

Norway's action, all neutrals appear to have regarded the U-boat as a cruiser with no other privileges and no other obligations than have been heretofore applicable to the cruiser. In judging of these inconsistencies, we may say, in the first place, that no party to a war can be allowed to determine the laws which shall govern it according to his own special interests. The law of nations has grown up out of the general agreement of many states, not through the insistence and self-interest of one. Again, and in view of the just mentioned principle, the presumption is in favor of the rules accepted prior to a war, for the simple reason that any change will be dictated by the desire and for the benefit of one, whereas all must be consulted. So introduced, a new usage does not become law, it is not law, it is merely the exercise of force.

By the close of the nineteenth century the neutral interest had become dominant; belligerency was regarded as a nuisance, almost an anachronism. It was, that is, an abnormal, exceptional status, with a presumption against any enlargement of its rights. In case of doubt, neutrality rather than belligerency was to be favored, in any new definition of the law. At the present moment, alas! the belligerent world is so powerful that neutrality has grave difficulty in asserting its rights. But this fact does not lessen those rights. If this is the theory with which we approach a study of the submarine status, I think there can be no doubt that the U-boat is to be regarded as a surface cruiser with no additional rights and privileges and with the same duties and liabilities. Hence in neutral waters it should not submerge. Submergence imperils neutrality by making the performance of neutral duties more arduous and the evasion of neutral rights easier.

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#### POLAND

FROM time to time statements have appeared in the press that a kingdom of Poland will emerge from the war. Sometimes it is the Czar of all the Russias who is to create Poland as an autonomous kingdom, presumably to be made up of Russian Poland, to which will be added Prussian and Austrian Poland. At other times, the press attributes to the Central European Powers the intention to establish a kingdom of Poland, and quite recently the statement has appeared in the press that the Central European Powers intend to create a

kingdom of Lithuania as well as a kingdom of Poland, apparently by depriving Russia of Lithuania and of its share of the partition of Poland, without the addition of Prussian and Austrian Poland. The proposal in each case seems to be an attempt to win over public opinion, which has always been very pronounced in favor of the Poles, and to gain the support of the Poles themselves, who are again to become a nation and a kingdom. But it is believed that the Poland of public opinion and of the Polish patriots is the unpartitioned Poland which, in 1682 under its king, John Sobieski, defeated the victorious and invading armies of Turkey under the very walls of Vienna, and saved a Christian Europe from Moslem aggression, only later to be partitioned by three of the Christian countries of Europe and among these the chief beneficiary of the victory of 1682.

Without going into details, it should be said that the ruler of Lithuania, then an independent country, married the Queen of Poland in 1568, and, by this marriage, the countries as well as their rulers became united. Poland was for centuries an unfortunate country — unfortunate internally because it was an elective monarchy, and subject to foreign intrigue and dictation in the matter of election, and unfortunate externally because its territory was coveted by three countries surrounding it and which, taking three bites to the cherry instead of the proverbial one bite, absorbed it, so that part of Poland went to Prussia, a part to Austria, and a part, forming the balance, to Russia, which three countries hold the land and its people in bondage.

Frederick the Great, on behalf of Prussia, and Catherine II, on behalf of Russia, concluded two treaties on the 4/15 of January, 1772, in the name of the Holy Trinity, an expression which the late Professor Jelinek of Heidelberg was accustomed to say was always used by Powers on the point of committing a peculiarly immoral agreement. By the first, they agreed to occupy and to annex certain Polish provinces, and by the second they determined conditions concerning the maintenance of auxiliary troops in case of attack. The reason assigned by the King of Prussia and the Empress of Russia was "the general confusion in which the republic of Poland exists by the dissension of its leading men and the perversity of all its citizens." Austria was not a party to this treaty, but it was the desire and the intention of the contracting parties that the Empress Maria Theresa should accede to it on the part of Austria. This Austria agreed to on February 19,

1772, and two treaties were entered into on July 25, 1772, between Russia and Austria, on the one hand, and Russia and Prussia, on the other, fixing the portions of Poland which each of the partitioning Powers should and actually did annex.

Poland lost by this action on the part of its neighbors about one-fifth of its population and one-fourth of its territory. The Empress of Austria was apparently loath to take part in the partition, but, when she made up her mind to join her imperial sister and her royal brother, she showed herself very exacting as to her share of the spoils, so exacting indeed that Frederick the Great said to the Austrian Ambassador: "Permit me to say, that your mistress has a very good appetite." This remark is equally applicable to all three of the sovereigns engaged in the partition of Poland, and the appetite, as the proverb says, "grows by what it feeds on."

Therefore, a second partition was agreed upon September 3, 1793, by which Poland was reduced to one-third of its original dominions with a population of some three and a half millions. In Lessing's *Minna von Barnhelm*, Just is not satisfied with the single glass. He wished a second, and, when the second was forthcoming, he added a proverb to the German language, upon which Austria, Russia and Prussia acted, that all good things are threefold.

Austria and Russia took the first step. Prussia, under the successor of Frederick the Great, acceded to the treaty of January 3, 1795, between Catherine of Russia and Maria Theresa's successor, and, in the treaty of the 10th of October, 1795, the balance of Poland was gobbled up.

Passing over the period of the French Revolution and of the Empire, the Congress of Vienna, which remade the map of Europe, took up the question of Poland and apportioned it among the three Powers. The Russian portion was erected into the kingdom of Poland under the sovereignty of Alexander, Czar of Russia. An insurrection of 1830 was put down by the Czar Nicholas, the successor of Alexander, and Russian Poland became a Russian province.

So the matter stands today. Prussia has its share; Austria-Hungary has its share, and Russia has its share.

Historians have given themselves much trouble to determine the sovereign who first proposed the partition. Carlyle, in his elaborate *Life of Frederick the Great*, thinks that the partition was doomed to happen, stating that

Two things, however, seem by this time tolerably clear, though not yet known in liberal circles: first, that the Partition of Poland was an event inevitable in Polish History; an operation of Almighty Providence and of the Eternal Laws of Nature; . . . and secondly, that Friedrich had nothing special to do with it, and, in the way of originating or causing it, nothing whatever. It is certain the demands of Eternal Justice must be fulfilled. . . . If the Laws and Judgments are verily those of God, there can be no clearer merit than that of pushing them forward, regardless of the barkings of Gazetteers and wayside dogs. . . . Friedrich, in regard to Poland, I cannot find to have had anything considerable either of merit or of demerit, in the moral point of view; but simply to have accepted and put in his pocket without criticism, what Providence sent.<sup>1</sup>

The Prussian historian, Von Sybel, however, is of a different opinion. "The first official suggestion," he says, "came no doubt from Germany, but we are not to conclude that this was the cause of Poland's fall. If that suggestion had not been made, Poland would, it is true, have remained undivided, but would have fallen as a whole into Russia's hands."<sup>2</sup>

The question of priority is not important. The fact is that the three countries, Prussia, Russia and Austria, took part in the partition and they are therefore all guilty, and they are in the opinion of the undersigned equally guilty, for each of the participating Powers was a free agent and could and should have resisted the temptation to profit at the expense of a neighboring country, irrespective of the sovereign from whom the proposal first came.

There is a happy German saying, *Die Weltgeschichte ist das Weltgericht*, which may be freely rendered in English as "posterity is the ultimate court of appeal," and in this court the late William E. H. Lecky has pronounced the following judgment:

It is difficult to exaggerate the extent to which it shook the political system, lowered the public morals, and weakened the public law of Europe, for it was an example of strong Powers conspiring to plunder a feeble Power, with no more regard for honour, or honesty, or the mere decency of appearances than is shown by a burglar or a footpad.<sup>3</sup>

Will the great war of 1914 right the wrong of 1772, and shall we again see an independent, free and equal Poland, or are we to see a partial, autonomous kingdom at the expense of one or other or of all the partitioning Powers?

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<sup>1</sup> Carlyle, *Life of Frederick the Great*, Vol. VI, pp. 481-482.

<sup>2</sup> Sybel's *History of the French Revolution*, English translation, Vol. II, p. 347.

<sup>3</sup> Lecky, *History of England* (1906 ed.), Vol. VI, p. 81.