He held that the case as presented to the Supreme Court showed that the original judgment was rendered on account of acts done in pursuance of the powers of a belligerent in time of war, that, when the original action was presented to the West Virginia court and the thing complained of was found to be an act in accordance with the usages of civilized war, during the existence of a war flagrant in that part of the country, that court should have proceeded no further and its subsequent proceedings may be held to have been without authority of law.

In these cases, the highest judicial authority in the United States has declared it to be a principle of public international law that the local territorial courts have no jurisdiction to try enemy persons for acts committed during and as a part of belligerent operations, even although such acts be acknowledged war crimes or are alleged to have been committed in violation of the laws of war. The principle has been consistently followed throughout a variety of changing conditions: (1) where a recognized war crime was committed in occupied territory and the local court secured jurisdiction of the offender after the occupation had ceased; (2) where the local court in occupied territory attempted to take jurisdiction of an alleged violation of the laws of war during the period of enemy occupation; and (3) where the alleged violation of the laws of war was committed during an enemy raid and the local court subsequently obtained jurisdiction of the person of one of the members of the raiding party.

Geo. A. Finch.

IN MEMORIAM—THOMAS JOSEPH LAWRENCE.

1849-1920

In the leading case of Triquet *v.* Bath (3 Burrow, 1478, 1481) decided in 1764, Lord Chief Justice Mansfield quotes Lord Chancellor Talbot as holding in Buvot *v.* Barbut, decided in 1736, and in which Mansfield had been counsel,

> That the law of nations, in its full extent, was part of the law of England. . . . That the law of nations was to be collected from the practice of different nations, and the authority of writers. Accordingly, he argued, and determined

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from such instances, and the authority of Grotius, Barbeyrac, Binkershoek, Wiquefort, etc., there being no English writer of eminence, upon the subject.

This state of affairs is fortunately long since passed, and their Lordships, were they living today, would have considered the late Dr. Lawrence as an "English writer of eminence upon the subject."

The principal works of Dr. Lawrence dealing with international law or international relations were: *Essays on Some Disputed Questions in Modern International Law,* 1884, second edition 1885, published when he was Deputy Whewell Professor of International Law in the University of Cambridge; a little *Handbook of Public International Law* issued a year later, which has run through many editions; *The Principles of International Law,* first published in 1895 after two years spent at the University of Chicago as Professor of International Law; *War and Neutrality in the Far East,* published in 1904 as the result of the Russo-Japanese War; *International Problems and Hague Conferences,* 1908, issued shortly after the adjournment of the Second Hague Peace Conference; *Documents Illustrative of International Law,* published in the year of the war and whose preface bears the ominous date of July 28, 1914; *The Society of Nations,* 1918, and finally, *Lectures on the League of Nations,* delivered, as were the contents of the previous volume, at the University of Bristol, which institution he honored as Reader in International Law. He had previously for many years been Lecturer on International Law at the Royal Naval College at Greenwich and at the Royal Naval War College at Portsmouth. For many years he was likewise an associate of the Institute of International Law, and from 1908 until his death a member of that learned society.

It would be an exaggeration perhaps to state that Dr. Lawrence's first work, the *Essays on Modern International Law,* was his greatest. It is, however, a fact that the views he there expressed he maintained and restated at lesser or greater length in his subsequent publications when he had occasion to refer to such matters, and it is also true that these views are as timely today as when they were first expressed. For example, among the seven essays of which that little volume consists may be mentioned the following: "Is there a True International Law?" "The Work of Grotius as a Reformer of International Law," "The Primacy of the Great Powers" and "The Evolution of Peace."

The first he answers in the affirmative, defining law not in the

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narrow sense of a law set by a superior to an inferior, but as "A rule of conduct actually observed among men." As the rules forming the body of international law are "observed among men" to quote his own language, "they are *laws;* being set by the consent of nations, they are *international* laws." If they are laws, they will be observed and the Society of Nations will in the long run see to it that they are observed.

In considering the work of Grotius, Dr. Lawrence calls attention to a condition of affairs at the end of the Thirty Years' War which in many respects is not unlike that obtaining at the end of the present war,—a situation of which Grotius said, and which he gave as the incentive for the composition of his work:

> I saw prevailing throughout the Christian world a license in making war, of which even barbarous nations would have been ashamed; recourse being had to arms for slight reasons or no reason, and when arms were once taken up all reverence for divine and human law was thrown away, just as if men were henceforth authorized to commit all crimes without restraint.

This state of affairs Dr. Lawrence considered as "the natural result of the principles of Machiavelli applied in the field as well as in the cabinet."

For the lawless, Grotius insisted upon a law of nature, everywhere existing, common to all, and of superior authority. The acceptance of his declaration by the nations at large supplied a standard by which the acts of nations could be tested and their conduct controlled. The belief in natural law has passed away, but the publicists of the future can hope to accomplish the same results as Grotius if they advocate as he, a principle everywhere existing, common to all, and of superior authority. This principle is justice.

The "Primacy of the Great Powers" was a fixed idea with Dr. Lawrence, just as the juridical equality of nations is an obsession of the present writer. Dr. Lawrence proclaimed the primacy of the Great Powers, that is the inequality of nations, in the *Essays,* his first publication; he restated it in the *Principles;* and he insists upon it in the *Society of Nations,* the last work we have from his pen, to which he gave definite and final form. Thus in the *Essays* he said:

> It is not merely that the stronger states have influence proportionate to their strength; but that custom has given them what can hardly be distinguished from a legal right to settle certain questions as they please, the smaller states being obliged to acquiesce in their decisions.

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In the *Principles* he says that an examination of modern international history points "to a primacy on the part of the foremost Powers of the civilized world," and in the *Society of Nations* he speaks of "the fanatics of state equality, the publicists who would rather see right and justice assassinated in the international forum than secured by according legal recognition to the differences in power and influence which exist among the states of the civilized world." It may be permissible to express doubt whether the little states at the recent Peace Conference at Paris were sufficiently impressed with the wisdom and justice of the principal Allied and Associated Powers as to recognize their primacy and to place their destinies in the hands of their representatives. "Power or weakness does not in this respect produce any difference. A dwarf is as much a man as a giant; a small republic is as much a sovereign state as the most powerful kingdom." It is believed that the correct doctrine was laid down in this extract from Vattel, whose day as a publicist is not yet run.

The last of the *Essays* to be considered is that devoted to the "Evolution of Peace," a subject which lay near his heart, which directed if it did not control his thought, and which colors his writings when they are not specifically devoted to the means of its realization. The greatest forces in modern life he stated in this remarkable essay to be "Commerce, Democracy and Christianity," and he declared them to be "ranged together on the side of peace." These ideas he expressed a little more at length yet still briefly as follows:

> Commerce flourishes most where there is the most perfect security; and the participation of the people in the business of government puts the power of vetoing war into the hands of those who suffer most by it. Thus an incidental effect of the extension of commerce and the growth of democracy has been to strengthen the pacific sentiments of civilized men. But in addition to these forces the main object of which is not peace, but in the first case the production of wealth, and in the second the increase of political liberty, there is also a potent cause which operates directly and immediately to restrain the warlike passions of human nature. I refer to the application of Christian morality to international transactions.

Appealing to history, he traces the steps by which our ancestors renounced private warfare, for he was of the opinion—and rightly—that what smaller groups had done, the larger groups which we call States could do:

> Looking back on the record of human progress, we can see that the passions of early man were so strong, and his reason so weak, that nothing but the wild

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> justice of revenge would satisfy him. We trace the gradual rise of state authority, as organization proved to be a mighty power in the struggle for existence. We observe how that authority first sought to regulate the use of force in private feuds, and then provided an alternative in the tribunals which it established and armed with coercive power. The next step shows us the survival of the fittest in the increase of the authority of the courts of law, and the decay of private war. At last civilisation banishes the vendetta altogether, and civilised man regards it as a mark of barbarism, when he observes it in less advanced communities.

Turning to public war, he says:

> Just as in the first stage of the history of private war the passions of the injured individual were the measure of the severity of the punishment, so in the corresponding stage of the history of public war the passions of the conquering tribe are the measure of the atrocities they inflict upon the vanquished.

The analogy however does not stop here:

> In the second stage the resemblance between the history of public and private war is as complete as in the first. . . . In the accounts of international struggles we trace the gradual growth of a body of customary rules, which curb the ferocity of combatants, and introduce mercy and good faith into a sphere of conduct from which they had before been absent. The tacit consent of civilised states takes the place of the public opinion of the community.

In like manner nations have resorted to arbitration and have provided temporary tribunals, just as in Dr. Lawrence's third stage "the state provided tribunals to which injured persons could resort for justice, instead of endeavouring to redress their own wrongs," and in this remarkable little essay he felt and stated that the nations had entered upon the fourth state, for he notes that "we have begun to regard international conflicts as barbarous." Thirty-four years later, recurring to this phase of the subject, he said:

> For some time past we have lived under an international order corresponding roughly to the internal order which subsisted for centuries within the older State communities. Courts were gradually established to try disputes between individuals and inflict punishment for crime, while the old right of private vengeance was not at first absolutely abolished, but allowed only under strict regulations. Similarly nations have had their Arbitral Tribunals, and have resorted to them with increasing frequency; but they have not yet given up the right of making war at their own will and pleasure, though in waging it they have accepted more or less completely certain restraints which are embodied in what we call the laws of war. The Society of Nations is now in the same condition as the Society of Individuals was in England in the time of Alfred the Great, who provided in his Dooms that the kindred of a murdered man

should wait for seven days before they attempted to slay the murderer, and if he consented within that time to make the money compensation which was the legal satisfaction for his crime, he was not to be attacked at all. In other words, it is just beginning to emerge from barbarism. But as individuals were in time completely converted to orderly ways, and consented to laws which made penal that resort to the blood feud which was once the proud privilege of every freeman, so it may come to pass that states shall soon agree to put under a ban as enemies of the common weal those of their number who resort to war instead of to international Courts of Arbitration or Committees of Conciliation. There is nothing utopian in the suggestion. If acted on, it would but carry one step further a process of evolution which has been worked out already in its earlier stages in close resemblance to the historical development of civilised society within progressive states.

And Dr. Lawrence thus stated his final conclusions in the *Society of Nations,* written in the last year of the war, the preface of which is dated six weeks before the armistice with Germany:

We have now seen that there are four needs, the satisfaction of which civilised mankind should insist upon in any scheme for the creation of a new and better international order whether by means of a League of Nations or in some other way. They are first the provision of Arbitral Courts to deal with cases susceptible of judicial treatment; secondly, the establishment of Conciliation Committees for the settlement of cases not capable of legal adjustment; thirdly, the organisation of an international force to be used in the last resort for the purpose of compelling recalcitrant states to submit to the decisions of these Tribunals and Committees, and fourthly, the proportional and simultaneous disarmament of all civilised powers, saving only the forces necessary to safeguard the social fabric. The first of these can be satisfied by carrying a little further the plans already formulated and in part put into working order by The Hague Conferences of 1899 and 1907. The second could be met by the drastic reform and vigorous development of the system of the Concert of Europe and the World-Concert which has had a rudimentary and precarious existence for several generations. In dealing with the third we may obtain valuable hints from the few occasions when an international force was used to bring pressure to bear on a state which defied the Concert of Europe. As to the fourth there are no precedents; but proposals pointing to partial disarmament have been made by responsible rulers on several occasions, and as late as 1907 the Second Hague Conference passed unanimously a resolution to the effect that the serious examination by the powers of the question of the restriction of military charges was eminently desirable. All these are directly concerned with the organisation and work of the League.

But in addition it will be necessary to make provision for the revision of its activities from time to time, and also for the improvement and extension of the International Law under which it must live and which its Courts will have to administer. For this something in the nature of a Legislative Assembly will be required; and the nations already possess the germ of one in the Hague

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Conference. Many reforms are needed both in its constitution and in its procedure. But it has not to be created. There it stands, ready for adjustment to the needs of the new epoch.

It is evident that in the course of his busy life of three score years and ten, Dr. Lawrence published many well-known and valuable contributions to international law, of which he was an acknowledged master, although by profession he was a clergyman of the Established Church of England,—a fact which militated against his preferment, inasmuch as some churchmen of influence were inclined to consider him as merely an international lawyer and some laymen of influence to regard him as primarily a churchman. His language was at times calculated to offend both classes, as when, for example, he called the writer's attention to a room in a deanery in England in which "His Majesty George the Third was first graciously pleased to go mad."

JAMES BROWN SCOTT.

PROFESSOR OPPENHEIM

The death of Professor Oppenheim, Whewell Professor of International Law at Cambridge University, occurred after a brief illness on October 7, 1919.

His eminence as a teacher, scholar and writer in international law is such as to call for mention in this JOURNAL of his services and achievements.

Lassa Francis Lawrence Oppenheim was born March 30, 1858, being a son of Aaron Oppenheim, of Frankfort-on-Main. He was educated in the local lycée and at the universities of Göttingen, Heidelberg, Berlin and Leipsig. After serving as lecturer and extraordinary professor at Freiberg and professor at Basle, and publishing several legal works in both Germany and Switzerland, he removed from Basle to London, and in 1905 became lecturer on international law in the London School of Economics. Abandoning all other branches, he devoted himself to a profound and exclusive study of the literature of international law in many languages.

He produced the first volume of his comprehensive "International Law" as to Peace in 1905. A year later this was followed by his second volume as to "War and Neutrality." Both were published by Longmans, Green and Company.