

## A REPLY TO MR. CULBERTSON

In physical attacks the technique, or rather lack of technique, of frontal assault with the full impact of available passion and force, sometimes leads to overwhelming results; the attacker need not draw, subsequently, on non-existent reserves. In literary attacks the effect is not the same. The victim survives unharmed the initial outburst of emotion and generic insult, to marvel coldly at the lack of reserves and substantiation that follows. A skillful literary invective should open more in the style of "Brutus is an honorable man."

Mr. Culbertson is not calm enough. For reasons of his own he read the *Preliminary Draft of a World Constitution* with passion-shot eyes. Otherwise it would be hard to explain how so honorable a Brutus could misinterpret and misquote a text to such an extent, befogging his legal language, his experience in constitutional law and history.

Mr. Culbertson's quarrel with the *Draft* may be divided into two sections. He criticizes its structure, based on Regions, insofar as it foresees a development beyond the nation-state, and tends to reach an acceptable balance between the "have" and the "have-not" states; and he criticizes the Grant of Powers as being too inclusive.

That the nation-state is by nature the antagonist of the world state seems to be merely a definition in terms and hard to debate. One might add that the more powerful the nation-state the greater the resistance to the world state idea. The accusation, however, that the *Draft* attempts to "abolish" the nation-states or to "drastically reduce" their sovereignty, needs some examination. Does Mr. Culbertson mean "abolish" or does he mean "drastically reduce"? If he means the former, the answer is found in the continuation of the quote which Mr. Culbertson cut to suit his convenience.

. . . [I]t would be visionary to expect that the so-called nation-states, about seventy or eighty of them . . . would consent to blot themselves out or to be blotted out of the historical picture overnight. . . . If, therefore, a world constitution is intended to be desirable and feasible alike, it must try a middle road pointing to a *survival of the extant state*; in a framework of local initiatives and authority, while depriving them of

functions and powers which are basic to the World Government. . . .<sup>1</sup>

If, on the other hand, Mr. Culbertson opposes the curtailment of sovereignty, we come to the real crux of our conflict. The *Chicago Draft* is a plan for a world federation. Mr. Culbertson's proposal has nothing whatsoever to do with federation, a term which he uses rather loosely. "The World Federation will come," he writes. "But it can come only from the association of sovereign states who will delegate to their federal government specific and strictly limited powers. . . ."

If world government comes by voluntary agreement, as we hope, and not by war and conquest, then there is no doubt that it will come "from the association of sovereign states." But once they have delegated to "their federal government specific and strictly limited powers . . ." they are no longer sovereign, it should seem.

In Mr. Culbertson's book, *Total Peace*, he points out that we need regional organization, in order to solve the problem of representation in a world government comprising over seventy states.<sup>2</sup> He indicates that neither the League of Nations' principle—one state, one vote—nor Clarence Streit's Federal Union principle of representation on a straight population basis would bring an acceptable solution. The *Chicago Draft* proposes one way out of this dilemma, correctly described by Mr. Culbertson. Strange, that he does not grasp it; that, instead, he accuses the *Draft* of embodying "a rabbit system." "If the population concept of humanity were true," he states, "the only just solution would be the one proposed by the University of Chicago Committee."

Representation in the World Legislature according to the Chicago plan is not based directly on numbers of population. It is based on a new synthesis of "popular" representation (as in the American House of Representatives) and "unitary" representation (as in the American Senate).<sup>3</sup> To

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1. Pp. 43-4 (italics supplied). All references to the PRELIMINARY DRAFT OF A WORLD CONSTITUTION are to the edition published by the University of Chicago Press, 1948.

2. TOTAL PEACE 309 (1943).

3. Where Mr. Culbertson alleges that the President and the World Council will be elected by the nine Regions "on the basis of a total of 27 votes," with each Region casting 3 votes, he seems to confirm that he has not read the *Draft* very carefully. The *Draft* provides that the Federal Convention shall be composed of delegates from all countries,

adapt these principles to the world situation it seemed advisable to translate them from simultaneity to sequence, the Council (unitary representation) originating from the Federal Convention (popular representation) which, unwieldy and unbalanced as it is, is reduced to an electoral body whose function ceases once the Council is established. It seemed advisable, furthermore, to introduce a link between the basis of seventy-odd extant states with their 1: 3,500 proportion between the population of the smallest and the largest, and the World Legislature. This link is the "Regions."

Mr. Culbertson's Constitution, too, is based on regions. He postulates the organization of nations into "regional federations" with regional governments constituted simultaneously with the organization of world government. The Chicago Plan, on the contrary, does not presuppose the Regions as already organized, or organizable, across oceans and continents. It establishes them at an intermediate level, in the Federal Convention, at which level regional organization becomes feasible without any technical difficulty. The Federal Convention is composed of delegates from the states, the political realities of today, each state being entitled to one delegate per million inhabitants.

The Federal Convention shall subdivide into nine Electoral Colleges according to the nine Societies of kindred nations and cultures, or Regions, wherefrom its members derive their power. . . .<sup>4</sup>

Each Electoral College then nominates twenty-seven candidates for the Council; whereupon the Federal Convention, reunited in plenary session, elects from those lists nine Councillors for each Region. To keep the situation more flexible, eighteen additional Councillors are elected at large (a provision the consequences of which are overlooked by Mr. Culbertson).

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one delegate per million inhabitants; that delegates shall vote individually, one delegate one vote; that the Federal Convention shall subdivide into nine electoral colleges corresponding to the nine Regions wherefrom the delegates originate; that each electoral college shall *nominate* three candidates for President and twenty-seven for Councillors; that, from these nine lists the Federal Convention, in plenary session shall *elect*—one delegate, one vote—the President as well as eighty-one Councillors, nine from each list. [For a more complete understanding of the Chicago Plan the reader is referred to *Common Cause*, published monthly by the Committee to Frame a World Constitution at the University of Chicago.]

4. P. 11.

The legislative body resulting from this second-grade election is workably small and fairly balanced among the races and fortunes. The United States, though its population is only slightly in excess of five per cent of the population of the earth, would have a minimum of eleven per cent of the votes in Council. It is likely that owing to her prestige and influence she would succeed in securing a certain number of additional votes by having additional Americans elected among the eighteen at large. The Far East, on the other hand, with almost twenty-five per cent of the world's population, would be restricted to eleven per cent of the votes.

But while representation is thus balanced, the democratic principle, one man one vote, is strictly safeguarded within this two-story structure in which the Council as a whole is finally elected by the Federal Convention (where representatives are strictly proportionate to population), so that, in the last instance, each Chinese and each German, each African Negro and each American white, has exactly the same share in electing the Council as a whole. The Chicago Plan falls in line with the historical trend toward regional organization in solving the problem of representation. It does not presuppose the culmination of this trend, however, by basing world government directly on regions which do not yet exist, but provides, in the Federal Convention, a guiding mechanism for its growth and fulfillment.

Mr. Culbertson could have done a much better job in attacking the Chicago Plan's Grant of Powers. He could have separated, among those nineteen brief paragraphs, those that deal with the actual repression of war from those which cope with the most usual causes of war and encroach on social and economic legislation. He could have taken the position of many good world federalists, the "minimalists,"—that it is premature to include the latter in the initial phase of world government. It would have been more interesting to meet him at this level, and to explain why the Chicago Committee, which itself started from a "minimalist" point of view, came to the conclusion that a world government of the police state type, with merely repressive powers perpetuating the status quo, unbearable to the majority of mankind, would be unacceptable to that majority and unable to maintain peace.

Set in motion instead by his peculiar understanding of "sovereignty" vs. "federation," Mr. Culbertson opens fire against, of all clauses, clause (c):

The maintenance of peace; and to that end the enactment and promulgation of laws which shall be binding upon communities and upon individuals as well;

If the jurisdiction of the World Government does not extend to the "maintenance of peace," what do we want a World Federation for anyway? If the law is not binding on individuals, but needs ratification by states, can we speak of a federal government at all?

Mr. Culbertson also attacks those clauses charging the World Government with the final settlement of boundary disputes, with the administration of what today are colonies—a job which even the United Nations dares to assume—and the control of armed forces. What should be the responsibilities of a world government, if not these?

Clause (p), granting the power of "supervision and approval of laws concerning emigration and immigration" to the World Government is misinterpreted by Mr. Culbertson. It does not give to the World Government power to *make* laws regarding immigration. It establishes that the world legislative body may veto or demand repeal of such laws if they are in contradiction with the world law. The United States, *e.g.*, could not be compelled—and who in his senses would make such a proposal—to open her frontiers wide to the "monstrously overpopulated Asiatics." The United States could be compelled however, to repeal immigration laws which would be in conflict with the world law. Since laws discriminating against race or color would be unconstitutional, the United States would have to repeal the Immigration Acts of 1921 and 1924—which she is repealing anyway. But she would be left free to admit as many or as few immigrants within the limits of reason as she herself would decide. To restrict the number of immigrants and to set high standards of individual qualifications would not be in conflict with the world law, according to the Chicago Plan.

It will be enough to list briefly Mr. Culbertson's other protestations, which are advanced with a similar lack of detachment. His deplorable appeal, *e.g.*, to the lowest un-American feelings against the "proliferating Asiatics" and their "desperately hungry politicians" seems out of place in the rational context of a law journal. Surprisingly, he calls the proposal that the President of the World Federation be also its chief justice or president of the supreme court, a "twisted echo of the Roman Caesar also being the Chief Priest." With-

out descending so deep and so inappropriately into the well of history he could have found this "legal absurdity" embodied in, *e.g.*, the new Italian Constitution, a document not so easy to brush aside as a legal absurdity.

But Mr. Culbertson is not much bothered by contemporary Constitutions. He seems unfamiliar with the Swedish Constitution, under which a Tribune of the People lives and flourishes right in the twentieth century. The fact that he can use trains and planes, and need not rely on ox-carts makes it possible for him to function exceedingly well all through the Swedish Kingdom. The Tribune of the People of the World could likewise make good use of planes and jets. Furthermore, he would have the right, under the Constitution, to appoint deputies, as does, under the late Chinese Constitution, the Control Yuan, an office which, much like that of the Tribune of the People, has its roots in prehistory and has proved so vital that it has survived into modern times.

Mr. Culbertson has skimmed the *Preliminary Draft* so cursorily that he attributes passages to it which are no part of the Constitution, just because they are printed in the same volume. The editorial statement, *e.g.*, of the Committee's attitude on the Russian problem, is no part of the Constitution. This appendix chapter, entitled World Government and Russia, has been attacked as "violently anti-Communist" in Western Europe. A European publisher has even asked us to expunge it because it is, in his opinion, too anti-Communist and too pro-American for the present West European mood.

It is true that Section C of the Declaration of Duties and Rights, concerning the four elements of life (earth, water, air, and energy) quoted by Mr. Culbertson, has a socialist (with small "s") content. Be it noted, however, that the legitimacy of particular and individual ownership, of definite or indefinite tenure, with due regard to the interest of the common good, is unequivocally stated in the same paragraph, but replaced with dots in Mr. Culbertson's quote.

It may be stated, in conclusion, that Mr. Culbertson's polemic could have been much briefer. It might have read, simply: "I am against federal world government."

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