THE LAWYER'S ROLE IN THE POST-WAR WORLD *

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One can recall today without effort the demonstrations of joy that followed the announcement of the capitulation of Germany. When Japan in turn lay humiliated and conquered, a still deeper feeling of deliverance and gratitude swept over the whole of the civilized world. The overwhelming nature of the victories and capitulations made one feel then that the serious problems of the past decade had been solved at last and that it would now be possible for our children, and our childrens' children, to look forward confidently to the era of peace for which this generation had fought.

But, as time goes on, you and I have come to the realization that a cataclysm of the kind that has just shaken the world has left its scars; and we are beginning to discover that underneath those scars all is not cured. Every man who thinks of the future must realize that if the source of infection is allowed to fester a condition will develop that may again necessitate a major and highly hazardous operation.

If this evening I look back upon the regrettable events of the past few years and, with the lessons we have learned in mind, look forward to what the future may have in store, it is only because I feel that the re-establishment of world peace dominates and conditions all other problems. Your Association and mine, the lawyers of the United States and of Canada, have to date devoted so much time to the development of a basis of permanent peace that we are bound, on account of that very responsibility we have assumed, to continue to help in the study of international problems and in the guidance of public opinion.

When I refer to the services of the American and Canadian Bar Associations, I have in mind particularly the studies of the Dumbarton Oaks proposals by groups of American and Canadian lawyers. In your country groups convened at key centres at the instigation of a Committee under the chairmanship of Judge William Ransom, which had been called upon to report on Proposals for the Organization of the Nations for Peace and Law. Similar work was undertaken in Canada by the Committee of Legal Problems for International Organization

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for the Maintenance of Peace, presided over by the Honourable Chief Justice W. B. Farris of British Columbia. The council and officers of your Section of International and Comparative Law, under its Chairman, Mr. Mitchell B. Carrel of New York City, worked along parallel lines.

Subsequently the members of the Canadian Committee met with your two Committees in Chicago to correlate their findings. That this work was considered useful by our two governments is shown by the fact that your President was delegated to attend the United Nations Conference at San Francisco and that Chief Justice Farris, Chairman of the Basis of Peace Committee of the Canadian Bar Association, and myself, then President of the Association, were asked by the Canadian Government to go to Washington. We were to become advisers to the Canadian delegate at the conference of international jurists whose duty it was to prepare a draft of the statute for a world court to be submitted at San Francisco. Judge Manley O. Hudson and Chief Justice Farris also acted in an advisory capacity at San Francisco.

It will not fail to have struck even the most casual observer that the agreements entered into during the war towards a common aim, the co-ordination of the efforts of all in the achievement of victory, have not survived the cessation of hostilities. Why, after agreeing in war, is it not possible for the nations of the world to sit down side by side and agree upon the conditions of a permanent peace? The contrast, on the one hand, between the unity of purpose, which the forty-eight allied nations presented a few months ago in the face of the common enemy and, on the other, the conflict of interest and divergence of views, which since the end of the struggle became more apparent every day, may seem a cause for despair. A study of recent history will assist us, however, to understand the situation, even though we may still regret it.

As you know, the allied nations have not always fought together. France shared with Britain the reverse in Belgium, and then refused the unprecedented and desperate offer of its ally to amalgamate the two countries into one state. The signing of the armistice on June 21st, 1940, the news of which echoed round the world as the knell of a general defeat, gave rise to a tragic misunderstanding over the disposal of the French fleet. When Britain, then alone and in agony, called upon the French admiral to deliver his fleet to Britain or to steam to an American port to be interned and neutralized for the duration of the war, French

guns answered British guns, French and British soldiers ranged in mortal combat died at each others' hands. Petain and Laval, for a time titular heads of their country, summoned the people to resist British invasion. That was not the real France speaking, but we must realize nevertheless that these events, coupled with the sufferings of occupation, have not made it easier for the mind of the average Frenchman to understand where gratitude should begin and grievances cease.

So far as Russia is concerned, we have, as you know, another and entirely different problem. As different as American ideology is from that of Nazi Germany, so are the concepts of Nazi Germany from those of Communism. For this reason it came as a surprise to the world to learn in those fateful days of late August, 1939, that Russia was bound to Germany by a pact of benevolent neutrality. When Poland was invaded and the German armies, after sweeping through western Poland, found themselves halted before Warsaw by the reorganized Polish army, Russia invaded Poland from the east, intent on protecting her frontiers and her national interests. That put an end to Polish resistance.

Then Russia, again avowedly for purposes of self-protection, called upon the four Baltic States—Lithuania, Latvia, Estonia, and Finland—to sign treaties of neutrality and cooperation. Finland refused and was invaded. After a long struggle, successful at its inception, Finland asked Britain and France for help and the Chamberlain government agreed to send 50,000 British soldiers to its assistance. To reach Finland, the British troops would have had to cross Sweden, but Sweden, in fear for its neutrality, refused to allow them passage. When Finland capitulated, Britain was contemplating the necessity of forcing her way through Sweden at the risk of war, so that her troops might fight with the Finns against Russia.

It was not until after the Battle of Britain had been won and Hitler had given up any idea of invading England, his sole remaining enemy, that Russian sympathy openly turned towards us. This, as you know, was brought about as much by the loss of prestige to German might, repulsed in the skies of Britain, as by the tightening of the sea blockade against Germany and the subsequent attempt of that country to obtain more of the products of Russia than Stalin was prepared to cede. It was only when Hitler invaded Russia that Germany's new enemy became in fact our ally.

I do not of course overlook the fact that President Stalin has stated since that he was aware from the very beginning of

the duplicity of Nazi diplomacy and that his alliance with Germany was solely for the purpose of gaining time in order that his country could arm against the invasion, which he felt was inevitable. The world of course will always be profoundly grateful to the Russian people and their leader for their gallant resistance to the invasion — resistance that gave the democracies time to arm and gird for the fight.

By what different roads and from what opposite points of the horizon came together some of the nations that were fighting side by side on the day of victory. How easily matters might have been otherwise.

In June, 1940, after the fall of France, all that lay between the apparently easy invasion of England and the eventual conquest of Canada — predicted in detail in Mein Kampf — were the British Navy and a handful of British and Canadian aviators. We know of course that you could not afford to allow the Germans to obtain a foothold in Canada to organize there an attack upon your country. But were any of us then prepared to meet the enemy?

You will recall that, at that time, the submarines and the dive bombers left many in doubt as to the survival of the British Navy if Hitler attempted to blitz his way across the narrow English Channel. Few in your country thought that the Spitfires and the Hurricanes could resist the Luftwaffe, which had pulverized Poland and obliterated allied resistance in France.

You will also recall that it had been possible to rescue the major porton of the British army surrounded at Dunkirk, but all war material had been left behind. Only a few of the returning soldiers had even their rifles. In this connection let us listen to General McNaughton, at that time Commander-in-Chief of the Canadian forces in Britain. I quote from a speech he made in Detroit two months ago:

> In the retreat from the continent of Europe, the British forces had lost most of their equipment, armament, munitions and reserves and there was very little available in the United Kingdom for the reason that during the "phoney war" most things had been sent forward as they were made to depots in France and these had been overrun before they could be moved.
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> In the Battle of Britain, even in rifles, we were to begin with tens of thousands short for the actual number of men in the units. So perforce we were driven to improvisation.

After describing the rudimentary weapons that were created to meet the expected landing and the sham equipment constructed to deceive the enemy, General McNaughton continued:

> With great truth, through the long days of the summer of 1940, Britain was held largely by bluff, for it is difficult to believe that any serious attack from across the Channel could have been effectively resisted.

Yet Britain held. But it was not so much the bluff of the Britisher that frightened Hitler off. It was his faith that the barrier he offered to the enemy by his indomitable courage would awaken among the peoples who were looking on at this unequal struggle a confidence in the ultimate success of resistance to aggression. It was his faith that help would ultimately come and that the sacrifices in the air, on the seas and even on its soil would not have been made in vain.

I give you the unforgettable words of Churchill, which rallied a reeling and bewildered nation:

> We shall go on to the end, we shall fight in France, we shall fight on the seas and oceans, we shall fight with growing confidence and growing strength in the air, we shall defend our island whatever the cost may be, we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills, we shall never surrender, and even if, which I do not for a moment believe, this island, or a large part of it, were subjugated and starving, then our empire beyond the seas, armed and guarded by the British fleet, would carry on the struggle *until in God's good time the new world, with all its power and might, steps forth to the rescue and the liberation of the old.*

The answer came from the United States. It came at the Ogdensburg conference. It came with the transfer of the fifty destroyers, which by legal ingenuity your country sold to Britain. And it came for the whole world to hear, in your President's broadcast on December 29th, 1940. Of this broadcast McInnis in his Oxford History of the War wrote:

> It was a trumpet call for the fullest national effort to ensure a British victory. 'The Axis not merely admits', said Roosevelt, 'but proclaims that there can be no ultimate peace between their philosophy of government and our philosophy of government' . . . There can be no reasoning with an incendiary bomb. We know now that a nation can have peace with the Nazis only at the price of total surrender. . . . The British people are conducting an active war against this unholy alliance. Our own future security is greatly dependent on the outcome of that fight. . . . Democracy's fight against world conquest is being greatly aided, and must be more greatly aided, by the rearmament of the United States and by sending every ounce and every ton of munitions and supplies that we can possibly spare to help the defenders who are in the front lines. We must be the great arsenal of democracy. . . . There will be no 'bottlenecks' in our determination to aid Great Britain. No dictator, no combination of dictators, will weaken that determination by threats of how they will construe that determination.

And lastly the answer came on December 11th, 1941, when you entered the war against Germany. Hitler, gloating over the Japanese diversion, the sneak attack on Pearl Harbour and your grave problems in the Pacific, could hardly have expected that you would literally "carry the war into Africa". No, Mr. Schickelgruber's intuition gave him no inkling that that kind of courage was to be found on this side of the Atlantic.

And while we are considering these moments in the world's history, may I make a passing reference to the role played by Canada and its leader, Mr. Mackenzie King? Immediately upon the declaration of war by Britain, the Canadian Parliament had been summoned by the Prime Minister. On the 10th of September, 1939, it in turn notified Germany that it had entered the conflict. There was no compulsion on Canada to do this. Canada is a full-fledged nation in the British Commonwealth of Nations, free to control its destiny in war and peace.

As the picture grew darker in Europe, and as your country began to realize the danger in which America stood, Mr. Mackenzie King came to occupy an increasingly important role in the relations between the United Kingdom and the United States. This was because he enjoyed, and properly so, the esteem and full confidence of both Mr. Roosevelt and Mr. Churchill and, before these two great leaders came to meet and discuss together the grave problems confronting them, many of their dealings were handled through the Prime Minister of Canada.

I cannot give you details of the many interesting negotiations that must have gone on between the White House and No. 10 Downing Street via Laurier House, but I can at least refer to one event that publicly exemplified the close cooperation between our countries. I have in mind the Ogdensburg conference of August 18th, 1941. It was there at a meeting between Mr. Roosevent and Mr. King that your country and mine arrived at an agreement, important less for any detailed provisions than for its inevitable implications in the ultimate defeat of the common enemy.

Though your country was at peace and neutral in August, 1941, the Ogdensburg agreement provided for the setting up of a joint defence board to "consider in a broad sense the defence of the northern half of the western hemisphere". It did not, nor could it, provide for any specific action under specific conditions. It was not, nor could it be, a formal alliance, nor did it in so many words give the forces of either nation the right to use the territory of the other, yet, and again I cite from McInnis:

> The United States could not in any case see a potential enemy in control of Canada, as Roosevelt had recognized two years before when he pledged American aid against an invader; nor could the United States allow Canada to endanger her own security if America were ever involved in a major war. Practically, the two countries were bound together; and the essential task of the Defence Board, which began its sessions at Ottawa the following week, would be to prepare the necessary steps to be taken when an emergency should arise.

I have referred to the relations between Mr. Churchill, Mr. Roosevelt and Mr. King with the purpose of suggesting that it was this confidence in each other, the trust of the beleaguered Britisher in the understanding and good faith of the American and Canadian, which vitalized the resistance of Britain, brought about a common unity of purpose and action and formed the turning point of the war. It is this confidence — I use these words advisedly — it is this confidence that won the war.

Must we repeat the experiences of the First World War? In 1919, the United States, Britain and France had fought together and won a complete victory. As nations they could not be more homogeneous, yet their disagreements at the conference table are now a matter of history. At one moment, for example, the United States found itself compelled to advise its two allies that it might withdraw altogether from the treaty-making meetings. France demanded sanctions, which Britain was not prepared to grant and which were also repugnant to President Wilson. You will recall that, even before the Armistice was signed, Germany had begun to weave its spider web, a web that was to entrap its former enemies in the meshes of diplomacy until it had, in some way or another, almost enmeshed the whole world. The misunderstandings that, even before the signature of Versailles, separated the allies of the day before, meant that the document presented to Germany for signature bore for its watermark "War."

It is trite to say today that, if Britain and France could have agreed to keep the Hun even within the four corners of the Treaty of Versailles and if the United States had not been so confident in the contrition of its former enemy, we might not have had to face the war of the past five years. How was it that countries who had fought against the Germans, who knew Germany's resources and its wiles, were unable to check the rising power of Hitler before he could fanaticize his youth and train his army as no army had yet been trained?

I now leave the narration of events to say that here the thinking man of the community must step in as an individual.

The lawyer, individually and collectively, heard and respected as he is in every corner of every democratic country, should assume his share of responsibility. He should see that the history of the first great war and its aftermath, and of the second great war, are never forgotten. He must make sure that, in the minds of those around him, there should be no second retreat into the oblivion of false security.

Human nature changes little. The ancients knew the adage, *si vis pacem para bellum* — if you want peace, prepare for war. Yet, because the Roman forgot his own precept, the great Roman Empire fell. There will always be some who wish to destroy, be they beast, man or nation. *Homo homini lupus*— man would devour man — said Plautus. There will always be criminal and gangster leaders somewhere in the world. That is why our civilization has, unfortunately, not yet reached the state where peace is the natural order of things.

Forsaking the philosopher and turning to the hard, practical men of today, I heard General Crerar, the present Commander-in-Chief of the Canadian army, saying last week at a reception in Montreal — and here he but echoes the military leaders of your country:

> A country possessing a democratic form of government, with a widely enfranchised electorate, is extremely loath to resort to war as an instrument of national policy. A nation with a government quickly responsive to the views of a population, enjoying freedom of thought and speech, is infinitely more concerned with evolution than with revolution.
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> Peace-loving democracies must always be prepared in a military sense to defeat sudden attempts of other nations — less susceptible to the steadying influence of an informed public opinion — to settle grievances by aggressive action.
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> Somehow, and until this world of ours reaches a much higher plane of civilization and international understanding, I believe it to be essential that those countries which believe in the maintenance of peace, and in the arbitration or judicial settlement of international disputes which may endanger that condition, should be militarily prepared immediately and strongly to act in support of those principles.

As I write these words my attention is drawn to the current issue of FORTUNE. It devotes its first page to an article entitled "The Job Before Us." In this article the editor comments upon an address delivered the month before in New York by General of the Army George Catlett Marshall, and says:

> Sometimes the conscience of a nation speaks through the voice of a single citizen . . . . In sharp memorable sentences Marshall rehearsed what happened after World War I when the United States and all other peace-loving nations disarmed.

He then quotes the former Chief of Staff as follows:

> As late as 1937 we might have convinced the Axis gangsters of the complete futility of their preparations by simply matching our 'cigarette money' — using the term figuratively — with expenditures for national security. . . . . Viewed in this light it would seem that the tragedy of our unwillingness to maintain what Washington called a respectable military posture becomes monstrous.

The New York Times, one of the world's foremost newspapers, comments in an editorial of December 12th, 1945, that unpreparedness is the price we pay for liberty and democracy and continues:

> But unless we do our utmost to banish war from this world, and unless, pending this achievement, we prepare sufficiently not only to stop tempting powerful aggressors to attack us but also to meet them with superior force able to survive all surprises, we may yet hear history pronounce the verdict that we deserve whatever fate befalls us.

You and I are not war-mongers. No one will ever say that the people of the United States sought the last conflict, or entered the first war other than to face in Europe the foe that otherwise they would have had to meet in America. But if the democracies had been armed and prepared in 1914 and 1917, in 1939 and 1941, there would have been no war. Peace can only come from preparedness. Peace can exist only if the would-be aggressor nation knows that it will be opposed arm for arm and man for man. Yes, peace can exist only if the nation preparing for aggression is made to realize that if it persists in its preparation it will meet sanctions, substantial, vigorous and effective.

The atomic bomb now seems to have relegated the frightful engines of the last conflict to the era of bows and arrows. It has made war as we have known it in the past a complete anachronism. It calls not merely for a wholly new scheme of national defence, but also for a new approach on our part to the organization of international security. Obviously it cannot long remain the secret possession of a few nations only, and the measures recently proposed by President Truman, Prime Minister Attlee and Prime Minister King ought to be pushed forward with all possible speed. I hope they will be productive of a general agreement proscribing the use of the bomb altogether. For that agreement to be effective, ways must be found to ferret out and suppress any clandestine construction or manufacture. Atomic energy now looms before us — nations and individuals — as an all-consuming fear and we must either find a way of banishing the bomb or live in constant dread of being obliterated.

If overwhelming public opinion is not always available to strengthen the judgment and the hands of our leaders in maintaining peace, then San Francisco, or any other convention, contract or treaty, will be but a parapet behind which a more hideous and terrible war will be prepared.

Peace is not a spontaneous creation. It is the result of combined efforts and community of views, which are always difficult to secure in the face of special interests. The security of nations must be protected by discouraging the aggressor by the force we can marshal against him, and by being able to counter any possible attack by armament superior to his. In order that our chiefs of state may accomplish this duty and impose for the common good the sacrifices that may result, it is necessary that they be supported by vigilant and enlightened public opinion.

My message, therefore, is that it is the duty of every thinking man — and this includes every lawyer — to keep before him the lessons of the past and teach them to his children. It is here that your country and mine, and those other nations that desire peace, should continue to act together, work together, have confidence in one another.

The best and perhaps the only continuing hope of the world lies in the United Nations Organization, supported as it necessarily must be by courageous public opinion. We have learned at bitter cost that peace is indivisible, that separately the peace-loving nations offer tempting opportunities to an aggressor, that only if a preponderance of force is ranged on the side of order and liberty can these objectives be achieved. The United Nations Organization admittedly falls short of perfection. It would be foolish to claim otherwise. Yet, given mutual consideration and far-sightedness, it can be developed into a potent instrument for preserving amity and fostering international justice. We must work with the tools at hand, striving constantly to improve them and to become wiser and more skillful in their use.

Both your government and mine have undertaken to give full support to the United Nations and to the World Court, one of its principal organs. It is of vital importance to our future peace and well-being that public opinion should back up governments and even advance ahead of them. In unity there is strength. In strength in support of right, there lies the only certainty of peace. It is the duty of every thinking man to keep that thought ever before him.

The survival of our nations by the maintenance of peace places upon every leader, big or small, and especially upon the lawyer, the duty of understanding fully the problems of today and properly guiding the opinions of tomorrow. Only in this way can your country and mine give effect to our common determination to save our children and the world from another carnage.

There never has been a greater duty, never a more impelling challenge.
