whereunder foreign-born children would be Americans at birth only if both parents were American citizens. It is undoubtedly the question of equality for women which is contemplated in that part of the Executive Order creating the present committee which mentions revisions "particularly with reference to the removal of certain existing discriminations."

In view of the decision of the Circuit Court of Appeals, Ninth Circuit, in Lam Mow *v.* Nagle,[13] it might be well to follow the English precedent and to cover in the statute cases of children born on American ships and on foreign ships in American territorial waters. The Circuit Court's decision may well be questioned on the ground that it did not follow the lead of the Supreme Court in the Wong Kim Ark case where the Fourteenth Amendment on this point was said to be declaratory of the common law and was interpreted in the light of common law principles. The applicability of the Fourteenth Amendment in this respect to our insular possessions should also be considered.

This is not the place to set forth a complete analysis of our nationality laws. It may safely be assumed that the experts charged with the task of recommending revisions are thoroughly familiar with the operation of all our nationality laws and will have in mind all situations which need to be covered for the first time or to be dealt with in a new way. It is not to be expected that either the *ius soli* or the *ius sanguinis* will be abandoned, but it might be well to consider limitations on both principles based upon the individual's connection with the United States. From this point of view the Italian laws are instructive. Fundamentally all nationality laws should be based on four principles:

1. Adoption of basic rules suited to the *mores,* institutions, and conditions of the country and its population;
2. Sufficient particularity to avoid uncertainty as to the status of groups of persons;
3. Simplicity of administration;
4. Avoidance of international complications.

PHILIP C. JESSUP

REALISM *V.* EVANGELISM

In recent years the possibility and best method of achieving durable peace has been a bone of contention between two schools of thought, both seeking the adjustment of international disputes and the reconciliation of conflicts of interest by peaceful means. Both schools also agree on the necessity of some forms of international organization to achieve the desired goal. Their differences lie in their estimation of the facts and in their degree of confidence in certain methods. The one school, founding its views of progress and of hope for peace on close observation of the conduct of states and peoples and on tried experience, has urged the strengthening of rules of law, as the time-tested cement of the social structure, and the promotion of negotiation, mediation,

[13] (1928), 24 F (2d), 316.

conciliation, and arbitration, including the revision of the 1919 treaties and particularly of those provisions undermining the chances of reasonable relations in the future, as the essential, if not the only practicable, methods of improving international relations. The second school, dissatisfied with the gradualness of these methods and professing to discover in the Covenant of the League and the Kellogg Pact a new "will to peace," has placed its faith in the "enforcement" of peace by collective sanctions, largely based on the theory that there was a right and wrong in most struggles and that it is the duty of third states to take sides to support the supposedly righteous; that as the object is peace, neutrality is morally and should be legally wrong—a view finding inspiration in the statement of ex-President Wilson that "neutrality is a thing of the past," a rationalization coming after the Freedom of the Seas point was refused acceptance by Great Britain; and that the new "machinery" for enforcing peace against "aggressors" was the only helpful road to peace, which it was a duty of "forward-looking" men to support.

What has happened in the past year should certainly be a revelation. It seems to the writer that the second school of thought had evidenced weak perception of the facts of international relations and had run away from them, so that sooner or later the theory of "enforcing" peace, identified with the *status quo*, was bound to come a cropper. Had the issue involved merely a question of which school was right, the matter would not deserve further discussion. What is important, however, is the fact that, by adhering so long to what I venture to believe a demonstrably wrong and hopeless road, the chances for genuine peace may have become so seriously impaired as now to present a major problem for western civilization. Unjustified reliance upon an instrument which now stands revealed as primarily a political device for maintaining the Treaty of Versailles and its analogues has given moral support to the reluctance of certain nations to reconcile their differences with others, an indispensable condition of the beginning of peace. To delay this necessary process by insisting on an unattainable, even if desirable *modus operandi*, was hardly a service to peace, for during the prevalence of that view of international relations, political hatreds have spread through Europe and have sunk into the consciousness of peoples like a spiritual pestilence, condemning possibly to sterility the hopes of appeasement and reconciliation. The fate of the Disarmament Conference is symbolic of the political conditions which had developed in Europe for the past fifteen years, a fate for which the League of Nations as such is not primarily to blame, but to ameliorate which the League, reflecting the attitude of the Powers that control it, was unable to render any effective aid. Unfortunate and impractical political settlements had helped to produce accentuated economic nationalism and economic disorder on an unprecedented scale, so that the question now is whether the process of disintegration of international relations with its resulting human misery has or has not proceeded too far to be rescued by sane methods.

For the international lawyer, one of the striking incidents of the pursuit of

the theory of enforcing peace by collective measures has been a disparagement of certain rules of law which had come through the centuries to be regarded as promotive of peace and reason, by limiting the area of conflict and by encouraging mediation on the part of third states. By disparaging neutrality, the whole complex of legal relations between a participant and non-participant in a war has been jeopardized, for the destruction of neutrality would carry with it the destruction of the doctrine of contraband, blockade, and of the principles which had sustained the right of a neutral to live at peace when others lost their heads and the duty to refrain from participating in the struggle, thereby enlarging its devastating effects. This attack upon law as the foundation of reconstruction has had the inevitable effect of promoting the growth of armaments.

The impracticability of the League theory of "enforcing" peace against "aggressors" and the consequent effort to destroy basic law which had at least ameliorated the consequences of war and permitted a restoration of tolerable peace finally aroused John Bassett Moore, the dean of American international lawyers, to express his views on the subject and to recall certain fundamental principles identified with human experience. He is not a partisan of any school of thought, but his long experience in the active conduct of foreign affairs, crowned by a term on the Permanent Court of International Justice, lends to his views on any international question, and notably on the issues that now trouble the world, an altogether exceptional value. Endowed by nature with a powerful mind, a gift for lucidity of perception, analysis, and exposition, a penetrating comprehension and hence a broad tolerance of human behavior, a benign and pervading sense of humor not unflavored by an occasional dash of caustic wit, and drawing upon a rich store of historical knowledge and practical experience in negotiation and conciliation, he has justly earned his reputation as one of the world's most profound and farsighted statesmen. A soft-spoken man, naturally restrained in expressing opinions, Judge Moore speaks rarely on public questions. When he does so, and when he uses vigorous language, it is an indication that he considers the need imperative.

In "An Appeal to Reason," recalling an earlier day when reason had to cope with a highly charged emotional morality and sentimentalism, Judge Moore, in the July, 1933, number of *Foreign Affairs*, joins issue with that school of opinion which has found in the Covenant of the League of Nations and the Kellogg Pact a "new spirit" and "will to peace." Stirred out of his accustomed reticence by the "fustian texture of the new psychology," Judge Moore directs his acumen to exposing, by the marshalling of cold facts and an appeal to elementary reason, the invalidity of the assumptions and postulates on which "the new psychology" is built and the dangers to which it is subjecting the United States and the rest of the world—for in the pursuit of the supposed goal of peace, the new school unwittingly adopts both the psychology and the instrumentalities of war. Rarely have good intentions been more unwisely equipped. It is Judge Moore's effort to distinguish the assumptions from the facts, the

professions from the reality, and to demonstrate the fallacy of the supposition that the program of determining and punishing "aggressors" by a hypothetical or actual combination of Powers can do anything but promote war and chaos. The paraphernalia of this alleged peace program, beginning with the Covenant of the League and the abducted Kellogg Pact, and implemented by such devices as arms embargoes against "aggressors," the suggested obsolescence of neutrality or even its supposed immorality or impracticality, "consultative pacts" to insure "peace," are subjected to a withering analysis which exposes inimitably and irrefutably their muddled vacuity and their capacity for harm. In essence, the author finds in these devices disguised military measures to hold down the *status quo* in Europe, and an effort to accomplish the result largely by the employment of the treasure and blood of the American people. He urges upon his countrymen an abandonment of those illusions and errors which have helped to bring the United States and the world to its present pass, and a return to the reason and common sense of the statesmen who founded the United States, in order that even greater perils may yet be averted.

The ostensible answer of Mr. Newton D. Baker, in the October, 1933, issue of *Foreign Affairs,* entitled, "The 'New Spirit' and its Critics," distinguished by the sentence, "The time has come for somebody to be 'a fool in Christ' if necessary," only shows how important it is that, after unwisdom masquerading as "idealism" has so long been allowed to drive the world into confusion and despair, the voice of reason should again be heard. And Professor Quincy Wright's more considered answer, "The Path to Peace," in the December, 1933, *World Unity Magazine*, by assuming that "the Covenant, the Pact, the Stimson doctrine, the modifications of the law of neutrality, the arms embargo, and the consultative agreement" constitute "steps in precise conformity with" Judge Moore's principles of setting law above violence, presents the issue very clearly, for Judge Moore evidently considers these proposals and instruments, as actually employed and currently understood, as subversive of law, order, and progress in the world and, if carried out, a guaranty of war and destruction.

The "Appeal to Reason" maintains that among the postulates of the so-called "new spirit" or "new psychology" "there is not one which is not contrary to palpable realities, to the teachings of history, and to the formulation, in universal legal principles, of the results of all human experience." Judge Moore shows how the League Covenant, to the disadvantage of its useful provisions for the reconciliation and arbitration of differences, has been more spectacularly and popularly identified with its provisions for "enforcing" peace by "sanctions" finding their source in the League to Enforce Peace, whose devotees give expression to their pacific intentions by proposing the laying of boycotts and embargoes on "aggressors" and conducting hostile measures generally against the supposed pariah.

Judge Moore accepts the views frequently expressed by ex-Secretary of State Stimson as typical of the "new psychology"; but needless to say, his chal-

lenge of their validity is not personal but objective. He distrusts the new methods and measures advocated,

> not only because they have no visible moorings on earth or in the sky, but also because they have infected many of [our] countrymen with confused notions of law and of conduct which, while they endanger our most vital interests, hold out hopes of partisan intervention that encourage European governments to defer the readjustments which only they can make and which are essential to peace and tranquillity in that quarter. As long as we persist in our misguided rôle, so long will discussions of disarmament be dominated by thoughts of war rather than of peace.

The "new spirit" finds satisfaction in the assertion that the Kellogg Pact has changed "almost everything" concerning international law, war, neutrality, etc., *ad lib.* Judge Moore points out that the only thing it seems not to have overturned is the "Versailles Treaty, which, with the gyroscopic aid of the League of Nations, has continued to ride on an even keel," entrenched against change by the "peace machinery" so widely extolled, and not even deflected from its course by the denatured Four Power Pact which was designed to accomplish that moderating function which Geneva is apparently to be denied the opportunity to exercise.

With unimpeachable logic Judge Moore dissects the sieve-like, yet deceptive, Kellogg Pact. The signatory Powers, he shows, have committed themselves to nothing at all, but the assumption that they made serious commitments persuaded Secretary Stimson to launch notes to Japan which had almost a fatal result. Yet M. Briand, the European collaborator in the creation of the pact, had a definite object in promoting it, as recently revealed by M. Paul-Boncour, namely, "to draw the United States, the decisive factor in Allied victory, into the League of Nations." The League would pick the "aggressor," who naturally would be an enemy of the Powers controlling the League; and then the United States, the initiator of the pact, would "throw into the duel" for "peace" the weight of its force. It was thus that the European instigators of the Pact conceived the peace rôle of the United States.

In a section entitled "The Lethal Blow of Facts" Judge Moore quotes largely from Mr. Ramsay MacDonald to show that the latter recognized that the difficulty in reaching a disarmament agreement in Europe lay in the effort to maintain indefinitely the political inferiority of the Central Powers, notwithstanding the pledge of the treaty, and that this effort, which is inconsistent with reasonable hopes for a tranquil Europe, is a constant threat to peace. Distrust has thus become the keynote of European relations. Even the British plan for a limitation of military man-power provides for an overwhelming superiority for the victor nations. Any effort to invoke Article 19 of the Covenant to ameliorate the political tensions, as Mussolini's Four Power Pact contemplated, is apparently frustrated by certain Powers. "If, as some have suggested, such a Pact denotes a rift in the League, the cause must be traced to the League's inability to bring about any substantial amelioration of the con-

ditions of the peace treaties." Articles 10 and 16 of the Covenant, even when not expressly invoked, serve as an effective obstacle to the readjustments that are so generally admitted, even in Europe, to be essential to the restoration of a wholesome political, economic, and moral order in that quarter.

In a section on "International Law and Neutrality" Judge Moore pays his respects to those teachers of international law who misconceive the history and function of neutrality and consider it immoral or obsolete.

> In reality, the current delusion that international law "legalizes" war, and therefore must now yield to the war-tending and warlike processes prescribed by the Covenant, comprising "sanctions," boycotts, and war itself, is merely the legitimate offspring of the new and consoling theory that peoples may with force and arms peacefully exterminate one another, provided they do not call it war.
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> From the same anarchic womb springs the exultant cry that the law of neutrality, because it blocked the new channel to peace, has been torpedoed, and that the neutral owners gurgled approval as they drowned. This would be a sad tale, if it were true. But it is false. There is not in the world today a single government that is acting upon such a supposition. Governments are acting upon the contrary supposition, and in so doing are merely recognizing the actual fact.

Neutrality, Judge Moore points out, always has had the highly moral and expedient object of preventing the spread of war, and of prohibiting acts which contribute to the starting of wars.

> In the days of the old psychology, before the crafty throat of war began to coo of peace, neutrality was chiefly offensive to war-mongers and war-profiteers. Today, however, and very naturally, it is even more detested by the devotees of the war-gospel of peace through force. . . . It is not logical for those who clamor for peace to cry out for measures the adoption of which only a nation commanding overwhelming force could hope to survive.

Mr. Ramsay MacDonald has recently deprecated, with respect to the boycotts proposed by certain groups for Great Britain against Japan, "advice which, if adopted, would have led into war with certainty."

Judge Moore particularly challenges the view that neutrality can be reconciled with partiality. He ends by the remark that "no matter how it is viewed, the demand that the law of neutrality shall be considered as obsolete is so visionary, so confused, so somnambulistic that no concession to it can be rationally made."

Judge Moore would doubtless maintain that the notion that the Covenant of the League and the Kellogg Pact have altered the law of neutrality (except for those who have agreed to permit the application against themselves of Articles 10 and 16, an application not likely to be realized in practice) is fatuous and unworthy the attention of lawyers. The hollowness of the obligations of the Kellogg Pact makes its effect on neutrality even less tangible.

In a section on arms embargoes, Judge Moore criticizes severely the effort

of Secretary Stimson, incautiously espoused by President Roosevelt but probably now abandoned, to inveigle the United States into a commitment to embargo arms against an aggressor state, with the concurrence of other nations presumably desirous of suppressing an enemy. Proponents of this supposedly innocent-looking measure apparently did not realize that they were advocating acts of war; and the dangers to which the United States is continually exposed are exemplified by the uncritical passage of the resolution through the Senate when it was first presented. Fortunately, on reconsideration, the Senate Foreign Relations Committee unanimously became convinced of what the resolution really involved, and incorporated a fundamental amendment safeguarding neutrality. Judge Moore condemns the "moralists now proposing to regenerate the world by violence, without regard to the consequences to their own country or to any other," and he asks them to consider how they might be classified "when the country came to pay the cost of their reckless superiority to law and to the lessons of history."

In a section treating of the conception of suppressing "aggressors" as a way to peace, Judge Moore considers it almost superfluous to challenge this fallacy, which has made such headway because it is so easily imposed "on uninformed or unreflecting minds by appeals to the sentiment of benevolence." There is no satisfactory way to define such a conception as "aggressor," even if it were useful so to do, but the effort to identify the "aggressor" quickly without delving deeply into historical and contemporary evidence is likely to be "reckless of justice," if not, indeed, capricious. Judge Moore distrusts the mechanical devices presented in recent years to allure the American people to help preserve the *status quo*, for his experience leads him to suspect how such devices will be employed. He adds that the United States and other great Powers might have been denied their present territory had the vague conception of "aggressor," a politically adjustable term, been employed against them, and the effort of other Powers to employ it might well have insured more or less constant and general wars.

It is for the "consultative pact," intimately associated with the idea of preserving peace against "aggressors," that Judge Moore reserves some of his major shafts. He regards the recent efforts of Europe to draw the United States into such a pact and the acceptance of the invitation, however tentative, by Mr. Norman Davis, as a source of danger. Lawyers who would not think of permitting their clients to sign contracts without inquiring into the expectations, motives, and purposes of the other signatory to the contract, seem regrettably willing to have their own country sign contracts without making such inquiry. Perhaps they misconceive the language of diplomacy. "To the uninitiated the word 'consultative' seems to imply a friendly or platonic communion." But "agreements are interpreted according to the subject matter"; and a reduction of armaments obtained in exchange for a "consultative pact" necessarily indicates that the subject of consultation will be the supply "of men, of ships and of aircraft" to take the place of what had been given up.

The United States, by flirting with these European ideas, advanced for no platonic purpose, is postponing the possibility of peace, for by promising aid to one group, it makes them the more unwilling to take the path of reconciliation and appeasement. Judge Moore remarks:

> The commitment of the United States to such a "consultative pact" as is desired at Geneva would, I believe, constitute the gravest danger to which the country has ever been exposed, a danger involving our very independence. It seems to be thought that we are an easy mark, and I say this not in any spirit of reproach. . . . It has been intimated that France might pay the overdue instalment on her debt to us if we would compensate her by a "consultative pact." . . . But, should we enter into a consultative pact for the sake of a payment due on an old account, we should remember that for every dollar paid us for our amiability we might have to return a million or two for war.
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> . . . Conferences may be useful and even necessary; but when nations come to determine, through their political authorities, questions of legality, morality and good faith raised by acts that have happened, or seem likely to happen, and to impose prohibitions or punishments, it is idle to conceal from ourselves the fact that they are moving and breathing in an atmosphere of force and of war, and probably without the benefit of that calmness of mind and impartiality which judicial proceedings are intended to assure among nations as well as among individual men.

In a section on Manchuria the author contrasts the sensible attitude of detachment and neutrality of the European Powers with the impulsive intervention of the United States and points out

> what a quagmire Manchuria offers for the swallowing up of blood and treasure, without permanent and uncontested reward to those who take their chances in it. The much vaunted annihilation of space and time has not yet enabled a nation thousands of miles away to exert its military power as effectively as it may do at home or in its immediate environment. For a distant nation to take the chances of armed intervention in Manchuria, unless in pursuit or defense of a vital interest, would suggest a recklessness savoring of monomania.

In a final section Judge Moore enjoins on the American people the wisdom of the founders of this country in dealing with Europe, and it is easy to infer that he considers the world's present misfortunes as largely due to recent departures from fundamental American principles. He remarks that "those who oppose our intermeddling with what does not properly concern us are dubbed 'isolationists,' " and he is far from resenting the unintelligent epithet, which he regards as serving only "to exemplify the want of knowledge and of understanding of those who employ [the term]." He evidently approves the sophisticated comment of the Grand Duke Alexander that the robustness of American life

> "had given place to the sickening self-consciousness of an hysterical idealism," and had been superseded by the "same hodgepodge of badly digested ideas" as had characterized the Guard Barracks in St. Petersburg thirty years back. "So this," he exclaimed, "was the American share of

> the Versailles spoils! It seemed bewildering that any nation should send 2,000,000 men across the ocean, fight for something that did not concern it in the least, tear up the map of the world and lend billions of dollars to its competitors—all for the purpose of acquiring the worst traits of pre-war Europe."

Judge Moore urges the American people to resist the importunities of the alleged saviors of the world who, in pursuit of an "hysterical idealism," would keep the world in constant turmoil, destroy all possibilities of genuine peace, and have the United States employed as a principal agency in the process.

> Human nature has not changed. Human propensities, human appetites and human passions have not changed. We come into the world in the same way, and our necessities are the same. The struggle for existence still continues and it will go on. As one long and intimately acquainted with men of arms, I may say that they do not share the new view that peace and tranquillity on earth may be promoted and stabilized by boycotts, by playing fast and loose with the law of neutrality, and by the extension of the area of wars. Wars are not brought about by the officers of our Army and our Navy; but wars have often been fomented by agitations recklessly conducted by persons who professed a special abhorrence of war.

The withdrawal of Germany from the League and the threatened withdrawal of Italy unless the League Covenant is fundamentally altered have indicated the fragile character of the foundations on which the so-called "peace structure" has been built, as well as the validity, it is submitted, of the views above expressed. Indeed, further resistance to change may jeopardize not only the devices for preserving the *status quo*, so greatly cherished in certain quarters, but, as well, the useful and more or less non-political functions of the League, including the Labor Office and the Permanent Court. The sooner revision of the League takes place, a revision which would probably eliminate mainly those articles which sustain the impractical and undesirable theory of "enforcing" peace by collective sanctions, the sooner will it be possible to believe that another great war can be averted. Such revision might still leave Geneva as a forum for discussion and negotiation at which statesmen can regularly meet. Unless revision is undertaken, the League may quite possibly soon follow the Holy Alliance into the limbo of historical records. Whether it is possible to abandon the fundamental theory of preserving by force the *status quo* while maintaining the League's useful functions is, of course, a grave question. It might be best at once to separate the court from Geneva by transferring its political administration to The Hague and devising a different method of electing judges. But everything is likely to go by the board unless the European Powers become convinced that they must show a genuine intention to rebuild Europe coöperatively instead of keeping one group on top and the other in subjection. That policy may temporarily preserve a certain type of peace, but only kindles the flame of future wars. Yet it is that system which the League has tended to preserve. Its failure should not be regarded

as a loss, but as a source of hope, in that realism has at last come into its own and evangelism, not intrinsically unworthy, has been saved for useful, instead of unintentionally destructive, ends. Idealism, to be effective, must be attached to facts and reality, without which it ceases to be a virtue. John Bassett Moore in "An Appeal to Reason" has merely exposed illusions and fantasies and has pointed out the rational road to the cherished goal of peaceful relations. Instead of attributing to such an authoritative mentor and experienced statesman unelevated motives or a want of enlightenment and idealism, the world should be grateful for so clear-headed an exponent of reason and practical judgment in dealing with foreign affairs. Here speaks the guide, philosopher, and friend of a confused humanity, pointing out the only well-marked and tangible road to salvation.

EDWIN M. BORCHARD

GEORGE V LAND

By an Order-in-Council dated February 14, 1933, Great Britain has for the third time asserted sovereign rights in the Antarctic upon the sector theory. The Falkland sector was created as a result of official acts of July 1, 1908, and March 2, 1917, by which "all islands and territories whatsoever" between longitude 20° W. and 50° W. south of latitude 50° S., and between longitude 50° W. and 80° W. south of latitude 58° S., are to be known as the Falkland Islands Dependencies. The Ross sector was created by the Order-in-Council of July 30, 1923, and comprises all islands and territories south of latitude 60° S. and between longitude 160° W. and 150° W. This sector was allocated to New Zealand. The recent Order-in-Council sets up a sector larger than the two earlier ones combined: "All the islands and territories other than Adélie Land situated south of the 60th degree of South Latitude and lying between the 160th degree of East Longitude and the 45th degree of East Longitude." Thus Great Britain by the so-called sector principle has laid claim to sovereign rights to all islands and territories, whether discovered or not at the date of the Order-in-Council, within a zone comprising more than two-thirds of the globe south of 60 degrees with the South Pole at its center, with the exception only of Adélie Land in extent undetermined.

The recent Order-in-Council states in the preamble that His Majesty has "sovereign rights" over all the islands and territories within the sector. Upon what principle are these sovereign rights based? Upon no other, certainly, than discovery. At the Imperial Conference of 1926 it was stated that there were certain areas "in these Antarctic regions to which a British title already exists by virtue of discovery." The areas within the present zone include Enderby Land, Kemp Land, Queen Mary Land, King George V Land, Oates Land, together with "the area which lies to the west of Adélie Land and which on its discovery by the Australian Antarctic Expedition in 1912 was denominated Wilkes Land." The allocation of the sector to Australia is in recognition of the work of Australian explorers, Sir Douglas Mawson in particular.