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# World Government Under Law:

## American Experience With Federal Union

by Samuel J. Kornhauser • of the Cleveland (Ohio) Bar

■ To assist our readers in forming their own opinions as to the desirability and practicability of present steps toward establishing a World Federal Union in place of The United Nations, we give space to the following advocacy of such an objective. In publishing Mr. Kornhauser's considered argument, we do not depart at all from our continued advocacy of united, undivided American support of The United Nations and the progressive strengthening of the Charter, as voted and urged unanimously by the House of Delegates.

The fact is, we believe, that the issues as to the future of international and world law, and of organized international cooperation or government for world affairs, are too great and too important for any American lawyer to exclude from his reading and his thinking the consideration of reasoned views, irrespective of our Association's stand or his own individual opinions at this time. Between the extremes of view held by those who would discard The United Nations and center all efforts on creating a World Federal Union, and those who strongly oppose any yielding of National "sovereignty" in favor of any form of world government, thoughtful lawyers may seek a middle ground, along the lines advised by the House of Delegates since 1944. Whether we all like it or not, events are moving swiftly and unforeseen steps are being

taken, through The United Nations, in the direction of an organized and strengthened international control—or "limited world government", as some prefer to call it—of many things with which no one Nation can cope.

Under such circumstances, lawyers who are intent on peace and justice through law may best seek unity and accord among those at work for that great objective, a sound common ground, rather than division about words or labels, so long as support and strengthening of The United Nations are not impaired. Exploration of the American experience, as Mr. Kornhauser and Professor John C. Ranney urge, may give useful guidance and warnings.

Mr. Kornhauser was born on a farm in Parma, Cuyahoga County, Ohio, in 1879. He received his A.B. degree *magna cum laude* at Harvard in 1901 and his law degree in 1903. He practised law in Pittsburgh, Pennsylvania, for a year, and then returned to Ohio, where he was admitted to the Bar in 1904. He practised law actively until 1942, when he became an executive of the National Tool Company, of which he has been Chairman of the Board since 1945. He is a member of the Cleveland and Ohio Bar Associations, and has at times been active in Republican politics. Lately he has devoted himself considerably to advocacy of World Federal Union.

■ I recall a distant hour when I attended my first lecture in a course on International Law and was struck with amazement by the professor's opening sentence: "Gentlemen, there is no such thing as *International Law*."

Then, as now, and for ages preceding, governments rendered lip service to a body of precepts, called the "Law of Nations" or "International Law", ostensibly binding on civilized

peoples. They were designed to regulate intercourse in time of peace and to mitigate the cruelties of war. They were amply recorded and annotated in vast volumes of learned treatises; they were based on approved usage, and grew, as time went on, through the inclusion of new principles, or modification of the old, in accordance with practice and declarations set forth in treaties.

But these so-called international

laws are not, and never were, laws in fact, because at no time was there any constituted effective authority to enforce them. We have had rules of conduct worthy of respect and obedience, but they lacked "sanction". There was no penalty for their breach except retaliation or war; and nations have without scruple brushed them aside, with a convenient pretext if they stood in the way of a course they were determined to pursue.



SAMUEL J. KORNHAUSER

When, in 1914, the German hordes swept into Belgium notwithstanding the treaty which solemnly proclaimed Belgian territory inviolate, the German Chancellor, Von Bethmann Hollweg, arrogantly denominated that compact, to which his country was a party, "a mere scrap of paper". We were shocked, but rather by his brazen, brutal frankness than by the implications of this declaration. We were accustomed to having statesmen resort to crafty subterfuge to justify treaty violations.

#### "There Is No Such Thing as International Law"

Such is this thing miscalled International Law and the folly of relying on it for any improvement in the condition of the human race. The "rules of civilized warfare" are an ironic reflection on human intelligence. Witness the use of flags of truce to lure our soldiers from protective covering to become targets for perfidious enemies; witness the death and destruction carried into homes of mothers and babes; witness the ghastly horrors perpetrated in Germany, Russia and the Pacific! Even poison gas was left unused, not because it was a cruel medium, but because it was not a sufficiently effective destroyer of life. In short, we are forced to acknowledge the melancholy truth: There is no such thing as International Law.

Yet we find it scarcely possible to shake off the intellectual tyranny which age-old habits of thought have imposed. After the first World War, there was a universal demand that means be found whereby, at last, the unachieved aspiration of the Biblical Prophet should become a reality, that swords should be beaten into plowshares and war forever banished. The inept, abortive attempts which followed led to the Second, and infinitely more frightful, World War; and thereafter arose an even louder clamor for safeguards against a recurrence of similar havoc. Then we labored again, and brought forth what: The United Nations Charter, another deficient contrivance because it rests upon promises and professions unbuttressed by power to compel performance.

The outlook would be hopeless were it not that millions of persons normally unaffected by illusions, who permitted their yearning for stable peace to beget over-sanguine expectations of wholesome results from the San Francisco Charter, are finally convinced that a new and radical remedy must be applied. They, as well as many who too readily embrace pleasing promises, have at length been driven to the conclusion that the plan of World Organization, so recently launched with songs of praise and thanksgiving, has already proved to be vain and unfruitful. The very name "United Nations", when we have the sound and fury from the international conference rooms in our ears, has become a tragic mockery.

Stripped of subterfuge, circumlocution and gilded promises, the bare essentials of the United Nations Charter constitute nothing more than a loose alliance of self-chosen Powers, nominally five but actually three, through which to impose on the rest of the world their conjoint will when, and if, they should be able to lay aside quest for individual advantage or dominance, and act in complete concert for the common good. Indeed, this Charter has not even the ostensible binding effect ordinarily ascribed to treaties; for any one of

the constituted overlords may render nugatory the united judgment of the others by interposing a peremptory veto.

#### The World Is in a Precarious State

In consequence, despite all that has been endured, and all that has been attempted, the world has never been in a more precarious state. With the heart-rending lamentations of this last and most horrible of wars still lingering, old and new insensate hatreds and appetites have engendered tendencies which, if unchecked, seem destined to sweep us into a cataclysm capable of engulfing the entire human race. Obviously, this is no time for palliatives and half-measures; it is no time to remain fettered to the futile methods of international intercourse under which incessantly the blood of men has been spilled and the products of their toil destroyed. However much we may execrate the duplicity and treachery perpetrated by heads of states, the stark historical fact confronts us that treaties are in truth mere scraps of paper. "Put not your trust in princes", said the Psalmist; and we might well paraphrase his injunction and say: Put not your trust in the mere plighted word of any state.

We talk glibly about outlawing the atom bomb, and we engage in labored negotiations for the control of this appalling instrument of destruction—by treaty. Here is a most striking example of our inability to face facts without flinching and to heed the lessons of experience. Make such a treaty; include in it the most explicit powers of visitation and inspection; sign, seal and beribbon it; promulgate it with august ceremonies, and go forth elated in the thought that this dreadful weapon has been rendered innocuous! And what then have you accomplished but to beguile yourself with an illusion of safety? If such a compact were made, no matter how drastic its printed provisions might be, there is not the slightest reason to believe that it would be conscientiously kept or could be effectively enforced. We de-

veloped the atom bomb under such well-guarded secrecy that it burst upon our enemies without a glimmer of warning. Should we not conclude then that notwithstanding treaty prohibitions, like results would be attained in other countries with equal secrecy? Such a treaty would be about as effective in suppressing the atom bomb as the Briand-Kellog Pacts were in excluding war as a means of furthering national aims and ambitions.

#### The Principle of Federal Union May Offer Remedy

In what direction, then, are we to look for relief? When Mr. Churchill, the clearness and sureness of whose vision and warnings have again and again been confirmed, proposes a United States of Europe as prerequisite to stable peace, he voices a profound truth which more and more is being embraced by thoughtful, undeceived persons. Indeed, the idea of applying the principle of Federal Union to most, if not all, countries of the world, which with few exceptions was till recently regarded as an impractical dream, is now exciting serious thought and attracting many earnest and important adherents. The accumulated facts of history, as well as current manifestations of human behavior, teach us that *there will come an end to warfare only when irrefragable controls are established which are so designed that they can and will prevent resort to force anywhere and under any circumstances.*

There are, of course, those who scoff at the idea of a world government endowed with powers ample to enforce predetermined rules bearing alike on all citizens of the member states. There are those who, like over-smart Professor Laski, derisively assert that quest for world-wide Federal Union is like searching for perpetual motion. Yet the effusions of cynics and the propaganda of those seeking one world under the sway of a single dictator fade in the light of the growing conviction that the processes of orderly self-government can be gradually extended over

the world under a system of Federal Union.

Those who hold these views proceed on the premise that suitable administration of relations between nations, just as of relations between citizens of any state, must come through a self-imposed "government of laws, not men". That is particularly a basic American concept. It seems appropriate, therefore, that we should reexamine the salient and significant factors found in our successful experience with Federal Union to see what principles it has demonstrated that may be susceptible of world-wide application.

## II.

### A Federal Union May Be Practicable and Lasting

The conspicuous contribution which America has made to the science of government is that Federal Union of individualistic States, spread over a vast expanse of territory, may be practicable and lasting. Our experience has demonstrated that this may be achieved if local self-government in the constituent States is preserved, and if the central government, based on a just method of representation, is effectually confined within prescribed limitations.

Ours was not the first attempt at Federal Union. Greece and Rome had tried it, and both had failed. The Greek city-states, jealous of their power and prerogatives, declined to vest in a federal government sufficient authority to enable it to function, while Rome insisted on retaining all essential powers in the grasp of the mother state, and refused to endow the outlying provinces with that measure of self-government without which a federal system becomes inoperative.

*In our country alone has the test been made of a system of Federal Union, under which a number of States, increased gradually from thirteen to forty-eight, of different origins, traditions, and prejudices, embracing an area as wide and diverse as Europe, have with a single brief interruption lived side by side, for*

*over a century and a half without armed conflict.*

### America Has Made and Tested the Experiment

For seventy-two years, from the beginning of our Government to the outbreak of the Civil War, our States had settled their differences according to established law. In that time they had grown from insignificance to a place of power and respect in the world. Even when that clash came, neither side challenged the principle of Federal Union. The sole issue was whether eleven of our States could withdraw and establish a separate Federal Union. We fought for the principle that the Union must remain indissoluble in order to maintain the peace and promote the public welfare in all the States, for the principle that disputes must be settled according to law within the framework of the Constitution, and not by force, nor by secession of any dissatisfied States.

Though undeniably deep scars were carried as a result of this resort to gun-fire and the ill-considered and ill-adapted measures applied after the fighting ended, no irremediable harm resulted. Our capacity for compromise, that prerequisite to self-government, ultimately prevailed, so that following that brief interlude, eighty years of uninterrupted peace among the States ensued, within which they advanced to unprecedented heights of achievement, power and distinction. The possibility of dismemberment has become inconceivable.

### The Conditions Which Led to Federal Union in America

Our form of government was no accident. Those who first settled on our Atlantic coast were men and women in whom aspiration for human liberty and personal dignity, which had previously ripened in the British Isles, was the preponderant impulse of life. They had a profound respect for law, a stern abhorrence for arbitrary, personal government. Their inherited tendencies were improved and strengthened by the rugged conditions met on the

American Continent. And when, at length, they revolted against the oppression of a perverted British Government, they did so on the ground that they had been unlawfully deprived of their rights as Englishmen.

But so strong had become the will to cast off control from without, that no sooner had independence been achieved than even the light hand of government under our Articles of Confederation was rebuffed by the thirteen infant States. The Continental Congress became impotent. The thirteen individual, and highly individualistic, States had had separate and distinct evolutions. They differed widely in origin, traditions, and viewpoints. Means of communication were so primitive, difficult and tardy that, in effect, they were widely separated.

Indeed, even during the Revolutionary War, there were disputes here, indifferences there, and in general a lack of wholehearted cooperation. With the end of the War, the last semblance of united effort disappeared, and there followed a period of veritable anarchy. Among the States, rivalries and jealousies gave rise to constant bickering, retaliatory tariffs, restrictions, and even bloodshed. It seemed as if the hard won fruits of the Revolution were about to decay, and that the net result would be a group of squabbling, embittered, petty States implanting the seeds of a Balkan problem in the Western Hemisphere.

#### **The Constitution Struck a Sound Balance of Powers**

In 1786, only ten years after the Declaration of Independence, the widespread friction, economic chaos, and threatened disintegration had become so acute that representatives of five States met in Annapolis to consider changes in the Articles of Confederation which might forestall the impending disaster. Already there was a growing belief that this end could be attained only by the adoption of a new constitution which would establish a Union of the States in fact, and not merely a loose league uncontrolled by a central gov-

ernment of adequate strength. This Convention issued a report recommending a meeting of delegates from the States "to consider the situation of the United States and devise such further provisions as should appear necessary to render the Constitution of the Federal government adequate to the exigencies of the Nation; and to report to Congress such an Act as, when agreed to by them and confirmed by the Legislatures of every State, should effectually provide for the same". Out of this came the Philadelphia convention which, though haunted by misgivings and beset by seemingly insuperable obstacles, ultimately produced the Constitution of the United States which, in due time, came to be acknowledged an unsurpassed achievement in the history of government.

When the delegates assembled, it did not seem possible that out of their widely divergent views and provincial prejudices there would emerge concurrence on a system of government that would win popular approval or withstand the shocks to which it would necessarily be subjected. There were many delegates who faltered at the thought of applying a basic, radical remedy. These timid souls preferred resort to make-shifts and half-measures in order to evade resistance. It was at this juncture that George Washington, President of the Convention, performed one of the greatest of his many great services to his country. In a few incisive words, he was able, because of the universal respect for his wisdom and the influence of his personality, to convince his colleagues that they must approach their vital task not with the view of administering some sugar-coated palliatives, but of providing a genuine, thoroughgoing remedy. He was no seeker after impractical perfectionism; but he detested evasion and subterfuge.

At that moment, as does the World today, we stood at the parting of the ways. Whether to continue a cluster of quarreling petty States, corroded by rivalries and jealousies, to become gradually exhausted and degenerated and ultimately the prey of some

virile, aggressive nation, or whether by working in concert to grow in strength and stature, to emerge as a great, integrated people in fact, was the issue which hung in the balance of fate. Those delegates were not super-men; but they well understood the lessons of history, the faults and foibles of human beings, and also their basic virtues.

#### **Opposite Extremes Had Led to Disaster in Government**

Some of the leaders were especially well equipped by learning to cope with the tasks before them. But doubtless the most important advantage they possessed for the achievement of that which, in the end, they consummated lay in the fact that they had so recently been face to face with those opposite extremes which lead to certain disaster in government. They had endured the vices of tyranny which arbitrary government under George III had engendered; and they had witnessed the drift toward anarchy during the weak and inept administration under the Articles of Confederation. It had become clear that the safe course lay on the mid-line between the two alternative currents driving toward destruction.

Nevertheless, agreement was far from easy. There were sharp differences as to the ultimate goal and as to the path to be followed toward an acceptable remedy, so that some of the most vital provisions finally adopted were the result of compromise. And that perhaps is the chief reason why the Constitution has endured for more than 150 years and enabled us to grow apace. In essence, it confers on the central government precise powers by which through a representative assembly and a sufficiently endowed executive, it can, within the scope of carefully delineated limits, do those things which concern the people of the States as a whole, leaving them meanwhile in unhampered possession of all powers of local self-government, and indeed all powers not expressly ceded to the National government.

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partial adjudication of conflicts between management and labor; it does not consider the requirements of a proper rule defining the rights of both.

Obviously, no tribunal can successfully decide controversies if it is compelled to do so on a basis which uniformly denies one side or the other equality of protection or opportunity for advancement. The basic law must subject both sides to the public welfare. In so doing, it must assure both that neither will be limited beyond the necessity for protecting society, and that the avowed aim will not be used improperly to subordinate either to the other. No tribunal applying a law as unfair to labor as was the concept of common law and equity rule, typified by the *Wilkerson* injunction (in *United States v. Railway Employees, etc.*, 283 Fed. 479 (1922), 286 Fed. 228 (1923) 290 Fed. 978 (1923)), will be acceptable to labor. No Court—or agency—applying a law as unfair to management as the National Labor Relations Act will be acceptable to employers. The discussion of mechanism presupposes a reasonably fair delimitation of rights as the basis for adjudication.

With this as the basis, the writer believes the adjudication of labor

conflicts should be entrusted to the regular Courts, under such procedural amendments as the nature of the controversies may compel, rather than to special labor Courts. This will require:

(1) A comprehensive labor code defining the rights and obligations of the public, of labor and of management;

(2) A grant of jurisdiction to the District Courts to entertain action instituted by either party to a labor relationship or an authorized representative of the public and after a finding that (a) a disagreement exists, that (b) meeting upon a common ground is improbable, and that (c) the failure to agree threatens material public detriment, to restrain the parties from a production stoppage pending settlement of the dispute, and unless they then unite either in terms of agreement or in a method for peaceful determination to settle the controversy by a binding determination either through proceedings in the nature of an arbitration or by a proceeding before the Court similar to one in equity.

(3) A prescription of the limits of this jurisdiction and the manner of its exercise to prevent abuse;

(4) An unquestionable right in

either party, where future terms are imposed, to apply for reconsideration on the basis of reasonable experience; and

(5) A right of appeal.

#### The Machinery for Expert and Impartial Settlement by Law

Provision should be made for "Labor Referees," similar to Bankruptcy Referees, empowered to make investigations, conduct elections, take evidence, make preliminary findings and recommendations, supervise and receive reports in cases of tentative terms and continuing jurisdiction, arrange for mediation or arbitration, furnish "expertness" in labor problems where necessary, and handle the administrative phases of matters coming within the proposed jurisdiction.

By such a plan, governmental interference with freedom of contract can be kept at the minimum required for adequate protection of the public interest, varying as that interest varies with the nature of the industry or the circumstances in which the stoppage is threatened. By it, where interference is necessary for public protection, the parties can be assured of impartial settlement of the conflict under the rule of law.

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There is no need to discuss here the aberrations since 1932 by which, through specious interpretations and practices, inordinate authority was grasped and centered in Washington, and the functions of the States and the rights of individuals were seriously abridged. It is the reasonable hope of those who prize our institutions that this was but a passing phase soon to be succeeded by a return to our basic concepts of government. Indeed, the first rays of that encouraging light seem now to be rising.

#### Federal Union Brought Sound and Stable Government

The Constitution, of course, was not a perfect thing. Least of all was it so regarded by those who drafted it or by their contemporaries. Indeed, many entertained grave doubts that it would receive popular approval, or that it would succeed if adopted. And it is quite evident that the ink-and-paper instrument would not have become the Constitution as we have come to know it, and would not perhaps have endured to this day in any form, had it not been for the wisdom displayed in applying its provisions. The steady influence of Washing-

ton, the penetrating genius of Hamilton, the profound judicial capacity and statesmanlike foresight of Marshall, the democratic balance imparted by Jefferson—these particularly turned what might have proved a futile effort into durable and abundant success.

Thus we have our American Charter under which our thirteen original States, with a total population of about four million people, living in widely scattered, isolated communities, mostly under crude conditions, subjected to the contempt and hostility of the outside world and confronted by serious internal problems,

did nevertheless spread across the continent to the Pacific, increase to forty-eight States, to a population of 140 millions, and grow to be the most prosperous and powerful Nation on earth—and this without any fundamental change in the structure of its government as originally erected.

### III.

#### Principles of Federal Union Can Be Applied to the World

Is there, then, reasonable ground to believe that the principles of Federal Union which we have tested and proved can be successfully applied generally to peoples over the world? Fundamentally, we developed a method of living together that gave us peace and the bountiful fruits of peace. In 1787, the same objections to the practicability of Federal Union of our States could be made, and were made, as those which are today scornfully asserted against the idea of a Federal Union of the Nations. We had relatively large, strong States and small, weak States; we had wide differences in viewpoint; we had monarchists and radical democrats; we had envies and animosities; and though we had a common language, we were by no means a homogeneous people.

Moreover, as time went on, a flood of immigrants from all quarters of the globe multiplied the divergencies of attitude and appetites. *Nevertheless, our scheme worked, if not perfectly, yet better than any other means of government ever devised for a large population in a spacious land.* Under it order has been maintained and maximum individual liberty enjoyed. Its chief virtue was that it provided basic safeguards designed to prevent oppression of the people either through usurped personal dictatorship or through unbridled majority rule.

In order to create a Federal Union it obviously becomes necessary that the people in each constituent State shall give up a portion of their absolute sovereignty, that is, their freedom to do as they please without regard to the effect on other States. That question presented a perplexing problem in 1787, and is

regarded by many as the insurmountable obstacle to World Union today. We solved that problem by judicious compromises. The small States were secured against aggression from the great by being accorded equal representation in the Senate, where the combined, numerous weak could thwart any hostile attempt by the few and powerful. Further, the functions of the Federal Government were carefully hedged about with limitations, and self-government in local matters was meticulously protected. Checks and balances were contrived to enable each of the three departments of the Federal Government to defend itself against encroachments by the others. And, above all, an independent judiciary was created to serve as a balance wheel. *Who will say that the people of our States did not make a good trade when they gave up so little for the abundant blessings of peace which they received in return?*

After all, what did they relinquish? They had the right to do as they pleased, but only as long as some stronger power did not step in and impose its will by force of arms. What, indeed, is the value of this thing we call complete, independent sovereignty if we have the sharp sword of modern warfare forever hanging over us? Is it not worth while to give up this fetish for the boon of uninterrupted peace? All parts of the world have far closer and quicker contact today than our people had 150 years ago and for a long time thereafter. To the very ends of the earth, its inhabitants become contemporaneously informed on all important matters. Therein lies the basis for a feasible plan whereby they can administer what concerns them in common under an equitable system of representation. But not only is such overall government practical, but in the presence of the threatened horrors of the atomic bomb and other imminent satanic developments for destruction, it has become the prerequisite to self-preservation. There is no promise of salvation in any other proposal yet made.

#### The Idea of Federal Government for the World Is Not New

The idea of extending the American system of Federal Government to the world is not new. Sixty-five years ago, John Fiske, our distinguished historian and philosopher, delivered three lectures in England which were repeated many times in American cities and in 1884 were published in a little book entitled *American Political Ideas*. He traced the origin and basic importance of local self-government, showed the futile attempts, over the centuries, at consolidated action by independent States, described the development of representative government in England, and finally the invention of Federal Union, in conjunction with local and national representative government in the United States. In his last lecture, he argued from the premises he had laid down that a scheme of Federal Union, geared to the principles of local self-government, a central legislative assembly, and an adequate executive authority, could in the course of time be applied to the world at large, or at least to Europe, as the only feasible appliance likely to insure peace.

It is true that Fiske presupposed a continued increase in the number of English-speaking people at a pace which would make them decisively preponderant by the end of the twentieth century. It was his view that at that time they would be in a position to engraft on the world their salutary principles of successful self-government. Some of his prognostications seem rather fantastic in the light of what has actually happened. Yet Fiske was no idle dreamer. Much that he foreshadowed is beginning to take shape. At any rate, the essential basis of his belief in the practicability of an organ of world-wide government is sound, and his argument as to the need of evolving such an agency is unimpeachable.

#### John Fiske Gave the Text for Peace and Stability

In the preface to his little book Fiske gave us the essence of the theme in this significant sentence:

How to insure peaceful concerted action throughout the Whole, without infringing upon local and individual freedom in the Parts—this has ever been the chief aim of civilization, viewed on its political side; and we rate the failure or success of nations politically according to their failure or success in attaining this supreme end.

Here we have a worthy text for all earnest advocates of united effort to establish everlasting peace on earth. And it is time that we should be getting down to precise, practical proposals. There are many calls for a "World Federal Union", or for a "United States of the World" or of at least a large part of it. But there has been wanting due exposition of the ways and means by which it could be attained.

#### Essentials of a Government by Federal Union

I am aware that anyone who would undertake to trace an exact and detailed design of such an organization of Nations would display excessive boldness; but the application of the ground principles tried and demonstrated in our country can, I believe, be used as an incipient design. Obviously, our Constitution could not be followed precisely as a pattern for a United Nations Government. But its essence could be reproduced to achieve "concerted action throughout the Whole, without infringing upon the local and individual freedom in the Parts". Let us consider, then, the necessary underlying details:

1. *A Federal Union of Nations need not at the start embrace all the world.* Some peoples, still in various stages of arrested development, are not ready for complete inclusion in the scheme of representative government. There is nothing inconsistent in this idea. We applied it under our Constitution: We established "Territories", in which rights of citizens were secured, but full statehood membership in our Union was deferred until a sufficient basis therefor was developed. We still adhere to this principle, as witness, for example, the status of Alaska, Puerto Rico, and the Hawaiian Islands. Some such idea

could be incorporated in a United Nations Constitution.

Further, if some states, great or small, declined to join, the project could nevertheless be launched with good promise of success, if a majority of the important states came in at the outset. When our Constitutional Convention met, stubborn, intransigent Rhode Island refused to send delegates; and after the Constitution was submitted she persisted in refusing ratification till May of 1790, more than a year after our Government under the Constitution began.

Thus even if there were not universal acceptance of a plan for World Federal Union, it could nevertheless be inaugurated by the consenting powers. Though, for example, the Soviet Union, presently unready, though unduly assertive, yet potentially strong, stood obstinately aloof, the World Union could establish itself without her. Like Rhode Island, she would in due time find it wise to join. It is quite reasonable to assume that the English speaking countries, Great Britain and all her Dominions, including India, as well as France, Western Europe, South America, and China, would combine with us to create a Federal Union on an equitable basis. The strength of such a Union and the manifest advantages enjoyed by its members would soon induce non-member countries to ask for admittance.

2. *Nor would it be necessary that every small state should be separately admitted to membership.* With the security which the establishment of a genuine Government of Nations would supply, many of the multiple race and nationalistic identities would fade. Groupings could be worked out by which several existing states could be combined as units for representation. Take, for example, the old Austrian Empire: Its components could no doubt have survived on a basis of amity, notwithstanding sharp individual differences, if the principles of local self-government within the orbit of Federal Union, such as ours, had been made effective. Various compatible groupings suggest themselves as a means of sim-

plification. The fragmentary division of the human race has been a source of endless wars and woes. The further that integration progresses on a logical basis, the greater shall be our progress toward peace.

#### Representative Government Should Be the Foundation Stone

3. *The principle of Representative Government would of course be the foundation stone.* But to arrive at a just basis of representation would not be without serious difficulty. In countries where the system has been successfully applied, representation has been based on population. Each citizen is regarded as having an equal voice in the choice of agents to carry on the government. Though we get along pretty well by using a specific number of persons to determine how many representatives a State shall have, it might well be that in a World Union other considerations would have to be taken into account, as, for example, the character of certain portions of the population. We did that very thing in our Constitution, which for purposes of representation allowed a slave to be counted as three-fifths of a freeman and excluded Indians not taxed. However, the problem of arriving at a fair basis for representation would not present insuperable difficulties. Mr. Rider's formula for weighted representation may be the answer. Indeed, if a nation having a portion of primitive, ill-adapted persons within its borders were denied full representation on a numerical basis, it would serve as an incentive to bring them up to a required standard.

4. *A second House, such as our Senate, has undeniable advantages.* Here, not only could the fears of smaller states be quieted by giving them equal representation, but such a body could be equipped with apt appliances by which hasty, ill-considered action could be prevented. The smaller, less powerful states could not be overwhelmed; compromise would become necessary to agreement, and compromise, history demonstrates, is prerequisite to successful self-government.



5. *The Executive functions, it seems clear, could not be designed on the lines laid in our Constitution.* The choice of an individual to serve as Chief Executive for a fixed term would be undesirable, unworkable and unacceptable. The British invention of the Cabinet system would seem to be the appropriate example to follow. The Executive Department—call it Cabinet, Ministry or Commission—would thus be created by, and responsible to, the Representative Assembly, and would hold office only as long as it retained the support of that controlling body.

6. *Of prime importance would be the explicit limitation of this Government of Nations to clearly defined functions delegated to it.* But the precise delineation of its legitimate sphere would be of little value unless effective means were provided to enforce the restrictions and to protect the constituent states in the free exercise of all powers not expressly ceded. This would require more careful restrictions than those found in our Constitution, to the end that by no possibility could unconferrred powers be usurped, or delegated authority expanded, by specious construction of the language of the Charter. On the other hand, it would be equally essential that such a central Government should possess all powers needed to enable it to enforce obedience to the law and thus preserve peace. It would have to be an administrative force in fact, not merely a policing department.

7. *This leads to the question of the laws to which all should be required to render obedience.* The Constitution or organic law to which the nations subscribed would be the starting point, but only in the sense that it provided the machinery whereby laws could be enacted and administered, strictly within the limitations set. It would of course be essential that such a United Nations Government be vested with power to establish and enforce fair trading regulations among the various countries to the end that all might enjoy an equitable portion of the earth's bounties, regulations which would insure

opportunity and rewards to the alert and diligent. And it would be especially important that this grant of authority should be drawn with the utmost care, to the end that it could not become puffed out and serve as a pretext for expanding the federal authority, as in the case of our Interstate Commerce Clause. Universal fair play for commerce and industry would remove the most common cause of friction and conflict.

Moreover, this basic Charter should contain a Bill of Rights for all persons over all the world; and this should not be merely a pious profession of good will, but be accompanied with effective means of preventing denial or abridgement of acknowledged individual rights. The idea that what a government does to its own citizens is no concern of other nations should be forever discarded. The world should no longer stand by and permit the rulers in any state to persecute, plunder and murder some of its subjects no matter what the pretext. Such a Bill of Rights could be ordained and maintained without infringing any legitimate privilege which a state should exercise in ordering its internal affairs.

As to details for the regulation of intercourse among the nations, a beginning could be made by adopting a code consisting of approved principles of International Law. That large body of precepts, conspicuously ignored when they should be most binding, known as the "Laws of War", would of course become obsolete. For the rest, the laws enacted would not be inflexible. We should have a growing body of international jurisprudence adapting itself to changing conditions, and giving effect to ripened experience.

8. *Our invention of Courts to interpret and define the meaning and intent not only of ordinary laws, but the Constitution itself, and endowed with authority to declare a law inoperative if found to be at variance with constitutional limitations, has doubtless been a most important contribution toward the permanence of our Union.* Such a Court would

be prerequisite to the success of a World Union. This important object, however, could not be achieved unless means were carefully worked out that would insure complete independence of this tribunal, a bench of judges placed beyond the reach of nationalistic cupidity and cabal. Heretofore, in our attempts to create World Courts, the members have sat not as impartial judges, but as representatives of the opinions and prejudices of their respective countries.

It would not be easy to devise means by which such a Court as suggested would always function perfectly. At times, ours, too, falls far below the exalted standard we have set. But, by and large, it has done a pretty good job; if it slipped, it soon regained its normal equilibrium. I think a World Court could be devised which in time would do quite as well.

#### IV

##### Americans Should Insist on a World Federal Union

John Adams aptly said of our Constitution that it was "*extorted from the grinding necessity of a reluctant people*". We are prone to forget that it took the last ounce of strength and strategy to push it over the line. The wise men who prepared the framework of our government, destined to stand intact while every other form of government which existed in 1787 has either crashed or undergone radical changes, well knew what intense and many-sided resistance their proposed plan of Federal Union would encounter. Yet they did not fail to embody in it that which they deemed to be good and reasonably practical. They did not quail in the face of certain bitter opposition. They, and their small body of adherents, went forth and fought valiantly for the drafted Constitution in the face of obstacles which would have turned back men made of less stouter stuff. And they won through. We should profit by their example.

Yet, with that proud heritage to urge us on, we have not even tried to induce the nations of the world to make use of the demonstrated principles which have given us peace

and prosperity. We have taken the easy way, and yielded to such expedients as emanated from Dumbarton Oaks and San Francisco. We have failed to assert, with the overwhelming strength we possess, the principles we know are best, not only for us, but for the world at large; we have failed to resist, as we should, categorical assertions based on ancient, alien ideas and obstinate prejudices which should be discarded.

Whenever it is proposed to unite the entire human race, now or gradually, under some form of over-all government designed to make certain the solution of international differences without resort to slaughter, pillage and devastation, various alleged insurmountable obstacles are promptly depicted. With an air of superior knowledge and pitying indulgence, the idea is dismissed as chimerical. Differences in language, customs and traditions, inveterate rivalries and jealousies, and a mass of other hindrances are cited; so that in effect we are asked to shrug our shoulders and go on as before, or accept some such ostensible remedy as the League of Nations or the United Nations Charter. Why should we not cut loose and make a forthright attempt to prevail upon other nations to join with us in establishing a genuine foundation for enduring peace under a system of Federal Union?

#### Could Soviet Russia Enter a World Federal Union?

It has been asserted that Soviet Russia with an autocratic form of government could not be fitted into a form of Federal Union. This is by no means so. If Russia desires above all security against outside attacks, so that she may be free to develop her vast territory and almost limitless natural resources for the benefit of her citizens, she should be the first to welcome such an arrangement as outlined, which would insure the achievement of this object. Indeed, the pretext for a strong, centralized autocracy would lose its force if once the threat of assailants from without

were removed. Clearly, if the Russian people understood that no threat of alien conquest existed or could develop, they would in due course learn and establish processes of self-government. On the other hand, if Russian leaders look forward to using their people as pawns, and to imposing a Communist dictatorship on all the world, then it is more than ever imperative that a Federal Union of Nations be founded without her, in order to frustrate such a threatened calamity. And if Russia found herself thus isolated, in due time no less than did little Rhode Island, she would find it advantageous to come in.

Undeniably there exists today a "grinding necessity" which should enable us to "extort" consent, however reluctant, to a cession of sufficient powers to a central authority to make peace forever secure. There is no other way. Twice in a quarter century we have been subjected to unexampled sorrows and losses from wars and their aftermath. This constantly recurring bloodshed, reproducing ever more horrible means of destruction, is a hideous brand on the brow of man. America cannot escape these horrors; we are intertwined with all the world; we are bound to be drawn into wars no matter how remote from our shores their origin may be.

Nor can we look for safety through colossal defense armaments. There is no defense, now known or conceivable, against atom bombs or other new developing engines of destruction which will become available against us. And the idea of obtaining security through treaty arrangements for disarmament is too ridiculous to warrant serious discussion. Can we put faith in disarmament compacts, even with a futile inspection provision, when still fresh in the memories of even young men there is the Washington Conference, the voluntary sinking of our warships, the three-power naval limitations, the restrictions on Germany to an army and navy so small that she could not possibly again cause a great war?

Likewise, there is no hope of obtaining a genuine solution by merely tinkering the machinery of the United Nations Charter. The "veto power" held by the few in the seats of the mighty frustrates the aspirations of the smaller nations craving safety and opportunity. This veto provision is a defeasance clause which vitiates the great objects of the founders and friends of the Charter. Obviously, neither the "Big Five" nor the "Big Three" could be expected to subject themselves to domination at the will of an unrestrained majority of the lesser, but more numerous, nations. Only under a system of World Union which would make security for all certain and indestructible, and would give to each proportionate influence in its councils and conduct, could the presently controlling powers be induced to yield any part of the advantages and dominance they now possess.

It seems clear, therefore, that the inherent infirmities of the Charter can be cured only by fundamental reconstruction; and further, that steps toward that end should be taken without delay according to the procedure specified in the Charter itself. As in 1787 our Constitution grew out of the Articles of Confederation, so out of the seeds implanted by the United Nations Charter there can be developed a robust World Federal Union.

Without this, codification of the principles of International Law would be futile. The most explicit rules which could be drawn and adopted would be useless in the absence of effective means for their enforcement. We know from long and sad experience that nations, if unhampered, will be guided by what their leaders assert is their national interest, and will not be deterred by the most precise written prohibitions.

#### No Hope Through the Influence of "Peace-Loving" Nations

Neither should we beguile ourselves with the hope that all will be well if the "peace-loving" nations have preponderant influence. What indeed is a "peace-loving" nation, in the world as it has till now existed, except one

which professes lofty ideals but keeps its sword sheathed only until it finds advantage in resorting to force. Even our country went to war with Mexico in 1846 because our slave-holding States, then in control of our government, found it desirable to capture new territory by which to ward off the growing threat to their "institution"—slavery. And who can say when some future Alexander or Napoleon, some Attila or Ghengis Kahn, some crazed Hitler or Mussolini, backed by the full grown power of Russia or China or India, will set out to conquer the world. The sharpened appetites of adjacent peoples, the susceptibility of human beings to subtle propaganda, the wiles of artful, ambitious leaders, can at any time set the world aflame.

We tried the League of Nations which failed in every crisis. It stood by impotently when confronted with Italian and Japanese aggressions, and vanished entirely as German brigandage progressed. And the United Nations Charter, it seems, is serving merely as a delaying maneuver for Russia against the day when she can marshal her full strength and dictate terms under threat of war.

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union), I should like to point out that the American Union was based upon long experience with looser forms of cooperation. It was, as Napoleon said of the Swiss Federation, "the product of a long series of developments, of misfortunes, of efforts, and of experiments." For many years the Colonies had been united under the British Crown. There had been a long succession of inter-colonial conferences. In particular, there had been the experience under the Articles of Confederation—an experience which is to some extent, being duplicated today under The United Nations.

How did the Articles of Confederation contribute to American Union? Their first great service was to bring together the leading statesmen of the American Colonies, to make them acquainted with one another, and to

There is one alternative founded on the Nazi philosophy that world peace can be attained only when one "master race" gains complete ascendancy over the entire world. With all humanity enslaved, the "master race" would enforce peace. And the Germans, with becoming modesty, conceding that they alone possessed the necessary superior qualities, graciously volunteered to assume the role of world saviors, and straightway set out on a career of unexampled murder and plunder, to the end that as abject slaves we might enjoy the blessings of peace. Equally abhorrent is the Communist doctrine under which the human race would be at the mercy of a single despotic regime which under false slogans of democracy would bestow such benefits on its fettered subjects as its sweet will might deign to confer.

The proposal that our country take the lead in establishing a Federal Union of Nations, involving a limitation of our "absolute sovereignty," is not urged as an act of pure benevolence. It is urged not merely for the sake of the world at large, but particularly for the sake of our

develop an understanding of common American interests and a feeling of American patriotism. It is significant that when John Adams went to the first meeting of the Continental Congress in 1774, he not only had never met many of the leaders of the other Colonies but had not even heard of them. The first days of the Congress were spent in something of a scramble to learn how other Colonies were governed, what their interests were, and who their leaders were.

Yet within the space of a few years, these leaders of the different Colonies developed a spirit of National loyalty which was one of the most important elements in winning support for the new Constitution in their individual States. It was more than a coincidence that every one of the great leaders in the struggle for the Constitution had served the government of the Confederation in either a

America. In the presence of modern instruments of destruction which cannot be averted, such a Union is the one means of self-preservation for us as well as all other peoples. In 1787, the people of our States, however they prized their individual sovereignty, consented to lop off what was required to put an end to the trials they had endured during the period in which they had no more over-all government than the world has today. We should not only ask that this sound and salutary example be followed, but we should use all the prestige and power we now possess toward inducing other nations to accept this available means of establishing secure peace. Indeed, we shall do no less than our duty to ourselves and to all humanity if we "extort" such acceptance as did the stalwart men in the days of John Adams.

If this is not accomplished, inevitably we return to power politics, plotting, militarism, and the whole dismal train of events that lead straight to warfare, and this time not to a war to end wars but a war to end the human race.

### World Federalism

legislative or an administrative capacity. For, as Charles Pinckney told the Constitutional Convention, "there is an *esprit de corps* which has made heretofore every *unfederal* member of [the Confederation's] Congress, after his election, become strictly *federal*. . . ."

It would be hard to say that there is any equivalent *esprit de corps* among the world's statesmen today; but The United Nations, by bringing them together for the regular consideration of common problems, is already doing much to build it.

### The United Nations Is Accustoming Nations to Work Together

A second great service of the Articles of Confederation was to prepare people's minds for the strengthening of their common government. Men are