

# The Reign of Law

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BY J. MURRAY CLARK, K.C.,  
President of the Royal Canadian Institute.

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Permit me first to express my appreciation of the honour conferred on me by electing me President of the Royal Canadian Institute.

I regret very sincerely that my predecessor, Dr. J. C. McLennan, was unable to continue his work as President for another year. We expected, however, to have his co-operation and assistance during the present session, but the British Admiralty has arranged with the University of Toronto authorities for leave of absence for him during the coming year so that he may continue his very important work in Great Britain.

It is gratifying that the work of Dr. McLennan and other Canadian men of science is being increasingly recognized as contributing materially to the success of the Allies. The details of much of this work cannot yet be published, but we can safely say that the scientific achievements of Canadians have saved the lives of many of our soldiers and sailors, and will add to the lustre shed upon Canada by the glorious deeds of our fighting men. Dr. McLennan has refused the offer of Sheffield University, and we all wish him a safe return to his life-work for the advancement of science and for the permanent prosperity of Canada.

It is to be noted that two of the Ex-Presidents of the Institute have lost sons in the great war. I refer to Lieut. F. G. Stupart, 81st Bn., C.E.F., son of Sir Frederic Stupart, President in 1906-07, 1907-08, and Capt. W. V. van der Smissen, son of Professor W. H. van der Smissen, President in 1886-87, 1887-88. "Lost" is scarcely the word to describe such noble deaths, which we must see were not in vain.

At Vimy Ridge fell Second Lieut. F. K. Lefroy, R.F.A., son of Professor A. H. F. Lefroy, a very distinguished member of the University staff, and the author of several works, one of which, describing the Federal System in Canada, is at the moment being carefully studied by

the Irish Convention. Lieut. Lefroy was a grandson of General Sir John Henry Lefroy, R.A., F.R.S., one of the founders of the Institute, and President during the year 1852-53. The work of Sir John Henry Lefroy was very important, and had far reaching results. He was one of a very brilliant group who might describe themselves as:

"We few, we happy few, we band of brothers",

who had a great deal to do with moulding the Institute, and, through the Institute, the intellectual life of Canada. It is to be remembered that one of this group, Sir Sandford Fleming, at the time of his death Honorary President of the Institute, originated the plan of standard time which the Institute was instrumental in having generally adopted, so that in a very real sense Sir Sandford Fleming has left his "footprints on the sands of time".

The Institute has always been a staunch advocate of scientific research and of the application of science to industry. Before the war the Institute decided to establish a Bureau of Industrial and Scientific Research. The plans for the establishment of such a Bureau, carefully matured, have been approved by the Canadian Manufacturers Association, the Board of Trade of the City of Toronto, the Ontario Associated Boards of Trade, the University of Toronto, the Joint Committee of Technical Organizations, Ontario Branch Society of Chemical Industry, the American Institute of Electrical Engineers, Toronto Branch, and all the Banks having their head office in Toronto.

The movement acquired such momentum, and public opinion was so aroused, that the Dominion Government constituted an Honorary Council of Industrial and Scientific Research. While this Council has not yet been adequately supported, considerable progress has already been made. Under the direction of Professor A. B. Macallum, formerly President of the Royal Canadian Institute, the foundations are being solidly laid. Scholarships and Fellowships have been established so that researchers may be trained and the scientific spirit fostered.

Through the wisely directed munificence of one of our Life Members, Col. A. E. Gooderham, the Connaught Laboratories have been established and handed over to the University of Toronto and endowed by the Ontario Government. These Laboratories, which will be partially devoted to medical research, have already proved their usefulness, and will be of permanent service to science and to humanity.

The resolution passed this evening indicates the appreciation on the part of the Institute of this provision for medical research.

These things, however, and others that could be mentioned, are only small beginnings, and as yet only a few of our public men realize the truth of the statement of a profound thinker, that "Original research is

in itself the most powerful weapon that has been or ever can be wielded by mankind in struggling with the great problems which nature offers on all sides for solution." It would be a great pity if, through national short-sightedness, the centre of scientific research should pass outside the British Empire, a contingency of which the President of the Royal Society of Canada warned us that there was grave danger.

A Royal Commission, appointed in 1870, and presided over by the Duke of Devonshire (the seventh duke), recommended the establishment of a Council and Minister of Science; but action was, to the deplorable loss of Great Britain, postponed until after the war, when a Council was constituted by the Imperial Government, followed by the appointment of a similar Council in Canada to which I have referred.

While in the United States tens of millions have been appropriated by Congress to solve scientific problems, in addition to immense endowments by individuals and large expenditures by private companies, the Imperial Parliament voted five millions to promote research, and the total vote by the Dominion Parliament to the Honorary Council of Industrial and Scientific Research was a little over \$90,000.

In his able address to the Institute last session, Professor C. A. Zavitz showed that, as a direct result of the scientific work of the Ontario Agricultural College, there had been an increase of several millions of dollars in the crop production of Ontario, that is, over what it otherwise would have been. The actual results prove that the application of science to improve the yield of barley (to give only one instance in the past fifteen years) has already brought to the Province a sufficient sum of money to maintain the Ontario Agricultural College for 190 years.

The other day I noticed an estimate that after the war the total of the Canadian debts, federal, provincial and municipal, would exceed five billion dollars, five times the staggering amount imposed on France by Bismarck after the Franco-Prussian War. The amount to be paid by us is, therefore, thirty-five times per capita the amount which the Germans thought would bleed France white. To enable us to pay the interest on these immense debts, such instances as I have mentioned of the application of science to industry must be multiplied, production must be increased, and waste eliminated.

We have many water-powers, the kinetic energy of which now goes to waste. British scientists showed us years ago how by the electrical production of nitrates from the air, this precious kinetic energy now wasted, could be converted into wheat. The Germans appropriated these British inventions, not only to increase food production, but also to manufacture explosives, but we in Canada have so far taken no advantage of them.

The United States will soon be a self-contained nation as far as compounds of nitrogen for fertilizer and explosive purposes are concerned. Will Canada wake up before it is too late? Will the neglect of science continue, and the forces of obscurantism prevail?

My humble opinion is that when we begin to feel keenly (as soon we surely shall) the pressure of the burden of our public debts for war and other purposes, there will be a sharp awakening, and Canadians will shake off the prevailing lethargy and apathy in regard to the application of science to industry. When we develop our enormous resources scientifically, we shall enter upon a new era of progress and prosperity.

Before the war, the attitude of the public was largely that of the mob who shouted when they killed the famous French scientist Lavoisier, "The Republic has no need of chemists;" and even since the war, have not some said, "Let us close the University"?—a University that has produced such men as McLennan, Mitchell, Nasmith, McCurdy and McLeod, and many others whose scientific work for the Allies will be recognized as invaluable!

The increasing pressure of the debts I have referred to, and the serious shortage of food, which, unless drastic action is promptly taken, will be much more serious in 1918, are beginning to make us realize that we must pay more heed to the scientists.

While the public are beginning to realize the benefit of practical results such as I have referred to, it is to be carefully borne in mind that most of the important scientific discoveries have been made in the pursuit of what is called pure science. Many examples of this can be given. Time will only permit me to refer to one, namely, the incandescent light. While many were endeavouring to solve this problem, on account of the keen competition of electric light, those who attacked the problem directly all failed, and this important industry was due to a discovery made by a scientist in investigating, for purely scientific purposes, the properties of oxides of rare metals.

While we emphasize the importance of industrial and scientific research, I am not of those who advocate that all education should be devoted to science, for we must ever bear in mind that there are things in heaven and earth not dreamt of in the philosophy of the materialist.

Rayleigh has well said: "In his heart he [the scientific worker] knows that underneath the theories which he constructs there lie contradictions which he cannot reconcile; the higher mysteries of being, if penetrable at all by the human intelligence, require other weapons than those of experiment and calculation".

It would, in my humble opinion, be a great mistake not to give due attention to the study of what are called the humanities. At the commencement of the great struggle in which we are now engaged, the call of Demosthenes was a potent one. The Allies are fighting to uphold international law, and Sir Henry Maine, with clear insight, long ago pointed out that no student without studying Roman Law can really know international law, on the vindication of which the future of the human race depends, because it alone protects the commonwealth of the nations from permanent anarchy.

In his famous message, President Wilson said that the world must be made safe for democracy. One of the most acute of the after-the-war problems undoubtedly will be to make the democracies safe from demagogues, and no one who has studied Thucydides and Aristophanes is likely to be deceived by demagogues. Take, for instance, the description of Cleon the Demagogue: "Of extraordinary impudence and little courage, slow in the field but forward and noisy in the assembly, corrupt but boastful of integrity and supported by a coarse and ready eloquence, he gained such consideration by flattery" that he achieved power.

Some of us remember a candidate who made himself invincible by declaring in stentorian tones that he would in all public actions follow the "*vox populi* of the people". He would not deceive anyone with even a little Latin.

I would not say that no one should be heard on public questions who is not a classical scholar. The public man across the border may have exhibited statesmanship as well as "horse-sense" when he advised his countrymen in circumstances of stress and agitation, that they could do more real good by "raising hogs" than by "raising hell", though his advice was not clothed in classical language.

Unfortunately, there are many who find it much more congenial and profitable to do the latter rather than do anything that is helpful.

In his recent profoundly thoughtful article on "The Real Basis of Democracy", Edmond Holmes truly wrote: "It is possible for the machinery of democratic organization to have been ingeniously contrived and to work smoothly and effectively, and yet for its chief function to be that of enabling ambitious and unscrupulous demagogues—true descendants of the robber knights of the middle ages—to exploit the people in the sacred name of democracy for their own selfish ends".

#### THE REIGN OF LAW.

With your permission I propose to make a few remarks upon the "Reign of Law". When the issues of the controversy with Germany are analysed, it may be said that it is for the supremacy of law that the

conflict is being waged. There is not time to give a complete history of the development of the German lawlessness. The root of the trouble may, however, be found in the statement of Bismarck that "Where the power of Prussia is concerned, I know no law". This was the foundation of the German doctrine that might is right, and led logically to the development of Prussian militarism, which must be finally and forever destroyed if the peace of the world is to be assured. To those who were able to read the signs of the times, what is known as the Zabern incident shed a lurid light upon the development of the German menace. The German doctrine that the state was supreme and bound by no moral obligation was gradually developed. Nietzsche said morality was the idiosyncrasy of the decadent. The German poet Felix Dahn sang: "Since then it is the joyous German right, to win land with the hammer, we are of the Hammer-God's race and mean to inherit his world empire."

In his story of "Bertran and Bimi," written about the end of last century, Kipling makes Hans Breitmann say to Bimi, the orang-outang who murdered Bertran's wife: "You haf too much Ego in your Cosmos". That vividly states the trouble with the Germans in 1914, and though the war has yet to be won, I do not think there is as much ego in the German cosmos as when they began the war, and they now rely on such agencies as the Socialists, I.W.W., and similar organizations. If all the Allies would act as vigorously and energetically against these agencies and the German propaganda as the United States, hundreds of thousands of lives would be saved.

By means which it is not necessary to detail further, the German people were so indoctrinated with this idea that the military caste in Germany thought it opportune to bring on the present war, for which the representatives of the German people almost unanimously voted funds.

That the German people had not become completely demoralized before the commencement of the war is indicated by the circumstance that the German Chancellor admitted that the violation of the treaty he had termed a "scrap of paper" was wrong. His words to the Reichstag on August 4, 1914, were:

"The wrong—I speak openly—that we are committing we will endeavour to make good as soon as our military goal has been reached."

At that time even he had not yet lost all sense of the distinction between right and wrong. The initial success in Belgium completed the diabolic work of Nietzsche, Treitschke, and Bernhardt, and of the misguided German theologians, and the German people almost unanimously approved of the German war policy. The Kaiser declared there was no international law. The Germans, having jettisoned the laws of God and

man, considered themselves free for any frightfulness which they thought would advance the interests of the German State. Hence logically followed the atrocities in Belgium, Poland, and Servia, and the massacre of the Armenians, and it is to be remembered that when the Turks refused to turn their guns on a group of Armenian women and children, the Germans had no compunction, and proceeded to murder them without hesitation, so that they could not interfere with their future plans.

Hence logically followed the poison gas, the poisoning of wells by the Germans, the sending of anthrax and other germs by diplomatic couriers to Roumania, and other abominations which we are too apt to forget. Whatever else may be forgotten and overlooked, if international law is to be vindicated and the future of humanity safeguarded, those responsible for the murder of Edith Cavell and Captain Fryatt, and for the murder of the women and children drowned when the *Lusitania* was illegally sunk must be punished. These were all blunders as well as crimes. Blinded though the Germans are by a false philosophy, (for not only in Europe, but in Canada, the United States, and even as far away as Honolulu, Germans rejoiced in the sinking of the *Lusitania*); they will soon perceive how stupid were their blunders when a million soldiers from the United States appear in France determined to give as good an account of themselves as the Canadians who barred the way to Calais and took Vimy Ridge, and whose heroic deeds in France and Flanders will gloriously live in history as long as liberty shall endure.

The criminal course of Germany as a State must react upon all its citizens who do not protest and resist, and must result in their moral deterioration. One is therefore not surprised to learn that the German Crown Prince, his officers and men, have been stealing in northern France for their private benefit—as common thieves and vulgar robbers—not for the Fatherland, but for their degraded selves.

Nemesis is inexorable, and it may be anticipated that the German people will later rend the Kaiser, Crown Prince, and the whole vile breed of Hohenzollerns, with the same brutality and cruelty the German soldiers have been taught to practice on the Poles, Belgians, and others. In the nature of things that is not likely to take place so long as the Germans can win such victories as they achieved last year against the Rumanians, and this year against the Russians and Italians. Nor indeed until the armies of the Central Powers are completely defeated, and the German people know by the presence of victorious Allied soldiers in German territory that they have been wickedly deceived. The Germans approved of the horrible atrocities perpetrated in Belgium and called it "a joyous war", "*der fröhliche Krieg*"—the German word looks like "frolic".

Since the decisive battle of the Marne, the joy has departed, and the enemy now hope for a German peace which will enable them to prepare for the next war. Lloyd George has declared with authority there will be no next time, and so the issue is joined, and in this fateful hour of the world's destiny, Canada and Russia are preparing for elections.

A despatch the other day read: "'Rather death than slavery' is the clarion note sounded in the National Press to-day in the face of the new barbarian invasion of Italy. In political speeches there is a tendency to sink the partisan dissensions and dilly-dallying which recently afforded so sorry a spectacle during the parliamentary discussion".

There was a similar sorry spectacle in the Canadian Parliament, but whatever history may say of our politicians, there are certainly no partisan dissensions or dilly-dallying among the Canadian soldiers fighting in stern reality against lawlessness, and for the establishment of the reign of law in the civilized world.

What, you may ask, are the prospects of the reign of law in Russia? The real cause of the troubles in Russia which are having such disastrous results, is the spirit of lawlessness, or, as a member of the Russian Government termed it, anarchy.

Many of the soldiers and sailors, after the Czar had gone, still shouted, "Down with authority!" The universality of the genius of Shakespeare is shown by the words he used three hundred years ago, which vividly describe the consequences, if this is accomplished:

And, hark, what discord follows! each thing meets  
In mere oppugnancy: the bounded waters  
Should lift their bosoms higher than the shores,  
And make a sop of all this solid globe:  
Strength should be lord of imbecility,  
And the rude son should strike his father dead:  
Force should be right; or rather, right and wrong,  
Between whose endless jar justice resides,  
Should lose their names, and so should justice too.  
Then everything includes itself in power,  
Power into will, will into appetite;  
And appetite, an universal wolf,  
So doubly seconded with will and power,  
Must make perforce an universal prey,  
And last eat up himself.

Kerensky, the Russian Prime Minister, thoroughly understood this, and stated that Russia would be ruined unless discipline in the army was maintained. On one occasion the mob were intent on murdering one of the Russian generals against whom certain allegations were made.

Kerensky, at the risk of his own life, stood between the general and the furious mob, and said that the general must be tried according to law. This demonstrates that Kerensky had the root of the matter in him, as no doubt have many of his fellow countrymen; and we may, therefore, confidently predict the ultimate establishment in Russia, after a long and painful struggle, of liberty based on law. As Elihu Root, the great American statesman who visited Russia as the representative of the United States, pointed out, the organizations which have demoralized Russia are similar to those which have caused so much mischief in the United States, and, I may add, in Canada also.

We can realize the tremendous difficulties in Russia by recalling the initial successes of the German propaganda on this continent. Not many months have elapsed since that song of degradation, "I didn't raise my boy to be a soldier," was enthusiastically sung by dupes of the German agents.

Much mischief is still being done both in the United States and Canada by this pernicious propaganda, the purpose of which is to prevent the sending of reinforcements and supplies to Europe and to prevent the increase of production necessary to the success of the Allies.

The English-speaking people should therefore not judge the Russians too harshly. In 1667, owing to the corruption of the British Government, an enemy fleet sailed up the Thames. This was more than 450 years after Magna Charta, and over 50 years after the warning of Shakespeare in King John:

"This England never did, nor never shall,  
Lie at the proud foot of a conqueror,  
But when it first did help to wound itself".

Nearly a hundred years after this the plans of the great Pitt were defeated by venal acts in the British Parliament. We read that 316 members voted for the Peace. Sixty-five on the other side, said Walpole, "were not bribed".

Historically there is too much foundation for the fear frequently expressed that "that which the soldiers and sailors will win the politicians will give away."

It will require a tremendous effort to bring any kind of order out of the deplorable chaos in Russia, and whether, after fighting the enemies of law and the German agents within, there will be any surplus energy to drive out the German army from the occupied Russian territory remains to be seen.

Wordsworth, with profound statesmanship, truly said:

"We must be free or die, who speak the tongue,  
That Shakspeare spake; the faith and morals hold,  
Which Milton held."

This freedom for which the English-speaking world is now unitedly fighting is based on the unquestionable supremacy of the civil power, and the universal rule of equal law. We are apt to regard the universal rule of equal law as a matter of course; but it is the result of a long struggle and can be maintained only by constant vigilance and effort.

Scientists tell us that there is always a danger of reversion to inferior types. So in matters of government, there is constant danger of the usurpation of arbitrary power, and against this Kipling uttered a timely warning when, in his poem on "The Old Issue", he said:

\* \* \* \* \*

All we have of freedom, all we use or know—  
This our fathers bought for us long and long ago.

Ancient right unnoticed as the breath we draw—  
Leave to live by no man's leave, underneath the law.

Lance and torch and tumult, steel and grey-goose wing,  
Wrenched it, inch and ell and all, slowly from the king.  
\* \* \* \* \*

So they bought us freedom—not at little cost—  
Wherefore must we watch the King, lest our gain be lost.  
\* \* \* \* \*

Howso' great their clamour, whatso'er their claim,  
Suffer not the old King under any name!

Here is naught unproven—here is naught to learn.  
It is written what shall fall if the King return.

He shall mark our goings, question whence we came,  
Set his guards about us, as in freedom's name.  
\* \* \* \* \*

He shall break his Judges if they cross his word;  
He shall rule above the Law, calling on the Lord.

He shall peep and mutter; and the night shall bring  
Watchers 'neath our window, lest we mock the King—  
\* \* \* \* \*

Strangers of his council, hirelings of his pay,  
These shall deal out Justice: sell—deny—delay.  
\* \* \* \* \*

Cruel in the shadow, crafty in the sun,  
Far beyond his borders shall his teaching run.

Sloven, sullen, savage, secret, uncontrolled—  
Laying on a new land evil of the old;

Long-forgotten bondage, dwarfing heart and brain,—  
All our fathers died to loose he shall bind again.

\* \* \* \* \*

All the rights they promise—all the wrong they bring.  
Stewards of the Judgment, suffer not this King!

\* \* \* \* \*

One of the crowning features of the British system under which we in Canada live is the final authority, in matters of law, of the Judicial Committee of the Privy Council, or, to speak more accurately, of the King speaking on the advice of the Judicial Committee of the Privy Council.

So far as the Province of Ontario is concerned, this is founded on a statute passed by the first Parliament of Upper Canada, held at Niagara, in 1792, which enacted that we should be governed by the laws of England, and that there should be an appeal to the King in council. This statute has been re-enacted from time to time, and is still in force.

According to Blackstone, under the British Constitution the King is the fountain of justice and the general conservator of the peace of the empire. By the fountain of justice the law does not mean the author or original, but the distributor. Justice is not derived from the King as his free gift, but he is the steward of the public to dispense it to whom it is due. Blackstone quotes Bracton for the proposition that for this very purpose was the king created and elected, in order that he might render justice to all. *Ad hoc autem creatus et electus ut justitiam faciat universis.*

In the early days of arbitrary power, monarchs sometimes decided cases personally, but it has long been settled that justice must be distributed through the regular courts. The last attempt to evade this salutary rule was that of James I, in the celebrated case of Evocation, when Coke stoutly replied to the monarch that he could only in such matters speak through his courts (*per curiam*), observing that the law was the golden metwand and measure to try the causes of subjects. In the following reign of Charles I (1641), it was enacted that all questions of property, etc., "ought to be tried and determined in the ordinary courts of justice and by the ordinary courts of law".

There is no more danger of monarchical tyranny in Canada than in any other part of this continent, nor, indeed, so long as the British navy is strong enough to protect the liberties of Europe and the security of America, of the divine right of the Kaiser. When recently (to adopt

the classical language of Lincoln) the British people decided to dedicate themselves more fully to the great task remaining before us, and that from the honoured dead of the Allies who had given to the cause of humanity the last full measure of devotion, we should all take increased devotion to that sacred cause, and to this end highly resolved that those dead shall not have died in vain, and that Europe, under God, should have a new birth of freedom and that the government of the people, by the people, and for the people shall not perish from the earth, as it would if Prussian militarism or its ally Socialism triumphed; and when it was decided in form by their leaders, but in reality (whether rightly or wrongly remains to be proved) by the British people that these lofty purposes would be more speedily achieved under Lloyd George than under Asquith, there was no difficulty in promptly carrying out the necessary change. Indeed, the fact that such a change as that from Asquith to Lloyd George would be impossible in the United States before the presidential election of 1920 (apart from impeachment), demonstrates that the British system is more elastic and responsive to the popular will than the United States system.

At one time some thought there was danger that the United States would be brought under the influence of German *Kultur*. As long ago as 1899, John Hay perceived the hatching of the German intrigue against the United States, and warned President McKinley, and afterwards President Roosevelt, though, as Thayer in his "Life of John Hay" says, "Only after the German Kaiser had forced his atrocious war upon the world in 1914, did his agents in the United States proclaim that they had built up an organization so powerful that it would compel the American government to do their bidding, which was his". At present there is no sign of the American Government doing the bidding of the Kaiser or his agents.

General Bernhardt, who advocated the present war, predicted as the result world dominion for the Germans, or their downfall. The danger of such world dominion may be said to have been warded off by the victory of the Marne. And, by the way, when we reflect on what the French so gloriously did in winning the battle of the Marne, and in holding Verdun, we surely should hear no further talk of the decadence of Latin civilization, to which humanity owes so much, including the Roman Law. That system still governs a large part of the human race, not by reason of imperial power, but by the imperial power of reason, if we may so paraphrase the famous saying of Portalis, "*non ratione imperii, sed imperio rationis*".

There is, fortunately, another alternative besides those stated by Bernhardt—world dominion or downfall—namely, the reign of law.

This is clearly brought out in the historical reply of the Allies to President Wilson. The Allies require, not the annihilation of Germany, but complete reparation, adequate guarantees, which surely must include the just punishment of those personally responsible for such crimes as I have referred to, and the maintenance of the public law of Europe, protecting each of the nations, great and small, in its right to life, liberty and the pursuit of happiness, each developing its own culture according to its own genius. Even Germans should be permitted to develop their own *Kultur*, provided they are not permitted to impose it by force on others.

There are, however, other dangers to our liberties to which citizens of the United States and Canada are both exposed, and which threaten what Chief Justice Fuller aptly called an enduring government of laws, not of men. Largely as a result of the violation of the fundamental principles of government, and of disregard of the warnings of Lincoln, who understood these principles very thoroughly, it has come about that, practically, amounts varying from 30 to 60 per cent. of taxes collected in both countries are wasted. In Canada we designate the main cause of this waste as "patronage". Ex-President Taft told us in Toronto that the phrase used in the United States was "pork-barrel appropriations". In each case, on analysis, this means buying the votes of the people with their own money, or rather the votes of some of the people with the money of the others.

Some have looked with longing eyes at the much-heralded efficiency of German bureaucracy. But this is a case of distant fields looking green. One of the influential German journalists recently advocated the introduction of what he called the American custom of lynching as the most expeditious method of getting rid of the oppression of German bureaucrats. This, by the way, and the advocacy by Germans of the deposition of the Kaiser, I regard as the first authentic signs of the beginning of the end of the Prussian military caste and of the war.

Others have advocated the adoption of the initiative, the referendum, and the recall, which all strike at the fundamental principles of representative government. They are indeed futile attempts to evade the consequences of disregarding the ancient admonition that we should choose as administrators (including legislators) able men who fear God and hate covetousness.

Not by such devices, nor indeed by any means, are these consequences of incompetence, inefficiency, and dishonesty, evitable. They are all pernicious, but especially the recall of judges which involves a denial of justice, and justice was truly described by Alexander Hamilton as the end of government. Indeed, it always seems to me to be tanta-

mount to expressing approval of the mob who cried "Crucify Him", and "Not this Man, but Barabbas", who "was a robber". The clamour of the mob was not the voice of justice, nor yet the true voice of democracy. We cannot too strongly emphasize the warning of Burke, who, after a profound study of the fundamental conditions of free institutions, said: "Liberty to be enjoyed must be limited by law: for where law ends there tyranny begins: and the tyranny is the same, be it the tyranny of a monarch or of a multitude; nay, the tyranny of the multitude may be the greater, since it is multiplied tyranny".

The two institutions undoubtedly most influential in upholding the supremacy of law, which is the fundamental condition of true liberty, are the Supreme Court of the United States and the Judicial Committee of the Privy Council. Both have jurisdiction over states and provinces, each sovereign within the sphere of its own authority. Surely the successful and satisfactory exercise of this jurisdiction contains the promise and potency of a supreme court of the civilized world, which shall bring the future of humanity under the "majesty of the law", to quote the eloquent phrase of the distinguished French statesman, Bourgeois.

Time is not available to trace the intensely interesting history of the jurisdiction of the Judicial Committee of the Privy Council. It must suffice to say that it was established in its present form in 1833, by an act introduced by Brougham, one of the greatest of law reformers. This act has been, from time to time, amended by subsequent statutes, including the Appellate Jurisdiction Act of 1913, which provided for two additional judges. The only one of these amendments that need be further referred to is that passed in 1895, authorising the addition of five members of the Judicial Committee from Canada, Australia, South Africa and other parts of the British Dominions. These five must be or have been judges of certain specified Canadian, Australian, or South African courts, or of some other superior court in His Majesty's dominions, to be named by competent authority, and must be members of the Imperial Privy Council.

The Judicial Committee is to be distinguished from the House of Lords, and by the House of Lords in this connection I mean the judicial body and not the legislative body of the same name which earned the gratitude, not merely of the British Empire but also of all friends of civilization, by rejecting the so-called Declaration of London. If this declaration had become law, it would have seriously handicapped the British navy, certainly in this war the bulwark of liberty, and would have been a potent factor in favour of Prussian militarism. Fortunately, owing to its wise rejection by the House of Lords, a co-ordinate part of the British Parliament, it did not become law, and never became

binding upon Great Britain. To allege, as some who should know better erroneously do, that Great Britain, which is fighting for the vindication and maintenance of international law, violated the Declaration of London, is therefore the sheerest nonsense.

The judicial body known as the House of Lords is composed of the same judges as sit in the Judicial Committee of the Privy Council, and has a jurisdiction defined by an imperial act passed in 1876. While the judges are largely the same, there are some important distinctions between these two tribunals.

While cases argued before the Judicial Committee of the Privy Council are really decided by the judges who hear them, the order issued is the order of the King made on their advice. Some important consequences follow from this. The Privy Council advises the Crown, and in doing so is bound not to record dissentient opinion. This was provided for in 1627, and the prohibition was reaffirmed in 1878. Only one set of reasons for judgment is given. One of the greatest living authorities on jurisprudence, Sir Frederick Pollock, states as the criteria of just laws in a civilized community "generality, equality, and certainty", and the rule which prevails in the Privy Council tends greatly to promote all these, but especially in the desirable quality of certainty. The House of Lords is bound by its own decisions in accordance with the rule laid down by Blackstone, that the duty of the judge is to abide by former precedents. This rule is not binding on the Judicial Committee of the Privy Council, which is required to decide in each instance according to the very right and justice of the particular case before it.

Some eminent jurists and statesmen have advocated a great Imperial Court of Appeal to take the place of the House of Lords and the Judicial Committee of the Privy Council. There are constitutional and other difficulties in the way, but the obvious advantages are so fundamental that it is to be hoped this beneficial reform will soon be accomplished.

The Lord Chancellor is a member of the Judicial Committee, and his position is a striking example of the English disregard of the doctrinaire division between the judicial, executive, and legislative powers, for the Lord Chancellor is head of the judiciary, a member of the cabinet or executive government, and also a member—indeed, the presiding officer—of the second chamber of the British Parliament.

Whatever may be the theoretical objections, no practical difficulties have arisen. In his brilliant book on "The Oppressed English", Ian Hay mentions the fact that the present Lord Chancellor of England is a Scotsman.

Over a quarter of a century ago a member of the firm of solicitors for the Bank of England remarked to the Attorney-General of Ontario,

then in one of the courts in London, England: "Do you see those three Scotsmen? Every one of them will become Lord Chancellor of England". The first of the three counsel then in court to become Lord Chancellor was Lord Loreburn, the second Lord Haldane, and the third was Lord Finlay, who last December became the Lord Chancellor of the Lloyd George government. It is fortunate that at the present juncture the highest British appellate court is presided over by one in whose fairness, impartiality, and accurate knowledge of international law there is such complete confidence.

Time would not permit me to give an adequate account of the invaluable services to the United States of the Supreme Court, or of the similar services rendered to Canada and the other parts of the British Empire by the Judicial Committee of the Privy Council. In Canada there were angry disputes between provinces of different races and diverse creeds, and it was most fortunate that there existed such a tribunal as the Judicial Committee of the Privy Council to decide such disputes as they did, and to do it so satisfactorily.

The Supreme Court of the United States has rendered notable services, not only to the United States, not only to jurisprudence and international law, but also to the cause of civilization. The fame of its great jurists, of whom I shall mention only Marshall, Story and Brewer, extends far beyond the boundaries of the United States; indeed, wherever the gladsome light of jurisprudence illumines the path of progress.

I have referred to the courts. What about legislation? Have we not omnipotent parliaments representing the sovereign people who can, if they would, speedily remedy all the ills that flesh is heir to. The irrepensible faith in the efficacy of legislation and in the promises of politicians is one of the marvels of the ages, and we are ever prone to forget

"How small of all that human hearts endure  
That part which laws or kings can cause or cure".

Perhaps I can best illustrate the limited sphere in which legislatures can effectively or usefully interfere by a concrete example.

Some politicians concluded that mathematicians represented the ratio between the circumference and diameter of a circle in an accurate manner that was unnecessarily troublesome, and passed a statute that this ratio should be 3.15. Why should the children of the free and independent electors be bound by the calculations of Archimedes thousands of years ago, or by the fact that a certain French mathematician, Lambert, demonstrated in 1766 that the ratio in question could not be a rational number, though his proof required the assistance of Legendre, which was subsequently given.

Not that the legislators actually said this. They were probably ignorant of the calculations of Archimedes and of the work of the French mathematicians I have referred to; or if they did say so, could they not answer, the French were a frivolous people?

When one reflects on the phenomenon, it is a curious thing that while we will not permit anyone to operate on the body of the humblest citizen without long and scientific training as a surgeon, we elect legislators to operate on the body politic without any scientific training, and without any adequate knowledge of social science, or even of the principles of legislation.

It is therefore very fortunate that the legislators I have referred to, or indeed any others, could not alter the ratio of the circumference to the diameter of a circle by the one billionth part of a unit. Even in Canada we now talk in billions, and shall soon have to learn in the school of experience to pay interest on billions, and in that hard school we shall learn much else.

Since Confederation, economy has been unpopular, and politicians could win more votes by squandering a million dollars than by saving a million dollars. I am quite certain that will not be the case five years from now.

Meantime we should note that the politicians could not set aside the conclusions of the ancient mathematicians any more than the so-called invincible German army was able to upset the calculations of a great modern French mathematician, General Pétain, at Verdun, and should ever bear in mind the wise words of Bacon: "For the chain of causes cannot by any force be loosed or broken, nor can nature be commanded except by being obeyed". It is because these principles have been neglected that so much of the legislation passed has been futile and mischievous, and the results disappointing.

In his "History of Civilisation", Buckle shows that statutes to decrease the rate of interest (which can always command a majority) have invariably resulted in increasing the rate of interest which the borrower has directly or indirectly to pay.

Legislation should be an important factor in progress, but to remedy the present unsatisfactory conditions we must begin at the very foundation. The problems to be solved are certainly, to use the apt words of Browning, "multiform, manifold, and menacing". Statecraft must call science to its aid; for such evils can only be cured by the removal of their causes.

The principles of ethical science and social service should be taught in the schools and universities, so that every citizen may thoroughly understand the rights and duties of citizenship, especially the duties.

Many people outside of Germany have too much Ego in their Cosmos.

If there were any general knowledge of the fundamental principles of political science, there would not be so much astonishment at the argument of a correspondent of the *Spectator*: that if the views of the so-called conscientious objector are carried to their logical conclusion, he should be regarded as an outlaw. The duty to protect the State is correlative to the right to protection by the State of person and property. To be consistent, the opponent of compulsory service which we call conscription must say, "Who steals my purse steals trash", that if his valuables are taken, no violence, even of the police, will be used in his favour, and that he will rely exclusively on moral and spiritual forces for the protection of his person and his property.

The present methods of electing representatives to legislatures and parliaments are crude and unscientific. Sir Sandford Fleming, though he lived in Ottawa, was optimistic enough to think what he called the rectification of parliament was possible. Sir Sandford was a great engineer, and all really great engineers are optimists. Sir Sandford was right; for Proportional Representation is not only right in theory, but quite feasible in practice.

The present crude system of electing members of parliament gives undue influence to the "grafters", and to those who make money out of politics; and the soldiers on the various fronts who have been grappling with stern realities are likely to insist on the speedy rectification of parliament, which can only be achieved by a scientific plan of proportional representation and selection.

#### INTERNATIONAL LAW.

I desire to preface my remarks on International Law by a letter written by me in March last. It was addressed thus:

Kent Building, Toronto, Canada,

March 26th, 1917.

The Secretary,

Carnegie Endowment for International Peace,  
407 West 117th Street, New York City, N.Y., U.S.A.

Dear Sir:

Thanks for your reprint of the Cosmos letters, which I shall study carefully as soon as the Allies, now fighting for the cause of humanity, achieve complete victory over Germany and her dupes who seek to

destroy human liberty. No one who does not do all in his power to stop the massacre of the Armenians by the Turks (acting with the knowledge and consent of Germany), to prevent the Belgians being drafted into a slavery more horrible than that from which Lincoln freed your South, and to punish the murder of women and children and other non-combatants by the Germans, should be heard in discussing any peace either now or after peace is won.

The conditions of peace should be settled by those who make the sacrifices necessary to end the war. At present only those who assist in the fight against Germany to their utmost are entitled to the blessing assured to the peacemaker.

The United States took a prominent part in bringing about the Hague Convention, on which Belgium relied in vain, and therefore your citizens are under a special obligation to Belgium, which I am pleased to see is being recognized by an increasing number.

The position could hardly be better put than by one of your eminent citizens, Mr. Church, of Pittsburg, who said: "You will remember that Dante in the *Inferno*, found a hell beneath all other hells prepared for those timid beings who insisted on being neutral in the everlasting fight between good and evil. This War is a fight between those forces of good and evil."

Though the Kaiser blasphemously claims God as his junior partner, thereby making the Deity a party to his atrocious crimes, such as the murder of the women and children who were drowned when the *Lusitania* was illegally sunk, I still believe that God is a God of righteousness and justice. If so, it is certain that in the nature of things there can be no true peace until righteousness and justice are vindicated, and the last live German soldier driven from the soil of Belgium and France. Consequently, anyone who, knowing the atrocities being committed by the Germans in Belgium, France, and elsewhere, urges peace now, must be moved by the devil. The only alternative is that the advocate of peace must be inspired directly or indirectly by German gold.

I noticed that a member of the German Reichstag inquired as to results of the expenditure of large sums of money previously voted to further German plans in the United States, and was interested to read that the German conspiracy against the United States was perceived over a decade ago by one of your statesmen, the late John Hay, though I suppose the extent of this conspiracy did not become generally known until recently.

Let me add that I am not one of those who say pacifists are the cause of the War, and share with the Germans the guilt of all its bloodshed and horrors. Having studied history very closely and had the

special advantage of discussing the meaning of the German preparations with friends of insight and foresight, I warned our people that in the present conditions of the world there was always danger of sudden war, but would not even now censure those who before the War believed the plausible assurances of the Kaiser. It is, however, very clear now, that when the Germans proposed peace they intended war, for which they had feverishly prepared, and that the Central Powers now ask for peace in order to prepare for another war.

Those who assist in attempting to accomplish this, assume an awful responsibility for all the bloodshed and misery of such a second war. Certainly now, only those are entitled to be regarded as lovers of peace who are prepared to make real sacrifices to achieve it. I am proud to say, most Canadians, who above all are lovers of peace, are making such sacrifices, some, of their lives, in order to destroy Prussian militarism, so that we may bequeath to our children the blessings of permanent peace.

Yours very truly,

J. MURRAY CLARK.

In discussing the future of international law, it is necessary to be careful not to be misled by the ambiguity of the term *law*.

Experience tells us of the uniform succession of phenomena. Our consciousness postulates a causal nexus, to denote which the term *law* is used. In this sense *law*, like *substance* and *causality*, are conceptions inherent in the human intellect.

It is not in this sense the term *law* is used in discussing International Law. Holland, one of the greatest authorities on Jurisprudence, defines law as a general rule of external human action enforced by a sovereign political authority. In this strict sense there is, of course, no such thing as International Law, for the persons of International Law are states themselves sovereign. The only feasible method of finally terminating this sovereignty of states is by establishing "the parliament of man, the federation of the world". Such a parliament could only be on the democratic basis of universal suffrage. The hundreds of millions of Chinese would out-vote the English-speaking peoples, and, however highly we may regard these members of the brotherhood of man, we are certainly not yet prepared to trust our destinies in their hands.

Charles H. Pearson, the author of "National Life and Character," wrote, in 1893:

"It is now more than probable that our science, our civilization, our great and real advance in the practice of government are only bringing us nearer to the day when the lower races will predominate in the world,

when the higher races will lose their noblest elements, when we shall ask nothing from the day but to live, nor from the future but that we may not deteriorate."

If Pearson could read the history of the present war he would write differently.

What, then, is International Law? The best definition I know of is that given by Lord Russell of Killowen, Lord Chief Justice of England, in his address to the American Bar Association at Saratoga. He defined International Law as the "sum of the rules or usages which civilized states have agreed shall be binding on them in their dealings with one another". This definition has been adopted by the Court of Appeal in England. The basis of International Law is, therefore, an agreement or the rule of good faith.

There is now no external political authority that can command sovereign states, for it is a basic principle of International Law, as it at present exists, that each nation must be the "judge of its own quarrels and the executioner of its own decrees". Much mischief has been done and many false hopes raised by those who have failed to grasp the limited scope of International Law, which deals only with the relations between states. Its influence can only be extended by increasing respect for the rights of others, reverence for law and a determination to observe good faith. These, however, are important, nay, essential, to the very existence of civilization.

What, then, about the proposed League of Nations? It is certainly to be commended, provided we realise its limitations, and do not mistake dreams for realities, or permit a sense of false security to lure us into a fool's paradise. For it does not much extend the promise of peace among men of good will, and certainly does not provide adequate means of dealing with men and states not governed by good will. The sad experience of humanity shows that much reliance cannot be placed upon peace movements, the apparent success of which has always hitherto been followed by horrible war. It is, as Carlyle would say, significant of much that, while there was some warlike talk, there was, during the presidency of Theodore Roosevelt, profound peace in the United States, and that when there was in power in that great country a government composed largely of pacifists, the Germans sunk the *Lusitania*, murdered the citizens of the United States, including women and children, and, by declaring ruthless submarine destruction, forced the United States into the bloodiest war of all history.

The French Prime Minister defined the present position very precisely (as becomes a distinguished mathematician) as well as authoritatively during the present week when he said: "There is to be neither

halt nor parley until the German brute force is shattered and the world terror ended; momentary trials which are afflicting Italy, and against which the forces of the Allies will make headway successfully, may delay, but cannot modify the issue of this formidable war, which henceforth is inevitable. Germany may make other spectacular moves in the far off and temporarily indefensible areas, but we are delivering solid blows on the Western front. Whenever Germany is sincerely ready to consider peace it will be because she is beaten, and when she is beaten the victors will write the terms of peace in conformity with justice and the rights of humanity, steadfastly refusing to admit any compromise with violence." The reign of law admits no compromise with violence.

International Law is as yet law between states and supernational law has not yet been developed.

President Wilson says:

"We are at the beginning of an age in which it will be insisted that the same standards of conduct and of responsibility for wrong done shall be observed among nations and their governments that are observed among the individual citizens of civilized States."

Before this can be accomplished Prussian militarism and autocracy must be destroyed and right vindicated. But if this ideal is realized, it must be by supernational rather than by international law, that is, there must be somebody to do the "insisting".

In a paper read before the Institute several years ago, I pointed out the analogous development of Roman Law in dealing with disputes between private individuals, and I need not repeat what I then said. Indeed, the analogy between international law and primitive law has often been pointed out.

Many of the Anglo-Celtic laws were largely hortatory rather than compulsory. The King exhorts rather than commands his subjects as good Christians to keep the peace and to conduct themselves properly.

It took a long time to establish the jurisdiction of our civil courts. Even as late as 1818, in the famous case of *Ashforth v. Thornton* (1818), 1 B. and Ald. 405, Lord Ellenborough, C.J., laid it down that the general mode of trial by law, in case of appeal, is by battle at the election of the appellee, unless the case be brought within certain exceptions not necessary to be here referred to. This mode of trial introduced in England by the Normans remained the law of the land until 1819, when it was abolished by 59 Geo. III, ch. 46.

The evolution of the State as the organ of social control, in place of groups of kindred or religious organizations, was gradual, but when we remember that in primitive society private law arose out of leagues or confederations of clans, may we not hope for analogous results from the

proposed league to enforce peace, and that the development of some reliable means of enforcing legal rules, including the rule of good faith (to which I have referred) among states, may be achieved? Certainly such a league among the English-speaking peoples, the peoples of the Great Charter of Liberty, would be a potent force for the preservation of the peace of the world.

General Jan Smuts can tell us something well worth considering on this subject. He is a very distinguished graduate of Cambridge, and some years ago, by his great ability and energy, earned our respect in a way, however, which would not have won him many votes in Toronto at the time. Recently his great services to the Empire, not only as a soldier, but also as a statesman, have entitled him to speak with considerable authority.

General Smuts said a short time ago:

"The only successful experiment in international government that has ever been made is the British Empire, founded on principles which appeal to the highest political ideals of mankind. . . . Our hope is that the basis may be so laid for the future that it may become an instrument of good, not only in the Empire, but in the whole world."

This vividly recalls the statement made many years ago, which cannot be too often quoted, that the British Empire is the greatest secular agency for good the world has ever known. The Imperial War Conference declared that "The readjustment of the constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the war, and that it should form the subject of a special Imperial Conference to be summoned as soon as possible after the cessation of hostilities." The experience of the United States demonstrates that a federal union is the only permanent solution, but we must remember that a federation of the United States could not be achieved until a system of alliances such as now proposed for the British Empire had proved inadequate, and that South Africa adopted a union rather than a truly federal government. At the present time public opinion is not yet prepared for a truly Imperial Parliament to whom the Imperial Executive already constituted shall be accountable according to the well-tried principles of responsible and representative government.

Although the decisions of the momentous Conference, so arranged to be held, may affect the destinies of Canada, and indeed of over one-fifth of the human race, many amongst us have not yet seriously considered its far-reaching consequences.

Meantime, that a basis satisfactory to General Smuts has been laid by the genius of Lloyd George is shown by the following extract from

a remarkable article by Sidney Low in the August number of the *Nineteenth Century*:

"It may be, and we must all hope it will be, Mr. Lloyd George's good fortune to go down to history as 'the pilot that weathered the storm', the Prime Minister who brought Britain victoriously through the closing stages of the greatest war of all time. But whether or not he win that title to immortality, he has already done one thing which must give him a permanent place in the annals of our constructive statesmanship. Since he came into office in December last the development of a true Imperial constitution has gone forward by long strides. The process has been unobtrusive, and almost unnoticed amid the intense pre-occupations, the poignant suspense, the hopes, and fears, of the campaigns by sea and land. But when the ultimate account is made up and the balance struck, it may be found that the meetings of the Imperial War Cabinet and the Imperial War Conference are more important in their enduring results than the battles and the revolutions. For from them will arise the new integration of the British system of nations on which the peace of the world, and the ordered progress of humanity, so largely depend."

Let us hope that Canadians may be as worthily represented at this Conference as we are on the battlefields, for Canada is verily the keystone in the arch which we call the British Empire or Commonwealth, and upon the strength of that arch, upon the strength and permanence of that Commonwealth, rest our best hopes for the establishment of the reign of law, as the only sure guarantee of the peace of the world.

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## RESOLUTION.

WE the Council and members of the Royal Canadian Institute desire to express our keen appreciation of the action of the Premier and Government of the Province of Ontario in contributing the sum of \$75,000 towards the endowment of the Anti-toxin Laboratory so generously donated to the University of Toronto by Colonel A. E. Gooderham. Convinced as we are of the importance of medical research in particular for the physical health and well-being of the people and of scientific research in general for the intellectual and industrial vitality of the nation and realizing the backwardness of our country in nearly all that pertains to these matters, we cannot but welcome as a happy augury this endowment of an institution devoted primarily to research and we venture to persuade ourselves that in the brighter outlook we see the first rays of the dawn of a new era in which scientific research in Canada will be endowed on a scale commensurate with the importance of the issues involved and proportioned to what is being done in this regard in other countries.

MOVED by Professor J. P. McMurrich and SECONDED by Mr. E. P. Mathewson, and carried unanimously.

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OFFICE OF  
THE PRIME MINISTER AND PRESIDENT  
OF THE COUNCIL, ONTARIO.

*Toronto, November 8th, 1917.*

MY DEAR MR. CLARK:

I have your letter of the 7th instant, enclosing copy of resolution passed at the recent meeting of the Royal Canadian Institute, for which I am obliged. I appreciate very highly indeed the action of the Institute in passing this resolution. The importance of research work in all lines at the present time cannot well be overestimated, and I will feel it my duty to support, as far as possible, all well directed efforts along this line.

Yours sincerely,

"W. H. HEARST".

J. Murray Clark, Esq., K.C.,  
President, Royal Canadian Institute,  
198 College Street, Toronto.