Völkermord oder Völkerbund, he expressed the opinion that the choice lay between suicide or a league of nations.

He never lost faith in the triumph of justice between nations, and he confessed his belief, not once but many times, that international law would be taken up at the end of the war, where the war found it, and developed to meet the future needs of nations. Perhaps the best statement of his views as to this is an article in the *Deutsche Revue* for November, 1914, on International Law and the War:

> Just as Moltke, upon the day following the battle of Sedan, returned punctually to his game of whist, which had been interrupted for several days, and merely said: "After this incident we will continue our game," so the scholars of the various states now at war will after the conclusion of peace meet at the customary time to resume their work, which was interrupted by the unpleasant episode, at the point where they were compelled to abandon it. Only the place of the meeting will at first probably be transferred for reasons of caution to a country which has remained neutral, in order that the *profanum vulgus* may not disturb it.
>
> As soon as the thunder of the cannon has died away, the solidarity of the *human* interests, the conscience of which was dimmed in the minds of many during the war, will again become apparent to all.

Heinrich Lammasch was a great and good man and it was a misfortune for him, his country and the world that his advice was not listened to while it was still time, and that when he came to power it was too late.

It is never too late to furnish a good example, and that Dr. Lammasch did.

JAMES BROWN SCOTT.

ALPHEUS HENRY SNOW (1859-1920)

In the death of Mr. Alpheus Henry Snow in New York City on August 19, 1920, the American Society of International Law has lost a friend of long standing and a valuable co-worker. Mr. Snow had been a member of the Society since the first year of its organization in 1906. As a member of its Executive Council, to which he was elected in 1910, he took an active part in assisting in the direction of the Society's affairs, rarely being absent from the meetings of the

Council. He also took an active interest in the public annual meetings of the Society and made some valuable contributions to the columns of the Society's Journal.

He was born in Claremont, New Hampshire, on November 8, 1859. After graduating from High School, he spent the years of 1876 and 1877 at Trinity College, Hartford, and entered Yale University, from which institution he graduated in 1879. Adopting law as a profession, he entered the Harvard Law School, from which he received the degree of Bachelor of Laws in 1883. Practising for a while in Hartford, he settled in Indianapolis, where he became a member of the firm of McDonald and Butler, the senior partner of which had been United States Senator.

During the course of his active practice, Mr. Snow appeared in the Supreme Court of the United States and argued the case of Indiana *v.* Kentucky in 1890, on behalf of the State of Indiana (reported in 136 United States Reports, 479). He was therefore trained in municipal law and that larger law that obtains between the States of the American Union.

Withdrawing from the active practice of his profession, although he never lost interest in or touch with the law, he settled in Washington with his wife, Mrs. Margaret Butler Snow, the daughter of Mr. Snow's senior partner, and gave himself up to a life of scholarly investigation and of scientific and literary activity. Here, the American Society of International Law was fortunate to enlist his interest. He was also interested in the American Society for the Judicial Settlement of International Disputes, before which organization he delivered a number of addresses and he also wrote a number of articles for its quarterly. He was deeply interested in the movement for international peace from its legal aspect, and made more than one notable contribution to the cause. In 1910 he was American delegate to the International Conference on Social Insurance held at The Hague.

The Bar Association of Indianapolis was well advised when it said in its resolution that

> Mr. Snow was greatly interested in Government by Nations advanced in civilization of semi-civilized and barbarous peoples and gave years of close study and laborious effort to the methods by which England, France, Holland, Germany, Spain and Portugal governed their colonies. He published the results of his investigations in two books, which are of the highest authority, and which, while not popularly known, are of infinite service to those charged with the administration of affairs in the Philippines, Porto Rico, the Canal Zone, Haiti and

Dominica, the Virgin Islands and such of the Pacific Islands as are under our jurisdiction.

The first of the books referred to appeared in 1902, and discussed the problems arising from the recent acquisition of our insular possessions after the Spanish-American War of 1898. The volume is entitled *The Administration of Dependencies* and its sub-title "A study of the Evolution of the Federal Empire, with special reference to American Colonial Problems." In the preface to this masterly work, Mr. Snow states that he was led to consider the subject by his belief that the clause of the Constitution by which Congress is given the power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," the only one in the Constitution dealing with the question, must have expressed on the part of its framers "the true principles of the administration of dependencies," since the Union was to govern for years to come territory to the west of the thirteen original States outside and beyond the sphere of influence of any one of them, but within the territory of the United States and subject to the Government of the Union created by the Constitution. The author stated that his "inquiry necessitated a careful examination of the issues of the American Revolution, and . . . my investigation extended back to the inception of the American Colonies in 1584. . . . I then examined the American, British, and European theory and practice from the adoption of the Constitution until the present time. The whole inquiry," continued Mr. Snow, "thus became a study of the evolution of the Federal Empire—a form of political organism which, though commonly believed to be of modern origin, was in fact more clearly understood by our Revolutionary leaders than by any other statesmen before or since their time, and which was recognized by them as being not only necessary and proper, but also beneficent in its operation, and hence desirable, for America as well as for other States." From these exhaustive inquiries he drew the conclusion that:

The people and lands of the American Union and the people and lands of its dependencies constitute a Federal Empire, and that the people of the American Union, by their written Constitution consented to by all the people of the Empire, have divided the governmental power under an unwritten Constitution, so that the Union is the Imperial State as respects the dependencies, standing in a federal and contractual relation to them, and having neither unconditional nor unlimited power over them, but only a power of disposition—which implies

adjudication as a prerequisite, and in which is included the power to execute its adjudications by all needful rules and regulations. . . .

His conclusions as to the administration of dependencies was

That the habitual and daily administration of the dependencies of the American Union should be in charge of the President, assisted by expert investigators and advisers, and that the superintendence and final control of the administration should rest with the Congress, subject only to the final judgment of the whole people of the American Union, expressed at the polls.

The second of Mr. Snow's volumes appeared in 1918 under the title *The Question of Aborigines in the Law and Practice of Nations.* This study was undertaken at the request of the Department of State of the United States, for use at the impending Peace Conference at Paris. In the brief note prefixed to his study, which has only recently been made public, Mr. Snow said, and truly, that, "The author has discovered no treatise on the question, nor even any chapter in any book on international law or the law of colonies, to serve as model or guide. He has therefore been compelled to develop the subject and arrange the authorities according to his own judgment." It is, as Mr. Snow's colleagues at the bar would say, "a case of first impression." It should not be summarized. The little book of only 217 pages should be read and studied by all interested in the subject. It is the only monograph on the subject and it is safe to predict that it will not have a rival for many a day.

Among the various articles which Mr. Snow contributed from time to time to periodicals of a scientific nature, and which should be brought together and preserved in a companion volume to his two larger contributions, are: "Neutralization versus Imperialism" (*American Journal of International Law,* for 1908); "The Law of Nations" (*ibid.,* 1912); "International Law and Political Science" (*ibid.,* 1913); "The American Philosophy of Government and Its Effect on International Relations" (*ibid.,* 1914); "The Development of the American Doctrine of Jurisdiction of Courts over States" (*Judicial Settlement Quarterly,* 1911); "Judicative Conciliation" (*ibid.,* 1916); "The Shantung Question and Spheres of Influence" (*The Nation,* New York, September 20, 1919); and "A League of Nations According to the American Idea" (a paper read before the American Association for the Advancement of Science on December 30, 1919, and printed in the *Advocate of Peace,* January, 1920).

His paper on "Judicative Conciliation" is especially interesting at this time when the nations are groping for some peaceful means of settling their disputes. Mr. Snow shows the relation of his proposed institution to arbitration and judicial settlement:

> Judicative conciliation is to be distinguished from either arbitration or the judicial action of a court. A commission of judicative conciliation, whether in the imperfect form described in Article XIV of The Hague Convention or in the perfect form as manifested by the tribunal in the North Sea Incident, differs from a tribunal of arbitration in this: The finding of facts and the judgment or opinion of a tribunal of judicative conciliation are advisory only, and the parties are free to accept or reject them, so that it is the parties themselves who finally settle the matter by their voluntary agreement; whereas arbitration implies an obligation of the parties to accept and faithfully carry into effect the award of the arbitration tribunal. . . . Arbitration, therefore, cannot properly be classified as a conciliative process. This essential feature of implied obligation to accept the award, even if it does not require arbitration to be classified as a compulsive process, since the nations are free to arbitrate or not to arbitrate, nevertheless distinguishes arbitration from judicative conciliation.
>
> A commission of judicative conciliation is clearly different from a court. A court is the judicial organ of a society organized compulsively as a state. A court exists and acts under the constitution and laws of the state and has the function of finding the facts in cases duly brought before it and of applying to the finding of facts the principles established by the state as its law. A court implies a legislature and an executive, and a constabulary under their control to enforce the laws, the executive decrees, and the judgment of the court. A court, therefore, is an organ of a society organized on the principle of compulsion, for the purpose of applying compulsion like any other organ of the state. Judicial action and judicative conciliation are, therefore, distinct from each other.

And he showed the cautious yet progressive spirit by which he was animated in the concluding sentences of the article:

> Arbitration is an established process. If nations can settle their disputes peaceably by arbitration, by all means let us encourage them to do so. If a court of the society of nations can be established without converting the society into a federal state, or if we believe that such conversion is practicable and desirable, let us press for the establishment of the court. All that is intended to be said in this paper is that in the great work of promoting the judicial settlement of international disputes we should not overlook the possibilities which lie in judicative conciliation, both in its imperfect form of "inquiry" under the definition of Article IX of the Hague Convention for Pacific Settlement and in its perfect form of judicative conciliation as manifested in the settlement of the North Sea Incident. It is always wise to hold fast to all that has proved itself good in many instances; therefore, we must hold fast to arbitration. It is

also wise sometimes to plan for a revolutionary change. Therefore, we may plan for a court of the society of nations; though the burden is in that case on us. But it is certainly also wise to hold in mind and consider carefully that which has proved good even in one case, for it may be that, if carefully studied and more generally applied, it will be found useful in many other cases.

The results of Mr. Snow's keen analysis of the Covenant of the League of Nations are also of very timely interest now. They were expressed in his article on "A League of Nations According to the American Idea," as follows:

The so-called "Covenant of the League of Nations" has the form of a treaty, but it is something different from and more than a treaty—that is to say, it is a constitution. It was, in fact, originally so-called. If adopted, it would constitute a new composite body politic and corporate, which would be a union of states, of which the United States would be a member. This new body politic and corporate would have a political and legal personality distinct from that of the United States. It would have a specific name—the League of Nations. It would manifest its personality through a common organ, which would sit in two divisions—one called "the Council," and the other "the Assembly." To this common organ the constituent states would delegate specific political and corporate powers, thereby renouncing the exercise and wielding of these powers to the common organ. The act of ratifying any treaty which contains this "covenant" would be an act of consent on the part of the United States to enter into a union with foreign states, and for a period of time more or less definite to participate and partially submerge its personality in this new union. The power which the United States would exercise in entering into and participating in the union would not be the treaty power proper, but the analogous but vastly greater power of union. Specifically the power thus exercised would be the power of political union, the supreme phase of the power of union.

The obligations under the Covenant of the League of Nations are opposed to the American Idea in at least the following respects:

First. The Council and the Assembly are said to have the function of "advising" the member states; but in giving this advice they are not required to observe the fundamental law or any principles whatever. The member states "covenant" to follow the "advice." "Advice" given by one person to another who is obligated on oath to follow the so-called "advice" is command, not advice. When no principles are laid down as obligatory on the adviser, and the person advised binds himself to follow the advice, the power of so-called "advice" is the power of absolute command, in disregard of the fundamental law.

Second. The Covenant defines aggression and wrongdoing in terms of warlike action, whereas the only aggression recognized by the fundamental law is that which occurs when states or governments deprive persons of their fundamental rights without due process of law. Such aggression, and such only, is an aggression against all other states. Each state may properly protect itself against such

an aggressor state, by war if necessary; and all states are in duty bound, under the fundamental law, to correct by their joint influences and strength such an aggressor state. To regard a state which makes war on such an aggressor state as the real aggressor is to render the League an agency of perversion and injustice.

Third. The Covenant places the power to direct the activities of right-doing states and to correct the activities of the wrong-doing states in the same body of men—an arrangement which in fact makes this body of men at once a legislature, a court, and an executive. Such a combination of functions in one person or body invariably results in absolute government. The fact that the League provides for a Council and Assembly is of no consequence, since in each of them the two functions are similarly confused.

Whether we agree or not with Mr. Snow's ideas on the subjects which interested him and upon which he wrote, we must agree that he was a publicist in the truest sense of the word, a clear thinker, a careful writer and a man to whom truth as he saw it, whether it be agreeable or not, was the chief thing in life. Quietly, modestly and earnestly he set himself to the task of mastering his chosen subjects and publishing the results of his labors for the benefit of fellow-student, practical administrator, or general reader.

We are better for such men, and such men do not live in vain.

JAMES BROWN SCOTT.