SOLDIER *and* POLICEMAN

A Consideration of the Rightful Use of Force
in Civil and International Affairs.

By

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With a
FOREWORD
by
LORD
PARMOOR

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FOREWORD

I Have been asked to write a short foreword to Mr. Le Mare's pamphlet on “Soldier and Policeman.” In his thoughtful study, Mr. Le Mare has drawn the right distinction which divides the functions and uses of force in civil, and international, affairs. No doubt in some cases the duties and functions of the soldier approach closely to the duties and functions of a policeman, but, in these exceptional cases, we must not forget that it is the duty of every citizen, if called upon to maintain order, to take his part in the maintenance of peace, and that the neglect of this duty renders him liable to heavy punishment. The main duty of the police force is to act as guardian of order, or as the agency to carry out executive decisions. If a policeman exceeds the limitation of his duty, he is liable to any person who can prove that such excess has directly caused him loss or damage.

It is the object of peace lovers to eliminate the soldier from interference in international affairs. In no case should an international force be sanctioned under the direction of the Council of the League. I regard sanctions, as they are called, to be of secondary importance. Under a general peace system, each country might be trusted not to transgress the obligations it has undertaken on becoming a member of the League of Nations. So far as soldiers are used in international affairs their conduct should be restricted by the principles of international law, but it is often difficult to make these applicable in a period of actual warfare.

I hope that Mr. Le Mare's pamphlet may be widely read. An effective system, such as will create a law abiding people, depends, not on the use of force, but on a general recognition of its value and utility as a substitute for the evils of private warfare, and in giving all citizens a right to appeal to recognised tribunals.

PARMOOR.

THE ARMY AND THE POLICE

A DIFFICULTY which presents itself to the minds of many persons who desire to put an end to all war is the consideration that ordered civil life is maintained by the exercise of force in restraint of those who would disturb it.

Judgment by law has taken the place of private vengeance and abolished blood feud and duel, but Judge and Policeman are still necessary for the protection of life and property: moreover, when the police are faced with a great emergency the soldiers are called in to assist them. Do not these facts make it impossible to distinguish between the army and the police, and imply that military force is a necessity of all modern civilisation lying unobserved in the background all the time?

Any supporter of a policy of total disarmament must take account of these questions and try to answer them. In the attempt which follows much has been culled from a pamphlet entitled, *Judge, Policeman and Soldier*, by Joseph Edmonson, published first in 1906 and republished in 1911, but it has been felt necessary to supplement the author's conclusions by evidence drawn from more recent experience.

THE ADMINISTRATION OF JUSTICE

In his review of civil law the author wrote: "In human communities there is no more important function than that of the administration of justice. We all recognise the impossibility of the existence of any well ordered society without it. Its aim is to apply the principles of justice to human affairs - principles which vary not with time, place or nationality, and which ultimately commend themselves to the conscience of all men - principles, however, which men in their upward progress from barbarism have only gradually apprehended and applied." There followed a careful examination of the system of law by which these principles are applied to offences and disputes the gist of

which has been embodied in the present writer's argument.

THE JUDICIARY

In all human communities there arise from time to time offences against the State and disputes between individuals which demand judgment. This must be given with strict impartiality in accordance with a body of laws, and thus are evolved the functions of judge, justice and arbitrator.

QALIFICATIONS OF JUDGES

It is universally acknowledged in civil affairs that no person having an interest in any case will be free from a more or less conscious bias and therefore most scrupulous care is always taken to prevent personal considerations from influencing the minds of judge and jury. If a judge, when conducting any judicial enquiry unexpectedly finds (as has sometimes occurred) that he has an interest in the result, he at once retires from the court and hands the case over to one of his colleagues. Any person endeavouring to influence the judge or jury becomes subject to penalty. No public comments prejudicial to either side are allowed to be made while the case is under trial. No expression of feeling, whether of applause or disapproval, is permitted in the court. In short, everything possible is done to establish and maintain an atmosphere of calm impartiality, free from excitement, without which there can be no just and equitable consideration of the case. If this ideal has been travestied in the press and elsewhere during some recent trials it is worth while to consider whether the declension is not itself an aftermath of the war of 1914-1918.

WITNESSES AND EVIDENCE

A trial is conducted upon well defined principles of evidence. In English courts each witness is bound, under penalty, to tell "The truth, the whole truth, and nothing but the truth," so far as he knows it. He is subjected to cross-examination, the most effective method known of testing the true value of evidence. Knowledge and not opinion, except in the case of experts, is demanded and irrelevant matter rigidly excluded from the enquiry. The case of a defendant may not be prejudiced by a record of his past or aspersions upon his character. No

pains are spared to ascertain the relevant facts and keep them from distortion.

THE ORIGIN OF LAW

Sir Henry Sumner Maine has shown, in his treatise on *Ancient Law*, how the conception of a code of justice has grown up amongst mankind. Starting from the absolute power possessed by the patriarch over his household in primitive society it has gradually developed into the recognition of the rights of free individuals in a civilised society. In Chapter V., on *Law in Primitive Society,* he writes: "The movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place. Nor is it difficult to see what is the tie between man and man which replaces by degrees those forms of reciprocity in rights and duties which have their origin in the family. It is contract. Starting, as from one terminus of history, from a condition of society in which all the relations of persons are summed up in the relations of family, we seem to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of individuals." The conditions upon which such contracts are made, whether between the State and individual subjects or between particular persons, are codified in the body of laws, a system which is constantly growing and needing modification as new necessities arise.

LAW IN RELATION TO THE JUDGE

Law has advanced step by step. Its growth has lessened the responsibility of the judge and narrowed the sphere of his action. It has given him a standard embodying the consensus (judicial and legislative) of many minds bent on applying justice and equity to specified conditions and circumstances arising, or likely to arise, in human affairs. But no formulated law, written or unwritten, can be complete in itself because the possible permutations and combinations of human activity are infinite. A judge will, therefore, always be needed to interpret the law and to supplement it by a decision as to the way in which it applies to the case then before him.

THE SILENT AND INVISIBLE FORCE OF LAW

The consciousness that law is continually operating in a civilised community exercises a silent influence over its members, and predisposes them to act upon principles of reason and mutual consideration in their dealings with one another and their relations with public bodies. Acts of personal violence are rare and passive resistance to an unwelcome law is only resorted to by those who are fortified with a strong sense of duty. The ultimate sanction of any law is not the exercise of force nor the infliction of penalties, but the common conscience of the community.

THE EXECUTIVE

There are, however, in any large group of persons, abnormal individuals for whom special treatment is necessary because they depart so far from the average normal type, physically or mentally or both, that their case can never be covered by a general rule. These come under the charge and control of the city officers, or police, whose function it is to be guides to the erring and reformers of the morally deformed; a function imperfectly fulfilled, no doubt, under present conditions, but one which it is the ambition of many, if not most, policemen, to ennoble, and which is only degraded (when it is degraded) by bad traditions. The whole police and prison force is the executive of the judicial organism with a strictly limited sphere of duties. It is a recognised principle of justice that the work of the judge and that of the executive officer must not be entrusted to one and the same person or organisation, but must be kept distinct. Moreover, the officer must be subordinate to, and under the ruling of the judge, not only in a general way, but in every detail of his work.

THE POLICEMAN'S LIMITATIONS

Within the domain of the policeman, including within the scope of the term sheriff, bailiff and all prison officials, the use of force legitimately lies. Nevertheless he is held responsible for keeping its exercise within the limits prescribed by law and the sentence or order of the judge. Any action beyond these limits is strictly prohibited. If the officer uses unnecessary force in bringing to judgment or in

executing a penalty he himself becomes a wrongdoer liable to punishment. The policeman has authority to quell a disturbance, but even in that case he must not use unnecessary force, and when so acting he must do nothing by way of punishing an offender. His aim must be: first to restore order, secondly to bring to trial any person whom he believes to have been guilty of a breach of the peace. Thus we have this principle governing the administration of justice: that no penalty may be inflicted, and no settlement of a dispute can be enforced until the matter has been submitted to an impartial tribunal for judgment, and that tribunal having found the accused guilty or the claim in the dispute to be just, has prescribed the penalty for the offence or the mode of settlement of the claim.

POLICEMAN'S BATON AND SOLDIER'S SWORD

The question is frequently asked whether a lawless mob can be permitted to interfere with peaceful citizens; if not, can a distinction be drawn between the policeman's baton and the soldier's sword (or machine-gun)? To take the second point: there is surely a very clear difference between the functions of the soldier and police man. The policeman is the servant of a law common to all whom he protects or restrains and he is himself subject to its jurisdiction; his use of force is defined in purpose and restricted in scope; his task is to bring offenders against an acknowledged law to an impartial trial; even in his capacity of prison official he is responsible for the welfare of convicted persons, and must use no avoidable compulsion.

The soldier, as soldier, is the servant of the State by which he is enlisted or conscripted under an engagement to do violence to the subjects of any other State it may happen to have a quarrel with; no international law restrains his use of force in time of war (except the Red Cross Convention of Geneva); his task is to effect the utmost damage by violence upon one party in the dispute; and in modern warfare he is often employed to inflict indiscriminate injury by bomb and gas upon weak and strong alike and upon civilian and military population together. Add to this that a strict press censorship and propaganda keep his mind scrupulously misinformed and a military oath, enforced by a death penalty, binds his conscience, and the contrast between the soldier's task and that of the peaceful and

restrained officer of the civil law stands sharply defined.

In reference to the first part of the query, it must be admitted that a very difficult question arises in regard to the employment of soldiers in the case of riots and other conflicts with the civil power when a mass of people, inflamed by a sense of social injustice, is getting beyond the control of the local police force. Obviously the authorities must protect the persons and property of the citizens for whose security they are responsible; but it must not be forgotten that the rioters themselves are amongst the number of those citizens and have previously suffered deeply enough to be smarting under a keen sense of injustice. Historical examples of military methods in such cases, as the Peterloo affair in Manchester, on August 16th. 1819, or the Agricultural Labourers' Revolt in Kent and Sussex in 1830, furnish strong evidence that the presence of soldiers does more to stir up violence than to quell it and that military force tends to exceed all justifiable limits and inflict untold misery upon innocent victims. It is very questionable, too, whether landlords and employers would ever venture so far in the exercise of that power which wealth and privilege afford them as to create a dangerous situation unless they felt confident that military aid would be forthcoming in the last resort. Finally, the position of the soldier must be remembered, compelled as he is under penalty of condemnation for mutinous conduct to overawe and, in the last resort, to fire upon members of his own class with whose cause he may have the fullest sympathy. These considerations lead to the conclusion that the peace would be more assured and the safety of citizens more secure at all times if there were no military force which could ever be called in to settle civil disputes. Safety lies in disarming the whole community, not in arming a section of it.

SUMMARY: THE FUNCTION OF THE POLICE

We may now summarise the argument up to this point. The need for the administration of justice in every civilised community is admitted; offences inevitably arise which must be dealt with, as well as disputes which require settlement; in judging them, however, a calm and impartial tribunal is essential to a just decision, therefore evidence must be strictly unprejudiced and no record of past misdoing aspersions up on the character of the defendant are permitted.

An enquiry into the origin of law reveals a steady progress from the exercise of a paternal domination to a system of free contracts between parties to an agreement, such agreements being codified into a body of laws the real sanction of which is public opinion. Nevertheless a judge is needed to interpret the laws because circumstances are never exactly repeated, and executive officers are required to administer them because there are always abnormal individuals in any community who do not submit to general rules; these officers or "police," are, however, always distinct from the judiciary and themselves subject to its jurisdiction, they may not inflict a penalty nor effect a settlement until an impartial court has given its judgment. The use of military force in civil disturbances interferes with the peaceful and proper function of the police and tends to provoke rather than quell disturbance.

CONTRAST BETWEEN POLICE AND MILITARY FORCE

A contrast may now be drawn between the normal effects of the exercise of police force in establishing and maintaining civil law and the employment of military force in international warfare.

Disputes between citizens and offences against the community, occurring within a civilised State, are subject to the civil law which has evolved from a condition wherein the head of the tribe dispensed arbitrary Judgments to a system of free contracts upheld by the moral sense of the whole people. The decisions of the judge, based upon law, and the verdict of the jury, after a careful examination of witnesses, represent the best human effort to obtain impartial justice. The whole exercise of force by the police service is subjected to the careful deliberation and impartial verdicts of the civil courts, its effect is to maintain a calm sense of security in society and prevent passion and panic,

Disputes between nations and offences laid to the charge of whole peoples, on the other hand, are seldom submitted to courts of International Law, which are still in their infancy, but are subject to decisions made in the self-interest of the parties concerned, of which not the more just, if one is more just than the other, but the one supported by the greater amount of military force, prevails.

International Law, developing in a manner similar to that by which

civil law has grown “from status to contract,” must probably pass through a course of evolution out of the present condition, where strong states exercise arbitrary power in enforcing treaties, into a system of mutual contracts between free peoples; but the rivalry in armaments hinders this process and may - at any moment set in motion retrogressive forces which will hurry the nations backward into barbarism again. The presence of great and growing armies, navies and air forces in rival States, so far from promoting peace, inspires fear, inflames passion and stimulates the silent mental processes which promote war.

COURTS OF INTERNATIONAL JUSTICE

The Hague Conference of 1899 established a permanent Court of Arbitration, and the Conference of 1907 improved its constitution. This was in reality a panel of judges ready for the speedy formation of a court to meet any case submitted to it. Under this procedure, arbitration was successful in settling disputes between France and Germany relative to Morocco in May, 1909 Norway and Sweden relative to maritime frontiers in October, 1909 Britain and the United States relative to the Newfoundland Fisheries in September, 1910, and in six other cases.

The conference of 1907 also worked out a scheme for a Court of Arbitral Justice, but failed to reach agreement as to the appointment of judges.

The League of Nations, by Article 14 of the Covenant, established a Permanent Court of International Justice. It is laid down that: "The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it." The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or Assembly of the League.

The difficulty which prevented the establishment of the earlier Court of Arbitral Justice was met (in the case of those States which have become members of the League) by the plan of electing the judges, first in the Council of the League, where the Great Powers are permanently represented, and afterwards confirming (or vetoing) their election in the Assembly, where all States members of the League are

equally represented, and appointing only those who secured an absolute majority of votes in both elections.

Submission to the Court as voluntary on the part of any State member of the League and though twenty-three States, including France, have agreed to submit international disputes to its jurisdiction, most of the Great Powers, including Britain, have not yet done so.

This Court represents the beginning of an international system of justice capable of dealing with all justifiable disputes between nations, that is all cases arising on questions of fact upon which some international legislation exists; like all human institutions in their earliest stages it is far from perfect, but it is matter for very serious concern to Englishmen, surely, that it has not yet received the full support of any British Government, though the Labour Government of 1923-4 would have accorded it under conditions set forth in the Protocol.

SETTLEMENT OF NON-JUSTIFIABLE DISPUTES

There remain for consideration those international disputes which, being non-justifiable in character and for the most part involving what is termed a point of national honour, are unprovided with any organ far their mediation or conciliation except the Council of the League of Nations.

The Geneva Protocol of 1924 was designed to meet such cases; the resolution embodying it was accepted on October 2nd, 1924, by the unanimous vote of the Assembly, including the delegations of Great Britain and all the Dominions, it failed, however, to get subsequent ratification by the Conservative Government, elected October, 1924, and largely an account of this rejection, was abandoned.

In brief, the provisions of the Protocol were; that the signatory States agreed not to make aggressive war, but to accept the jurisdiction of the Permanent Court, or of the Council, or of a Committee of Arbitrators; they agreed that any State which would not submit its case to arbitration should, *ipso facto*, be reckoned by them as an aggressor, and against such disturbers of the peace they agreed, in the event of war, to act together in applying military and economic sanctions.

If this Protocol had been ratified by a majority of the States which were permanent members of the Council of the League and ten other States - members before May 1st, 1925 - a Disarmament Conference would have been called to Geneva in the following June. This attempt to outlaw war failed, the Disarmament Conference was not called and the proposal of a Pact (1925) took the place of the Protocol.

The idea embodied in the Security Pact is a more limited one than that which the Protocol proposed, but it is not incapable of extension.

A German note of February 9th. 1925 addressed to the French Government, made alternative proposals, after the failure of the Protocol, for a Pact of Guarantee and Arbitration, and expressed the hope that a "Security Pact might be so drafted as to prepare the way for a world convention," and that "in case such a world convention was achieved, it (the Pact) could be absorbed by it or worked into it." Arbitration treaties between certain Powers were proposed, England, France, Italy and Germany being specifically named, and the Government of the United States was suggested as arbiter.

Negotiations were carried on at a conference held at Locarno between representatives of the Governments concerned and resulted in the "Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy," which has been signed in London (December, 1925) by the official representatives of those Powers. The Pact, to give it its briefer title, which will only come into operation when Germany has become a member of the League, provides for the inviolability of the Franco-German frontiers; it is of much more limited scope than the Protocol, it provides no means of defining an "aggressor," it leaves open certain possibilities of a resort to arms, and does nothing to ease the tension existing between the Soviet Government of Russia and other European Governments, but it has been received with gladness and hope by the peoples of the signatory Powers and is evidence of a growing will to peace amongst them.

Both these proposals, then, despite the fact that they are limited in scope and exclude the governments of important nations, and the further fact that they regard the use of military force as the ultimate sanction, are nevertheless attempts to put law into the place of war and relegate the use of force to the executive agent or agents of a judicial

assembly. They may be very short steps on the road to disarmament, but it would be a heavy responsibility for those who desire total disarmament to refuse to welcome either of them.

THE LEAGUE OF NATIONS AS INTERNATIONAL POLICE

Mention of the Protocol and Pact leads to a consideration of the methods (Sanctions) which the Covenant of the League proposes to employ against any member resorting to war in disregard of its covenants or any State not a member of the League which resorts to war and refuses to accept the obligations of membership for the settlement of an international dispute.

In the Covenant of the League these sanctions are described as:-

(a) Severance of all trade or financial relations.

(b) Prohibition of all intercourse between the nationals of member States and the nationals of the covenant breaking State.

(c) Prevention of all financial, commercial or personal intercourse between the nationals of the covenant breaking State and the nationals of any other State.

(d) Military, naval, or air forces employed by members of the League against the recalcitrant State.

Sanction (a) does not necessarily imply the use of armed forces; sanctions (b) and (c) would almost inevitably involve a blockade of the coasts or frontiers; (d) means the direct use of military power.

Before turning to the general question of the use of force in support of international justice there are certain contingencies to be dealt with in which it would be difficult to rule out the possibility of having to employ a small body of international police to protect life. These include:-

(1) Piracy.

(2) Survivals of the slave trade.

(3) Survivals of barbaric practices.

(4) Unavoidable risings amongst frontier tribes.

In all such cases the principle maintained in this essay is applicable; that necessities may arise for the use of force but when they do it should be employed by the civil authority in its capacity of administrator of justice and guardian of the peace. Thus in regard to (1) it may be said that piracy is not even a remote possibility on the great trade routes, and that if it occurred in the seas or gulfs of some undeveloped country its suppression would be of the nature of police protection for home and foreign traders within the jurisdiction of the State or States concerned, though it would desirable that it should be controlled by a mandate of the League. In regard to (2) and (3), it is not a hopeful policy for the Governments of highly civilised States to endeavour to abolish native practices amongst more primitive peoples by force of arms even when these appear cruel and disgusting to western eyes.

Where colonists or their servants are threatened, a colonial police force controlled by the civil authority could deal most safely with the situation. If strict justice is maintained between white and coloured races and equitable agreements made with the natives for the cultivation of their land it is not impossible to obtain tropical raw materials with benefit to both sides and without trouble arising. In regard to (4) it is probable that public opinion will demand some special protection for residents on the north-west frontier of India and in similar regions where modern life is impinging upon that of warlike aboriginal tribes, but it is to be hoped that a better way may at length be learned from the faith of missionaries who often go forth unprotected amongst these peoples, and whose goodwill is undoubtedly their best defence.

In all cases, then, where it is for a time impossible to dispense with some use of force, it should he always be of the nature of a police force under the civil control of the State or States concerned, who might act under a mandate from the League and be strictly responsible to the Assembly.

THE USE OF FORCE IN SUPPORT OF INTERNATIONAL

In dealing with the problems which arise in regard to the proper use of physical force in human affairs, certain valid conclusions seem to have emerged from our enquiry into the functions of the police in a civilised community. Force is, in itself, neutral in character, there is a limited place for its use in dealing with animals, children and mentally and morally defective (or undeveloped) persons who are more or less incapable of responding to the influences of reason and moral suasion.

Force may be safely employed for such purpose only when its exercise is under the control of an impartial tribunal and its scope is strictly limited to the end in view - the protection of society and the reformation or education of the individual. All use of force is fraught with peril, no less to him who employs it than to those who suffer its compulsion, because it is so fatally easy to resort to it in many difficult and perplexing situations and (since its use provokes resentment and resistance) because it leads on from force to more force and often to tyrannical oppression.

Amongst democratic peoples there is a growing sense of the danger involved in the employment of military power to subdue riots or intervene in disturbances arising from strikes and a growing reluctance to resort to it; whenever used by the authorities their action is held to be subject to subsequent judgment by a civil court; it is indeed very doubtful whether its use is ever unavoidable or wholly justified. A system of law is an appeal to reason which relies upon a sense of fairness and impartiality to secure consent, and gradually effects the elimination of force from human affairs; it has succeeded in disarming the private citizen in all civilised countries.

A military system on the other hand, is based upon despair of human reason to arbitrate in the last resort; its supporters are sceptical of the goodness latent in mankind and are compelled to resort to various forms of intimidation in the endeavour to preserve peace; they dare not trust the soldier with full information about the war in which he is engaged or the better impulses of the enemy, nor permit him to exercise his moral judgment freely so as to lay down his arms when he is convinced that further use of them would be wrong; it is a system

which can only prevail by destruction and death and only persist by domination and deceit.

The two systems, therefore, represent opposed tendencies in human evolution; progress in civilisation depends upon the discovery of a means of disarmament.

There are better ways than war or blockade for upholding the verdicts of international courts and supporting the authority of a League of Nations. The moral condemnation of a great International Assembly, widely disseminated through the press, would restrain an aggressive State, if that assembly represented an inclusive League of all civilised peoples. The power of international finance is sufficient to apply inviolable sanctions to the decision of such a League. It must be admitted that international finance at the present time is in the hands of groups of financiers whose interests are not wholly opposed to the sale of armaments; but, even so, the influence of the banks will more often be found on the side of peace than war. With a more democratic control of high finance it would be possible to prevent any great war from breaking out.

The only proper sphere for the use of force is where it can be strictly limited in scope, controlled by a civil court and applied to socially redemptive purposes. A Democratic League of Peoples, which included all nations, might succeed in employing a small armed force for such purposes as have been referred to above in exceptional circumstances, but it would need no armaments to uphold its decisions in settlement of greater international disputes nor to keep the peace between Governments, for the interests of the majority would always be best served by peace and a majority of States could always render any single State, or small group of States, financially helpless.

The building up of armaments, such as have burdened Europe for so long, is an interminable process, leading to unceasing rivalry between competing Powers, imposing burdensome taxation upon the citizens of the several States, and becoming itself the chief threat to the peace and welfare of the world.

ULTIMATE REASON FOR DISARMAMENT

The case for disarmament is based upon a judgment of reason. Men and women are much alike everywhere; treated with generosity they respond with goodwill, suspected and wronged they become a restless menace to peace.

There is no cause for any of us to fear our fellows, of whatever race or tongue, unless we do them some injustice.

The ultimate reason for the abolition of armaments lies in the fact that it is by them that a minority in a group of States, or within a particular State, is enabled to exercise dominion and so perpetuate injustice, thereby provoking the fear and hatred of the majority which culminate in war.

There are, and will always be, eventualities in human life against which neither individuals nor nations can fully provide, the best form of protection does not consist in destroying present hopes of reform by unendurable expenditure upon costly weapons, but in a calm reliance at all times upon the humane forces of reason and goodwill.