alone on the will of the contracting parties. There are indeed some essentially natural requirements in the relations of states which are, however, also determined and fulfilled under covenant. The terms of agreement mutually imposed on contracting parties are the externalization and sanctioning of performances having an intimate bearing on the moral law. Violation of such agreements by any state according as its own private interests dictate is plainly morally wrong and sinful, as being an infringement of justice and natural law antecedently binding. The inviolability of treaties does not rest on treaty but on legal justice and natural law.

The principles of international natural law demand 'fidelity to compacts agreed upon and sanctioned in conformity with the principles of the law of nations . . . but to tear the law of nations from its anchor in divine law, to base it on the autonomous will of states is to dethrone

⁵ Cf. *The Science of Ethics*. By the Rev. Michael Canon Cronin, Vol. II, p. 636.

it of its noblest and strongest qualities.' Further, 'to consider treaties on principle as ephemeral and tacitly to assume the authority of rescinding them unilaterally when they are no longer to one's advantage, would be to abolish all mutual trust among states. In this way, natural order would be destroyed and there would be seen dug between different peoples and nations trenches of division impossible to refill.'⁶

Peaceful relations among nations cannot survive whilst power politics allow the strong to triumph over the weak. The threat of aggression, no matter what form it may take, inevitably destroys security in international life, and makes void the brotherhood and solidarity of mankind. When the moral law of justice is made subservient to force, then the natural rights of nations can only be implemented by repelling force by force.

Human reason makes it evident that if peace is to be durable it must be guaranteed by the recognition of high moral principles. The domination of one state by another ignores the natural law of differentiation and destroys the specific characteristics and rights which are integral to a nation's life. As the natural rights of individuals in society are to be respected by the state to which they belong, so the nations in common should hold sacred the territorial and other rights which belong to each by the sanction of natural and positive law. 'Now it is evident,' says St. Thomas, 'that all who are included in a community stand in relation to that community as parts to a whole; while a part, as such, belongs to a whole, so that whatever is the good of a part can be directed to the good of the whole.'⁷ ' . . . What belongs to the whole is due to the part, and in a quantity that is proportionate to the importance of the position of that part in respect of the whole.'⁸ Ac-

⁶ *Summi Pontificatus*.

⁷ *Summa*, II^aII^{ae}, 58, V.

⁸ *Summa*, II^aII^{ae}, 61, II.

cordingly, besides her claims to national integrity and independence, each nation, be it great or small, has in justice a right to share the advantages of international life in a proportionate ratio to the importance of her status in the world-state. The just claims of each state, which it is the function of international law to recognise, control and respect, cannot be measured in bulk, but only by reference to her needs and her legitimate national aspirations.

The growth of a nation is largely a spontaneous though conscious natural development in the free association of distinctive peoples by race and type. It is spontaneous because self-originated, it is natural because rooted in man's social nature. This development to a large extent follows the ordinary laws of growth, since it cannot be maintained that the fully developed state in its ultimate concrete form was consciously and deliberately aimed at from the beginning. There are indeed many contributing factors, including colonization and conquest, leading up in successive stages to the ultimate autonomy and self-sufficiency of national communities. Once the body politic has grown to full stature and become endowed with a personality of its own it has the right in natural law to independence and to be admitted into the comity of nations as a fully sovereign state. For these and other reasons every nation has a natural claim to living space, in so far as it is consistent with legitimate rights of others. The world is for the nations and their inhabitants. National life and well-being in justice demands the safeguard of law, as a protection of sovereignty against the crime of lawless violence which receives the condemnation of natural law. But when the rule of law and sanity can no longer prevail in curbing the determination of unjust expansion, a higher law must be made to triumph over force in the taking up of arms for self-defence and in the cause of world-order.

The state which allows itself to be robbed of its sovereignty, even though only in part, begins quickly to be ab-

sorbed if not annihilated by powers which it can no longer resist. We have before our eyes the cases of Austria, Czecho-Slovakia, and Poland. This type of invasion, for 'the rectification of frontiers,' is not only a gross crime against the countries immediately concerned, but is a flagrant breach of international good faith and a wrong committed against the commonwealth of nations. The criminal is not punished merely for the wrong done to one of his fellow men, but also because he has perpetrated a criminal act against society as a whole from which he derives benefits, and to which now he has made himself a public danger.

It was not till after the Reformation with the breaking up of Christendom into independent states that international law presented itself as a practical necessity for the regulation of dealings between different peoples. An arbitrary individualism based on private judgment in religious matters quickly accelerated the tendency towards an exaggerated nationalism, in which each nation seeks its own at the expense of all others. In the course of time a thoroughgoing rationalism and materialism have developed. The truth of this is clearly illustrated by the unprincipled striving after purely material and worldly interests divorced from religion, and the disregard in the public conscience of human life for the sake of material gain. In the time of war the result may be utter barbarism, unless international conventions and law are held sacred in the conducting of hostilities.

Under the Roman legal system a body of rules was recognised as a working standard in general use among civilized peoples. This was the *ius gentium*, which was of course not an international law as now understood. In the Justinian conception adopting that of both Gaius and Ulpian it signified the body of laws which, being originally in part a market law, grew out of commercial exigencies and was accepted as current and having a binding-force on all peoples. In the earliest times at Rome it was administered to citizens and *peregrini*. Subsequently it developed into

an embodiment of laws which were found to be common to all non-Roman peoples and which was administered by the *praeter peregrinus*. Maine describes it as 'the sum of the common ingredients in the customs of the old Italian tribes, for they were *all the nations* whom the Romans had the means of observing, and who sent successive swarms of immigrants to Roman soil. Whenever a particular usage was seen to be practised by a large number of separate races in common, it was set down as part of the law common to all nations, or *Ius Gentium* . . . it was accordingly a collection of rules and principles, determined by observation to be common to the institutions which prevailed among the various Italian tribes.'⁹

St. Thomas took the texts as they are found in the Roman law books, building up upon them his philosophical and theological gloss which results in a perfect synthesis adaptable to more modern needs when extended into a wider field of international life. He shows clearly on an ethical basis the manner in which the common law of nations is deduced from the natural law and how they are interdependent.

The turn of events which emerged in the sixteenth century was the opportunity for the Spanish Dominican, Francis de Vitoria, to become the earliest writer to lay particular emphasis on the need of a law *between nations*.¹⁰ By an adaptation of the old classical Roman definition of the law of nations, he was able to furnish a new formula expressive of the content of international law. It is no longer a matter of certain institutions which are seen by observation to be in force among all the peoples, but there are a mass of observances which are fixed as mutually binding *between all the nations*. '*Quod naturalis ratio inter omnes gentes constituit vocatur jus gentium*': That which natural

⁹ Maine, *Ancient Law*, ch. III, pp. 52, 53.

¹⁰ *History of English Law*. By W. S. Holdsworth. Vol. V, pp. 50, 51.

reason has agreed upon among nations is called the law of nations.¹¹

An important factor which is responsible for conflicts in international life is the emptying of law of any ethical content, and the basing of it on false and therefore un-Christian presuppositions, affecting the whole sphere of social ethics. Under the influence of spurious philosophical teachings, this latter statement is supremely true of Germany, though largely so also of other countries, including ourselves. It seems evident that British policy has largely suffered from the dictates of utilitarian and positivist teaching in ethics and law. In consequence and not altogether without reason, we are apt to appear before the world as insincere when those in responsible places raise the cry of aggression only when it affects our own sphere of interests, or when it touches our fluctuating money market.

When we turn to the state of affairs on the German side, experience has taught without any doubt that the German Chancellor and his associates in their broken faith cannot be trusted. But in making this charge, we need to remind ourselves that we are thinking in philosophic terms which they do not recognise. There is no reason for them to suppose that we place any more faith in their word than they do themselves. The pledged word in their opinion is not more than a convenience which will continue to bind only as long as it serves the purpose for which it was given, or till such time as they are strong enough to defy hostility. Moreover, Hitler evidently regards himself as the embodiment of the German will to power which by every means must mould and alter the world to suit itself.

¹¹ *De Indis*, III, 1. The definition of Gaius is 'Quod vero naturalis ratio inter omnes homines constituit, id apud omnes pereque custoditur vocaturque jus gentium' (D.Lib. I. tit. I, ix). Vitoria substitutes *gentes* in the sense of nations for *homines*. Cf. *Vitoria and the Conquest*, by Honorio Muñoz, O.P., pp. 133, 134; *La Justice*, by M.-S. Gillet, O.P., p. 221.

This idea contains within it the notion of an evolutionary process which terminates at world domination. The German will alone, therefore, is made the measure of necessity and law, working itself out in a world-history determined by fate.¹² When these aspirations are made concrete and come into conflict with the outer world of other nations, struggle and conflict are the unavoidable result. It may be admitted by National Socialists that other states also possess their own national features and special interests established likewise by their arbitrary wills, but in the Nordic view there is no room for a universally common law governing relations between themselves or with Germany because there is no supreme authority over them all. In the opinion of Dr. Micklem, 'National Socialism as a philosophy or religion is a pure Immanentism; it recognizes no God outside, or other than, its own inner demands and wishes.'¹³ Right is therefore the will and the might of the German State.

It follows, then, that when clashes of interest arise between Germany and other states, there is no possibility of settlement for outstanding differences, in the last resort, except by war. Peaceful discussion and appeals to treaties are no longer useful, for even international agreements may be and are being broken by Germany with impunity whenever she judges them to be obsolete through changed conditions. This so-called Hitlerism, which is applied Hegelianism in tone, is at the root of the issue with which the world is in conflict and which the Allies are resolved to smash.

The evolutionary conception of the state requires that international law should be dynamic to meet changing cir-

¹² In the words of Dr. Micklem, 'According to the National Socialist conception the "honour" of Germany would appear to be more particularly expressed in the refusal to brook any limitation upon national destiny as Germans read their destiny' (*National Socialism and the Roman Catholic Church*, p. 62).

¹³ *Ibid.*, p. 61.

circumstances and needs. There is nothing sacrosanct about the static quality of law and treaty, and the Pope in the encyclical already quoted acknowledges that they may require modification with the passage of time and the substantial change of circumstances. Though the remedy is to be found in the timely recourse to frank discussion. But in the Nazi view of their destiny they are the makers and judges of circumstances and needs to which all else must yield. International law, then, becomes a dead letter for them whenever it stands in the way of their self-determined aspirations, or whenever the changes which they have wrought in achieving their aims renders law or treaty automatically obsolete. The Nazi method of achieving this purpose when others withstand them is to exert force. It is evident, therefore, that some further guarantee is required before it is possible to assume that there is anything more than a verbal community of principle between Germany and ourselves. Moreover, the fact outstanding is that Germany actually has taken the law in her own hands and has endeavoured by violence to change circumstances in such a way that there is no alternative for others but either to bow to the violent change or to resist it.

But the negative aim of destruction, even if achieved, will not rebuild a broken social order without a positively constructive plan. Collective security as a condition of permanent peace will be but a vain hope, unless an attempt is made to reinstate true moral and Christian values in accordance with which may be established a better world-order. In the words of the Holy Father, 'to hope for a decisive change exclusively from the shock of war and its final issue is idle as experience shows . . . safety does not come to peoples from external means, from the sword, which can impose conditions of peace but does not create peace. Forces that are to renew the face of the earth should proceed from within, from the spirit. Once the bitterness, and the cruel strifes of the present have ceased, the new order of the world, of national and international life must

rest no longer on quicksands of changeable and ephemeral standards that depend only on the selfish interest of groups and individuals. No, they must rest on the unshakable foundation, on the solid rock of natural law and divine revelation.'¹⁴

Whatever the results may be of the present conflict, the stern alternative lies before this country now, either to fight on for national independence in the upholding of the rule of international law, or to yield with dishonour to the violent domination of the German will to power. One day, we may hope and pray, perhaps not far distant, there may be a rude awakening to the world, in the discovery that the true soul of Germany lies not in her lawless rulers, but within the breasts of the German people. It is this hope which will enable us to think and say with courage and sincerity, that we are not at enmity with the German people, but only with the régime that holds them in bondage and had become a menace to the civilized world, where not force, but law and justice must reign.

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¹⁴ *Summi Pontificatus*.