

EDITORIAL COMMENT

RATIFICATION OF TREATIES IN GREAT BRITAIN

The first Labor Government of Great Britain, of which Mr. James Ramsay MacDonald is Prime Minister, and the very head and front, is responsible for a change of policy which, if maintained, will in one respect at least tend toward "the Americanization of the British Constitution." It appears that on April first, of the present year, Mr. Arthur Ponsonby, Under-Secretary for Foreign Affairs, moved in the House of Commons the second reading of the bill to ratify the Treaty of Lausanne, concluded by Great Britain and other Powers with Turkey on July 24, 1923. There was nothing unusual in the motion, but he followed it with an announcement, according to the Associated Press,¹ "that in order to strengthen the control of Parliament over international treaties the government had decided that in the future Parliament would be allowed an adequate opportunity for the discussion of all treaties before their final ratification. He said that hitherto there had been no constitutional obligation on the government of the day to submit treaties before ratification."

Any government of the day could take the Parliament into its confidence before proceeding to the ratification of a treaty, but the importance of Mr. Ponsonby's statement lies in the fact that His Majesty's Government—for such it is—has adopted the policy of publicity in the matter of treaties. It is, however, too much to say with Mr. H. A. L. Fisher, a Liberal member of Parliament and former Cabinet officer, that such action on the part of the government would necessarily entail "the Americanization of the British Constitution." Even in respect to treaties, the proposed policy does not go so far as American practice, although the government proposed, to quote again the Associated Press, to "lay on the table in both Houses of Parliament every treaty, when signed, for a period of twenty-one days, after which the treaty would be ratified and published and in the event of important treaties an opportunity for discussion would be given within this period." It is further stated that the government intended to submit "to the House all agreements, commitments and understandings which might in any way bind the nation to specification."

It is a correct conclusion that by such a practice, secret treaties—a consummation devoutly to be wished—would be rendered improbable. It is perhaps too much to say impossible, for they could be concluded, but their terms would become public before ratification, and the British electorate

¹ *The Washington Post*, April 2, 1924, p. 3.

would understand in advance of ratification what obligations the government in power was concluding, by which every man, woman and child of the vast British Empire would be bound. One can, however, understand that the older parties were aghast, for if the new policy of publicity thus inaugurated should commend itself to Parliament and to the people who choose the members of Parliament, it is evident that the ways of diplomacy would become the talk of the man in the street, and that international secrets would cease to be the patrimony of the select few, who, in their self-sufficiency, have bound their countrymen in times past to policies which they themselves condemn when reason has replaced the passion of the moment. John Bright was beaten for reëlection to Parliament because he opposed the Crimean War of 1854–1856, waged by Turkey, France and Great Britain, on the one hand, against Russia on the other. Yet within a generation as sturdy a defender of the past as Lord Salisbury maintained that that very war was a mistake.

It is too much to hope that the people will always be wise enough to descry the ultimate danger lurking in a treaty or convention with foreign countries, yet it cannot be doubted that the policy of publicity, taxing them at the source with knowledge in advance of ratification, will exercise a sobering effect—and sobriety in foreign relations is not the least of the world's desiderata.

The method by which the American public learns of treaties and conventions is different from that proposed at present by the British Government. From the meager statement transmitted by the Associated Press, it does not appear that the treaty or convention or agreement is to be approved in express terms by the Commons and the Lords. In effect, it is little less than that, because the government would hardly proceed to the ratification of a treaty which meets with the disapproval of the House of Commons, although it might not be deterred from this course by opposition of the Lords. But the control of the public over treaties is assured, if only they be laid before Parliament in advance of their ratification, and an opportunity be given to public opinion to express itself. For the people really rule today, in most countries, whether the form of government be monarchical or republican.

It is a break with the past to make secret agreements public, either before their ratification or within a reasonable time afterward, and yet there is no difficulty in the matter. A nation should not enter into a treaty with a foreign country, whose terms it is unwilling to disclose. And if the terms of a treaty cannot for one reason or another be disclosed, that would seem to be in itself proof positive that it should not be contracted.

The Government of the American Union cannot make secret treaties—at least it cannot be bound by them if made, because a treaty, or convention, or international agreement, only becomes binding when its ratification is advised and consented to by the Senate, and it only becomes a law of the land by promulgation as such by the President of the United States. Yet,

notwithstanding the requirement of publicity, the Government of the United States has entered into all treaties which have seemed to be necessary to the protection of its interests. Other countries may do so, if it be their desire. Publicity cannot be expected to prevent wars, but publicity can prevent the negotiation of treaties which, if concluded and ratified by the nations, bind them to go to war. There is perhaps no one method to preserve peace, but there are many approaches, and the publication of all agreements is one of the steps toward the goal which we should have, and which it is to be hoped we will have more clearly before our eyes than ever in the past.

Of a truth, "The old order changeth, yielding place to new."

JAMES BROWN SCOTT.

EXTRADITION TREATIES AND THE DEATH PENALTY

Attached to the extradition treaty between the United States and Costa Rica, signed November 10, 1922, and since ratified, there was an exchange of notes concerning the death penalty which seems to be of sufficient interest to draw attention to certain developments in this type of international agreement. The essential portions of these notes are as follows. In answer to the statement of the Costa Rican Minister of Foreign Relations "that it is understood that the Government of the United States of America gives assurance that the death sentence will not be passed upon criminals surrendered by Costa Rica to the United States of America for any one of the crimes enumerated in the said treaty, and that that assurance will form an effective part of the treaty and that it will be so mentioned in its ratification," Mr. Davis, American Minister at San José, in repeating the words just quoted, added: "In order to make this assurance in the most effective manner possible, it is agreed by the United States, that no person charged with crime shall be extraditable from Costa Rica upon whom the death penalty can be inflicted for the offense charged by the laws of the jurisdiction in which the charge is pending."¹

Of the extraditable crimes listed in the treaty none is punishable by the death penalty in Arizona, Kansas, Maine, Michigan, Missouri, North Dakota, Oregon, Rhode Island, South Dakota, Washington, and Wisconsin. Treason, punishable by death in Arizona and Michigan as well as by Federal law, is not an extraditable offense. With the exception of the states listed murder, arson, and rape are generally punishable by death throughout the United States, and together with piracy, under the Federal statutes. Noth-

¹ SUPPLEMENT to this JOURNAL, Vol. 17 (1923), pp. 221, 222. See upon this subject generally, J. Saint-Aubin, *L'Extradition et le droit extraditionnel*, Vol. I, pp. 695-703; Maurice Travers, *Le droit pénal international*, Vol. III, pp. 313-322; and P. Leboucq, "Influence en matière d'extradition de la peine applicable dans le pays requérant," *Clunet*, Vol. 38 (1911), pp. 437-449.