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Accessing British Empire-U.S. Diplomacy from Japan:  
Friendship, Discourse, Network,  
and the Manchurian Crisis  
(日本からの英米外交への参加：  
友情、議論、情報網、満州事変)

Peter Oblas\*

**SUMMARY IN JAPANESE:** 満州事変の際、日本の外務省が英米関係にかかわりを持つことができたのは、一人の国際法学者と東京在住の一級の日本評論家であったジャーナリストの親密な友情のおかげだったといえる。その国際法学者は、日本の外務省の法律顧問トーマス・バティ博士、ジャーナリストは『ニューヨーク・タイムズ』と『ロンドン・タイムズ』の東京特派員のヒュー・バイアスだった。二人の主権をめぐる法的議論は、日本の満州における軍事行動は国際連盟規約および他の協定に違反するものではないという日本の立場を支持する英国内の意見を再確認するものであった。結果として、日中間の争いに対処する方法において英米間の戦略的な違いをより大きなものとする事となり、一旦は、カナダも国際連盟内で公然と日本を支持することになった。

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At the time of Japan's military action in Manchuria beginning in 1931, the Office of the Foreign Legal Adviser of Japan's Ministry of Foreign Affairs was able to access British Empire-United States relations through its extraordinary connection to Japan's expatriate community. The international law professed by the foreign legal adviser had become associated with the representations of the Tokyo correspondent for the *London Times* and *New York Times* in the form of a juridical discourse on sovereignty during Japan's belligerency in China from the late 1920s. Both British and Canadian Far East diplomacy were affected by this framework. Ultimately, the discourse impacted on British-U.S. cooperation in countering Japanese expansion in Manchuria.

The foreign legal adviser and the pressman who developed this discourse were, respectively, Thomas Baty and Hugh Byas. The two came from different class backgrounds in British society, but they became good friends in a country not their own, Japan, from 1916 to World War II. Their friendship developed within the context of their separate careers. Baty served the interests of his employer, the Japanese government, as Foreign Legal Adviser, while Byas pursued a reputation as a journalist that would gain him recognition as the leading commentator on Japan from inside Japanese society for the Western press and later, an academic position with Yale University.

Baty advised the Japanese Ministry of Foreign Affairs. His job at the ministry was confined to formulating diplomatic documents and offering advice on legal matters. He was not employed in a diplomatic capacity by the ministry. Regarding Byas' employment in Japan, he edited the *Japan Advertiser*, an American-owned, English-language daily in Tokyo, from 1914 to 1922, acted as the newspaper's London correspondent from 1922 to 1926 and returned as editor from 1926 to 1930. From 1926/1927 until 1941, his reports would circulate in the *New York Times* and *London Times* as at first their part-time correspondent and later their full-time correspondent.

The close association of the two men illuminates a connection, however unofficial and informal, between Japan's Office of the Foreign Legal Adviser and the *New York Times* and *London Times* drawn by a juridical discourse on sovereignty. The Baty-Byas discourse impacted on British and Canadian Far East diplomacy from the late 1920s to the mid-1930s and as a consequence on British Empire-U.S. relations.

## Baty-Byas Friendship

Byas first met Baty in 1916 in the mountain-lake village of Nikko—a popular summer resort for officials and prominent members of the British Empire community in Japan. Byas had arrived in Japan with his wife two years earlier to assume the editorship of the *Japan Advertiser*, which he hailed as the leading American-owned newspaper in Asia. Byas was 41 years old at the time while Baty was 47.<sup>1</sup>

Baty had come to Japan in May 1916 accompanied by his mother and sister. A large-size picture of Baty, his mother and sister appeared on an inside page of the May 27 edition of the *Japan Advertiser* when the family reached Tokyo from the port of Kobe. Byas' headline for the following article based on an interview with Baty by a "representative of the Advertiser" read "New Adviser Foresees Bright Future for Anglo-Japan Pact."<sup>2</sup> Byas, at the time, was pursuing an editorial policy at the *Japan Advertiser* dedicated to countering growing criticism in the Japanese media of the Anglo-Japanese Alliance. The alliance guaranteed the participation of Britain and Japan in a war where either Britain or Japan was engaged with more than one belligerent. The alliance formed the basis for Japan's participation in the world war, but it was being criticized at the time as benefiting only Britain and preventing Japan from fulfilling policies that would establish its political dominance over China at Britain's expense. Advocates in the Japanese press were calling for the immediate and drastic revision of the alliance.<sup>3</sup>

Byas, who was an active member of the Tokyo Branch of the British Patriotic League supporting Britain's war effort,<sup>4</sup> was busy running articles and editorials bolstering Japan's support of the alliance. For Byas, it was not Japan's position with regard to England in the Far East that was at stake, "as so many thoughtless writers have assumed," but Japan's standing as a civilized member of the world community.<sup>5</sup> Consequently, Baty's remarks during the interview made the new adviser "news" for Byas and provided Byas with a highly positive first impression of the man. Byas tied his headline for the Baty article into Baty's assertions that the alliance was as firm as the rock of Gibraltar and the present relations of Japan and Great Britain had "become a sort of second nature, a habit to both the parties."<sup>6</sup>

Baty had journeyed to the "Lake" as part of the summer exodus to escape the heat of Tokyo.<sup>7</sup> Byas was on a holiday from his strenuous schedule as editor of a daily newspaper, "thanking his stars that I was out of Tokyo and would not

have the difficult job of commenting on the news until more was known” about the course of the war in Europe.<sup>8</sup> Byas and his wife found Baty and his sister good company. Both men enjoyed reading and taking long walks as their hobbies. Byas’ eclecticism in his reading appealed to Baty’s intellectual curiosity. Byas read books on cars, travel, literature, law, etc. He enjoyed a book on Turkey as much as one on Sir Walter Scott as a judge.<sup>9</sup> His thoughts on what he read were implicit in his observation “that the subject matters little and the writer everything.”<sup>10</sup> Both men were enthusiastic about books on Japan and intent on reading all that they could on Japanese society and culture.<sup>11</sup> Some years later after their friendship had matured, in an editorial on the cherry viewing culture in Japan, Byas would reflect on Baty’s search for the soul of Japan. He observed: “Dr. Baty, seeking for the soul of things, finds the cherry flower a symbol of vitality and grace,” which the Japanese continue “to enshrine in their hearts.”<sup>12</sup>

Byas would not return to the Lake until twenty-nine years later, but Baty made summer at the Lake part of his seasonal routine. The death of his mother, who suffered from ill health, at the end of August, did not alter his attachment to the Lake and its lifestyle. In fact, the burden of the loss was lightened somewhat by the Japanese foreign ministry, which arranged for a special train car to transport the body for a funeral in Tokyo attended by the foreign minister.<sup>13</sup> In the following summers, Baty enjoyed expatriate society at its leisurely best of morning walks, sailing, high tea, good books and good conversation.<sup>14</sup> In 1935, when Byas visited the Lake once again he reminisced about his earlier stay. He remembered that “he was greatly taken with Chuzenji” (the name of the Lake) and if he could have had a summer place he would have fixed it there. His memories of his early conversations with Baty at the time were associated with sailing on the Lake in Baty’s large but quite old sailboat. He related his feelings on Chuzenji and Baty in a letter to a mutual friend of theirs, Lionel Cholmondeley, the Anglican chaplain in Tokyo from 1887 to 1921. He referred with a sense of *deja vu* to the “capital ship The Ark” that “still floats, flying the St. Andrew’s cross [the flag of the patron saint of Scotland] when her owner, Dr. Baty, is aboard.”<sup>15</sup> In the ensuing months of 1916 and 1917, Byas had ample opportunity to get to know Baty even better since Baty’s huge ministry-provided residence in Tokyo soon became a highly popular destination on the embassy party circuit.<sup>16</sup>

Byas and Baty differed in education and social backgrounds, the latter with doctoral degrees in law from Oxford and Cambridge, and the former, a farmer’s son, educated locally, who had earned his worldly knowledge as a working jour-

nalist in Scotland, England and South Africa. But they both took pride in being Scottish.<sup>17</sup> Byas was well known as the Scottish editor of the *Japan Advertiser* since he was inclined to highlight his editorials and commentaries with a touch of humor that bore on his Scottish heritage. For instance, with the establishment of the League of Nations and the appearance of a wide range of ethnic movements for self-determination worldwide, some quite spurious in his opinion, Byas wrote an editorial headlined “Scotland Too” on an effort for Scottish self-determination. He remarked that there must be some “sideslip somewhere” since, in his understanding, “it was the English who wanted self-determination.”<sup>18</sup> On the appointment of the first secretary-general of the League of Nations, he punctuated his belief in the success of the new enterprise for peace in the following way: “The Secretary-General of the League of Nations is a Scotsman. This is not a guarantee of efficiency, but an assurance that the League will ‘stretch out’ and extend its business. It will keep a firm grip on what it has got and lose no opportunity to look for more.”<sup>19</sup>

Whereas, for Byas, being Scottish was his birthright, for Baty, it was the ideal lineage. Baty was English, not Scottish, but he considered the Scotsman to be without equal in his freedom-loving, independent ways, traits he emulated. A friend described Baty as the most ardent Scotsman he had ever met. His sister would continually remove the rampant lion, red and gold Scottish flag, which he flew at their summer cottage in her absence, with the Union Jack, explaining to all that their family had no Scottish blood in them.<sup>20</sup>

In addition to their shared love for Scotland, both men considered themselves Victorians and took pride in the past Victorian decades. Byas was born in 1875, Baty in 1869. Both passed their formative years in Victorian households. Byas felt most comfortable with Victorian values of moderation and liberalism. In 1932, he wrote that Meiji Japan was rapidly becoming a thing of the past and offered the following refrain on the world in general: “I am afraid that applies to the ‘age’ of all of us who are Victorians. The world is rushing into something new. No doubt it will be better but I have no great desire to hasten it.”<sup>21</sup> Baty, more emphatically, idealized the Victorian era, considering it an age of peace, chivalry and liberty.<sup>22</sup> Both men trumpeted the gentility of Victorian society.

On gender considerations, they shared a Victorian appreciation of the “home sweet home” female virtues of charm and determination. They were of the opinion that future society would benefit by providing greater opportunity for women’s virtues outside the home.<sup>23</sup> Byas would bring women’s issues and

topics to the pages of the *Japan Advertiser*. And he would provide the editorial page with a feminist orientation. He considered the goals of the feminist movement in Japan as reflecting the aspirations of civilized men and women worldwide. He consistently maintained in his writing that the demands of Japanese intellectual women for equality of the sexes, the right to earn a living in a field of their choice and a voice in public affairs to be respectable and constitutional.<sup>24</sup> Their Victorian roots also provided for a close correspondence in their opinions on Japan's stature in the international community. Both men were thoroughly attached to a Victorian standard of civilization that evaluated a nation's standing in the international community according to a Western model, especially the British one. Byas and Baty were firm believers that Japan epitomized the "march of civilization" in the Orient. They agreed that among the Asian states, only Japan had the capacity in their day to evolve into a progressive and modern state. Byas' opinion echoed Baty's when he wrote: "If I had to note in a sentence the characteristic which makes Japan noteworthy in the world today I would say that she is the only Oriental country in which the new wine of Western ideas has not burst the old bottles." He explained that Japan, "alone in the non-white world," had not only withstood the impact of the "terribly energetic civilization" but had grown strong and prosperous by assimilating it.<sup>25</sup>

Both men were British Empire colonialists. They believed in the beneficial nature of colonialism for the Empire's colonial peoples. Consequently, the new wine of Western ideas did not exclude the empire experience when considering Japan's overseas expansion into Korea, Formosa and China. In 1919, Japan suppressed demonstrations for self-determination in its colonial possession of Korea and implemented a policy of assimilation to Japanese language and culture. Korea became a protectorate of Japan after the Russo-Japanese War of 1904-1905 and Koreans became subjects of Japan after annexation in 1910. Byas and Baty confronted the Korean situation in a similar vein, although Baty tended to be less critical of Japan's behavior. Both men differentiated between Japan's colonial policies and Japanese colonialism. Both found Japanese colonialism to be sufficient and above reproach, but they thought that more consideration should be given to cultural sensitivities.

Byas maintained that his criticism of Japan's response to Korean demands for independence were not directed at Japan's administration in Korea, which he maintained to be mainly efficient and progressive. "The Koreans are more prosperous and enjoy greater liberty in their legal sense than they did under their

unspeakably rotten despotism.”<sup>26</sup> In Byas’ estimation, Japan could not concede independence or even, for that matter, self-government because there was the matter of “how can we suppose that people with past [“a chaos of misery and misrule”] so recently behind them could at one step rise to democratic government . . . .”<sup>27</sup> Byas admonished Japan in his editorials to reconsider its colonial policy in light of British colonial benevolent paternalism and secure its reputation in the world as a civilizing power by taking part in what had been called “the white man’s burden.”<sup>28</sup> For Byas, the burden in the Korean situation would be met by experimenting with a measure of local self-government and admitting Koreans to higher levels of administration in the colonial government. Such reforms would be bolstered by education in self-government and respect for Korean culture. He felt the choice for the future of Japan in Korea was rule by brute force or the British way of “leaving people alone,” offering “a period of beneficial tutelage,” and holding out an ultimate “partnership in Empire.”<sup>29</sup> He was quite positive about Japan’s future in Korea. He believed the real strength of Japan to be vested not in its feudal, military-clique past but in the continuing evolution of a new ruling class whose strength rested on reforming old institutions, even those directed toward backward peoples.<sup>30</sup>

Regarding Baty’s viewpoint, he considered the protection and annexation of Korea by Japan as conferring “the blessing of freedom.” His opinion was: “If freedom means the power to possess and enjoy in peace and security the fruits of one’s labour, the Koreans did not have it before, and they have it now.”<sup>31</sup> He agreed with Byas that Japan “found a country where the mass of people were in hopeless subjection to a few idle, tyrannical, and normally dissolute yang-bans; where dirt, cruelty and brutality were rampant . . . ; where justice did not exist, and politics meant palace intrigues . . . .”<sup>32</sup> And Japan gave Korea “reasonably good government.”<sup>33</sup> He, also, was inclined to differentiate between good government and self-government. The conferring of political rights was a policy of colonialism that he believed in time an enlightened Japan would implement in Korea, abandoning assimilation to secure “a contented and Korean Korea within the Japanese Empire . . . .”<sup>34</sup> At the moment, however, he was wary of moves to self-government since Korea had “no ‘self’ capable of governing.”<sup>35</sup>

Aside from hobbies, interests, heritage and the Victorian experience, colonial or otherwise, Byas and Baty shared a great respect for their respective accomplishments. Byas was apt to refer to his learned friend in conversations with others by his academic title, as Dr. Baty. By the year 1916, Baty had written over a dozen



highly acclaimed law books, including the treatise on *International Law* (1909) and *War: Its Conduct and Legal Results* (1915) and had contributed as many as 45 articles to professional journals. Several years later, in 1922, in recognition of his stature in international law, Oxford University offered him the prestigious Chichele Chair of International Law, which Baty decided to forego to remain in his present employ. Baty was also a leading member of the International Law Association, an achievement noted by the *Japan Advertiser* in the article on Baty's arrival.

In 1920, when an inaugural conference of the International Bar Association, of Asia, was held in Tokyo, the proceedings were featured in the *Japan Advertiser*.<sup>36</sup> The prime minister, members of parliament, foreign ambassadors and the president and members of the Japan Bar Association, as well as Baty, attended the opening ceremony. However, Byas led the article on the speeches with what Baty said. Byas provided the page-one two-column boxed article with the headline of "Speakers of Many Nations Greet Law Meeting Delegates," but he highlighted Baty's greeting with a sub-headline of equal point entitled "'This Not an Age of Anarchy,' says Dr. Thomas Baty." Baty's speech hailed the gathering for its lofty endeavor in spite of a feeling in the world "that in the eagerness to gratify the impulse of the moment nobody cares for the law" these days. He exclaimed that all was well with the law, given the proof that members of the bar had come from many different countries to improve and extend the practice of law. The speeches of the other dignitaries were relegated to an inside page, page ten. Also, noteworthy, in terms of Byas' elevation of Baty's status at the meeting, in the following day's newspaper, Byas rushed to correct an "obvious misprint" in recounting Baty's presentation. The insertion was entitled "Dr. Baty's Address" rather than correction or "Speakers of Many Nations."<sup>37</sup>

As for Baty's consideration, in turn, of Byas' stature and capabilities, Baty admired Byas' journalism. He found Byas to be "acute, fair, sympathetic, well-read and full of human kindness." In all, the two men found stimulation and comfort in the company of each other. Baty and his sister often visited their "dear friends," the Byas', at their home where, according to Baty, they were received with spontaneous hospitality. It was not surprising, Baty related, that there was no house he and his sister visited "more frequently or with greater pleasure."<sup>38</sup>

### Finding Common Ground: Two Interwar Issues

Agreement on two post-war international issues in which both had invested a great amount of thought in newsprint and international law scholarship respectively enhanced the comfort level of their frequent family get-togethers and other social contacts. The issues were the role to be played by the League of Nations in maintaining world peace and the status of China in the community of nations. The evaluations of both men would have ramifications for Japan's foreign relations.

Byas embraced the unveiling of the covenant of the League of Nations at the 1919 peace conference enthusiastically and with great hope for the future of civilization. On considering the contents of the covenant, he wrote: ". . . how deeply the covenant goes into the causes of war and national rivalry, and how practical is the machinery which it creates for the formulation and enthronement of public right as the law of the world."<sup>39</sup> On adoption of the covenant by the participants at the conference, his editorial was headlined by one word of exuberance, "Triumph." He proclaimed the League to be "a living reality" served up by not only representatives of Christendom, but of civilization. He hailed the League as the constitution of a higher authority never before established in this world. He added: "April 28 marks the fairest effort yet made to liberate the whole energies of man for the duties and the gains of peace and adds a new anniversary to the world's holy days—a fete day of humanity." Byas envisioned the replacement of a world of nation states with "the power of organized and civilized mankind." In his fervor, he informed his readers that "the world's great age begins anew."<sup>40</sup>

Later, when it appeared that the treaty establishing the League confronted severe reservations in the United States' Senate, his editorials urged America to consider its proclaimed aim in entering the war. The covenant was not to be viewed, in his understanding, as the finished product of political perfection but as an alternative to pre-war rival alliances, an improvement destined to avoid another catastrophe. He held that it was not the document that mattered but the intention; the document could be amended if necessary. There was only one choice and there were no alternatives to the proposed League. He explained that if discarded, there would "not be a shadow of any other." Instead, he warned of another war with aircraft, poison gas and Big Berthas that would surpass the horrors of the previous one.<sup>41</sup>

Byas was immensely disappointed by the U.S. decision to remain outside the

League. The decision dampened his enthusiasm for the peaceful settlement of disputes through the apparatus of the League since he considered the nations in 1919 to be no different from the nations in 1913 in pursuing their self-interests.<sup>42</sup> He observed that “with America out of the League nothing is left but a military victory and a treaty which plainly will require amendment some day but which cannot be amended except by force.”<sup>43</sup> Some ten years later, he still was of the opinion that there was little hope that a League without the U.S. could check a major world conflict since “obviously the League without America is one-eyed and one-armed.”<sup>44</sup>

Baty, unlike Byas, did not consider the League and its covenant upon its adoption at the peace conference as the “harvest of victory”<sup>45</sup> that would mold the political future of the world toward peaceful settlements. He was a traditional international law publicist who put his confidence in improving or fine-tuning the existing body of international law. He was not concerned with instituting a world government solution in the form of a universal provider of legislation, adjudication and enforcement.<sup>46</sup> He realized that the world was ready for peace, but he did not think that it was prepared for a super-state-style League of Nations that would impose propriety throughout the world. He held that different nations had different views of propriety. He saw the society of nations not as a State to be regulated, policed and judged but “more like a company of voyagers marooned on a desert island” to be roused to cooperation.<sup>47</sup> Baty understood that the efforts to abolish war had been “brought up with a round turn.”<sup>48</sup> To the inevitable demand of what would be put in the place of the instrumentality of war, the answer had so far proven unsatisfactory, according to Baty. He had arrived at a similar evaluation of the League’s potential to satisfy the world’s demand to put an end to national wars as Byas had, although less a consequence of events, i.e., the U.S. rejection of the League and its covenant, and more the result of custom and logic.<sup>49</sup> In any event, both men could agree in the 1920s that the League did not even closely approximate a super-state. For Baty, “the machinery of the League of Nations is dilatory and cumbrous to a degree.”<sup>50</sup> It could not dictate or enforce peace. For Byas, a League of Nations became a reality only if America participated.

Consequently, throughout the 1920s, both men were unhappy with the existing solution for peace in their time. For Baty, the question was what do you put in the League’s place and for Byas, what do you put with the League. With the Kellogg-Briand Pact of 1928, Byas’ solution replicated Baty’s. Based on 1927-

1928 negotiations between U.S. Secretary of State Frank Kellogg and France's Foreign Minister Aristide Briand, a multilateral treaty was concluded among the major powers. The pact included a renunciation of war as an instrument of national policy and committed the signatories to the settlement of all international disputes by peaceful means.

Baty acknowledged the appropriateness of the measure to dismiss war as impossible. He reasoned: "it may be said that an agreement to abolish war is of very little use unless there is some penalty provided for its infringement. This is not quite true. For we might proceed in an endless series to complain that the due infliction of any provided penalty was secured by no penalties." He continued: "No penalty is automatic. In the last analysis, we must come to some willing mind . . . ."<sup>51</sup>

For Baty, the Kellogg-Briand Pact was essentially the initiation of just what was required to galvanize the company of voyagers marooned on a desert island. He maintained: "Let all the nations of the world acknowledge—as by the epoch making 'Kellogg Treaty' they are swiftly doing—that their paramount necessity is the preservation of the peace, and we shall be in sight of what some minds consider a *sine qua non*, namely due penalty for its infringement." Once all nations were persuaded of the need to preserve peace, in his belief, they would rise up unanimously and with overwhelming force against the peace breaker.<sup>52</sup>

Baty realized that galvanization of nations would require more than just an announcement of abolition of war, it would have to be persuasive. This meant the peace pact, in the future, would have to meet his understood canons of international law to be indisputable, including simplicity, embodying a few broad principles; certainty, since international law could not sustain novelty; and objectivity, capable of application to facts that were easily ascertained.<sup>53</sup> He held that for the pact to be a viable as well as a real utility in abolishing war, public opinion would need a simple and certain standard that would "brand as war all 'peaceful attacks' with fire and sword."<sup>54</sup> The pact had to be amended to characterize pacific violence, peaceful reprisals, peaceful invasion and other alternative ideas to national conflicts as war. Otherwise, when the attacked sovereign state took up arms in its self-defense, the blame of war would pass to the victim of aggression. According to Baty, there still remained something to be accomplished before the guarantee of peace could be sustained.<sup>55</sup>

Byas also approached the pact with a Baty-like concern for materializing a collective willing mind to "outlawing war."<sup>56</sup> Whereas Baty referred to the willing

mind, Byas analyzed the “making of the international mind.”<sup>57</sup> In finding the pact and the covenant to be complementary rather than antagonistic, he saw no reason why both the pact and the covenant “should not exist side by side, strengthening each other.”<sup>58</sup> Byas, in 1928, had begun to catalogue the League’s relevance for peace within a framework strikingly imitative of Baty’s legal perspective of super-state or non-super-state status. Regarding the League, he now wrote:

It is not a piece of super human machinery capable of dominating international events independent of the will of various governments of the world. It can only work through the agency of elected governments and must therefore be judged from a human point of view; not as if it were that world government which does not exist. Yet in its eight years it has secured many useful results and it comes more to be trusted as a practical and indispensable part of civilization.<sup>59</sup>

For Byas, the pact fortified the human point of view and brought the U.S. closer to the League. However, like Baty, the peace pact was yet no guarantee of a peaceful world.

While Byas was considering the future of world peace within a concomitant framework of Baty-like juridical concepts and rationality, he was also preparing editorials on the civil war in China and sourcing Baty’s legal writing. At the time, the nationalist-led northern expedition force was combating the power of independent warlords. In his coverage of emerging conflicts in 1928 between Chinese nationalist engagements and foreign interests, including those of Japan, Byas sourced a 1922 article by Baty in the *Yale Law Journal*, to formulate a legal framework of analysis consistent with the merits and demerits of de facto recognition of governments. It was Byas’ habit to collect and reference articles of knowledgeable friends, including Baty, on a regular basis.<sup>60</sup>

In this 1922 article,<sup>61</sup> Baty argued that de facto recognition of belligerents as legitimate governments of a state created an anomaly in international law since recognition of a new state government was a factual affirmation of its permanence and “good evidence—in fact the best evidence—of its existence.” Without recognition, according to Baty, a government’s position was “insecure and difficult” since its legitimacy was still at issue and it lacked the instruments to secure international assistance and alliance. Baty considered that de facto belligerent governments could be recognized as provisional governments for purposes of

convenience, however. Provisional governments could be “temporarily dealt with as if they constituted a state—but only with the measure of necessity.” He clarified what he meant in this regard in the following way. “Thus, their exequaturs may possibly be accepted, while their envoys are not; their prize decrees may be respected while their currency may not be; there is no limit to the variety of treatment which may be accorded to them, provided always that it is within the fair limits of necessity.” He went on to explain that to go any further would substitute hypothesis for fact in international law and diminish the authority of recognition of sovereignty. He observed that rules of international law besides being simple and certain must also be stable and “any attempt to complicate or depart from them is certainly to be deprecated.” This understanding as to stability in the law would probably have been especially so for both Baty and Byas at the time of the Kellogg-Briand negotiations since both looked to stability in the willing mind or international mind in promoting peaceful relations among states. Baty insisted that recognition of provisional governments might be necessary, “but let it not degenerate and spread over into an arbitrary ‘de facto’ recognition of persons whose only true status is that of promising rebels . . . .”

By 1928, the government of the nationalist movement had established itself in Nanking. However, in capturing the city in the previous year, bands of nationalist soldiers assaulted foreign residents, resulting in the deaths of American citizens, and leading to the bombardment of the city by U.S.-British destroyers to disperse the offenders. Subsequently, five powers, U.S., Britain, Japan, Italy and France demanded of the nationalist regime a formal apology, compensation and punishment of those responsible and a pledge to protect foreign residents and property in the future. The U.S. was the first to negotiate a settlement and Byas, rather than merely commenting on the successful conclusion of the incident or the foreign policies of various countries toward China, chose to formulate his editorial approach on the logic to the recognition of governments. His logic and style followed that of Baty’s in his *Yale Law Journal* article. Although Byas was satisfied with the final resolution of the incident, he was uneasy with a settlement that recognized the “Nanking regime as a de facto government.” Byas carefully differentiated between regime and legitimate government. He considered it unfortunate that the settlement confused the two and he could well understand the diplomatic importance assigned to the settlement by the Nanking regime. He informed his readers that although the agreement flew in the face of the logic of international law, there was really no other way to deal with the controversy. He

added that such recognition simply was an instrument of necessity and should not be confused with the recognition of sovereignty. He related in this regard: "There is no unified government in China, and no visible prospect of one, and foreign powers have no choice but to deal with the local de facto authorities. . . . It is an unsatisfactory basis, Chinese governments come and go with unforeseeable rapidity." He explained that the Nanking government was not in existence when the incident occurred and might not be in power to receive the report on damages to be presented by a joint commission. The Nanking government's pledges were only for the time being, he noted. And, moreover, in considering the control exercised by Nanking over the factitious nationalist movement, he related that the pledges did not bind "Canton, or Hankow or Honan though they are all in some sense Nationalist governments."<sup>62</sup>

Byas also shared Baty's particular terminology in classifying a government constituted like the one in Nanking. For example, in one commentary, Byas dismissed the authority of the Nanking regime as another of "the transient, embarrassed phantoms of civil war."<sup>63</sup> In another observation, he explained that every Chinese government in recent years was "provisional," installed by a military leader.<sup>64</sup> Both Baty and Byas dismissed the idea that national sentiment could substitute for an established State.<sup>65</sup>

The difference between Baty and Byas on considering the status of the Nanking government was one of style rather than structure. Baty applied his principles to the facts of a case study while Byas, making use of journalistic license, drew upon historical models to emphasize the provisional character of the government. Byas recognized that there were optimists among diplomats, missionaries, scholars and traders who were hopeful that the nationalists would be able to bring about a stable and peaceful China and maintained that foreign governments should not interfere or obstruct the nationalist movement. According to Byas, these individuals pointed out that China had traditionally revealed a great political capacity to organize some 400 million people into a productive and peaceful civilization. He took note of their claim that since the Chinese had successfully operated the institutions of a scholastic empire, they could successfully administer a democratic republic. But Byas queried whether such a premise was not a little far reaching.<sup>66</sup> He agreed that the old scholastic empire worked well because it was a highly structured "system of personal relationships in complete harmony with religious, philosophical and social ideas which have fashioned the life of Chinese for thousands of years."<sup>67</sup> However, he pointed out that the old mandarin had

disappeared. China had degenerated “from the empire back to the tribe.” “All that is nation-wide about nationalism is the sentiment; there is no nation-wide direction.”<sup>68</sup> Byas proposed that the present anarchy in China was not the result of a national revolution or civil war that would culminate in a new mandarin state. And he told his readers that the revolution or civil war represented “the superficial symptoms of a gigantic disintegration in which the whole political framework of old China has broken down.”<sup>69</sup> He consistently asked his readers to consider the traditional cycle of Chinese history before relinquishing cherished rights in China to provisional governments, such as the one that represented the revolution in Hankow ephemerally a short time ago and to which the British relinquished valuable concessions in the city. He posited that China was passing through another cycle and observed that “no change of government in China has ever been accomplished in a single lifetime and there is little reason for supposing that this will.”<sup>70</sup>

Implicit in Byas’ application of Baty’s reasoning structure to recognition of the Nanking government was Baty’s macro-principle of international law on territorial sovereignty. According to Baty, international relations were organized on the basis of territorial self-determination. “The assumption which renders that organization possible has been that the soil of a nation is sacred.” Only war justified territorial intervention and once a state entered into war, a state incurred “all the risks and responsibilities of war,” including abiding by the rights of neutrals and preventing the unwarranted expansion of the hostilities to other states, as well as “the odium of commencing hostilities.” In setting forth his reasoning on the non-recognition of provisional governments, Baty was elucidating an exception to the sacredness of territory, i.e., territory without an established government. “The necessary condition of a State is that it should have a government.” Baty argued that it was insufficient to make a people a State even though the people once had a government. “If the government falls, the State falls with it.” And, he held that war did not exist if one of the two belligerents was not a state. In such a case, as currently existed in China, Baty held that the established state could do what it pleased in the borders of the belligerency as long as it observed the dictates of humanity.<sup>71</sup>

The settlement of the Nanking incident in 1928 did not mark a respite to the troubles in China besetting Japan. The settlement was soon followed by the Tsinan incident in the spring in Shantung when Japanese troops fired on Chinese nationalist soldiers allegedly engaged in the looting of Japanese property in Tsinan.



The Tsinan incident solicited an explicit response in Byas' editorials that China was not protected by the norms of territorial sovereignty governing international relations. Significantly, it brought forth Byas' sourcing of T. J. Lawrence, a turn of the century publicist on international law and lecturer at Cambridge University where Baty had completed his doctoral studies. Lawrence, in his works, defined a sovereign state, not unlike that of Baty, as a political community whose members were tied to some central authority. Byas applied Lawrence's writing to justify the interventionist policy of the Japanese government of Giichi Tanaka.<sup>72</sup> Since Byas refused to label the conflict a war, he referred to Lawrence in writing the following opinion: "Intervention is not a word of ill omen, but when a fire is raging people will endeavor to save their property without much regard for the law of trespass. Every state is bound to respect the independence of its neighbors as a fundamental principle, but a regard for its own safety is still more fundamental and if the two principles come in conflict it naturally and properly acts upon the principle of self-preservation." Byas underlined this estimation with the observation that there was no Chinese authority capable of maintaining "the ordinary rights of civilized communities within the area of the [civil] war."<sup>73</sup>

The settlement of the Tsinan episode would be drawn out, with negotiations faltering on the determination of responsibility and indemnification and would not be concluded until 1929. In the meantime, the nationalists' forward advance toward Manchuria consumed the attention of Tanaka in the months that followed, as well as Byas and the *Japan Advertiser*. In the *Japan Advertiser*, Byas portrayed how Manchuria had grown and matured under the regime of Japan's treaty rights. He paid particular attention to the immense impact of Japan's South Manchurian Railroad on Manchuria's agricultural productivity and mining. Byas ran excerpts of a book by Henry W. Kinney to be published by the *Japan Advertiser* in January 1928, focusing on the continuing surge in Chinese migration into this formerly highly under populated region in response to the prosperity and relative order reigning under Japan's influence. Even though Manchuria was under the rule of the warlord Chang Tso-lin, warlordism in Manchuria, given the firm authority of the Japanese, had not disrupted the efficient administration of public affairs. According to Byas, the world was witnessing in Manchuria what the Straits Settlements and Hong Kong and the treaty ports had previously shown, i.e., the Chinese worked and strove wherever good government existed.<sup>74</sup> Byas commenting on the nationalist campaign in May explained that he could well understand "why Japan would not let Manchuria be overrun by civil war"

and have all its sacrifices and efforts from the time of the Russo-Japanese War of 1904-1905 come to naught. Byas viewed Tanaka's declaration that Manchuria not be made "prey to civil war," in the same way that he viewed Tanaka's dispatch of soldiers to Shantung. Both were within the bounds of practicality and international law.<sup>75</sup> He noted that "to intimate that a certain part of a foreign country is to be fenced off from a civil war is a high-handed policy, when judged by the ordinary rules of intercourse between peaceful states." But he intimated that the extraordinary rules of national self-preservation took precedence in this case given that Manchuria was such a valuable property of the Japanese Empire. In addition, there was the prospect of placing Japanese lives at risk.<sup>76</sup>

By 1930, the situation in northern China appeared to have stabilized. The northern expedition was engaged in consolidating its gains after occupying Peking. The politically ambitious Chinese warlord of Manchuria, Chang Tso-lin, who had challenged the northern armies by establishing his government at Peking, had returned peacefully to his stronghold in Manchuria. But the nationalist leanings of Chang Tso-lin's son and successor, Chang Hsueh-liang, kept the threat of Chinese nationalism to Japan's position in Manchuria an immediate one for officers of Japan's Manchurian military force.

### **Of One Mind: Diplomatic Impact**

Also, by 1930, Baty and Byas were of one mind in representing Japan as having a just cause in international law for occupying Chinese territory. Both did not believe that Japan would actually pursue such a course in Manchuria, opting instead to achieve important economic objectives. Baty's understanding of China's station in international law had become Byas' understanding as well. Byas' language was perhaps less emphatic, but he considered the nationalist government as a gathering of clans and the Chinese nationals in Manchuria as Manchurians, who if they had the right to vote would definitely choose to be under Japan's rather than China's protection.<sup>77</sup> For Byas, the fundamentals of his discourse on China had taken on a juridical structure in which (1) China was not a sovereign state, (2) intervention in China did not violate the rules of war and peace and did not contravene his optimism for the excellent effects of the Kellogg-Briand Pact on relations among sovereign states, and (3) fencing-off Manchuria rested within the bounds of international legitimacy. On January 1, 1930, Byas

welcomed the year of the horse with an editorial that heralded two harbingers for a better world: Japan's excellent relations with the West, and the institution of the Kellogg-Briand Pact. On China, he judged that the situation there would remain a thorn of contention for Japan for some time. "The whole chronological zoo will have to pass in progression more than once before China's confusions cease . . . ."<sup>78</sup>

Baty welcomed the New Year with the publication of his book, *The Canons of International Law*, in which he reviewed recent events between Japan and China. He maintained in this work that the actions of the Tanaka government did not contradict the root-principle of international law to avoid violence and conflicts "by allotting to each separate public its own area of ground, in which it can work out its own destiny in its own way." He related that the principle did not apply to the case of Tsinan since "only the crowned ghost of an ideal united China was sovereign there . . . ." "The Chinese government had ceased to exist; China had become a geographical expression . . . ." He observed that international law took "no account of ghosts" and did not consider "China 'China' when 'China' is only a memory and an aspiration." For Baty, "there is no one Chinese government to look for order in Tsi-nan; consequently the only remedy (short of annexation) is to secure order by one's own efforts." Legally, Baty held that Japan could have annexed Shantung if Japan had decided upon that course of action.<sup>79</sup>

The year of the horse would provide Baty with no additional examples of Japanese intervention in China for his publications or opinion. It remained a year of friends and parties in Japan and a light schedule at the ministry of routine correspondence and legal drafts. Byas, however, altered his routine substantially by departing from the *Japan Advertiser* to become Tokyo correspondent for both the *London Times* and the *New York Times* on a full-time basis. In 1926 and 1927 respectively, Byas had taken on additional duties besides editing the *Japan Advertiser* by becoming part-time correspondent for these two influential newspapers. In this capacity, Byas contributed articles from time to time that were in line with his editorials in the *Japan Advertiser*. His state, non-state appraisal of Japan and China first appeared in the *New York Times* in December 1929 in his coverage of the International Conference on Pacific Relations in Kyoto.<sup>80</sup> At the time, Byas listed the reasons behind Japan's adamant position on Manchuria, including the Japanese sacrifices in the war with Russia to prevent the Russian takeover of Manchuria, the possible renewal of the Russian threat and the need to safeguard Manchuria from the disorder in China that endangered Japanese subjects and property. He stated: "it was obvious that China had at no time been able

to protect Manchuria against foreign aggression or internal disorder, and Japan's presence was due to necessity."

Byas criticized the delegates for failing to consider China's internal conditions to better understand China's international status. He maintained that such an omission handicapped a full realization of the challenges confronting international relations in Asia since China lacked a unitary government and therefore was not a state in the usual sense of the term. Several days before the year of the horse, Byas had already indicated that whatever change in his situation as a pressman in Japan, it would not change his perspective on the evolving situation in Asia.

One can perhaps date the diplomatic impact of a Baty-Byas juridical discourse from the time of passage into the year of the horse because a focus of interest for both men centered on Canada's first diplomatic mission in Tokyo. The establishment in 1929 of a Canadian mission was part of a recent undertaking by the Canadian government to initiate its own foreign affairs department within the British Empire. The officials of the mission were untutored in overseas service, not to mention Asia.<sup>81</sup> Under the circumstances, the legation came to refer to two long-standing and highly knowledgeable members of the British Empire community in Japan, Baty and Byas, for expert direction on Far Eastern affairs. Both men frequented the new legation and socialized with the members and their wives quite regularly. Baty remembers that "in their fine new Legation," the Canadian Minister, Herbert Marler, and his wife, "dispensed a lavish hospitality."<sup>82</sup> Baty was quick to offer any assistance he could in terms of his insider knowledge of the Japanese government and the legation staff appreciated his suggestions. Hugh Keenleyside, the legation's first secretary, considered Baty an early friend and "although not a Canadian," he noted that he was very close to many Canadians. He remembered Baty as being very helpful to him especially in his early days in Japan. "He knew all the officials and which of them responded to a pull on which rope, and his advice was almost invariably sound." Although Keenleyside was a firm supporter of the League of Nations for conflict resolution, he considered Baty to be one of the great minds of international law. He wrote: "His major volume on international law [*The Canons of International Law*] was, in my opinion, from the standpoint of both keen interpretative content and elegance of expression, the best book of its kind, with the exception perhaps of the classic work of W. E. Hall. Unfortunately, his close identification with Japan at a time of widespread hostility toward the country resulted in the book being generally ignored—or denigrated by prejudice."<sup>83</sup> There is a picture in Keenleyside's photo

album of 1929 showing Baty and Keenleyside in front of a sailing boat on the pier in Chuzenji with other vacationers including the British ambassador, John Tilley.<sup>84</sup> Kenneth Kirkwood, the legation's junior secretary, remembered fondly chats over tea with Baty and travels in the Ark during the summer respite in Chuzenji.<sup>85</sup>

Although Baty's presence and reputation in the Canadian legation circle were established quite early and quite authoritatively, Byas' influence on legation diplomacy was more direct given his familiarity with the rather socially proper and rigidly formal Marler who, according to Baty, "a little resented the situation which made it incorrect that Canada should be represented by an Ambassador at the same time that another Ambassador represented the whole Empire."<sup>86</sup>

Byas added depth to the observations and investigations of Marler and the legation staff through his articles and his opinions based on his extensive sources and over ten years of analyzing the news from Asia. Kirkwood placed in his diary in its totality an article by Byas concerning the Japanese Diet. He wrote: "My friend Mr. Hugh Byas, correspondent to the *London Times* and *New York Times* has written by far the best description of the Japanese Diet and is typical of my own experience and impression. I quote it in full, as it has historical value as a picture of political life and methods at this date and time."<sup>87</sup> Keenleyside kept a photo portrait of Byas, probably for display in his office. Keenleyside referred to Byas in his personal diary as a journalist "with exceptional sources of information" and he acknowledged benefiting from their discussions on international issues.<sup>88</sup>

But it was Marler who singled out Byas for the attention of the Prime Minister R. B. Bennett, who was also the secretary of state of external affairs, and O. D. Skelton, the undersecretary of state of external affairs, referring to him as an authority to be followed in the Far East. He provided the prime minister with an article by Byas from the *London Times* to assure him how successfully British and Canadian diplomats had so far worked together in Tokyo to coordinate a community policy. He explained to the prime minister his belief that the prestige of the British Empire had been enhanced by the presence of a Canadian minister and how my idea on the subject had been confirmed by the *London Times* correspondent. His appreciation of Byas' insights into affairs that were new to him led him to the conclusion that all of Canada should benefit from Byas' reports. He informed the undersecretary of state of his efforts to gain the executive management of the Canadian Press to employ Byas to write articles for their various Canadian newspapers. He noted that he had recommended Byas to the Canadian

Press as the “highest-class” journalist whose articles “command respect” and “provoke great interest.”<sup>89</sup>

But most significantly, Marler found in Byas’ thoughts and discourse a platform to define his own ideas for Canada’s foreign affairs in Asia. Prior to taking his first investigative trip to China in 1930, Marler had already absorbed Byas’ polarity of statements in describing Japan and China differentially with regard to the West. He considered Japan to be a modern, united country and thought that even Canada could learn from Japan’s methods on how to encourage national consciousness within its educational institutions. He thought Japan had worked miracles in its overseas possessions, which he confirmed in his stop in Korea and his visits to Manchuria. Regarding China, he believed that even the most elementary criteria for consideration as a sovereign state were lacking and he reported to Ottawa on how divided China still was between rival warlords in the provinces and north-oriented (Chang Hsueh-liang) and south-oriented governments. For Marler in 1930, China was a quite a way from entering the community of nations.<sup>90</sup>

In his correspondence with Ottawa, Marler would paraphrase the themes and sub-themes of Byas’ perspectives on Japan and China, referring to a united state and a chaotic one to expand on his proposal for a Canadian trade regime in the Far East centered in Tokyo. He would introduce Byas’ conceptualization of Manchuria as a “great territory,” the development of which was proceeding at an unequalled pace. According to Marler, China, not being a state, was, at least, a territory, a potential market for selling Canadian wheat through the well-administered and orderly gateway of Japan. He held that this would best be implemented by making the minister in Japan, the minister in Japan and China. A trade regime centered in Tokyo was, in his estimation, the most effective way of penetrating the Far East market, with Japan’s Manchuria being the choice market for Canadian wheat and Japanese wheat flour made from Canadian wheat. Byas’ imaging of Manchuria in his articles at the time in terms of its orderly and productive markets was very much the same as Marler’s.<sup>91</sup>

When Marler subsequently traveled to Ottawa to argue his case for a minister in Japan and China, he brought with him the Baty-Byas juridical discourse on how China could be known in international relations. Marler’s representation of China as a geographic space rather than a sovereign state was considered by Bennett to be an appropriate one for defining Canada’s Far East policy. Bennett was interested in promoting Canadian trade and was also concerned with devel-

oping objectives in foreign affairs that would not conflict with the political policies of the British Empire. A market to market policy rather than a state to state policy gained his attention and approval. The Baty-Byas juridical discourse gained its first major Western nation convert.

Nevertheless, the geographically directed Canadian trade regime as envisioned by Marler was not to be. The deterioration in the political situation in China with the 1931 Manchurian incident prevented the execution of Marler's idea. On September 18, 1931, the Japanese army in Manchuria responding to Chinese violations of Japanese treaty rights in Manchuria staged an attack on the railroad tracks of the South Manchurian Railroad, giving rise to the Manchurian crisis. However, about one year into the crisis, the Bennett government's approach to China's sovereignty arising out of Marler's trade regime resulted in what historians have called an aberration in Canada's foreign policy that placed it in opposition to U.S. recognition of Chinese rights. The policy was immediately disavowed. But this was not before the Baty-Byas discourse acting through the coopted Bennett government had brought Canada to sustain before the League Assembly's inquiry into the Sino-Japanese dispute that China was not a fully governing state, not protected by international law and not sovereign in Manchuria.<sup>92</sup>

### **Lawfully Occupied and the Press**

The railroad track explosion resulted in the dispersal of Japanese forces beyond the demarcated treaty zone and the occupation of Manchurian territory. The incident led to a confrontation between China and Japan in the League of Nations. Here, Japan found it necessary to defend itself against allegations that its actions violated not only the peace preservation stipulations of the League's covenant but also the Kellogg-Briand Pact and the Nine-Power Treaty guaranteeing China's administrative and territorial integrity.

Japan's defense of its case before the League became Baty's official responsibility. Baty's international law of sovereignty and recognition offered an authoritative rejoinder to breach of the peace assessments. Japan's initial claim of self-defense tended to lose its relevance as Japan refused the League's demand for withdrawal of its forces to the treaty zone and an end to the occupation of Manchuria. Baty's canons provided an alternative defense, one that also con-

firmed the Japanese government in the international correctness of Japan's occupation of Manchuria and establishment of the controlled state of Manchukuo. His ministry legal drafts provided Japan with substantive justification as well as arguments for its actions through the acceptable legal language of the West.<sup>93</sup>

Baty's example in *The Canons of International Law* of China as failing to meet the standard of an organized state became Japan's defense before the League. Japan claimed that it had not violated the covenant or any international agreements with regard to China because there was no state of China, no recognized government to speak for China before the League. In mid-August of 1932, the Japanese war ministry leaked one of Baty's legal opinions to the Japanese press to exploit his name and status as well as his conclusions. But even before this happened, Byas was already aware of where Baty's contribution to Japan's defense lay and it was not evident in Japan's singular claims to self-defense. He held that "the only respectability" Japanese arguments possessed resulted from Baty's influence.<sup>94</sup> On August 2, 1932, Byas wrote to Cholmondeley in England regarding the visit of the Lytton Commission. He explained:

We had the League Commission here a week or two ago—our last occasion of real news. They saw [Prime Minister] Count Uchida twice and went off intensely disappointed. He simply put up a stone wall, made no response to any suggestion for a compromise, talked about self-defense and its sacred rights (this is the stock reply to suggestions that the army may have gone a little too far in September last) and the self determination of the 30 millions of Manchuria, which is the stock reply to criticisms of the creation of an independent state. I can't understand why Japanese of experience abroad put up such futile arguments. What becomes of their case if it is shown that the Mukden incident was a put up job and that the creation of the new state was engineered by the Kwangtung army and a group of nationalist ronin?<sup>95</sup>

While Baty's juridical framework energized the response of the Japanese government to criticism from the League and the major powers, Byas' correspondence from Tokyo shaped the editorials in the *London Times* and the *New York Times*. Byas' highly respected analyses of events confirmed and extended the isolationism and conservatism in foreign affairs of both papers.<sup>96</sup> During the first weeks of the Manchurian crisis, Byas, in his cables to both newspapers, offered reasons why Japanese intervention in Manchuria was not an act of belligerency.



In this regard, he placed primary emphasis on Japan's outstanding grievances against authorities in Manchuria, but he also noted that China's lack of an organized government made it impossible for Japan to defend its subjects and its treaty rights according to international law. A nationalist leaning warlord administration, autonomous local authorities and the impotency in Manchuria of the Nanking government had created a situation that fomented trouble.

Soon after the fighting had begun, the *London Times* in an editorial headed "Fighting in Manchuria" criticized China rather than Japan for the outbreak, citing Byas' recent reports. According to the *London Times*, tumultuous China had drawn into its abyss the erstwhile Japanese government. China's violations of the rights of Japanese subjects to lease lands and travel freely in Manchuria, not to mention the Chinese boycott of Japanese goods and anti-Japanese demonstrations, had drawn Japan into a fight. The editorial noted that just recently, the Chinese had executed as a spy a Japanese military person traveling outside the zone who had the necessary permits and passport. The editorial exclaimed: "Exasperated by the murder of CAPTAIN NAKAMURA and a multitude of other incidents, the Japanese garrison in Manchuria has taken the law into its own hands." The editorial dismissed the railroad explosion as a pretext more than likely arranged by the Japanese army to teach the Chinese a lesson. It referred to Byas' comment that "the attack 'found them prepared ... the 'button was pressed and the plan carried out.'" The editorial reflected the hopes of the Western powers, especially Britain and the United States, that a speedy solution to the problem would be found since Japan was profoundly embarrassed by developments. Indeed, the editorial maintained that the foreign office was prepared to settle the grievances with the Chinese authorities peacefully, the only obstacle being that the soldiers were tired of drawn-out diplomacy.<sup>97</sup> Byas provided the *New York Times* with similar correspondence and an editorial stressing "provocation" appeared in the *New York Times* at about the same time.<sup>98</sup>

By the end of September, China had invoked the breach of peace article of the covenant and the League of Nations had involved itself in the dispute. The League called upon both Japan and China to refrain from any act that might prejudice a settlement. The League requested the withdrawal of all forces from the theater of hostilities. The United States, although not a League member, supported the League's pacific intervention. Byas, however, remained wary. He emphasized the importance of the League to tread softly and allow Japan and China to find a solution by direct negotiation. He related that the opinion in Tokyo disparaged

international intervention as encouraging China to disregard its treaty obligations.<sup>99</sup> And in this regard, Byas was able to insert a telling comment on how the negotiations should conclude. He explained: “Modern Chinese doubtless regret the bargain their predecessors made with Russia, but the consequences of the bargain are built into the economic and strategic fabric of the Far East.”<sup>100</sup> The leader of the *London Times* picked up on this remark to cut a much more biting conclusion in Japan’s favor. It held: “In the present dispute, the Council’s championship of peace does not in the least mean that it has any sympathy with the ‘pin-pricking’ policy in which Chinese Governments have indulged only too often in recent years.”<sup>101</sup>

The League recessed from the end of September and reconvened on October 14. Instead of refraining from aggravating the situation, as promised, Japanese forces continued their advance southward from the treaty zone during this interval. The Japanese military on October 8 staged an aerial bombing of Chinchow, the newly reestablished administrative center of the warlord Chang Hsueh-liang. Byas was taken aback by the military’s continued advance. He reported that the army’s actions, being so at odds with the government’s stated intentions, would probably force the cabinet to resign. He related that the army had not only aggravated the situation by breaking the government’s promise to the League, but also, had prevented Chang from forming a government. He pointed out that the lack of a civil administrative authority postponed indefinitely a restoration of order in the occupied area—a condition for Japan’s military withdrawal.<sup>102</sup>

The Chinchow bombing, however, did not reverse Byas’ opinion of the reasonableness of Japan’s case in the dispute. Although he wrote about how the army had hurt Japan’s case, he still maintained that the case was meritorious. He wrote: “The irony of the present crisis is that Japan can put forward a good case against China on her complaint of violation of treaty rights, but that case, in foreign eyes, apparently has been more than half ruined by the army’s high-handed policy, especially by the bombing of Chinchow after the government had pledged itself not to aggravate the situation.”<sup>103</sup> Byas was correct that the bombing of Chinchow had put Japan at a disadvantage diplomatically. After Chinchow, the United States drew closer to the League. Secretary of State Henry Stimson, who stood firmly for conformity to the terms of the Nine-Power Treaty, hoped to persuade the League to move things forward through resort to the Kellogg-Briand Pact. Although the U.S. could have invoked the pact as a signatory, Stimson wished to deflect Japan’s animosity from focusing on the U.S. Instead, Stimson maneu-

vered the League into enhancing pressure on Japan in Kellogg-Briand-style in return for U.S. participation in Council discussions. The British government also favored the peace pact initiative.<sup>104</sup>

Regarding the Stimson initiative and the League action, the *London Times*, in an editorial entitled “Old Methods or New?” and the *New York Times*, in an editorial entitled “Friendly and Impartial,” saw American participation as a triumph of new over old methods for settling disputes, i.e., adjudication over force. The *London Times* denounced what it perceived as the Japanese position of negotiating from strength with China on the basis of occupied territory. This was what the *London Times* called the old method, which was at variance with the Kellogg-Briand Pact and the covenant of the League of Nations. However, both papers continued to urge the League to avoid involving the world in a confrontation with Japan over Manchuria and to be conciliatory toward Japan, referring to the list of “serious grievances,” which Japan had against China and China’s unwillingness to settle these matters by peaceful methods.<sup>105</sup>

However, when Japan responded negatively to the Peace Pact initiative, both the *London Times* and the *New York Times* settled on noninvolvement of the West in the Manchurian crisis as the best policy rather than upholding new methods of diplomacy and inviting a confrontation with Japan.<sup>106</sup> With the League’s demand on October 24 for Japan’s withdrawal by November 16, both papers, in addition, expanded Byas’ correspondence through features and commentaries.

Byas’ feature article in the *New York Times* on November 1 characterized Byas’ correspondence at this time. In addition, the analogy put forward in the article apparently built upon an argument appearing in Baty’s 1929 article on “The Suppression of War.” Baty maintained that “the attempt to behave as though a phantom united State was still alive, with rights to be respected and duties to fulfil, is productive of infinite evils.”<sup>107</sup> Byas’ feature asked the question of “when is a war not a war?” He contended that the war risk in Manchuria had to be confirmed before any affirmative measures were implemented in Washington or Geneva. In his opinion, the Manchurian case did not exemplify the type of risk to be offset by the framers of the covenant or the Kellogg-Briand Pact. Therefore, the efficacy of these arrangements was not at issue. He went on to explain that the war risk did not extend to non-states and China was not a state even though it was a member of the League. Using the analogy of building insurance, he referred to China’s claim to statehood in this way:

The League Covenant and the Kellogg Pact are insurance policies covering, let us say, an entire city. But in the city there are old structures, hardly insurable, whose owners find their claims rejected when they file them. China is such a building. Since the League of Nations and the Kellogg Pact are political and not business contracts, China is admitted, though if those agreements bound their signatories, as the underwriters of a policy are bound, to pay compensation according to the amount of their interest, China could not be insured at all. Her structure is too inflammable. Revolution, civil war and anti-foreign agitations are chronic. China is like a very old building which has fallen into decay and is uninsurable until it has been reconstructed.<sup>108</sup>

Byas linked his examination of the war risk in Manchuria to forceful metaphors for Japan and China: with the former constituting “raw imported modernism” and the latter a “welter of still surviving medievalism.” He referred to the considerable power and influence still enjoyed in constitutional Japan by the army. And he noted that since the elective element in government was new and untutored, the tendency was for the majority to put more faith in the army than the politicians in the case of Manchuria. As for China, he navigated the reader through a “medieval walled country” undergoing revolution where bandits became kings.<sup>109</sup>

From November, both papers delivered the Baty-Byas juridical discourse in presenting its readers with perspectives on the Sino-Japanese dispute. The explicit and definitive presentation in the pages of both newspapers came three months earlier than the Japanese government’s explication of what was to be the outstanding thrust in Japan’s defense against breach of the covenant before the League, i.e., the standard of an organized people.

Ten days after Byas’ feature appeared, the *New York Times* issued a call for “united efforts for peace” and deplored any action on the part of the League’s Council to side with China. Coercive measures, such as a trade boycott, at the expiration of the deadline were to be avoided. The *New York Times* even provided an uninsurable-structure-style editorial, explaining that the League existed to guarantee peace only for those who possessed a house. The editorial referred to the recent observation of a British parliamentarian to the effect that “since the League was founded, the condition in China had been one of almost perpetual fighting, a state of civil war with which the League of Nations was positively disqualified from dealing.”<sup>110</sup>

One week after Byas' feature in the *New York Times*, the *London Times* set forth an editorial with an uninsurable structure parable while stressing the unfortunate circumstances confronting the League, preventing it from seeing the whole dispute in the correct perspective. The editorial referred to Japanese military movements in Manchuria merely as "an extension of police work" beyond that normally permitted under the international agreement and queried whether such action could be characterized as belligerency. The editorial pointed out that "it is in any case an interesting and difficult legal point whether [China's] sovereignty can be said to have been infringed, when that sovereignty is not effective."<sup>111</sup>

An editorial that followed in the *London Times* advised the League to consider the recent deliberations of the League's Mandate Commission in working out an approach to the problem. The editorial noted that the mandate commission had laid down five prerequisites to test whether a former mandate qualified as an independent sovereign state eligible for League membership. These consisted of the following: (1) an administration capable of maintaining the regular operation of essential services; (2) an ability to maintain the territorial integrity of the state; (3) the strength to insure the public peace nationwide; (4) the financial solvency to meet the regular needs of government; (5) the legal framework to provide equal and regular justice for all. The editorial, then, turned to China, asking how many of these conditions did the present Chinese government meet, even though China was not only a member of the League of Nations but also had recently been elected to a seat on the Council. According to the editorial, the League would be wise to consider how "an unbiased recognition of this anomaly opens up a whole series of reflections, in the light of which the term 'aggression' is seen to be liable to justly various interpretations."<sup>112</sup>

Byas' conceptualization of the house that could not be insured, i.e., the denial of China's sovereignty, did not correspond to U.S. Secretary of State Stimson's thinking on China's legal standing in the international community. For Stimson, Japan was the aggressor, the violator of the covenant, the peace pact and the nine-power accord. But for Sir John Simon, the British Foreign Secretary, and the Foreign Office, the idea that China was uninsurable represented a welcome loophole in Britain's moral commitment to the ideals of the League and the peace machinery. On January 7, 1932, Stimson delivered a note to both Japan and China. In the note, the U.S. refused to recognize any agreement between China and Japan that impaired the territorial and administrative integrity of the Republic of China or the open-door policy and refused to acknowledge any arrangement

contrary to the Kellogg-Briand Pact. Stimson's intention was to deny Japan the benefits of aggression by excluding whatever new state arose in Manchuria access to international instruments and agreements on trade and diplomacy. He thought that the note might serve as a substitute for sanctions, an alternative that the U.S. government considered too truculent.<sup>113</sup>

But Simon held a different view of the situation. Simon wished to keep the proceedings within the contours of the League of Nations. He also, wished to encourage a conciliatory approach to the resolution of the crisis. He sought to further the principles of the covenant in world affairs and at the same time convince Japan of Britain's good will. Simon indicated at a private luncheon at the time that Japan offered order and stability in Far East nowadays, and order and stability was what British interests required to secure its vast holdings and huge investments. Japan was Asia's policeman, in Simon's view.<sup>114</sup> Stimson viewed his note as embodying the spirit of the covenant and the peace machinery.<sup>115</sup> But Simon's commitment to the idealism of the post-war peace machinery and Anglo-Japanese cooperation provided him with little reason to see the note, as Stimson saw it, as existing in the gray area between conciliation and confrontation.<sup>116</sup>

For Simon, the note was too extreme. The negative disposition of Simon, a former barrister and attorney general of Great Britain, was reinforced by reports and editorials in the *London Times* denying any need for affirmative measures, such as non-recognition, given the lack of a sovereign state in China. Simon and Geoffrey Dawson, the editor of the *London Times*, had been close political friends for many years. In addition, the voice of the *London Times* was one to be seriously considered since the paper had been instrumental in garnering the public support that had put Simon's coalition National Government in power.<sup>117</sup>

When, at the time of Britain's rejection of the note, the *London Times*-cum-Byas press hailed the correctness of the decision, the British government was bolstered in its opposition to any U.S.-British joint undertaking. Britain's response to the U.S. initiative referred only to British support of the open door for international trade in Manchuria on which it had received assurances from the Japanese government, juridical references excluded. However, the *London Times* offered much more declarative statements on its editorial page. In this instance, Byas referred to the realities of China, as earlier described, and the editor stated that it was not "the business of the Foreign Office" to defend China's administrative integrity until that "integrity is something more than an ideal." As such, the *London Times* buoyed Simon in his policy of solving the problem by keeping an

open mind rather than engaging in litigation in a case with dubious legal merits, thereby foreclosing any narrowing of the gap between Britain and the U.S. on how to proceed diplomatically.<sup>118</sup> Future joint action on the Manchurian issue had been tabled for all extent and purposes.

Stimson, in 1936, reviewed past British-U.S. differences in a book entitled *The Far Eastern Crisis*. He referred to the deepening rift as occasioned not only by the British rejection of the note but also by the dismissal of the *London Times*. He thought the latter was more damaging than the formal rejection and implied that the British government and the *London Times* were one and the same in foreign policy concerns in the Far East.<sup>119</sup> Stimson's book brought a rebuttal by John Pratt, the Foreign Office's China specialist at the time of the crisis, in his 1943 book on *War and Politics in China*. Pratt, although disavowing any linkage between the Foreign Office and the *London Times* in responding to the Stimson initiative, did, however, confirm the "closeness" in Far Eastern policy between the British government and the newspaper. Firstly, he referred to Dawson's ready access to influential members of the government. In considering Stimson's reaction, he said: "it is natural that suspicions should be aroused by a leader of this kind for many important people held the same views as those expressed in the leader and it is generally assumed that the writer of the leaders in *The Times* has had access to those in authority."<sup>120</sup> Pratt could not deny the assumption since Simon and Dawson were known to be political friends. Secondly, and most importantly for an understanding of Simon's "buoyed" disposition after the appearance of the editorial, Pratt acknowledged the impact of the leader on subsequent British foreign policy and British-U.S. relations. He referred to the ongoing legal inquiry in the League of Nations when the note was received and concluded that it was rather mysterious given the legal complexities how Stimson could have expected to wind up the problem "with a snap."<sup>121</sup>

## **Conclusion and Postscript**

The friendship of Baty and Byas, their common experiences, values and perspectives, allowed the Office of the Foreign Legal Adviser in the Ministry of Foreign Affairs to over-reach its official functions. Baty was employed in a non-diplomatic official capacity within the ministry to offer legal opinions on cases and correspondence. He was not only uninvolved in policy and decision making

but he worked inside his office and was not employed in diplomatic negotiations or discussions with other countries or international organizations. However, Baty, unofficially, engaged in quasi-diplomatic activities through his publications, attendance at international law conferences and his social engagements in the expatriate community of Japan.<sup>122</sup> Such activities did not impact on Far Eastern international relations until the late 1920s when Baty's thinking on international law entered into Byas' editorials and correspondence concerning Far Eastern events. Baty's international law of sovereignty combined with Byas' highly structured framework of analysis, with Japan as modernizing and progressive and China as backward and unchanging, to produce a discourse favorable to Japan's China policy in the Western media and diplomatic circles. The overall effect was to provide the Japanese government with a defense for intervention in China even before the 1931-1933 Manchurian crisis had begun. The defense was present even before the crisis had escalated to where an official legal defense before the League of Nations other than the assertion of acting in self-defense was deemed necessary. The latent but substantive defense was in the form of a juridical discourse. China was characterized as a non-state in international law since it lacked a unitary government. Accordingly, intervention of external actors in China's territory was legitimate, the crux of the discourse being principles of sovereignty did not insure a phantom structure against occupation even when covenants, pacts or treaties existed. The discourse proved effective in gaining British Empire support for Japan's position in Manchuria and dividing the British Empire and the U.S. in their diplomatic resolve. Canadian support for Japan's position was evinced openly in the League of Nations and the gap between Britain and the United States on how to resolve the dispute was rigidified in view of the *London Times*-cum-Byas response to Stimson's non-recognition policy.

After Japan's withdrawal from the League of Nations, Baty returned to his routine legal work in the ministry. The Japanese government had decided that diplomacy and alliances were more significant strategically than legal niceties. Since legal arguments had failed to convince the Western powers of Japan's role in Asia, the perception within the ministry was that Baty's international law had done all that it could do in Japan's confrontation with the West.<sup>123</sup> Baty, however, wished to continue the legal argument in his private capacity during what was to be the last of his three furloughs to Europe. At the time, Baty was less concerned about the destabilization of East Asia and world peace and more about "The Threatened Chaos in the Law of Nations." Baty attended meetings of



European international law associations where he expounded on the need to return to the basic principles of international law and, especially, to rescue the most basic of precepts, sovereignty, from being undermined by the League of Nations. Baty would continue to hold that the international community should recognize Manchukuo as a sovereign state irrespective of the position of the League.<sup>124</sup> In his final legal treatise, *International Law in Twilight*, published just before his demise in 1954, Baty continued to rally against the sovereign ghost of China of the 1920s and 1930s. Throughout the 1930s, when Japan's military intruded into China proper in the China War, Baty could not fault legally the actions of the Japanese government in spite of his distaste for militarism.<sup>125</sup>

Byas, for his part, would cease to expound upon international law considerations after Japan's exit from the League. He was aghast about the rise of militarism in Japan, the demise of Japanese democracy and the drive of military expansionism in China, or what he termed "Japan on the rampage." When Japan retired from the League, he observed: "the junkers who are very much in the saddle just won." And he was alarmed over Japan's isolation in world affairs. Byas regretted the loss of his progressive image of Japan, which far outweighed any juridical discourse concerning the situation in China.<sup>126</sup> In 1935, he wrote Cholmondeley: "We hear ad nauseam these last few years of the 'foundation spirit' of Japan. It appears to be indescribable in ordinary English but its manifestations have a strong resemblance to Fascism and Hitlerism . . ." <sup>127</sup> For Byas, the China War was not about conditions in China but about the big boys in the Japanese military seeking a foreign diversion for the restless elements in its ranks.<sup>128</sup> In all, although Baty would remain focused on the law of nations, Byas' slant would be the implosion of Japan's democratic aspirations. During World War II, Byas would write two popular books on Japan's violent politics and lecture in foreign area studies at Yale University.<sup>129</sup>

The Baty-Byas discourse ended in 1933. Baty and Byas diverged in their reaction to current events. Nevertheless, there remained a common perspective among the two that the condition of China had led to the first step in Japan's continental expansion.<sup>130</sup> Neither of the two ever conjectured that just perhaps a juridical argument on China's status had enabled Japan's turn down the road to a Pacific war.

## Notes

- 1 See Hugh Byas to Lionel Cholmondeley, 27 August 1935, Byas-Cholmondeley File, Rhodes House Library, Oxford University. (This archival material of letters at Oxford University will hereinafter be referred to as B-C File.) Cholmondeley was the Anglican Chaplain in Tokyo from 1887 to 1921 and an early friend of Byas and his wife, as well as Baty.
- 2 *Japan Advertiser*, 27 May 1916.
- 3 See editorials, *Japan Advertiser*, 12 April 1916, 18 October 1919.
- 4 See editorial, *Japan Advertiser*, 14 July 1916.
- 5 See editorial, *Japan Advertiser*, 12 April 1916.
- 6 *Japan Advertiser*, 27 May 1916.
- 7 Thomas Baty, *Alone in Japan* (Tokyo: Maruzen, 1959), 92, 96.
- 8 Byas to Cholmondeley, 27 August 1935, B-C File.
- 9 Regarding Byas' leisure preferences, refer to Maxine Block, ed., *Current Biography* (New York: H. W. Wilson, 1943), 91. Also, see: "Notes in Passing," *Japan Advertiser*, 11 June 1916; "Loose Leaves from the Editor's Notebook," *Japan Advertiser*, 10 August 1919, 7 September 1919; "New Books in Japan," *Japan Advertiser*, 2 May 1920. Regarding Baty, see Baty, *Alone in Japan*, 187, 194; Hugh Keenleyside, *Memoirs of Hugh Keenleyside*, vol. 1 (Toronto: McClelland and Stewart, 1981), 331.
- 10 See "Loose Leaves from the Editor's Notebook," *Japan Advertiser*, 27 July 1919.
- 11 See editorials, *Japan Advertiser*, 20 March 1920, 17 May 1928. Also, "Loose Leaves from the Editor's Notebook," *Japan Advertiser*, 25 June 1916; "New Books About Japan," *Japan Advertiser*, 13 July 1919. As for Baty, see: Thomas Baty to Isaburo Yoshida, Second Secretary, Japanese Embassy, London, 19 February 1915, *Honpo koyo gaikokujin kankei zakken* [Miscellaneous Matters Related to Government Hiring of Foreigners] Diplomatic Record Office of the Ministry of Foreign Affairs, Tokyo, File K.4-2-0/1-5; *Japan Advertiser*, 27 May 1916; Baty, *Alone in Japan*, 92.
- 12 See editorial, *Japan Advertiser*, 12 April 1928.
- 13 *Japan Advertiser*, 26 August 1916.
- 14 Baty, *Alone in Japan*, 92-93, 103, 187; Keenleyside, *Memoirs of Hugh Keenleyside*, 340-42. Kenneth Kirkwood Papers, 7 August 1932, National Archives of Canada, MG27 III E3, vol. 2, Diplomatic Journal 1932; F.S.G. Piggot, *Broken Thread* (Aldershot: Gale and Polden, 1950), 158.
- 15 Byas to Cholmondeley, 27 August 1935, B-C File.
- 16 Baty, *Alone in Japan*, 94-96; Keenleyside, *Memoirs of Hugh Keenleyside*, 331.
- 17 Baty, *Alone in Japan*, 185-87; Block, ed., *Current Biography*, 91. See Byas' obituary, *New York Times*, 7 March 1945. For a fuller account of Byas' employment history, including his career prior to Japan, see Peter Oblas, "Japan and the Sovereign Ghost-State," *Journalism History* 29, no. 1 (spring 2003), 32-34.
- 18 See editorial, *Japan Advertiser*, 23 September 1919.
- 19 See "Loose Leaves from the Editor's Notebook," *Japan Advertiser*, 4 May 1919.
- 20 Keenleyside, *Memoirs of Hugh Keenleyside*, 331.

## Accessing British Empire-U.S. Diplomacy from Japan

- 21 Byas to Cholmondeley, 2 August 1932, B-C File.
- 22 Baty, *Alone in Japan*, 40-41, 47-49.
- 23 Baty, *Alone in Japan*, 59-60; Thomas Baty, "Shinto," *Hibbert Journal* (April 1921), 418-19.
- 24 See editorials, *Japan Advertiser*, 1 June 1919, 11 August 1928, 1 March 1932.
- 25 William Elliott Griffis and Hugh Byas, *Japan: A Comparison* (New York: Japan Society, 1923), 31; Baty, *Alone in Japan*, 8; Thomas Baty, "Formosa the Modern," *Contemporary Review* 124 (October 1923), 495; Thomas Baty, "Korea Japan and Freedom," *Asiatic Review* 24 (July 1928), 214, 222.
- 26 See editorial, *Japan Advertiser*, 26 June 1919.
- 27 See editorial, *Japan Advertiser*, 29 November 1919.
- 28 See editorial, *Japan Advertiser*, 12 December 1919.
- 29 See editorials, *Japan Advertiser*, 26 June 1919, 7 May 1919.
- 30 See editorial, *Japan Advertiser*, 10 September 1919.
- 31 Baty, "Korea Japan and Freedom," 217.
- 32 *Ibid.*
- 33 *Ibid.*, 222.
- 34 *Ibid.*, 224.
- 35 *Ibid.*, 222.
- 36 *Japan Advertiser*, 2 April 1920.
- 37 *Japan Advertiser*, 3 April 1920.
- 38 Baty, *Alone in Japan*, 123-24.
- 39 See editorial, *Japan Advertiser*, 1 May 1919.
- 40 See editorial, *Japan Advertiser*, 2 May 1919.
- 41 See editorial, *Japan Advertiser*, 10 October 1919.
- 42 See editorial, *Japan Advertiser*, 12 November 1919.
- 43 See editorial, *Japan Advertiser*, 10 October 1919.
- 44 See editorial, *Japan Advertiser*, 26 January 1928.
- 45 See editorial, *Japan Advertiser*, 12 November 1919.
- 46 Peter Oblas, "In Defense of Japan in China: One Man's Quest for the Logic of Sovereignty," *New Zealand Journal of Asian Studies* 3, no. 2 (December 2001), 82. Thomas Baty, *International Law* (New York: Longmans, Green and Co., 1909), 334-37.
- 47 Thomas Baty, "The Suppression of War," *Quarterly Review* 253 (July 1929), 182.
- 48 *Ibid.*, 177.
- 49 *Ibid.*, 192.
- 50 *Ibid.*, 177.
- 51 *Ibid.*, 181-82.
- 52 *Ibid.*, 182.
- 53 Oblas, "In Defense of Japan in China: One Man's Quest for the Logic of Sovereignty," 80.
- 54 Thomas Baty, "The Suppression of War," 182.
- 55 *Ibid.*, 185, 194, 199; Baty, *International Law*, 247-49.
- 56 See editorial, *Japan Advertiser*, 26 January 1928.

- 57 See editorial, *Japan Advertiser*, 23 February 1928.
- 58 See editorial, *Japan Advertiser*, 26 January 1928.
- 59 See editorial, *Japan Advertiser*, 23 February 1928.
- 60 Part of Byas' collected articles and clippings, including Baty's article, "Korea, Japan and Freedom," can be found at Yale University Library. See Hugh Byas Papers, Yale University Library, Manuscripts and Archives (Herein after referred to as HBPY).
- 61 Thomas Baty, "So-called De Facto Recognition," *Yale Law Journal* 31 (1921-1922), 469-70.
- 62 See editorial, *Japan Advertiser*, 6 April 1928.
- 63 See "Loose Leaves from the Editor's Notebook," *Japan Advertiser*, 10 June 1928; Baty, "The Suppression of War," 197.
- 64 See editorial, *Japan Advertiser*, 21 June 1928; Baty, "So-called De Facto Recognition," 481.
- 65 See editorial, *Japan Advertiser*, 14 December 1927; Baty, "The Suppression of War," 197.
- 66 See editorials, *Japan Advertiser*, 31 August 1927, 27 March 1930.
- 67 See editorial, *Japan Advertiser*, 27 March 1930.
- 68 See editorial, *Japan Advertiser*, 14 December 1927.
- 69 See editorial, *Japan Advertiser*, 31 August 1927.
- 70 See editorial, *Japan Advertiser*, 14 December 1927.
- 71 Baty, "The Suppression of War," 186-97.
- 72 See editorial, *Japan Advertiser*, 18 May 1928. Refer to T. J. Lawrence, *The Principles of International Law*, rev. ed. (Boston: D. C. Heath and Co., 1923), 48.
- 73 See editorial, *Japan Advertiser*, 18 May 1928.
- 74 See editorials, *Japan Advertiser*, 21 September 1927, 17 January 1928.
- 75 See editorial, *Japan Advertiser*, 17 May 1928.
- 76 See editorial, *Japan Advertiser*, 18 May 1928.
- 77 See editorials, *Japan Advertiser*, 18 May 1928, 5 April 1928.
- 78 See editorial, *Japan Advertiser*, 1 January 1930.
- 79 Thomas Baty, *The Canons of International Law* (London: John Murray, 1930), 104-05.
- 80 *New York Times*, 8 December 1929.
- 81 Eber H. Rice, "Sir Herbert Marler and the Canadian Legation in Tokyo," in John Schultz and Kimitada Miwa, eds., *Canada and Japan in the Twentieth Century* (Toronto: University of Toronto Press, 1975), 75-80; Peter Oblas, "Canada's Far West Policy: China and Japan 1929-1932," *Journal of American and Canadian Studies*, no. 18 (spring 2000), 18-21.
- 82 Baty, *Alone in Japan*, 110.
- 83 Keenleyside, *Memoirs of Hugh Keenleyside*, 330-31.
- 84 Hugh Keenleyside Collection, Album 3, National Archives of Canada, Acc 1993-405, 2000586435.
- 85 Kenneth Kirkwood Papers, 7 August 1932, National Archives of Canada, MG27 III E3, vol. 2, Diplomatic Journal 1932.
- 86 Baty, *Alone in Japan*, 110.
- 87 Kenneth Kirkwood Papers, 8 February 1931, National Archives of Canada, MG27 III E3, vol. 2, Diplomatic Diary, 1929-1931.
- 88 See Hugh Keenleyside Photo Collection, National Archives of Canada; Keenleyside, *Memoirs of*

## Accessing British Empire-U.S. Diplomacy from Japan

*Hugh Keenleyside*, 430.

- 89 Herbert Marler to Prime Minister, 13 July 1931, National Archives of Canada, RG25, T-1804, vol. 795, File 473; Marler to O.D. Skelton, Under-Secretary for External Affairs, 5 September 1931, National Archives of Canada, NAC, RG25, T-1804, vol. 795, File 473.
- 90 Marler to Secretary of State for External Affairs, 31 December 1930, National Archives of Canada, RG25, vol. 1561, File: vols. 1-2.
- 91 *Ibid.*
- 92 Oblas, "Canada's Far West Policy: China and Japan 1929-1932," 18, 30-33; Canada, House of Commons, *Debates*, vol. 1, 30 July 1931. Marler would report to the prime minister on the Manchurian crisis, supporting Japan's defense of its actions by exposing the idea that there was "a single State in China which controls all territory embraced in the geographical expression including Manchuria." Marler to Secretary of State for External Affairs, 1 December 1931, NAC, RG25, vol. 1606, File 1931-786C, Parts 1-3; Robert Veatch, *Canada and the League of Nations* (Toronto: University of Toronto Press, 1975), 119-22.
- 93 Regarding Baty and the evolution and pleading of Japan's defense before the League of Nations with references to resources in the archives of the Ministry of Foreign Affairs and the Library of Congress as well as sources such as the *Nihon gaiko bunsho*, see Oblas, "In Defense of Japan in China: One Man's Quest for the Logic of Sovereignty," 77-89.
- 94 Byas to Cholmondeley, 23 March 1933, B-C File.
- 95 Byas to Cholmondeley, 2 August 1932, B-C File.
- 96 Adolph Ochs, publisher of the *New York Times*, and Geoffrey Dawson, editor of the *London Times*, fostered a cooperative relationship between the two newspapers. They also fostered a conservative approach to their respective countries' foreign policies. Ochs was associated with an isolationist foreign policy; while Dawson became linked to what would be termed a policy of appeasement. John Evelyn Wrench, *Geoffrey Dawson and Our Times* (London: Hutchinson, 1955), 29, 88, 232-33, 266-67, 290, 303; David Dutton, *Simon* (London: Aurum Press, 1992), 240; Donald McLachlan, *In the Chair: Barrington-Ward of The Times, 1927-1948* (London: Weidenfeld and Nicolson, 1971), xiii, 99-101; *The History of the Times*, vol. IV, Part 2 (London: Times, PHS: 1952), 780, 816-17; Francis McDonough, "Rethinking *The Times* and Appeasement," *Journal of Newspaper and Periodical History* 8, no. 2 (1992), 42. Regarding specifically the *New York Times*, see Susan E. Tifft and Alex S. Jones, *The Trust* (New York: Little Brown and Co., 1999), 45, 67-68, 103, 127-28; Gay Talese, *The Kingdom and the Power* (New York: World Pub. Co., 1969), 60-61.
- 97 See editorial and Byas' article in *London Times*, 21 September 1931.
- 98 See Byas' articles in *New York Times*, 19 September 1931, 22 September 1931. See editorial, *New York Times*, 22 September 1931.
- 99 *London Times*, 24, 26 September 1931; *New York Times*, 25 September 1931.
- 100 *London Times*, 26 September 1931.
- 101 See editorial, *London Times*, 26 September 1931. A similar spirit pervaded the *New York Times'* editorial of 25 September 1931 on there should be no quarrel with Japan in the League.
- 102 *London Times*, 9 October 1931; *New York Times*, 9 October 1931.
- 103 *New York Times*, 20 October 1931.

- 104 Armin Rappaport, *Henry L. Stimson and Japan, 1931-1933* (Chicago: University of Chicago Press, 1963), 30-33.
- 105 See editorials, *London Times*, 16 October 1931; *New York Times*, 14 October 1931; Rappaport, *Henry L. Stimson and Japan*, 38-41.
- 106 Japan repudiated the League's reference to Japan as the cause of the breach of peace, insisting that both China and Japan should agree not to commit any aggression. In Japan's view, China was to refrain from boycotts and other hostile acts, protect Japanese subjects in Manchuria and uphold Japan's treaty rights. Japan remained unwilling to concede on the League's view of the conflict.
- 107 Baty, "The Suppression of War," 197.
- 108 See Byas' commentary, *New York Times*, 1 November 1931, Section 3.
- 109 *Ibid.*
- 110 See editorials, *New York Times*, 10 November 1931, 27 November 1931.
- 111 See editorial, *London Times*, 7 November 1931.
- 112 See editorial, *London Times*, 23 November 1931.
- 113 Henry L. Stimson, *The Far Eastern Crisis* (New York: Howard Fertig, 1974), 95.
- 114 Rappaport, *Henry L. Stimson and Japan, 1931-1933*, 102-04.
- 115 Stimson, *The Far Eastern Crisis*, 89.
- 116 *Ibid.*, 94-95.
- 117 Margot Louria, *Triumph and Downfall* (Westport: Greenwood Press, 2001), 210; McDonough, "Rethinking *The Times* and Appeasement," 42; Godfrey Hodgson, *The Colonel* (New York: Alfred A. Knopf, 1990), 158-59; Peter Oblas, "Japan and the Sovereign Ghost-State," 40. Regarding the close political relationship between the *London Times* and the government in power as well as the close relationship between Simon and Dawson, see Wrench, *Geofrey Dawson and Our Times*, 29, 88, 266-67, 290.
- 118 See article and editorial in *London Times*, 11 January 1932.
- 119 Henry L. Stimson, *The Far Eastern Crisis*, 97-105.
- 120 John Pratt, *War and Politics in China* (London: Jonathan Cape, 1943), 227.
- 121 *Ibid.*, 228. The Stimson and Pratt books have been followed by later historical studies on the influence of the *London Times* on British Far Eastern policy and British-U.S. relations. See in this regard: Louria, *Triumph and Downfall*, 387; Robert A. Hecht, "Great Britain and the Stimson Note of 7 January 1932," *Pacific Historical Review* 38 (1969), 188; Rappaport, *Henry L. Stimson and Japan, 1931-1933*, 103-04; Elting E. Morison, *Turmoil and Tradition* (Boston: Houghton Mifflin, 1960), 387-88; Wrench, *Geofrey Dawson and Our Times*, 29, 88, 266-67, 290, 298, 303; Charles Callan Tansill, *Back Door to War* (Chicago: Henry Regnery, 1952), 101-02; Sara Smith, *The Manchurian Crisis 1931-1932* (New York: Columbia University Press, 1948), 235-36.
- 122 The commerce bureau chief referred to Baty's grade as similar in rank to an envoy and minister plenipotentiary in the ministry in 1941 and explained his contribution through his publications and his relations with important friends in assisting Japan during the Manchurian crisis. Chief, Commerce Bureau, Ministry of Foreign Affairs to Chief, Foreign Exchange Bureau, Ministry of Finance, 6 September 1941, *Kakukoku ni okeru shisan toketsu oyobi eikyū kankei zakken* [Miscellaneous Matters relating to the asset freeze in each country and effects] Diplomatic Record Office

## Accessing British Empire-U.S. Diplomacy from Japan

of the Ministry of Foreign Affairs, Tokyo, File E. 2-3-1/10.

- 123 See observations of the Asian Bureau on the cover document to Baty's draft letter to the *London Times*, 26 January 1933, in Archives of the Japanese Ministry of Foreign Affairs 1868-1945 (Washington: Library of Congress Photoduplication Service, 1951), Reel 499. Also, Chief, Commerce Bureau, Ministry of Foreign Affairs, to Chief, Foreign Exchange Bureau, Ministry of Finance, 6 September 1941, *Kakukoku ni okeru shisan toketsu oyobi eikyū kankei zakken*.
- 124 Thomas Baty, "The Threatened Chaos in the Law of Nations," *Contemporary Review* 148 (July 1935), 67; Thomas Baty, "Can Anarchy Be a State," *American Journal of International Law* 28 (1934), 453.
- 125 Thomas Baty, *International Law in Twilight* (Tokyo: Maruzen, 1954), 22-23. Also, Chief, Commerce Bureau, Ministry of Foreign Affairs, to Chief, Foreign Exchange Bureau, Ministry of Finance, 6 September 1941, *Kakukoku ni okeru shisan toketsu oyobi eikyū kankei zakken*; Baty, *Alone in Japan*, 138-39.
- 126 Byas to Cholmondeley, 23 March 1933, B-C File.
- 127 Byas to Cholmondeley, 27 August 1935, B-C File.
- 128 *Ibid.*
- 129 Peter Oblas, "Japan and the Sovereign Ghost-State," 40. The two books are: Hugh Byas, *Government by Assassination* (New York: Alfred A. Knopf, 1942) and Hugh Byas, *The Japanese Enemy* (New York: Alfred A. Knopf, 1942).
- 130 See Byas' Yale University lecture on "Continental Expansion" in HBPY; Baty, *International Law in Twilight*, 22-23.