

treaties and disregarded the rules of international law. It is curious to note in this connection that the country against which this charge is most frequently and violently made had, up to a few years ago, not a single chair in all its great educational system exclusively devoted to the teaching of international law.

The Congress of Westphalia, which ended the Thirty Years' War, marks an epoch in international relations, and it may well be that the peace which ends the present unfortunate war, and the means taken to prevent the violation of its terms, will likewise mark a new era in international relations. If international law, in the sense in which we understand it, entered into the practice of nations with the Peace of Westphalia, the enforcement of international law may date from the peace which we hope may not be long deferred.

THE DEPARTMENT OF STATE AND THE WAR—ADMISSION TO THE
DIPLOMATIC SERVICE

The Honorable Robert Lansing, Counselor for the Department of State, delivered an interesting address at the dinner of the Amherst Alumni, held in New York on February 24, 1915, which dealt with the many and difficult problems arising out of the war upon which the Department of State is obliged to pass. In the latter portion of his address he spoke of the diplomatic service, approving examination for admission to the service for the lower positions and promotions within the lower grades, while leaving the administration free to select the higher officials, such as ministers or ambassadors, either from within or without the service as may seem advisable. It is proposed to quote these portions of the address and to make such comment as may be suggested by the subject-matter.

Reversing the order, the first quotation shows Mr. Lansing's relations to the problems arising out of the war and the way in which they are met and solved. He said:

It is my duty, as many of you know, to deal with the questions of international law and usage, which are arising every day in our relations with other countries. These questions are of absorbing interest and many of them are extremely complex because this war in its magnitude and methods is different from all the wars which have gone before. One can look in vain for precedents in many cases. In fact we have to abandon precedent, that time honored refuge of jurists and diplomatists, and lay hold of the bed rock of principle. Diplomacy today is wrestling with novel problems, to which it must apply natural justice and practical common sense.

The expressions "natural justice and practical common sense" elude definition. Justice is hard to get hold of, and natural justice still harder. Common sense still awaits a satisfactory definition. The meaning, however, would seem to be that, in the absence of a recognized rule of law, we are to create a rule based upon the fundamental principles of law, and practical common sense undoubtedly means the common sense of a man of experience, who decides in the fullest knowledge and with due regard to the facts as found.

Mr. Lansing then passed to the new problems, of which he said:

This great conflict has introduced the submarine, the aeroplane, the wireless telegraph and new forms of explosives. It has made mechanical motive power an absolute necessity in military operations. The old strategy of surprise has given place to mobility. The petroleum products, essential to rapid motion in the air, on land, and beneath the sea, are as necessary to a modern army and navy as arms and ammunition. New devices for communication and transportation are used now for the first time in war, and new modes of attack are employed.

The result is that neutral nations have had to meet a series of problems, which have never been solved. The liability of error, the danger of unintentional impartiality, and the constant complaint of one or another of the belligerents make the path of neutrality rough and uncertain.

In addition to these dangers which beset the way of a neutral it is impossible to proceed with that deliberation, which would appear to be the part of wisdom. Things have to be *done*, not studied these days. The motto, "*Do it now*" is not a piece of advice in the Department of State. It is a *command*. A question which is a week old, is ancient history. Considering the customary slow and dignified ways of diplomacy, this "touch and go" method of doing business was a decided innovation and compelled a radical change in the machinery through which our foreign affairs are conducted.

It is common knowledge that the war increased manifold the business of the Department of State, whose duty it is to look after the interests of American citizens in foreign parts. How the Department met these new responsibilities is thus stated by Mr. Lansing:

When the war began early last August the Department of State, amply equipped for its work in times of peace, was forced to reorganize immediately to meet the new conditions and the enormous increase of its business. With tens of thousands of Americans in Europe clamoring to get home, with the majority of the belligerents turning over their affairs to our diplomatic representatives, with banking credits gone, and with telegraphic communications uncertain and doubtful, the difficulties of the situation were staggering. New bureaus were hastily created. The Departmental force with many inexperienced recruits worked days, nights and Sundays. The correspondence of the Department increased ten-fold. The whereabouts and welfare of probably 100,000 Americans were sought for anxious friends. Credits

were established in the various European capitals and hundreds of thousands of dollars were transmitted to stranded Americans abroad.

While this was going on at Washington, our embassies, legations and consulates were taxed beyond their capacity not only in caring for our people but in caring for the interests of other nations confided to them. All at once the Department of State found itself the diplomatic clearing-house of the world, as well as the banker, transportation agent, and medium of communication for Americans abroad. And, while these new responsibilities were thrust upon it, questions of neutral rights and neutral duties were being presented to the Department every day, which required immediate answer. That the Department of State was able to meet these extraordinary conditions is common knowledge.

Mr. Lansing then considered whether the diplomatic service as a whole should be brought within the civil service, or whether the lower grades should be covered by it, leaving the administration free to fill the higher grades by appointment from civil life. Mr. Lansing's opinions are clear-cut and, as he can be taken as representing the views of the administration, this portion of his address is quoted in full:

The newspapers have recently given a good deal of prominence to addresses and articles advocating that our diplomatic officers be brought under civil service rules in the same way that the entire consular service—thanks to President Wilson—is regulated in the matter of appointments and promotions. I must say that the emphatic opinions of some of our former representatives are rather amusing, when one considers that they would never have been appointed under civil service rules.

I will not discuss the value of their opinions, or how much weight should be given to such authorities. The trouble is that they as well as other advocates of the system start out on wrong premises. Chief of these, I think, is the idea that an Ambassador or Minister never acts independently, and his only duty is to repeat words put in his mouth by the Department of State; that he has no more initiative than a consular officer. Now that idea is a common one; it is quite generally believed. If it were true, a permanent diplomatic corps would be just the thing. The fact is, it is a fallacy. Successful diplomacy requires today individual initiative and sound judgment, as it always has. It is the man of force, of originality, of personality, who becomes distinguished in the diplomatic service. On men of that character the success of an Administration's foreign policies depends. They must also be men who comprehend those policies, who are in hearty sympathy with them, and who are enthusiastic and untiring in carrying them out. Now that goes a good deal beyond merely obeying orders.

Of course what I have said does not apply to the subordinate officers of the diplomatic service. I am referring to Ambassadors and Ministers, not to Secretaries. There is no doubt in the case of Secretaries competitive examinations for appointments and promotions work well. I am not sure that the system might not be extended to some of the less important missions. But, when it comes to the principal posts abroad, I am strongly opposed to tying the hands of the President in any way.

Success in diplomacy depends so much on temperament, on reputation, on char-

acteristics which have won distinction in other fields of enterprise that it would be most unwise to restrict the Presidential power. If we had obtained all our Ambassadors and Ministers by promotion, we would not have had men at London like E. J. Phelps and Joseph H. Choate, or in the present crisis men like Myron T. Herrick and Brand Whitlock. Such men, inexperienced in diplomatic practice but equipped with qualities which command respect and achieve success, are the ones who have brought lustre to American diplomacy.

I realize that sometimes mistakes will be made, and that some of the untried diplomats sent abroad are failures; that is natural; but after nearly twenty-five years of more or less intimate acquaintance with the Department of State I can say that the large majority—the very large majority—of our diplomatic representatives have maintained the dignity and standard of excellence, which have in the past characterized the diplomatic service of the United States.

Now what I have said will not, I know, meet with the approval of all of you. The idea of competitive examinations for public service is pretty deeply imbedded in popular favor. It has in a measure prevented public office from being the victim of favoritism. But it should not go too far. The President is responsible to the people for the conduct of our foreign affairs. He should be free to choose his agents where he will. They should be his friends, and in full harmony with the ideas and aspirations of his Administration, men who have a personal interest in carrying out the President's will.

VIOLETIONS OF NEUTRAL WATERS

It was announced in the press that, on March 14, 1915, the German cruiser *Dresden* was captured off Chilean waters. The facts appear to be, however, that the *Dresden* sought refuge within Chilean waters near Juan Fernandez Island, that the Chilean authorities had ordered it to put to sea or to be interned, and that the British cruisers *Glasgow* and *Kent* and auxiliary cruiser *Orama* entered Chilean waters and destroyed the *Dresden*. The British Government has admitted that the *Dresden* was destroyed by British cruisers within Chilean waters and has offered an apology for the violation of Chilean sovereignty, without seeking to excuse the action of its overzealous agents, for whose conduct there is no excuse in point of law.

This question is one which, as Lord Mansfield would say, can only be obscured by argument. The authorities are clear and in point. They hold that a belligerent should not attack a ship of the enemy within neutral jurisdiction, that if the enemy ship is thus attacked it should not defend itself, at least not in the first instance, but that it should appeal to the neutral country to prevent this violation of its neutrality; that the capture, although made within neutral jurisdiction, is valid between the belligerents, as enemy property may be taken where