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## The Kellogg Pact - A Contrast in Legal and Moral Interpretations

## *The Kellogg Pact—a Contrast in Legal and Moral Interpretations*

By BEN M. CHERRINGTON, Executive Secretary of the Foundation for the Advancement of the Social Sciences, University of Denver.

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**W**HATEVER good war may have accomplished in the past, the refinements of modern science have made it so costly and devastating a weapon that the citizens of all lands would gratefully see it outlawed forever could that be achieved without jeopardizing those values for whose preservation men are willing to fight as a necessary and final resort.

This fact doubtless accounts for the unprecedented approval accorded by the masses of common people in all lands to Mr. Kellogg's first simple proposal that the nations of the world agree to renounce war as an instrument of national policy.

In Great Britain public opinion was overwhelmingly favorable to the acceptance of Mr. Kellogg's proposition. The press of the country, with hardly an exception, was unreservedly in agreement. On the day the Pact was signed churches throughout the British Isles conducted services of praise and thanksgiving. Dr. Otto Hoetzsch, chairman of the Foreign Relations Committee of the Reichstag, while in Denver last week reported a similar reception of the Pact in Germany. Sentiment in the nation was enthusiastically favorable and all parties in the Reichstag, with the exception of the Communists who everywhere appear to be against it, united ardently in directing Dr. Stresemann to sign the Pact without reservations. In France, after a temporary setback following Mr. Kellogg's rejection of Monsieur Briand's proposal for a bi-lateral treaty, public approval of the Multilateral Pact mounted steadily, finally reaching a peak of enthusiasm on August 27, when the Pact was signed in

Paris. All wireless stations in Britain and most stations in other European countries broadcasted the momentous ceremonies. Similar reports come from the Far East, South America and other parts of the world. "Comments upon the Kellogg Treaty collected from all parts", says the Christian Science Monitor, "reveal a state of unanimity almost unheard of on a matter of such world-wide significance". Oddly enough interest has been less widespread and intense in the United States than in some other countries; possibly because war has touched us so lightly in comparison with the appalling toll it has exacted from others. Nevertheless, such public opinion as exists has been strongly back of Mr. Kellogg in his lofty endeavor.

As one reads his proposal it is easy to understand why the peoples of the world have greeted it with such acclaim, for in plain, unambiguous words it promises the fulfillment of the deepest longing of millions of hearts; a longing born of the unspeakable sorrow and sacrifice inflicted by the monster which these brief but mighty words propose to banish from the earth. Says the Manchester Guardian, "Whatever politicians may mean by the Pact, to the masses of men and women it is the symbol of the most passionate of their hopes". There are just seventy-eight words in the Pact, which reads as follows:

"Article 1. The high contracting parties declare, in the names of their respective peoples, that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

"Article 2. The high contracting parties agree that the settlement or solution of all disputes or conflicts, of whatever nature or of whatever origin they may be, which may arise among them shall never be sought except by pacific means."

Taken at its face value it seems ridiculous to raise the question whether the United States Senate ought to ratify this noble document. All right-thinking men would, of course, reply in the affirmative. But unfortunately there is more to this Pact than the two articles quoted above. There are notes of interpretation and qualification. These reservations some experts in international law who are as devoted as Mr. Kellogg to the abolition of war believe will not only nullify the original intent of the Pact but actually make it a menace to the peace of the world. Other experts while admitting that these reservations are unfortunate do not feel that they completely vitiate the treaty. We shall look at the arguments on each side.

Those opposing the ratification of the Pact in its present form admit that the masses of the world are weary of war, but contend that their statesmen are not yet done with it. While public opinion has forced these officials to give formal assent to Mr. Kellogg's proposal they have first taken the precaution to pull its teeth. One leading American advocate of "outlawry" accuses the British of "sabotaging" the Pact. Under cover of their qualifications and interpretations five kinds of wars slip by untouched by this treaty:

1. It does not outlaw war in self-defense.
2. All signatories are automatically released if one of them violates the treaty.
3. Wars in defense of allies or third parties are not outlawed, in connection with the enforcement of the sanctions of the League of Nations, the Locarno Treaty, the treaty commitments of France to Poland, the Little Entente, etc.

4. There are "certain regions of the world" unspecified where Great Britain is to be free to interpret her new Monroe Doctrine, while the United States has remained silent on its own Monroe Doctrine.

5. Apparently the treaty does not prejudice the freedom of action of the United States in military invasions in weaker nations like Nicaragua, Haiti, etc., nor Japan in Manchuria, nor similar cases of intervention.

Speaking before the Williamstown Institute of Politics this summer Dr. E. M. Borchard, professor of international law at Yale, expressed the opinion that the British and French reservations entangle the United States in European politics to such an extent that we may some day find ourselves embroiled in a foreign war declared under the League of Nations or the Locarno Treaties in which we are not concerned. The original proposal of Mr. Kellogg was unconditioned renunciation of war, and with this Professor Borchard was in complete accord. "But", he added, "the Treaty as now qualified by the French and British reservations constitutes no outlawry of war, but in fact and in law is a sanction for all wars mentioned in the exceptions and qualifications. When we look at the exceptions we observe they include wars of self-defense, each party being free to make its own interpretation of when self-defense is involved, wars under the League Covenant, under the Locarno Treaties and under the French Treaties of Alliance. Far from constituting an outlawry of war these qualifications constitute the most solemn sanction of specific wars that has ever been given to the world. This cannot be charged primarily to Mr. Kellogg, whose intentions were of the best, but is the result of the reservations insisted upon by the European powers, who, it is to be feared, comprehend peace as a condition of affairs achieved through war or the threat of

war." It will be noted that Professor Borchart takes the position that the notes containing interpretations and qualifications although not part of the treaty are legally as binding as the text of the treaty itself. This is perhaps the best summary of the arguments against ratification that can be given. On purely legal grounds those who hold with Professor Borchart seem to have the better case, although such distinguished lawyers as President Harry Garfield of Williams College and Professor Phillip M. Brown of Princeton at Williamstown disagreed with his assertion that the reservations were as if written into the treaty itself. These, they held, merely represent the interpretation of the governments at present in power, are subject to early and frequent change, and therefore are less binding than the Treaty. This appears also to be the British position. The conservative London Telegraph on August 27 said, "True, some nations, ourselves included, have added notes, but these are in separate documents, and they bear to the document that will be signed the same relation that the obiter dicta of a judge bear to his considered and binding judgments. They are interpretations of the document that may vary from time to time". Nevertheless, it is generally admitted that viewed from the legalistic point of view the Treaty with its accompanying notes is full of loopholes. Considered solely on the basis of law the case against ratification rests on solid ground.

However, the argument for ratification is not legal, but moral. International lawyers like Professor James T. Shotwell, Joseph Chamberlain, Phillip M. Brown and others readily admit that as a legal document the Pact is weak, but nevertheless advocate its ratification on moral grounds. The idea of outlawing war has seized upon the imagination of the world, the hope of mankind has been aroused; to deny

that hope at this late hour is unthinkable. In spite of the devitalizing notes there is only one course for the United States to follow, and that is to ratify it. To fail to ratify would dash to earth the aspirations of millions of people; strike a death blow to faith in American idealism and perhaps drive all of Europe into the arms of the powerful dictatorships that inevitably would capitalize this apparent failure of western democracy. To ratify will be an act of faith: faith not in documents and ministers but in ideals and in people; faith that once public opinion has fastened with determination upon an ideal it will sweep aside the cynicism of diplomats and statesmen and in the end have its way. There is unmistakable evidence that the common people of other lands have fastened upon the ideal of a warless world. If America unites with them nothing can resist its realization.

The case for ratification has been nowhere more clearly stated than by the brilliant and thoroughly realistic foreign observer, Mr. Sisley Huddleston. I conclude by quoting from his article in the British "New Statesman" of September 1:

"I think that the Pact possesses a genuine importance. I also think that as a document it is utterly worthless. Rarely have both sides in a controversy been so right as those who belittle the Pact and those who magnify the Pact. The Pact means nothing, and it means much. Should we be sceptical? Yes and no. We should be poor diplomatic students if we were not somewhat cynically amused at the loopholes which have been left in the text or which have been created by interpretative and explanatory statements. Anybody can go to war for anything at any time, and reconcile his behaviour by reference to the correspondence that has accompanied the recent negotiations. Yet I do not think that, in fact, anybody will go to war before turning round upon himself as many times as a dog which seeks a suitable sleeping place. . .

"The force of public opinion convinced the diplomatists that this Pact was necessary. The force of public opinion will hereafter convince them that it must be observed in its spirit and not in its letter. . .

"Here is an act of faith. Here is a solemn announcement that war is ruled out. If in one year or in ten years this or that nation were to break the pledge, the public would be amazed. It would resent the deception. It would, presumably, rise against those who attempt to rely on subtle diplomatic phraseology. It disregards the annexes. It sees only the broad effect of the Pact. The reservations are, so far as the public is concerned, uttered "*sotto voce*". They

are not heard. They will be ignored. Governments are no longer free. They have, in raising public expectations, tied their own hands. If they have logically contrived a possible exit from the Pact, they will, at the first sign of a movement to escape, be driven back by an indignant public into the safe precincts of the Pact. For that matter, I believe the Governments will be voluntary prisoners. There is probably no Power which is willing again to run the risk of war. The reservations are merely the expression of the old traditional diplomacy which has been trained to conduct affairs with circumspection; it is a ghostly diplomacy which does not realize that it is dead and that its methods are futile."

## *The Annual Meeting of the Colorado Bar Association*

Reported by MR. HAMLET J. BARRY

CONSTITUTIONAL questions and controversies formed the subjects for discussion at the annual meeting of the Colorado Bar Association held at the Antlers Hotel at Colorado Springs, Friday, September 14 and Saturday, September 15, last. Most of the addresses delivered touched upon some phase or phases of constitutional law.

The outstanding scholarly address of Henry Archer Williams, of Columbus, Ohio, leader of the Ohio bar, climaxed the programme. Williams, who is an active, virile lawyer in the prime of his career, in developing his subject, "*Our Shifting Constitution*", demonstrated to more than one hundred lawyers and judges in attendance, that the early and primary purpose of the constitution itself was the protection of the individual against the tyrannies of the State. He showed the colonial public mind to be just that. He announced that the same purpose ran through the first ten amendments, the bill of rights. He then asserted that

this first, fundamental purpose had to some extent been lost sight of, and in succeeding amendments to the constitution down through the latest, there had been a gradual encroachment by the state upon the rights of the individual.

Because of the masterly presentation of his subject the address was most enthusiastically received as was Mr. Williams' talk at the banquet on Saturday night.

Cass E. Herrington of Denver was chosen president at the closing business session Saturday. In accepting the office Mr. Herrington expressed his gratification at the honor and pledged himself to a program of advancement for the Colorado Bar Association. President Herrington warmly supported Amendment No. 1, to be submitted at the November election, the purpose of which is to obtain increased salaries for judges in Colorado. J. Alfred Ritter, Colorado Springs, was elected first vice-president; Mortimer Stone, Fort Collins, second vice-president; and