Denver Law Review

Volume 5 | Issue 1 Article 5

January 1928

Address by Dr. Nicholas Murray Butler

Nicholas Murrray Butler

Address by Dr. Nicholas Murray Butler

Address By Dr. Nicholas Murray Butler

Delivered at Cosmopolitan Hotel, Denver, Colorado,
Monday, December 12th, 1927.

Mr. President and Gentlemen:

YOU will not deny me the privilege of expressing my most grateful appreciation for your very cordial and kindly reception, and also expressing my own great satisfaction at finding myself back, after an interval, in Colorado.

My experience with these Western states is that I was generally there before most of those who now adorn them. When I first came to Colorado it was only five years old, and from that time to this I delight in its attractions and its beauty. My satisfaction in the friendships, warm and close and numerous, have grown with the years, and the compliment and the honor of being invited by the Institute of Social Studies of the University of Denver to come and speak to you on this momentous topic is one for which I am most grateful.

Let me waste no words in getting to the heart of the subject. The proposal to substitute methods of conciliation, arbitration and judicial process for war is, so far as the United States is concerned, in very much the same situation as the weather in Mark Twain's famous remarks. You remember that Mark Twain said of the weather in Connecticut that everybody complained about it but that nobody ever did anything about it. (Laughter) That is the situation in respect to ourselves at the present time.

From the foundation of our government down to 1916, from the time of Washington and Jefferson to that of Wilson, an unbroken record of leadership in all that related to the strengthening of international relations, the building up of protected international trade and the establishment of international peace, we have become as a government through sheer paralysis one of the chief obstacles to this movement that now exists in the world. It is not our conscious fault, for no American, whatever his party or his faith, could have wished it so; but it is the result of conditions that have come upon us, and it is time for us to begin to remedy the situation.

Our foreign relations began on a very high plane. That was partly because of the character of the men who conducted them, partly because of the temper of the young nation. You may imagine that when Benjamin Franklin and John Adams and Thomas Jefferson were drafting treaties and guiding foreign policy that a very high standard of achievement was reached. We have never written treaties on a higher plane, if so high, as our very first treaties with France, with Prussia and with Great Britain. If you will take pains to go back and read today our first treaty ever made with a foreign people, the Treaty of Amity and Commerce with France in 1778, followed by the treaty with Prussia in 1782, or the treaty which established peace at the end of the war of the Revolution with Great Britain in 1782 also, you will find them cast in a mold, with a breadth of view and vision and genius and temper, and sympathy and understanding that has never been surpassed in our later history. And in our dealings with the nations to the south of us we reached high water mark in the treaty which ended the war of 1846 with Mexico. The treaty of Guadaloupe Hidalgo is another treaty which might have been written 50 years hence in so far as it rests upon the soundest moral, political and

social principles for the establishment and control of international order.

We have come to a stop. This went on from 1778 to 1916. Now we are in a situation which is the unhappy result of partisan difference, of personal dispute and ambition, neither of which should ever be permitted to disturb the course of international policy. Surely, gentlemen, our own relations with the other great peoples of the world ought not to be the subject of partisan difference or personal struggle or ambition. If in August, 1919, President Wilson had not taken so cordial a dislike to Senator Lodge and if Senator Lodge had not so cordially hated President Wilson, an agreement could have been reached for the continuance of our policy of leadership, and the condition of the world today might have been very, very different.

But it was not to be. Men fell apart; they made groups; they became partisans of a point of view or of a person. From that day to this we have been in effect paralyzed and as a government incompetent to go forward, simply dealing with the business of the day or the week as it comes to the desk of the Department of State or of the Committee on Foreign Relations of the Senate. We are in such a position that the Executive dare not take too much initiative lest the government appear to be committed to something which the Senate will not approve. The Senate does not agree with the Executive; does not even agree with itself. In consequence we are committed and have been committed to years of useless, futile rhetoric and talk with nothing being done.

What are we going to do about it? There is an earnest group who say to us today, Let us outlaw war; let us pass a law declaring war to be outlawed. Suppose we do; and suppose war refused to be outlawed. Who is going to arrest it and bring it to the examining magistrate? Who is going to commit it for trial? Who is going to indict it? Who is going to constitute the jury, and the judge? And if war is convicted, who is going to be the sheriff to inflict the punishment; and where is the penitentiary into which it is to be confined?

No, gentlemen, words have no such power as that. You cannot outlaw war by passing resolutions against it. The deep, lasting emotions, good, bad or indifferent, of human nature and of the human heart cannot be dealt with in any such fashion as that. That proposal is mere rhetoric, and will get absolutely nowhere unless perhaps it be placed in a way of adoption of propositions that are immediate and practical and susceptible of application to the affairs and the relations of tomorrow.

The situation is that the nations of the earth, except the United States and Mexico and Russia have become members of the League of Nations, with its seat at Geneva. Our people and our government have decided not to do so, and at the moment that is not a practical question for debate.

Indeed there are very many earnest workers in the cause of peace who believe that the circumstances being as they are it is just as well that our government is not a member of the League, although I think they all believe that we should cooperate with it whenever practical; that we should hold up its hands; that we should strengthen its authority, and that we should be very happy to applaud its steadily growing measure of success.

You must remember, gentlemen, that Europe has come a long, long way since 1914. If you could go to Geneva and see what the Secretariat of the League has to do in matters that have no relation whatever to politics you would see what a vast change has come over the administra-

tion of a common business. It is no longer possible for a plague breaking out in some remote part of the world to pass unimpeded from nation to nation and from people to people carrying its destruction and death.

At Singapore there is a reporting station where every case of one of those terrible scourges, whether in Australia, in the South Seas, in the East Indies, China, Japan, India, or where you will, is immediately reported, so that the entire health force may be mobilized to combat it and stamp it out.

Then think what is being done for the backward and dependent peoples merely by the invention of the system of mandates. No longer can a power, however important, however large, however rich, exploit a poor and backward people, rich in raw material, lying off at a distance, unseen and unreported upon.

I have myself been in Geneva and have seen the Under Secretary for Colonial affairs of the British government standing at the foot of a table and answer questions from representatives of a dozen European countries as to how in a particular mandate in Africa this problem was solved, how this matter was attended to, how this difficulty was surmounted. That was a very splendid and a very inspiring sight.

We owe the League the fullest share of cooperation in all these great humanitarian and social undertakings, so numerous and complex that I have not time to enter upon their enumeration, much less their description.

There are three men to whom this generation should lift its hat in universal honor; the three men who taking their political lives in their hands brought about the agreements of Locarno, and so far as public policy can do it have expelled war from central and western Europe, which has been one of its chief seats for nearly 2,000 years. Each of those men has his nationalists and his superpatriots at home to combat with. There is no path of roses for the French Minister of Foreign Affairs or the German Minister of Foreign Affairs or the British Secretary of Foreign Affairs who starts to build closer and better relations with his neighbors. They too have their critics, their opponents and their obstacles.

But I say to you that this generation of ours, particularly in America, should raise its hat in grateful honor to Briand and Stresemann and Austen Chamberlain. (Applause)

Let me take time to show you how by their personal relations they made many things possible — because foreign relations are half psychological and only half diplomacy. Let me give you a story to illustrate how the relations of these gentlemen have become intimate and cordial; and I can vouch for its accuracy.

In March, 1926, the question had come up of admitting Germany to the League of Nations. Germany wishes to have a seat on the Council of the League. That could only be brought about by unanimous vote. Brazil objected. The whole world was on tiptoe to see what would be done. Would a Latin republic, thousands of miles away, have it in its power to prevent the increasing relationship of friendship and entente between France and Germany? Briand and Stresemann were in the back room of a hotel, taking into careful consideration the question of what should be done on the morrow. Eighty or a hundred newspaper reporters, representing the journals of the world, were in the outer room waiting. Briand said to Stresemann, "Doctor, I don't see what we can do about it. Brazil has a legal right to object, and she seems to insist upon her legal right." Stresemann

said, "No, it looks as if we had come to a deadlock. This is really dreadful; what can we do?" Well, said Briand, "Let us go to bed and sleep upon it. Perhaps in our dreams something will come to us." "Splendid", said Stresemann, "that is the thing to do next; let us go to bed and sleep on it". So Briand taking Stresemann's arm, with his familiar cigar in his right hand, opened the door and went out to the waiting reporters.

The men came with the keenest anticipation. What would be done—what is going to happen next? Drawing himself up perfectly straight, Stresemann nodding assent, Briand said, "Gentlemen, I wish to say to you that France and Germany are in absolute accord as to the next step to be taken!"

That was sent all over the world, from Chile to Japan, and the world felt the next morning that an immense step had been taken in the establishment of peace—and the curious thing, gentlemen, is that it had—it had.

That was the psychologic situation. Now what are we going to do about all this? What is our relation to it?

For the moment we have lost our moral and our intellectual leadership in the cause which we promoted for 150 years. Were it not for our commanding position economically we should have lost much of our habitual authority. What are we going to do as a government?

At this moment there is opportunity, gentlemen, for a specific act, such as rarely comes to a government or a people, that fits exactly into this picture.

All Europe is anxious upon security and disarmament. They feel security to be a problem in a way which we never have, because hostile armies have been tramping over their territory by and again for a thousand years. They are anxious to disarm; they have largely disarmed. Germany has no army; England has practically none; France has only 45 per cent of what it had in 1914, it has reduced its term of service from three years to one. Smaller nations, excepting the new ones in eastern Europe, are in the same category. But they are all anxious about security. How shall that best be gained?

M. Briand is a great psychologist as well as a great statesman; and you will remember perhaps that on the 6th day of last April, the tenth anniversary of the entry of our government into the great war, he publicly made to our people a proposal by summoning the Associated Press representatives in Paris and reading to them a formal statement, not to the government, but to the American people, that France was ready to join with us in renouncing war as an instrument of public policy.

The congress was not in session. No official answer was made or perhaps could be made. The press of the country spoke in warm commendation; organized bodies of all sorts and kinds applauded this suggestion.

And now Senator Capper of Kansas has given us an effort to make reply in terms so simple, so direct, so convincing that a child can understand, and without in any way running counter to any of our prejudices or traditions, or raising any of those disputed questions which brought us to grief in the summer of 1919.

Senator Capper has introduced into the Senate of the United States a joint resolution declaratory of public policy. This is not a law in the sense of a statute, impinging and binding immediately upon our citizenship; it is a declaration of policy like the Declaration of Independence itself.

And it is simple, short and direct. I see that it is set forth on the paper which has been placed in the hands

of those who are present here today. Let me say a few words about it.

This declaration of policy consists of three parts, "By treaty with France and other like-minded nations formally to renounce war as an instrument of public policy and to adjust and settle its international disputes by mediation, arbitration and conciliation";

"By treaty with France" means the acceptance, open, and public and avowed of M. Briand's invitation.

"Other like-minded nations" means the same thing, we are ready to do with any nation that will take the same position, and I violate no confidence in saying that Great Britain, Germany, and Japan are ready tomorrow to sign the agreement with us if we are ready to make it!

What possible objection can there be to that? We renounce war as an instrument of policy. Senator Capper does not say there will never be any war. That would be foolish. We renounce it as an instrument of policy when we sit down with France and other like-minded nations in a dispute over a tariff; over, if you please, a colony; over any of the things which arise in the daily life of nations. We do not think of war; we do not have it in the back of our heads. We do not have any army or navy policy based upon war with that nation. We are not talking about security and policy in relation to France and other like-minded nations in terms of war.

We like-minded people, civilized on a like plane, have come to a decision where we can settle our differences like honorable gentlemen, face to face; and if the solution is not satisfactory, then by that resort to judicial process which lies at the very basis of our orderly civilization.

All that we ask is that we shall treat France and Great Britain and Germany and Italy and Japan precisely as for 115 years we have treated our neighbor the Dominion of Canada (Applause)

Now, Mr. Chairman, what possible objection can there be to that? I confess my ingenuity was not adequate to suggest any. But two have been suggested, from Washington — which is where I should expect objections to come from. (Laughter)

It is urged that inasmuch as the Congress has the power to declare war, the Congress cannot make such a declaration as this because it would limit its constitutional authority to declare war. (Laughter) Now I submit that argument as simply as I can, in order that you may get its full effect: Because the Congress of the United States has power to declare war, it is constitutionally unable to do anything to promote peace! (Laughter)

Surely the great end of the American people has higher limits than a mere war.

Why, Mr. Chairman, when that was written into the constitution we told three nations that we were not going to go to war. We had already told them. And the very simple sentence that says Congress shall have the power to declare war says that it shall have the power to issue letters of marque and reprisal, that is, to send out privateers to prey on the sea-borne commerce of the world; but do they dare do it? Would they ever dream of doing it? Did not all the civilized powers except ourselves join 70 years ago in the Declaration of Paris whereby privateering was abolished, and did not we ourselves accept that principle at the time of the Spanish war? What becomes of the argument? It is really too silly for words—that because the Congress has the power to declare war it can do nothing of this kind or really of any other kind, to promote peace! May that argument rest in peace! (Laughter)

Then it has been suggested by a legalistically minded person that one Congress cannot bind another Congress. Therefore, if the Seventieth Congress should adopt the Capper resolution the Seventy-first Congress might repeal it. That is important if true, because logically that would affect every statute passed by any legislative body in the land. Why pass any law, or make any declaration, if the next session of the same body can repeal or amend it?

Now, gentlemen, the fact of the matter is this: The Congress of the United States is supposed to represent the American public opinion. If, as I believe it does, American public opinion supports and demands this declaration of policy by this government until American public opinion changes, and when American public opinion changes we will go to war with somebody, and then any of our brethren who are historically minded may rise in their places and ask what we said on the platform and in the press on the 4th of August, 1914, when the German government said the treaty to preserve the neutrality of Belgium was "a scrap of paper". What is sauce for the goose is sauce for the gander; we can treat a treaty as "a scrap of paper" if we will.

But my faith in the American people leads me to a different conclusion. My faith in the American people leads me to believe that if conscientiously and carefully with their eyes open they take this very practical step with respect to nations on the same plane with ourselves which are responsible and mean to keep their words, that our word will be kept, and that it will be a long long time before any war breaks out between these nations, that join in making this declaration of renunciation in 1927. (Applause)

This Capper resolution defines an aggressor nation, and that, Mr. Chairman, is one of the most important steps to be taken in walking the path to peace.

Up to this time there has never been an aggressor nation! Any nation which began war always did it in self defense; it took the initiative because somebody else was going to attack it; and it is a military maxim that the best defense is offense—so all wars have been defensive wars.

They are arguing now in the magazines and the press, and it is perfectly safe prediction they will be arguing a hundred years from now, as to who was responsible for the war of 1914. I do not think they have mentioned the United States yet, but we may be drawn into the controversy as the years pass.

But here is a definition of an aggressor nation which is so simple, so easy to understand and so practical that it tells its own story. No formal declaration but to accept the definition of an aggressor nation as one which having agreed to submit international differences to conciliation, arbitration or judicial sentiment begins hostilities without having done so.

If the nation has agreed to submit its differences or any of them and does not keep its word, but begins an attack on its neighbor without having submitted these differences to those agencies it becomes an aggressor.

Somebody tells us that foreign offices are so clever that they can state the case in such a way as to make it almost impossible to determine whether they had agreed to submit to conciliation, arbitration or judicial settlement or not.

But if a nation has made an all-inclusive committal, well and good. If it has made a committal such as we used to make excluding certain things, well and good. But it is only a question of keeping its word whatever its terms. Having promised, you keep

your word, or become an aggressor nation.

That has been put in the Locarno convention, and you must remember that it is now the law of Europe for all nations west of the Vistula. They have accepted that definition, and we remain, together with Japan, the important powers that are still to declare ourselves satisfied with it.

Now what harm does it do to be an aggressor nation? In the first place, and most important, it would bring down upon such nation the moral opprobrium of the civilized world. Some practical gentlemen think that moral opprobrium does not matter. Mr. Chairman, it is more powerful in this world of ours than any other single force. There is no nation—I care not what—that could break its word and stand up in the face of the public opinion of those advanced nations without being broken with shame and self-contempt and self-humiliation.

It is a long generation since Bismarck used his famous phrase of which we heard so much during the late war. He said, speaking to the Reichstag in about 1878, "In the next war it will be the imponderables that count", not the things you see and weigh and measure, but the imponderables, the judgments of men, the feelings of men, the approval and disapproval of men.

And, Mr. Chairman, if there is any thing more certain than any other it is that the prediction of Bismarck was fulfilled and that the last war was won by the weight of *imponderables.* And they will do it every time in a world like ours.

It is the imponderables that count! Let us see the nation—that is of nations advanced, civilized, cultivated, with grand tradition—that will stand up even before its own public opinion and break their word to the world and become an aggressor nation.

And then Capper has another paragraph.

"By treaty with France and other like-minded nations to declare that the nationals of the contracting governments should not be protected by their governments in giving aid and comfort to an aggressor nation."

That is also covered by Senator Burton's proposed resolution, which is in the form of a statute, which would be an appropriate statute to be adopted following the adoption of the Capper resolution declaring public policy.

What that means is this, that if there is an aggressive war we are not going to be drawn into a position of helping our nationals who through greed for gain want to help the aggressor.

A gentleman said to me in Washington, "Do you know that if that had been our policy in 1914 we would have lost $700,000,000 worth of business?" Then I said, "Do I understand that $700,000,000 is your price?" How much do you lose or gain before you do an aggressory thing, and engage in war or whatever you agree to refrain from doing?

Now, Mr. Chairman, that is all there is to the Capper joint resolution. Senator Capper said when he gave it to the public that he proposed to test the sincerity of the American people in their talk about peace. You could not get a word in favor of war out of any public man; but very few acts in favor of peace. Talk, rhetoric, ponderous declarations of intentions and belief and faith and high purpose and all the rest of it but acts.

Now here is a man who has borne the burden and the heat of the day, has taken his political life in his hands, but when the curtain falls will be seen to have been the chief factor in the promotion of peace.

He holds out his hand to America and says, Cannot you who away back in 1788 made this declaration with us—can you not now in 1927 under these circumstances make it again?

Then let us see a great war break out; all those nations, the United States, France, Germany, Italy, Japan, Great Britain, accept this principle, and the others have all accepted it in Locarno; how is an aggressor going to carry on a war?

Where is it going to get its munitions? Where is it going to get its food supplies? Where is it going to get its raw material? And war would have to be something very different from that through which we have just come if these nations make this declaration and keep their word.

Here, Mr. Chairman, is the first chance that has come to us since the war to do, without partisanship, without personal conflict, an act by way of a declaration of policy which is in accord with all our professions, which is sustained by all our precedents, and which if done puts us back where we belong, without any political deals whatever as leaders in the great procession along the path of peace.

Read, if you will, John Hay's instructions to our delegation to the First Hague Conference, in 1899, the Chairman of our delegation being Andrew D. White, of New York.

Read, if you please, the still more important instructions written by Elihu Root to our delegation to the Second Hague Conference, in 1907, of which the Chairman was Joseph H. Choate, of New York.

Read the statute of the United States passed by the Congress in August, 1916, making it a law of this country that we shall settle our disputes in this way; and then tell me what objection there can possibly be to this asked-for declaration, at this psychological moment, when the world is waiting to know where we stand in fact, not merely in rhetoric. What objection can there be?

Every American, in my judgment, who cares for his country's fame and reputation and influence, should make his Senator and representative now understand that this Capper joint resolution is sustained by the overwhelming body of public opinion, and that if and when adopted American public opinion proposes to see that we keep our word.

My appeal Mr. Chairman, is to the public opinion of the nation. In his first debate with Douglas at Ottawa, Illinois, Abraham Lincoln used a famous phrase. "Public sentiment", said Lincoln, "is everything. With it nothing can fail; without it nothing can succeed". My appeal, Mr. Chairman, is to that public sentiment which Abraham Lincoln appealed to, shaped and fashioned and guided to put our America—your America and mine—in the very front rank of those who express and keep their determination to advance and protect the peace of this modern world. (Continued applause)

C. P. Gehman, Shorthand Reporter
Court House, Denver, Colo.

The Supreme Court's decision giving the Texas negroes the right to vote in primary elections reminds us of Judge Ogden Person's decision giving a married man the right to spank his wife. He's got the right all right all right, but he'll probably have to go to considerable trouble getting drunk enough to try it.—*Macon Telegraph.*

A Monopolist

A little fellow left in charge of his tiny brother, called out: "Mother won't you please speak to baby? He's sitting on the flypaper and there's a lot of flies wanting to get on."—The Open Road.