

A NEW AMERICAN NEUTRALITY

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*Old thoughts need not be therefore here,
O brother man, nor yet the new.
Ah, still awhile the old thought retain,
And yet consider it again.*

CLOUGH.

AS the shadow of the Italo-Ethiopian dispute fell across America, the old fear of being drawn into a European war swept the United States. League protagonists hoped the United States would actively co-operate against Italy as it did against Japan, but experience during the Sino-Japanese dispute had apparently convinced Congress of the League's inability to prevent war. Moreover, East Africa was more remote than Manchuria from American interests. Accordingly, while League countries hurried their diplomats to Geneva, Congress prepared not to prevent the war, but to prevent it from involving the United States. The method adopted was a revision of the traditional American policy of neutrality.

Neutrality, although called by a term highly technical and controversial in international law, has a relatively simple purpose. This is twofold: in the first place, to isolate the contest, and secondly, to permit non-participating states to carry on normal relations with both sides, subject to the right of either belligerent to prevent by lawful means succour from reaching the other. While neutral states must neither help nor hinder either belligerent, they are not required to prevent their citizens from carrying on trade with either side. On the other hand, they must acquiesce in lawful interference with this trade by either belligerent. This is particularly important in naval war, because of the belligerent rights of blockade and contraband. Contraband, which refers in general to goods destined for war purposes, has been a particularly controversial subject, since it is obviously the interest of belligerents to extend the term as widely as possible, and of neutrals to restrict it as narrowly as possible.

The important rôle played by the United States in the development of the modern concept of neutrality has been due to fear of being entangled in foreign wars, and a desire to maintain trade with both belligerents. The United States provided the first clear definition of the obligations of neutrals in its Neutrality Act of

1794. American statesmen of the day believed, or at least hoped, that a strict observance of obligations would prevent their country from being drawn into the war then raging against Revolutionary France. But the Act failed of its purpose. Interference by the British navy with American shipping inflamed American opinion and became the issue, though not perhaps the real cause, of the War of 1812. In the American Civil War the rôles were reversed, the United States interfering with what Great Britain conceived to be her rights as a neutral trader. The early years of the Great War found the situation during the Napoleonic wars repeated, American trade being subject to drastic interference by both belligerents. A more ruthless interference by Germany eventually consolidated American opinion towards participating on the Allied side. Recent investigations by the American Senate have disclosed, however, the part played by loans of American bankers to Allied Powers, which made possible the enormous expansion in trade with Allied countries before the United States entered the war, and suspicion has arisen of undue influence by high finance in drawing the United States into the contest.

The present attempt of the United States to keep out of possible European wars continues the policy begun in 1794 and repeated in 1914. Americans, however, are thoroughly aware of the ultimate failure of neutrality on these two historic occasions. The present attempt seeks to remedy the apparent previous defects of neutrality. During the early part of 1935 some fifteen bills were introduced into Congress for this purpose. None, however, proved satisfactory, and a temporary bill, to last until February, 1936, was finally adopted as a compromise between different groups in Congress and between Congress and the President. The first section provides that on the outbreak of war between any two or more foreign states, the President shall proclaim the fact, and it shall thenceforth, so long as the war continues, be unlawful to export arms or implements of war as defined by the President¹ from the jurisdiction of the United States for the use of any belligerent state. Should other states subsequently enter the war, the President may extend the embargo to them. Violation of this law entailed a maximum penalty of \$10,000 or five years in prison, or both, and forfeiture of the vehicle and cargo to the Secretary of War. The fourth section permitted the Government to require suspected ships to deposit a bond that they would not deliver their cargoes to belligerents, and empowered the President to detain for the duration of the war any

1. He is morally bound by the pledge given the Senate by Senator Pittman that the term "implements of war" would be defined in accordance with the traditional use of that term. This would mean that the President cannot bring all materials of war within the term.

foreign or domestic vessel which has previously cleared a United States port for such a purpose. The fifth section empowered him to forbid the entrance of belligerent submarines into the territorial waters of the United States, and the sixth section gives him the discretionary power to warn American citizens that they travel on belligerent ships at their own risk.

The Act was immediately put into force when the Italians invaded Abyssinia. On October 5, the President proclaimed a state of war between Italy and Ethiopia, drew up a list of the goods under embargo, and warned the American public that any who traded with the belligerents did so at their own risk. In a simultaneous but separate proclamation, he warned citizens that henceforth they travelled on belligerent ships at their own risk. A month later, Secretary Hull officially noticed the increase in the export to belligerents of certain essential but unforbidden materials of war such as oil, and labelled this as contrary to the spirit of the recent legislation. The Government, through such governmental agencies as the Export-Import Bank and the Shipping Board Bureau, apparently exercised "moral" pressure to restrict trade with Italy in non-forbidden war materials to the "normal level". As a result, a number of oil companies stated they would ship no oil to Italy, and the Ford Motor Company refused to sell to Italy 800 trucks which she had ordered. But in spite of these instances of co-operation, moral pressure did not succeed. Exports to Italian Africa jumped from approximately \$25,000 for the year 1934 to \$367,000 for the month of October, 1935, and to \$583,000 for November. The Government had not sufficient power to check this.

When Congress re-convened in January, the President in his Message to Congress requested the amendment of the neutrality measure. An Administration Bill which was early introduced included the prohibition of loans and credits to belligerent Governments, and gave the President discretionary power to limit exports to belligerents to normal levels in war materials and to proclaim that all trading with belligerents was at the trader's own risk. But the bill failed to satisfy the various schools of thought in the Senate Foreign Relations Committee. There were those who would probably have risked going to war rather than co-operate with any foreign association such as the League; some were ready to keep out of war at almost any price; others thought that the freedom of the seas could be maintained without fighting; some considered any limitation of trading rights to be incompatible with the dignity of a sovereign nation; others thought that the neutrality legislation

should be sufficiently elastic to permit the United States to exercise some influence in world affairs; and still others advocated joining the League of Nations. No effective bill could satisfy all these groups. Accordingly it was decided, though not without strong opposition, merely to extend the August Act to May 1, 1937, enlarging it so as to prohibit the granting of loans or credits to belligerents, and to exempt from the embargo any South American country at war with a non-American state. An important slip in the August Act was amended. The new Act, instead of permitting the President to extend the embargo to "subsequent belligerents", requires him to do so.

EFFECT ON THE CONCEPT OF NEUTRALITY

The legislation now in force changes the American neutrality laws only in that it prohibits American citizens from enjoying their neutral rights to sell arms and implements of war or to lend to either belligerent, and in that it gives the President discretionary power to prohibit the entry of belligerent submarines into the territorial waters of the United States. As we shall see later, these changes only indirectly affect the old problem of belligerent *versus* neutral rights at sea.

There are some who deny that this legislation is neutrality legislation, and their denial is not altogether without point. Professor P. M. Brown,² for example, argues that it is abundantly clear, in spite of all official disclaimers, that the Government is taking sides against Italy, and thereby exposing the country to claims of unneutrality. But he goes further:

If the policy advocated and applied by the present Administration towards Italy be qualified as neutrality, it is necessary obviously to revise all previous notions of neutrality. It would rather appear to be an idealistic form of international opportunism which might better be qualified as "malevolent neutrality".

The American policy, he suggests, is like that of France which offered generous port facilities to both sides during the Russo-Japanese War. Professor Brown's example is, however, not very happy, since the offer of port facilities even to both sides is clearly public assistance to a belligerent, and as such unneutral service. It is just as easy to argue that the United States would be acting "malevolently", although not illegally, towards Ethiopia were she to leave trade unrestricted, as it is to argue that she is acting "male-

². See his editorial on "Malevolent Neutrality," in the *American Journal of International Law*, January 1936.

volently" to Italy by checking supplies to both sides. As long as one belligerent is stronger at sea than the other, one belligerent must suffer more than the other, whichever policy the United States pursues. And surely a neutral is not compelled by the international law to sell goods to belligerents. Professor Brown's criticism gains some weight in that the present legislation is temporary in form. But the reason for the time limit in the Act apparently is that few, if any, found it satisfactory as a permanent measure. Yet the expectation seems to be general that by May, 1937, circumstances will be more favourable to a permanent satisfactory change in neutrality laws.

THE NEW NEUTRALITY AND "FREEDOM OF THE SEAS"

Every naval war has re-opened afresh the conflict of interests between neutrals and belligerents. This was especially so in the Great War, because of new methods of warfare introduced by new inventions such as the submarine, and because the war quickly became a war of economic exhaustion rather than a contest between professional armies and navies. At an early date the Allies closed off large areas of the high seas by mines or other devices to combat the menace of submarines, and extended the term "contraband" to include virtually all neutral trade going to enemy countries, either directly or through the territory of their neutral neighbours. Germany, in an effort to exploit the advantage of the submarine to the full, resorted to ruthless sinking of merchant shipping, neutral as well as Allied. American protests against these new interferences with neutral trade were summed up in the term "Freedom of the Seas". At the close of the war President Wilson endeavoured to secure recognition of the "Freedom of the Seas" by Great Britain and other naval Powers as part of the peace settlement. But the British Government was adamant. Through control of the seas the German war lords had been brought to their knees, as had Napoleon a century earlier. Great Britain was not prepared to give hostages to fortune by limiting her freedom of action in future naval wars by a wide definition of neutral rights of trade such as President Wilson encouraged in his doctrine of "Freedom of the Seas". Neutral rights at sea remained therefore undefined after the World War, just as they had remained after the Napoleonic wars.

It is possible that President Wilson thought the issue settled by the creation of the new League of Nations. Since the Covenant contemplated collective action, at least in an economic sense, against an aggressor state by all loyal members of the League, it

seemed virtually to rule out the old concept of neutrality, and thus to remove the possibility of a dispute between neutrals and belligerents over trading rights at sea. But the refusal of the United States to enter the League left the old problem unsolved. For Great Britain the issue became potentially more dangerous because of the rise of the United States as virtually a naval equal. The issue lay in the background at the various post-War Naval Conferences, and it was one of the contingencies which Great Britain had to take into account in her attitude towards the League of Nations. There was always the possibility that, should Sanctions be required against an aggressor, naval action might be needed for their enforcement, and Great Britain, as the leading naval member of the League, might, in carrying out League policy, come into difficulties with the United States as an exponent of the old neutrality. For a time the Kellogg-Briand Pact, which ruled out war as an instrument of national policy, seemed to promise an indirect solution. It was argued that the United States could not look with equanimity upon a breach of a treaty promoted by the United States, that it could not decently object to League action against a delinquent under the Pact, and that it might indeed co-operate actively. During the Sino-Japanese dispute in Manchuria this prediction seemed to be fulfilled; the United States in fact co-operated, though not very effectively, with the League Council. But the issue was obviously raised again in the application of Sanctions against Italy.

The present legislation promises something towards a solution of the problem of freedom of the seas. The Act forbids American citizens to export arms and implements of war to belligerents, but these in any case are usually regarded as contraband. The prohibition may, however, lessen the risk of belligerents sinking American ships, since there cannot be the excuse that they are carrying munitions as there was in the case, say, of the *Lusitania*. The prohibition of loans or credit to belligerents may reduce the risk even more, since trade with any belligerent would obviously be reduced, and perhaps actually brought to a standstill at an early date, if it could buy only for cash.

On the other hand, there is no indication that the United States intends to renounce traditional neutral rights. Indeed the Administration Bill which failed to pass the Senate contained a clause, inserted perhaps for Senatorial consumption but none the less significant, to the effect that the United States reserved all rights as a neutral as of 1914. Again Senator Pittman, Chairman of the Senate Foreign Relations Committee, said on February 10th:

The United States does not intend to surrender the freedom of the seas. . . . Foreign Governments may be warned that any

restrictions which the United States may see fit to place on her citizens in time of war will not constitute any warrant for illegal treatment of our citizens by foreign Governments, nor deprive our Government of the right to take any action it sees fit voluntarily on behalf of our citizens.

When we recall the recent addition to the United States fighting forces, the attitude of one or two groups in the Senate whom we have noticed, and the preference of the New York Chamber of Commerce for bigger armaments rather than meek neutrality, we are not justified in assuming that the United States has renounced the "Freedom of the Seas". The ghosts of 1914 still remain, though in perhaps more shadowy form, to trouble Anglo-American relations in any future naval war in which Great Britain happens to be involved.

The new legislation promises to affect Great Britain and the British Commonwealth in even a more vital way. Without the United States as a reserve source of supplies in 1914, the outcome of the war would probably have been profoundly different. While in any future war in which Great Britain is involved the United States will still remain technically open for the purchase of supplies other than munitions and instruments of war, in fact if those supplies can be purchased for cash, the time during which supplies will be obtainable promises only to be indeed short. In the Great War, despite the enormous sale of British investments in the United States, the "cash period" had come to an end long before the close of 1915. Borrowing in the United States alone made possible the continued flow of supplies across the Atlantic. With no chance of borrowing or obtaining credit in the United States in a future war, Great Britain must depend much more on her own resources for supplies. Nor in the present state of the world's finances does there appear to be any alternative source for credit in any sense comparable to the United States. All this applies to Canada as well as to Great Britain. If we could raise no public or private loans, and could not obtain credit south of the border in the event of war, we would obviously be seriously handicapped in putting forth our full effort. Nor is there much hope that we could borrow elsewhere; London, our principal other possibility, is likely to be inaccessible.

EFFECTS ON THE COLLECTIVE SYSTEM

The effects of the new legislation on the League system for the prevention of war are still rather doubtful, but certain tendencies are clear. The temporary Act of August, 1935, gave the President

discretionary authority to extend the embargo to states becoming involved in war after the first outbreak. Since he was not required to extend an embargo, he had by inference discretion to allow the sale of arms and implements of war, and the granting of loans or credit to League states which were co-operating against an aggressor, except those involved on the immediate outbreak of war. This discretionary authority, however, was considered a mistake by Congress; the legislation of February makes the extension of the embargo mandatory. The result then is that the Administration is hamstrung as far as active co-operation with League members against an aggressor is concerned. The Administration must treat all states at war alike, whether aggressors or loyal members of the Covenant.

Again, the Act gives the President no authority to cut off trade with aggressors except in arms, munitions and implements of war. Raw materials, for example, are not included. It is significant that President Roosevelt in his Message to Congress in January asked for authority to restrict trade with belligerents to its normal peacetime level, but this failed of adoption. The net result is to leave trade with belligerents in the same position as before the passage of the Act, except (1) as respects the sale of munitions and implements of war, and (2) as respects the granting of loans or credits.

The difficulties of the League are illustrated by the problem of oil Sanctions. The Committee of the League reported that oil Sanctions would be effective if neutral countries co-operated by joining in applying the Sanction, or restricted their trade to normal peacetime quantities. It was aware that the President of the United States was attempting to co-operate by exerting moral, and for a time financial, pressure on oil exporters. But it noticed that exports of oil from the United States to Italy had jumped from 19,000 tons in December, 1934, to over 1,000,000 tons in December, 1935.

On balance, it would thus seem that the new legislation promises to be more of a hindrance than a help in the establishment of collective security.

EFFICIENCY IN AVOIDING WAR

How far does the new legislation promise to fulfil its main purpose, that is, to keep the United States out of the next war? Mr. Charles Warren,³ Assistant Attorney-General during 1914-17, who is probably as familiar as anyone with the difficulties confronting

3. See his article in *Foreign Affairs*, April, 1934.

the United States, is sceptical of the legislation. Basing his judgment on the experience of 1914 to 1917, he argues that there are at least twelve subjects that call for legislation if neutrality legislation is to have half a chance. We have not the space here to follow him in detail. Suffice it to say that the present Act embraces only half his subjects, that it does not include war-time control of radio and wireless, prohibition of belligerent armed commercial vessels entering United States ports, prohibition of the entrance of ships of any belligerent nation which allows the American flag to be flown for purposes of deception, prohibition of the assembly and despatch abroad of reservists in belligerent armies in the United States, and requirement that belligerent merchant ships in United States ports at the outbreak of war leave within a certain time. Further, even his list does not include a restriction to normal levels of the exportation of war-materials other than munitions. But even if all these subjects were covered in the new legislation, it is doubtful whether neutrality would be completely guaranteed. A great deal would depend on the attitude of the people, and especially on the attitude of the Administration, during war. To avoid war the American people must be prepared to suppress sympathy for either belligerent, they must be willing to suffer indignities and perhaps insults to their country at the hands of either or both belligerents, and to watch their trade dwindle because of interference by belligerents at sea. We have no reason to assume they will accept such indignities and sacrifices, or that they will remain cool enough to make nice judgments. No legislation can ensure that they will.

An intelligent and cool Administration might possibly surmount these and other difficulties; but let us consider the cost. This, of course, would probably always be much less than the cost of being involved. It seems to depend largely on one factor:—whether or not other sources of credit would be available for belligerents. Self-sufficient countries in war-time are rare, and it is not likely that both sides would be self-sufficient. Sooner or later one belligerent would be forced to seek external financial help. Even a country as rich in American securities and credits as Great Britain in 1914 could pay cash for little more than a year. It is not unlikely that, in the type of war the United States fears, her trade with one side would be cut off. Probably she could make up this loss by increasing her trade with the accessible belligerent,—that is, until the "cash period" ends. Then, as in 1915, the United States would be confronted by the choice of lending or facing an acute depression for the rest of the war. In 1915 she decided to lend; but she has since learned the difficulties involved in collecting war debts.

Should she, in similar circumstances, decide to lend again, she must be prepared to forget about the loans after they are made. This would be the price paid for avoiding depression. But the present legislation prohibits such loans; the United States has decided in advance to face depression rather than run the risk of propaganda by investors leading her into war. We may note here that had she made a similar decision in 1915, the war would probably have come to an early close, and quite probably with utterly different results, since Great Britain and her allies had no other available source of credit.

Thus we see that there are many uncertainties along the road which Congress has chosen to follow. There is, first, the uncertainty that the United States will be able to avoid all future wars, and secondly, the uncertainty of the cost involved in her avoidance. It is, of course, not unlikely that, as time goes on, other nations would learn the folly in lending to belligerents; but this hindrance to long wars might well be counterbalanced by the increasing self-sufficiency of possible belligerents. It is at least arguable that the United States would find it cheaper in the long run to take some positive action towards the prevention of war, such as co-operating with the League, or even joining it. But the road to Geneva is too dangerous politically for any party to propose, if it wishes to remain in or to get into office.

The value of the neutrality legislation as it stands is doubtful. It was inspired by an earnest desire to avoid war, but it is by no means clear that it will fulfil this purpose. It appears to have increased rather than diminished the uncertainty existing between Great Britain and the United States by leaving open the question of the freedom of the seas, and it appears to have weakened what remains of the collective system by refusing to recognize any distinction between aggressor states and states co-operating to preserve law and order.

THE WILD CHERRY TREES

E. C. WRIGHT

ONE of the neighbours came to look around the place when we were getting the grounds in order the first spring.

"Now when you get those old cherry trees chopped down," he began.

We stared at him aghast. Chop down those cherry trees? Why we had bought an extra piece of land in order to have room for the house without disturbing any of the cherry trees! Chop down the cherry trees? We had given strict orders to the builder that those cherry trees were to be preserved, and what hadn't we said to the carpenter who nailed a plank to one tree! Chop down those cherry trees? We had pointed out the curving of the clumps of cherry trees as his guide one day when we discovered the lawn-maker preparing to achieve a rectangular plot regardless of contours, cherry trees and owner's instructions. Chop down those cherry trees? We had warned the man who came to plough the garden to go around the cherry trees, and lest he fail to observe some of the smaller ones, we had lifted them to a place of safety.

We get such pleasure from those wild cherry trees. One tall tree of countless years and many intertwining trunks, and several groups of smaller trees, grow along the slope to the west of the house; one good-sized tree (which is going to succumb as a result of the carpenter's attentions) and a line of young ones stand to the south of the house, where they serve as a screen for the orchard sitting-room. In spring the cherry blossoms appear before the apple blossoms and are at their best for Convocation visitors. In summer the little copses offer a shady retreat for an over-sunned gardener, and a cool soil for chionodoxia, scillas and lily of the valley. When the frosts have robbed the garden of its bloom, then the wild cherries delight the eye with autumn splendour. Each tree has its own time for yellow, gold, red on gold, crimson, bronze, a progression of colours which lends brightness and interest to many a dull autumn day. Even in winter the cherry trees have beauty, especially after rain, when their trunks gleam richly.

The first spring we were in the new house, we were very diligently pruning our fruit trees. Away back in March we began on the apple trees, and by April we had reached the cherry trees. There is a very fine view of the valley from the tallest cherry tree, and we spent several days up there. From that vantage point one morning we were able to turn away three agents who wanted to sell us things. The next day there arrived a robin. He perched on the other large tree and made remarks. His language was quite unprintable. We have not been so sworn at since one day in the New Brunswick woods, when a squirrel objected to our sitting on a fallen tree, and from first one side and then the other of a nearby tree trunk cursed us for twenty minutes without intermission. The robin did pause occasionally, but he was equally vituperative. Somebody advanced the theory that he was a real estate agent who had intended selling building sites in that largest cherry tree. But really, we were removing dead branches only, and they wouldn't have done for nests any way.

We were more popular with the robins in July, in fact we were too popular. Before we had any suspicion that the cherries were ripe, we noticed the robins sampling them. For days anyone's approach to the cherry trees disturbed five, or six, or a dozen invaders. They ate noisily too, fluttering and pulling and scolding at the cherries. The noise wouldn't have mattered so much if the robins hadn't insisted on breakfasting on cherries and on having that meal at 3.30 a.m. Neither did we appreciate the messy lumps of pits they dropped all over the new flagstone walk. We let them feast on, for we hoped it was good policy not to discourage the visits of the robins. We hoped they would see our garden and the opportunities it offered for enterprising birds who wished a carnivorous diet. Next year we are going to put the cabbages right next the cherry trees.

It was the robins who were largely responsible for our not realizing the economic possibilities of the cherry trees. We had most certainly expected to have cherry jelly, but not one cherry was left us. We had thought of having those cherry trees grafted, and made a trip to the Experimental Farm to talk with the expert on such matters. He wasn't very encouraging: he said it was hardly worth while to try to grow large luscious cherries for the birds and the small boys; but if we were determined to try, and could find a man to do the grafting, he would send us the scions next week, which would be the time for grafting. Next week came, and the men came to take off the double windows, and the men came to put in the lawn, and the carpenter came to fit the new

screens, and the painters came to give the verandah a second coat, and somehow our firm resolve weakened, and we never did find the men to do the grafting.

Wild cherry trees they remain, and probably shall till the end of their days, or of ours. Future owners may be more practical, but we like their blossoms in early spring, their shade in summer, their colour in autumn, and the sheen of their bark after a winter storm.