LECTURES
ON
INTERNATIONAL LAW
BY
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BEFORE

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LECTURE I.

Mr. Dean, and Fellow Students:

I appear before you this afternoon for the purpose of paying a small installment upon that debt which Francis Bacon said every man owes to his profession. I shall speak from very brief notes and you must not expect any symmetrical or labored address. The subject is one of great extent and complexity; it is also of daily and surpassing interest in the increased intimacy of national intercourse. Nations far remote now touch one another where formerly they had no point of contact. Intelligence is conveyed more speedily than if it were borne upon the wings of the morning. Relations of all kinds, social, monetary, political and commercial occur with hourly frequency. Under such conditions the interest of any State in its international affairs becomes exceeding important. Indeed, you cannot look at any daily paper without seeing how frequent and various these international questions have become. This morning the question is whether the United States is bound to return Senorita Cisneros, who was recently released from a Spanish prison by the enterprise of a newspaper correspondent. We also see that Costa Rica has declared war against Nicaragua, where we have that large interest, the Nicaraguan Canal, created by contracts of our citizens with those governments. With the United States the question is, what effect this war

will have upon our relations with those States, in view of our rights in that great enterprise. So that I am justified in saying that our international interests are of daily increasing recurrence and importance.

Another characteristic of the relations of our Government to other powers is this: Whatever may be the distractions of party and the vicissitudes of political ascendency in our internal affairs, it is a maxim of this Government that, whatever party may be in power, the continuity of our foreign intercourse and policy should never be broken. That maxim has seldom been infringed upon and whenever it has been disregarded it has been to our detriment.

The first topic to which I shall address myself is as to the parties to international relations. Those parties are States. They are not sovereigns, they are not classes, they are not territory, they are not nations in the large and general use of that word, but they are States. Now, what is a State? A clear definition should be impressed indelibly upon our minds, because it applies to every discussion and issue in which international relations are involved. I should define a State to be: A body governmental and politic, comprising all the human beings within certain defined territorial limits, organized for the purpose of governing, and which does supremely govern, within the limits of that territory. A State in international law is an artificial and yet a compositely human person. It has a personality; it has rights; it is subject to duties; it can do wrong and suffer penalties, and it must have relations to other States which may be defined in the same manner. Bear in mind that a State is a body governmental and politic which does supremely govern within certain defined territorial limits. I use this phrase "ter-

ritorial limits," for the reason that it produces clearness of conception, and it is well, perhaps, to define a little further in regard to this expression. We are accustomed to regard the territorial limits of any State bounded by the ocean as the shore line. But while it is true as a general conception that the sea is under no nation's sway, yet, by a usage long since passed into law, the territorial jurisdiction of every State bordering on the sea extends to a distance of one marine league from the shore. This limit of sovereign jurisdiction has been established to secure defense, to prevent smuggling, to prevent criminals hovering upon the coast, to prevent crime, and, generally, jurisdiction over the contiguous sea-territory exists for the security of the adjacent State and its people. Beyond that the sea is like the air; it is no man's possession; it is no nation's territory; it rolls ungoverned by any human ordinance except as to the ships thereon. They are floating tracts of nationality. The weak point in the Bering Sea controversy was our attempt to controvert the principle that the sea is not subject to dominion. The Russian Government had during its possession of Alaska tried to hinder the navigation of that sea by foreign ships within one hundred miles of the coast. The United States and Great Britain protested vigorously, and in the correspondence during Mr. Harrison's administration we made the great mistake of contending that Bering Sea was, or might be made a "closed sea."

There have been a few enforced or unnoticed exceptions to this rule of marine boundary. During the imprisonment of Napoleon, Great Britain closed the sea surrounding St. Helena to foreign vessels. Pearl fisheries on the coast of Ceylon are made exclusively British property outside the one league limit. Hudson's Bay was recognized as a closed sea

under acts of Parliament respecting the Hudson's Bay Company in the treaty of 1818 between the United States and Great Britain. The fishing banks of Newfoundland, more than two hundred miles distant from any shore, were recognized, granted and partitioned as national property by the treaty of 1783. Great Britain for centuries asserted territorial sovereignty over the seas which surround the British Islands. But these are merely exceptions which impose no rule, and derogate nothing from the general law.

We have as the parties to international relations the States of the world. I apply this expression, here and elsewhere, to the civilized States, because as to the uncivilized States, there are certain vague distinctions and limitations unnecessary to be considered at this time.

When you come to look into the human constituents of States you find that they are subjects or citizens who are all bound to the State by an obligation which is called allegiance. It is the tie which binds man, woman and child to the government, and by reason of which, in consideration of equivalents which the State is bound to render, whether by social contract or divine mandate, that government, within certain limits, has been vested with authority and power over them. The doctrine of allegiance attaches itself to the doctrine of States naturally. In the discussion of allegiance a great many curious questions come up for consideration, some of which are not yet entirely settled.

Allegiance being conceded, and it must exist or all government disintegrates, the question arises: Is this allegiance indissoluble, or is it severable at the will of either party; can the State throw off the citizen, or can the citizen renounce the State, expatriate himself, and transfer his allegiance to another State?

It is probably a correct abstract proposition that the subject cannot renounce his allegiance except by the consent of his sovereign. And yet the civilized States of the world have practically disregarded this principle, for I believe that all of them have passed laws for the naturalization of aliens without requiring the consent of the sovereign of the applicant as one of the conditions of abjuration of allegiance to him.

One would think that an alien thus naturalized would be sustained in all the rights of citizenship by the naturalizing State to the same extent as if he were a native citizen. Logically he ought to be. But a curious conflict of laws has frequently arisen, a conflict between the old feudal principle of indissoluble allegiance and the right of the subject to abjure that allegiance which is implied in the naturalization laws which have been enacted by all civilized States.

It has arisen in this way. A fully naturalized citizen of the United States returns to his native European State, which thereupon makes accusation against him which depends for its validity upon the principle of indissoluble allegiance. It has been uniformly held by the European courts of justice that this principle is legally correct, and thus the naturalized alien has been prevented from obtaining any consideration of his claim to immunities which a native-born citizen could undoubtedly assert, or at least have considered.

The question arose in The Queen vs. Warden, before Chief Baron Pigot, in a trial at Dublin in 1866. The Chief Baron instructed the jury that "according to the law of this country, he who is born under the allegiance of the British Crown cannot by an act of his own, or by any act of any foreign country or government, be absolved from that allegiance."

The State Department of the United States has

held variously upon these conflicting propositions. Mr. Webster admitted the legality of the principle of indissoluble allegiance in cases where the naturalized alien had returned to his native country and its application to him while there, while Mr. Cass most vigorously asserted the validity of the principle of severable allegiance, no matter where the naturalized citizen might be. I cannot find that the Supreme Court has ever passed definitely upon this question.

The latent danger of this conflict of principles was so apparent that by treaties concluded since 1866 between the United States and the leading powers of Europe, and by statutes enacted by many States, the right of expatriation and of transfer of allegiance has been recognized.

There are some very curious historical instances which illustrate the inefficacy of the theory of indissoluble allegiance in the present century in its practical application. Aaron Burr, after his duel with Hamilton and the failure of his magnificent scheme in the southwest, whether of treason or filibustering, was compelled by the force of public opinion to leave this country. He took refuge in England. This was, I think, in 1807 or 1808, during the time of the great Napoleonic wars. The authority of the executive in England was then extremely despotic. Burr had served in our armies during the Revolutionary War, had been Vice President of the United States, was a man of surpassing ability, and was supposed to be a conspirator dangerous to any country. He was ordered as an alien by the British government to leave England. It is said that Burr, able lawyer that he was, turned upon the British government the common law axiom of indissoluble allegiance. He had been born under the British dominion in this country, and he maintained that upon the English theory he could not throw off his allegiance, and that, as he was a

British subject, the authorities had no right to require him to leave their shores as an alien. He failed in his contention. He went to Paris. Napoleon also thought him dangerous and placed him under surveillance in France. This story of Burr's experience in England is however much discredited by the consideration that he was too good a lawyer not to know that the treaty of 1783, by which our independence was acknowledged necessarily absolved him from his former allegiance to Great Britain.

Of course, when persons or bodies politic, call them states or corporations, or what you will—when any persons, natural or artificial, who have individuality, who claim rights, who can inflict or suffer wrongs, assume relations to other individualities, they must do so by virtue of some law which prescribes the terms and conditions of those relations; and so, when States came into being, in the long and sometimes undiscoverable processes of time, there immediately, and necessarily, grew up certain commonly recognized legal principles of relations of greater or less complexity and efficacy by which the intercourse, commercial, social, political, and even military, of those coexisting States was governed, and that body of principles, that system is International Law.

The definitions of International Law are many. Some of them are very elaborate and contain an argument within the definition. I think that as good a definition as can be given for the practical purposes of what I have to say to you is, that International Law is that body of rules which governs the intercourse of States. We know that States have intercourse; we know that it is regulated by rules; we know that this must be so; we see them obeyed, no matter by what method they may have been established, and so it is a sufficiently accurate, although

it is a very compendious definition, to state that International Law is that body of rules which governs the intercourse of States.

To a proper understanding of even the most fragmentary discussion of this great subject, into the minute details of which I cannot be expected to go in what I shall say to you now or hereafter, some account of the history of International Law will not be inappropriate, and, I think, is indispensable. In the older civilizations—those of Egypt and India for instance—we find no trace of it. Great nations arose, some immured in their own seclusion, others in competition who wasted each other by fire and sword, and swept thousands into slavery, and no trace appears of international relations, nor of any modification of the primeval law that every stranger is an enemy. Why was that? As to India and Egypt, whose civilizations antedate the very morning of recorded history, it was the existence and effect of caste; it was the drawing of the sharp line of distinction between the divinely favored nation and all other nations, whereby the nation esteeming itself thus privileged and all other nations as inferior, as Egypt and India did, could not, under the prohibitions of their theocratic systems enter into any relations with foreign States except those of aversion or hostility and subjugation. Nor do we find international law in the history of the Jews, although it has often been attempted to show its existence from entirely inapplicable passages of their scriptures. There is in my opinion no trace in the history of that nation of what, in our time and for the last five hundred years, has been understood to be international law. Why? Because the Jews were, in their own estimation, a peculiar people, a favored people, a people divinely set apart from other nations. They were forbidden by their law to make covenants with

other nations. They were promised, in the supreme fullness of time, dominion over all other nations, and this explains why we see no real trace of international law and relations of the Jews with other States, and it also accounts for the atrocities and bloodshed of the wars in which they overran Palestine.

In the processes of time the Greek and Roman civilizations appeared, with no system of caste, with no assertion of an exclusively divine mission and favor, and here, for the first time we see the germ, and the growth from the germ, of modern international law. I know it has been denied by many writers that there was any feature or function in the Greek and Roman civilization which can properly or probably be attributed to international law as we understand it, but I am inclined to think that this is an error. It would be an interesting topic of investigation by any young gentleman of you who is so inclined, to look into this question, and see whether the foundations of international law did not exist deeper and broader in the Greek and Roman civilizations than modern writers are willing to admit. How could it be otherwise? Their philosphers taught the equality of men; the equality of States was practically assumed; the little peninsula and islands of Greece were divided into commonwealths possessing refined and exquisitely finished systems of government. They made leagues with each other, they fought each other, they made treaties of peace with each other. As to Rome, she had under her protection the kinglets of Asia Minor, Palestine and Egypt and the cities of Spain; her first wars of conquest were against the tribes surrounding the city; she sent and received ambassadors; she made demands by heralds for satisfaction, and made formal declarations of war after satisfaction had been refused. The

details of these transactions in their legal aspects have not come down to us, but there must have been a system of international rights and wrongs and remedies for such wrongs, of which history has given no sufficient account, and which must have existed and operated from the very nature of the situation. The Code, the Pandects and the writings of the poets and historians contain many passages which sustain this opinion. The negotiations and treaties between Mithradates and Sulla and those between the Pontic king and Sertorius, who was then the *de facto* ruler of a great part of Spain, were very formal and complicated and adjusted vast international questions. I wish some young gentleman would take up this topic and fully investigate what were the relations of international comity and right between the nations of antiquity.

International law, as we understand it and from which it has expanded to its present proportions, first clearly appears from the date of the ascendency of Christianity around the Mediterranean and on the continent of Europe. The cardinal principle from which it sprung was the Christian doctrine of the inviolable and indestructible equality of man to man, as a man. It was a doctrine never taught before as a religious precept, a doctrine never generally conceded before, whatever may have been said in the abstract speculations of the philosophers, a doctrine which had never before secured any political acceptance. There is the basis of the modern republic; there is the basis of the modern State by whatever form of government it is ruled; there is the basis of the conception of the equality of nations—for I ought to have said to you in another connection, in elaborating upon the definition of a State, that it is also a cardinal and axiomatic principle of international law that all States are equal—absolutely

equal, unquestionably equal—and are not responsible to other States for what they do within the sphere of their government. This applies as well to Hawaii as to Russia, to the smallest State as well as to the greatest. The little republic of San Marino, situate entirely within the kingdom of Italy, with 32 square miles and 8,000 people, is one of the oldest governments in Europe by virtue of that very principle. That republic, in 1872, concluded a treaty of protective friendship with the kingdom of Italy by which it is surrounded.

Of course, after the fall of the Roman Empire and the submergence of Europe under the successive barbarian invasions, the power of Christianity and the force of such international law, as they existed at that time, were very much weakened, but there did remain the commanding power of the Church—then the Church Universal—speaking through the voice of pontiffs, and often with the voice of supreme morality with an authority which took centuries to weaken in its influence upon the independence of States, and which exercised the power of the chastisement, deposition and installation of kings. The Church was often the supreme arbiter which enforced, from the doctrine of morals and from the canon law, the rights of nations. With whatever purity of intention that jurisdiction was for a long time asserted, the Church at last, depraved by power, sullied by ambition, the sport and prey of kings, lost the confidence of mankind upon which its authority rested and ceased to be dominant in international relations. Little by little civilized Europe through barbarism, through the feudal system, through the Crusades, through the expansion of the spirit of commerce, through the independence of municipalities, through the gladsome light of education which illumined the world,

began to assume those national forms which have continued to the present time.

The Protestant Reformation was effected in the process of this evolution, and immediately two principles engaged in conflict. One was the liberty of conscience, the liberty of personal judgment upon religious questions. The other was the *ex cathedra* doctrine of the entire subjugation of individual will and opinion to the dogmatic authority of the Church. This conflict took a political form. It produced the great Thirty Years' War. It was Luther and Calvin against the old order of things, and while it was a religious war, it was much more. It was also, in substance and effect, in a resultant sense, a war for national emancipation and independence. This long conflict was ended by the peace of Westphalia in 1648, and I advise you to study the treaties by which that peace was made. By those conventions the geography of Europe was fixed, as to its exterior national boundaries, substantially as it now is. That peace was the edict which established the status and relations of the States of Europe, great and small. Excepting the Pope and Russia, which had not yet appeared as a member of the commonwealth of nations, all the States of Europe joined in the treaties. They curbed the power of Spain; they placed the Netherlands upon the pedestal of an enduring nationality.

As I am considering only its political effects, I will merely say that the peace of Westphalia fixed the map of Europe; substantially took religious matters out of all play and action in international politics, and caused them to cease to be an occasion of war, by solemn compacts in which all the powers of Europe joined, except Russia and the Pope, who protested against the treaties.

You will permit me here to make a short digres-

sion. We have all read Macaulay's review of Ranke's History of the Popes, and have recognized the truth of his statement to the effect that, geographically and as to boundaries, Europe stands as to the situs of creeds substantially where it did when the religious wars in Europe finally ceased. Parishes that were then Catholic have remained Catholic to this day; parishes that were then Protestant have remained Protestant. Little principalities and bishoprics and dukedoms, as well as great States, all at one time filled with religious fervor, intolerance and passion which ebbed and flowed in battle and persecution, have remained since that peace without change in their religious opinions, although those passions have entirely subsided. Macaulay accounts for this by the subsidence in Protestant energy and by a reformation and purification in Catholicism. I do not think that this opinion fully explains this result. I think that an additional reason is that by the removal of religion and differences of religious opinion out of the arena of international disputes, the operations of men's convictions upon those subjects were allowed to remain free and uncoerced, and thereby the boundaries of faith and creed were fixed. This has been rudely expressed, but you can read Macaulay's essay, and determine for yourselves what weight ought to be given to this portion of my observations. Anyhow, the result of the peace of Westphalia was this: It established the map of Europe; it made equal the States great and small; it guaranteed their existence; it divorced religion from international politics, and made a general system of international law absolutely necessary. The events and causes which produced the treaty also produced Grotius, from whose immortal work the science of international law has ever since flowed in an unfailing and broadening stream.

The American Revolution was followed by the French Revolution, its offspring. The latter was deformed in many respects, but it was fruitful of benefactions to the human race. Those revolutions had an impressive influence on international law and its application. They warred against many principles which had been theretofore accepted, which they contended ought to be superannuated, and the result was that many rules which had been deemed indisputable and indispensable in times prior to those momentous events became obsolete and passed into the region of outworn theories, no longer suitable for practice. It is a remarkable fact that Franklin and Napoleon destroyed that system of finesse, chicane, duplicity and cunning which in former times was called diplomacy. They taught the duty and advantage of plain-speaking and business methods in international negotiations.

Having thus defined States and allegiance, and given an imperfect general idea of the origin and progress of international law, let us inquire for a moment what its sources are, and how it is evidenced. The most conspicuous source, perhaps the one which most attracts the attention, certainly the one we read most about in history, is treaties by which the signatory States give laws to each other as between themselves, as to what shall be done in a certain contingency or in composing existing differences. But this is a very limited source of general international law. A treaty between France and the United States binds only those governments. It does not bind England; it cannot; it binds only the signatory powers; so that, except by a treaty of general nature signed by many States, as in the cases of the treaties of Westphalia in 1648 and that of Vienna in 1814, binding so many States as to

make it a rule of almost universal obligation, such a convention is not an international law.

Another source is usage. To you who are studying law I cannot better illustrate what I mean than by saying that this usage is the common law of nations. Its origin is not perceptible; its growth is gradual. As to the common law of England, who knows precisely when and where it arose? We all know the many (some of them very far fetched and remote) explanations given of its origin by the commentators; some very grotesque, such as the supposition that it had its origin in a body of statutes now lost, the memory and knowledge of which, however, still repose in the minds of the judges, transmitted to and by them from generation to generation. The common law of England and the common law of nations have sprung from customs, from irresistible conveniences, from tacit understandings by which not only classes of men as between themselves, but States as between each other, have accommodated differences or made intercourse desirable and peaceful. Who established the doctrine that territorial sovereignty over the ocean is limited to a marine league from the shore; by what authority was the principle ordained that private property on land is not subject to confiscation as is private property captured on the high seas during war, or the doctrine of contraband of war and blockade; who decreed the principle of the inviolability of ambassadors, or that piracy is a capital crime? You find these rules written in no code, laid down for the first time in no treaty, prescribed by no superior power. They have developed automatically, as the common law of England has developed, into a body of law which every nation recognizes, and which the common consent of the civilized world holds to be binding upon every nation. And then, beyond and above all that, there is a

source of international law, denied by many writers who, in my opinion, adhere too closely to technicality and too little enter into the spirit and fact of these evolutions of jurisprudence. That source is the precepts, obligations and sanctions of the moral law; that law which deals with the absolutely right and the absolutely wrong; that law which is written in the conscience of all men and speaks from it with judicial authority; that law of which every man is at once subject and competent judge; for, say what we may of the disparities of intellect, natural gifts and will, there is one respect in which all men are equal, and that is in the guidance of that inner and infallible monitor which teaches all men equally what is right and what is wrong. That is the great depository of international law which, from its unerring tribunal as exigencies arise, prescribes the rights, duties and liabilities of States. When that law speaks upon a certain case and with a decisive voice, there is no custom or prescription however hoary, no precedent however entrenched which can long stand against it. It works its way into custom, usage and law in due course of time. John Austin contended that international law (so-called), cannot be considered to be law, because it has no coercive force, no sanction. Let us see. There must be a coercive force somewhere, because mankind obeys that law, nations obey it. In the first place there is the force of opinion. In the next place, there is the force of pacific retaliation, of restrained intercourse, of international boycotting and outlawry, of unfriendly legislation; and then, finally, there is the supreme arbiter and coercive force of war. War, dread and dreadful as it is, is sometimes an indispensable agency of the assertion of the rights and even of the preservation of a nation. It is as true of nations as it is of individuals

that their existence often depends upon the rightful exercise of their physical forces to the last extremity.

I shall conclude my remarks this afternoon with a few observations upon the intercourse of States by which the operation of these laws is asserted. Of course, considering States as personalities, we must observe and remember that they are bodies politic and corporate in a certain sense, and that therefore they must act through agents. The State has no voice by which it can speak for itself. For that purpose it must accredit somebody; and, accordingly, in the development of international intercourse, a hierarchy of diplomatic agents has been created, variously named and with varied powers, authority and consideration, through which States speak to each other. These representatives reside in the courts to which they are accredited. The classification of their rank and powers is somewhat complex and need not be gone into here.

The highest grade of these representatives is an ambassador. He is a person sent from one government to another, to represent it in its international relations. He is not merely a general representative; he represents the person of his sovereign. The British Ambassador to the United States, represents the person of Queen Victoria. He is entitled to and receives high honors for that reason. The distinction between ambassadors and ministers is not very material nowadays, being mainly in name. An ambassador, however, has a right of precedence in audiences with the officials of the foreign government to which he is accredited.

The United States never sent ambassadors until a few years ago. Our highest diplomatic representative up to that time was a minister. It was found that an ambassador representing the person of a sovereign received precedence over our ministers

who represented no personality, and that, for instance, our minister to England had to wait for an audience until the ambassador of the King of Siam, or of some other little kingdom had been received. This shows the power of precedence.

The next grade is that of ministers—envoys extraordinary and ministers plenipotentiary is the full title—but those big words do not express much of anything. A minister is sent to represent the government, but not the personality of the sovereign. His authority is as great ordinarily in modern times as that of an ambassador, but he is not entitled to the same precedence.

Ambassadors and ministers have certain extraordinary privileges and immunities. They are exempt from arrest. They cannot be subpœnaed as witnesses. If an ambassador or minister should commit a crime in the city of Washington, such as murder, forgery, robbery, the hand of the United States cannot be laid upon him to arrest or try him; the process of the United States courts in any action civil or criminal cannot be served upon him. The higher principle of the necessity of perfectly unrestrained freedom of action on his part exempts him from the jurisdiction of our laws. He is not to be taxed; duties cannot be laid on his goods. And these exemptions extend to his entire household, to his family and to his servants. He can be sent back to his home there to be tried, and the only thing to be done in a case of crime committed by him would be to send him home for trial. Most of the continental States of Europe have the power under their judicial systems, to try their subjects for offenses committed in other countries. This power does not exist in the United States under the provisions of its constitution. A minister of this government, therefore, expelled by the power to which he was accredited by reason of a

crime committee by him within that foreign jurisdiction, would wholly escape punishment by any judicial proceedings.

There is a prevalent misapprehension about the office of consul. A great many people suppose that a consul is a diplomatic officer. He is no such thing. A consul has no diplomatic character whatever. He is merely a business agent of the government from which he is sent at the port or place of another government to look after the commercial interests of the citizens of his own country. A consul has no exemption whatever from the jurisdiction of the courts of the government to which he is sent. He can be prosecuted civilly; he can be prosecuted criminally; he can be a citizen of the State in which he resides as consul.

LECTURE II.

Mr. Dean, and Fellow Students:

Perhaps it will be well to reenforce the very important proposition that I made yesterday (because it bears on the entire philosophy of the subject) that international law has a coercive sanction; that it is enforceable, and that the agencies exist which enforce it, although it has never been agreed upon in any formal legislative manner by the nations subject to it. It is enforced, in the most conspicuous instance that I can now think of, in the admiralty prize courts of the various nations. There is not a maritime state upon the face of the globe that has not established its prize courts of admiralty. And for what purpose? To enforce certain rules and precepts of international law. Those rules and precepts are written in the codes of no States; they are written in no code whatever. They are the immemorial possessions of the human race, coming down from a remote time, formed by the accretion of ages and ordained by the common consent of mankind. So that Lord Stowell, or Mr. Justice Story, or any of the great admiralty judges who have sat on that bench of judgment, have made and enforced their decisions from tribunals established by their own States for the purpose of making operative that immemorial and universal law which is the enactment of no State, yet which binds all nations. What code has enacted the law of prize; what code has enacted

the law of blockade; in what code originated the law of marine insurance, of general average, of the rights of shippers, of the rights of sailors, or the general law merchant? All these by origin are part of international law, properly speaking, and are enforced by the tribunals of the various nations. They are organized and instituted to enforce them. These courts are the product of universal international law and are not its origin. Lord Stowell did not enforce as to prizes, blockade, contraband or the rights of neutrals the code of Great Britain, nor did Mr. Justice Story enforce any code of the United States of America. They declared the universal, all-embracing mandates of international jurisprudence, for which each State has supplied a coercive agency, a deliberate and judicial sanction. While some of these subjects, such as marine insurance and the laws of shipping, have long since passed, by silence or judicial adoption, into the juridical systems of the several States and have become parts of their municipal codes, it is none the less true that their origin is to be found in an international law which by the very process of its enforcement as such became by degrees the law also of the several States.

I will continue what I have to say this afternoon by discussing the duties of States toward each other. We obtained yesterday, I trust, a sufficiently clear conception of States, that they are personalities, each enjoying rights and privileges, bound to the performance of duties, and subject to liabilities. The entire civilized world is divided into States as determinately as Minnesota is divided into counties. States are great, they are small, they are of medium size; the disparities of power between them are immeasurable, and, yet, like everyone of the persons in this audience with all the inequalities of wealth, intellect, strength, and all that, they are absolutely equal as

to each other—absolutely equal. That is the very keystone of the structure of international law, and States co-exist in comparative harmony under that vast arch which spans the nations. The question arises, and contains within its periphery the whole scheme of international law, what are the duties of States to each other in war and peace?

Well, the first duty, and the all-embracing duty of States is to respect the sovereignty of each other, just as you and I are bound to respect the personal independence of each other, to inflict no wrong by way of physical aggression or otherwise upon each other. Grasp firmly the idea that States are persons, with rights and duties, and subject to liabilities, and then apply the analogous rights of persons as to each other to that larger and more complex person, and you will receive a conception, clear beyond a definition anybody can give you, of the rights and duties of States as to each other. It may be generally expressed to be their duty to observe the rules of international law just as men observe, in their intercourse, the rules of society. If anybody says, or shall argue theoretically, (for he cannot argue practically,) that there is no system of international law, because it is not enforceable by any coercive sanction, recur to what I said a few moments ago. Let us go into the region of society, outside the realm of enacted law, and consider a force which bears on us more persistently than any system of law—daily custom, that coercion of usage and intercourse which society applies to its members. We offend against the social regulations, we do acts of impropriety punished by no enacted code, and yet, how quickly and efficiently society converges upon us its punitory forces in one focus of consuming power and retribution. It is so with nations. Let a nation refuse to establish prize courts, let a nation refuse to obey the

law of blockade, let a nation refuse to obey the law of neutrality in force against one nation in favor of two others who are at war, and that nation, like an individual by the majestic process of opinion executed by the entire civilized world, will be thrown out of the pale of civilized comity, just as you and I would be expelled from the social pale if we offended against the unwritten law of society. It is vain to contend that there is no sanction to that great system of law which has ruled the civilized world since the time of Grotius, and ruled it with increasing power every year.

The duties of one nation to another, of which I have spoken, or of one State to another, for that is a better phrase, mainly apply in times of peace. What are those duties in times of war? I am not speaking now of the two States who are at war, but of the duties of States at peace with the belligerents. That duty is absolute neutrality as between them—absolute indifference and abstention from any action which can give aid or comfort to either belligerent. It is pretty hard to define accurately what neutrality is, or in what it consists, without expanding the definition into an essay. There are some words which convey their meaning better than any paraphrase and the word "neutrality" needs no illustration or side lights from any expansive definition. In the course of the remarks I shall make, I shall go a little further into special applications. You will bear in mind that, speaking as I am from brief notes and in an informal manner, I am laying down principles and allowing you to draw the inferences and ultimate generalizations. As I remarked yesterday, you can find international topics in every daily paper. The question of today is, whether we shall join with England in a conference on the seal question, Great Britain having refused to join us in a conference

with Russia and Japan, or whether we shall have two conferences—one with Russia and Japan, and the other with Great Britain. You can find plenty of such questions in the topics of your own time.

As I am trying to deal with subjects of practical interest and am touching lightly upon large and speculative questions—the limitations of this occasion will not warrant that—let me call your attention to a question arising every day in the intercourse of nations. Men who have committed crimes in one county take refuge in another. A subject of Germany, or France, or Russia comes to the United States; his hand is bloody with murder, perhaps. What are the rights of Germany, Russia or France in the case supposed, and what are the rights and duties of the United States? There are two opinions on this subject. One is that, irrespective of any treaty compact and as a duty of universal international obligation imposed by the comity of nations, it would be obligatory upon the United States, without any such compact, to deliver up the criminal. There is another and more restricted opinion, which holds that there is no duty whatever of that character, unless it has been stipulated by an antecedent treaty covenant. I have never been able to see, as a matter of juristic speculation, why the first proposition is not correct, but it is due to the present state of the authorities and law upon this subject to state as a general proposition that no State, and especially not the United States, is bound to deliver up such a fugitive from justice from another State, in the absence of treaty binding it to do so. I can go further, and say that in the United States it would be unlawful for the executive department to attempt to do so; it would have no law to warrant it. Our constitution provides that a treaty shall be the supreme law of the land, and if

there is no treaty authorizing the extradition and delivery of a criminal, or no statute empowering such action it is asked with great pertinency and force, where does the executive get the authority to lay its hand on any person, every man being entitled to a judicial hearing under due process of law in every case which affects his liberty or property. The same limitation might not apply to other countries which have not those constitutional guarantees. Hence, as a proposition of international law, it can be stated that the United States, in the absence of treaty obligation, is not only not bound to, but has no authority to extradite any criminal fleeing to its shores.

There have been some infractions of this rule of restricted obligation in our own country, one of which I will lodge in your memories for the purpose of emphasizing the general principle. During our civil war a Cuban, by the name of Arguelles, who was a governor or commandante of some province in Cuba, a man of great authority in his jurisdiction, fled to the United States under the following circumstances: The African slave trade had become unlawful in Cuba, although slavery was still lawful in that island, and cargoes of slaves were still being illegally transported there from Africa. Such a cargo was landed within his jurisdiction. The negroes were seized. He then reported to the authorities over him that they had all died of disease, whereas in fact they had not died, but he himself had taken them and sold them into slavery. He fled with the proceeds to the United States. It was a heinous and ghastly crime; it is something which afflicts the hearts of men in hearing it told even. We had no extradition treaty with Spain which covered the case, and yet Mr. Seward—those were times of martial law and of lax obedience to civil law—immediately had Arguelles

seized in New York and sent back to Cuba, where I trust he met his deserts. Spain reciprocated not long after. You will remember that Tweed, when he fled from New York, landed in Spain. The Spanish government seized him and he was brought back to the United States for trial and punishment. These cases are exceptions to the general law on this subject.

In the modern intercourse of nations, there are sojourners in every community, denizens in our midst, citizens or subjects of foreign countries, who have not renounced, and perhaps do not intend to renounce their allegiance to the State from which they came. The question often arises in a practical and most forcible shape, what are the obligations of the United States to these people and to their governments under these circumstances? While such denizens do not vote, and are not subject to military service, they pay taxes, they share in the fiscal burdens of the community but not in the exercise of its sovereignty. They are here—Scandinavians, Irish, English, Poles, Italians, Germans, French, or whoever they may be, subjects or citizens of the countries from which they came. They have the same rights before the courts, the same rights to the enjoyment of property, as a general rule, except as to land, with a citizen of the United States. They are not distinguishable from citizens in point of enjoyment of any personal right which I can think of at this time, excepting the ownership of land and the franchise of citizenship. But questions have occasionally arisen, and will recur in our history so long as we are a polyglot people, a nation of many nations, with a Babel of many tongues, yet all lapsing audibly into English speech, as to the responsibility of this government to foreign governments for inflictions of violence upon the persons or property of these resi-

dent aliens. Under the fury of race prejudice, or under the impulse of passion having no connection with the race prejudice, such as that growing out of labor troubles for instance, the subjects or citizens of foreign countries denizened in our midst are injured in their person or property by mob violence; sometimes their lives are taken, or their property destroyed. What is the obligation of the United States in cases of that kind? Before I define it, I will cite the most prominent incidents that have occurred. About fifty years ago there was great excitement throughout the South on account of the filibustering from this country on the shores of Cuba. Bloody executions were inflicted in that island, some of the sufferers being citizens of the United States. The feeling became so infuriated that a mob in New Orleans sacked the Spanish consulate, and tore down the national flag and shield. Again, in 1884, at Rock Springs, in the Territory of Wyoming, a colony of Chinese, peaceful men, perfectly satisfied with their wages, and laboring in their daily toil with the proverbial industry of that people, were asked by a turbulent mob, composed largely of aliens, to join in a strike for higher wages. John Chinaman did not see it in that way, and refused to join. The result was that the mob in its rage slaughtered one hundred and twenty-four of them, burned their houses and destroyed their property. During Presdent Harrison's administration, again in New Orleans, great resentment arose in regard to the Mafia association alleged to exist among the Italians resident in that city, not citizens of the United States. The result was that a mob, rising suddenly in the excess and abuse of public indignation, took from the prisons of that city some alleged Italian murderers and publicly executed them.

In each of these cases, Spain, China and Italy made the most earnest reclamations against the

United States, insisting, to the extent of straining diplomatic relations very severely, that there was an obligation on the part of the United States to those governments representing their subjects thus denizened in this country, which had been violated to an extent which bound this government to pay the damages caused by the injuries which had been inflicted. Secretaries Webster, Bayard and Blaine respectively answered in substance as follows: The United States is under no obligation for the safety and security of any foreign subject resident within its territory that it is not under to its own citizens in any case of riot and lynching committed under similar circumstances; that the outbreaks were sudden, without any warning to the United States, and were not permitted by its negligence. If it were a wrong just as likely to have been perpetrated on these people if they had been naturalized citizens, this government recognized no responsibility. These propositions are correct. Why should this government be responsible? Why should aliens, it may be unanswerably inquired, have a greater privilege or right of recompense against this government than native-born or naturalized citizens would have under the same circumstances? They come here knowing our social conditions and bound to know the limitations of national liability, and it cannot be admitted that a Chinese, an Italian, or a Spaniard residing here by the comity of nations, or on the faith of treaties even, can have any greater claim for indemnity against this government than any native-born citizen would have under like circumstances. The result was total denial of the claim in each instance. But another result—highly creditable to the generosity of the United States, and to be mentioned with the greatest satisfaction—was that in each case this

government, while denying any liability whatever, compensated the sufferers and the families of the sufferers liberally for their losses and inflictions. I believe we paid to China, for the benefit of the injured and the relatives of those killed in the Rock Springs massacre, some $400,000, but decidedly disclaimed responsibility, and I think on undeniable legal grounds.

It happens, of course, from time to time, in the intercourse of States, just as it happens from time to time in the intercourse of individuals in any society, that a great variety of questions arises between these great personalities which compose the family of nations as to rights claimed, damages inflicted, or recompense or punishment demanded, and it is well to consider in what modes States proceed against each other to obtain recompense or punishment for such breaches of international obligation. I will first speak of those modes of action which fall short of war.

There is, first, the right of state to execute measures of retortion. It may be defined as a right of retaliation which is exercised when a government whose citizens have been subjected to severe and stringent regulations, or harsh treatment by a foreign country, employs measures of like kind, of equal severity and harshness upon the subjects of that government found within its territory. If France, for instance, should injure a citizen of the United States by some oppressive proceeding, such as seizing his estate, his goods or his person, the United States would have the right to retort in kind by seizing the goods, estate or person of a French subject found in this country. The right is seldom exercised, but it exists.

Second.—There is the right of reprisal when one nation has inflicted a wrong on another, and from

that right and its application has come the phrase "letters of marque and reprisal." The right of reprisal is more extensive than that of retortion. Where one government has inflicted an injury on another, and particularly where the injury is on the subjects of that government, the injured nation has a right to execute general or special reprisals against the offending government, its citizens or subjects. Such reprisals are of various kinds. They may sequestrate the goods and chattels of the subjects of the offending government; they may put into sequestration the land or estate of the subjects of that government held in the offended.State; they may seize their shipping; they may be exercised in a variety of ways, the object being in each case to secure reparation and indemnity. These rights are not often asserted in modern times, but they still exist in the law of nations, and formerly were very much resorted to. In 1850 the British government authorized reprisals in a very irregular and stringent manner against Greece for a claim of Don Pacifico, a British subject, whose house had been broken open by a mob which also beat members of his family and destroyed his property. A relic of the practice still exists in privateering. In the olden time privateering was often authorized as a measure of special reprisal by and for the benefit of the injured subject, and the early State papers of Great Britain, France and Spain are full of such cases. That is the reason why Drake and Hawkins, and some of the buccaneers of the Spanish Main of three hundred years ago were not pirates. Naval war on the Spanish Main was conducted by them, acting under letters of marque and reprisal issued by their government, for indignities inflicted by Spain, and yet this condition fell far short of war between the nations.

A great deal has been said lately in discussion in

public places and newspapers concerning the right of intervention, especially in regard to the unhappy and melancholy condition of affairs in the island of Cuba during the last two years. The right and duty of intervention by the United States in the affairs of that island have been insisted upon, and advocated in some quarters upon grounds which the law of nations does not at all warrant. It is proper concerning a present question, as that is, to endeavor to impress upon your minds quite forcibly the limitations and extent of the right of intervention.

In doing this we are brought back again to the principle of the absolute equality and independence of States, and the duty of every State not to interfere in the affairs of another, or to infringe upon its sovereignty. That is a great general principle, and it is one of the primary duties of States. Exceptional to this, however, there is in the law of nations, another special principle warranting intervention by one State in the affairs of another within its proper limitations, just as there is a principle authorizing retortion and reprisals, and, finally, authorizing war. What is the principle, and what is its definition? A State has the right to intervene in the concerns of another State, in its affairs and administration, whenever it is conducting them in such a manner as to injuriously affect or seriously threaten the peace and safety of the intervening State, or when it is conducting them in such a manner that the property and person of the citizens of the intervening State have been injuriously affected or are not safe within the offending State. It has been thought, and it has been so argued by men of the highest character for philanthropy, that States have a right to intervene merely to stop unnatural, unwarlike and inhuman effusion of blood. However attractive that theory may be, it has no warrant or

authority in international law according to the best esteemed precedents. If there ever was a time when it behooved the civilized world to make bare its arm and raise the sword of retributive justice over any nation, it was in the early part of this century as to Turkey, in the affairs of Greece. The great powers of Europe intervened. But while in reality they intervened for the purpose of stopping the sanguinary massacres which were then making the eastern waters red with blood, the pretext and legal justification on which they acted were that Turkey did not stop piracy in the Levant.

So that you can safely hold to the opinion that the right of intervention is not warranted, except within the limitations I have stated. Now, the question is, and it is one of an exceedingly delicate character, whether the United States ought, under present conditions, to intervene in the affairs of Cuba. I think, as a matter of personal conviction, that this government should have intervened in the affairs of that island one year ago. Spain had shown herself utterly incompetent and unable to observe the treaty of 1795, under the guarantees of which many American citizens, native born, or naturalized, had settled in the island, so that by the year 1895, when the rebellion broke out there were $50,000,000 of American property in Cuba, of which Mr. Cleveland stated in his last annual message to Congress, $18,000,000 had been destroyed, had gone up in smoke and flame and pillage. The commerce, before 1895, between this country and that island, reached close to a hundred millions of dollars annually. It has fallen off in that universal scene of bloodshed, massacre and destruction to less than twenty-five millions dollars annually. American citizens have been incarcerated in Spanish prisons, have been driven from their homes to many a place

of concentration, where famine and fever do their mortal work. In that condition of affairs I have been clearly of the opinion that the United States ought, with a firm hand, long since to have intervened in the affairs of that island, upon the strictest grounds I have stated—for the protection of its own citizens, their persons, property and interests. Far more warrant exists to do it than the great powers of Europe had to intervene seventy years ago in the affairs of Turkey and Greece.

While every State has the right to say whether it will or will not have diplomatic intercourse with another State, the refusal to enter into such relations does not decide the right of the other State to be considered as a lawfully existing State. No nation whatever the feeling may be inspiring it to not send ambassadors or ministers, has the right to otherwise question the legitimacy or existence of any *de facto* government. It has no right to question the legitimacy of any new State which comes into being, nor has it the right to question the legitimacy of any new form of government of an old State. This is a controlling principle of international law running through many years of history, and it results from the recognition of the supreme sovereignty of each people, and rests upon the principle that governments derive their just powers from the consent of the governed, and can be rightfully changed whenever the popular will decrees it so to be.

There are two forms of recognition applicable to a newly formed government. One is the recognition of belligerency in case of insurrection or rebellion; the other is the final recognition of independence, or of its existence as a State. No State is entitled to demand recognition of belligerency or of independence as a right. That is a matter to be determined entirely by the will and interest of

the recognizing State. A nation may exist for many years, and be a State—undoubtedly a State—and yet not be recognized by many of the civilized powers of the world. It is none the less a State for that reason. It is a question, for instance, whether the United States will recognize the belligerency of the insurgents in Cuba. They have no right to claim it; it is for us to say whether we will recognize it. Such are the narrow limits of the principle. And the question arises, taking in view the entire situation, what ought to be done in a case of that kind? In the first place, what ought to be the status of the belligerent insurgents; how far shall a rebellion have progressed, and what foothold and ascendency must it have attained, not only as to area of territory, but numbers of people, to warrant the United States, or any other nation, in recognizing the status of belligerency. There is no better answer than that given by Mr. Justice Grier, in The Prize Cases, 2 Black, 667:

"The parties belligerent in a public war are independent nations. But it is not necessary to constitute war, that both parties should be acknowledged as independent nations or sovereign States. A war may exist where one of the belligerents claims sovereign rights as against the other.

"Insurrection against a government may or may not culminate in an organized rebellion, but a civil war always begins by insurrection against the lawful authority of the government. A civil war is never solemnly declared; it becomes such by its accidents—the number, power and organization of the persons who originate and carry it on. When the party in rebellion occupy and hold in a hostile manner a certain portion of territory; have declared their independence; have cast off their allegiance; have organized armies; have commenced hostilities against their

former sovereign, the world acknowledges them as belligerents, and the contest a *war*."

We complained, of course, very emphatically in 1861, when Spain, England and France recognized the belligerency of the Confederate States. We thought their action was precipitate and unfriendly. Spain was first in this recognition, and it unquestionably was precipitate and unfriendly; but, at the same time, candor compels us to admit now that, as a matter of strict right, the recognition was, technically, lawful enough. Those nations had the right to recognize the belligerency of the Confederate States. It was unfriendly to do it, but they had the right. Take the case of Cuba and its status as to the recognition of its belligerency. The senate of the United States has passed resolutions to that effect, and, testing the question by Justice Grier's opinion, I think that the Cuban insurgents ought to have been recognized as belligerents some time ago. That insurrection has a constitutional government; it has a capital in the eastern part of the island which the Spaniards have never got near enough to attack; it has a president; it has a legislature; it has passed and printed laws and enforced them; it levies duties throughout the portion of the island which it holds in money and kind, and they are paid. It has a postoffice department and carries mails; I have seen the stamps—I have received letters bearing them; it has an army of 40,000 men, regularly organized, commanded by commissioned officers. The insurgents hold the eastern half of the island, except the seaports and a few inferior, insignificant interior towns. They have conducted war on humane, Christian principles, notwithstanding the provocation they have received. I think, therefore, that this government ought to have recognized the belligerency of the insurgents long ago.

This is not an appeal entirely to our sympathies for a people struggling for their liberty. On strict grounds of right and policy we ought to have recognized that belligerency. It is right for our own interest, and for the protection of our own people, to tell Spain that she must wage war according to the rules of civilized warfare, and not according to those precedents of massacre and extermination which have defaced the pages of the history of every war in which she has ever been engaged. So long as recognition of belligerency is not given, Spain is entitled, and the United States must concede that she is technically entitled, to execute upon the armed insurgents, upon their non-combatant sympathizers, upon American citizens in the island, the penalties of a code which is an affront to civilization. It was never heard during the war between the United States and the Confederate States that any Englishman or other foreigner landing in either the North or the South for the purpose of taking service in the army of either, came under any bloody code of murder or assassination. So long as we shut our eyes to the facts, and agree with Spain that this is merely a treasonable riot and not a rebellion, we say to Spain, and she has a right to insist that we say it: "These offenses committed under these circumstances are not the acts of revolution or of civil war, but they are mere common crimes for which Spain may inflict any punishment she pleases."

This is why I think that on cold grounds of policy, duty and right, to say nothing of the dignity of this government, and of the great interest it has in the future of Cuba, and to stop the enormous destruction of American property which Spain has been unable to prevent, and much of which she herself has inflicted, we should say to Spain: "You may fight this people to your heart's content, but you must

fight them as soldiers and fellow Christians; you shall not hunt them as outlaws, nor torture and assassinate them."

LECTURE III.

Mr. Dean, and Fellow Students:

We adjourned yesterday after discussing somewhat the doctrines of intervention and recognition of belligerency. To what was then said concerning those topics I do not purpose to make any material addition this afternoon.

Of course the most important recognition is that by which the existence and sovereignty of a new State are acknowledged. States come into being by conquest, by colonization, by insurrection and by peaceful change of old governments into new forms, or by consolidations of several governments into one. When they attain a firm consistency, and an apparent perpetuity is sufficiently established they become proper subjects of recognition as States by other governments.

But a State, or an aggregate of people claiming to be a State engaged in insurrection against a parent government, no matter how great the consistency and permanence of its establishment may seem to be, is not entitled to claim any such recognition as a matter of absolute right. The question of recognition is one to be determined solely by the recognizing State in the light of its own convictions, interests and advantages. At the same time, international law does not recognize as fit or proper the precipitate and premature recognition of the sovereignty of a people in in-

surrection. The principle is this: In order to justify one government in recognizing the independence of an insurrectionary people it is necessary that the contest has demonstrated that the people in insurrection have obtained a hold apparently firm upon a certain defined territory to the exclusion of the parent government; that they are there conducting a government, and that their subjugation by the parent government is manifestly hopeless. The conditions which warrant a recognition of independence, if you remember what I said yesterday, far exceed in their stringency those necessary to justify a recognition of belligerency. The recognition of the belligerency of a people does not imply in the least degree the present or future recognition of its independence or sovereignty. Spain and the other European powers recognized the belligerency of the Confederate States, but they never followed that action by a recognition of their independence. Why did they not? Because the cause of the Union against the Confederacy was never desperate; it could never be seen that the United States would be unable to extend in the process of time by its armies the sway of the Constitution over the portion of the Union that was in rebellion.

It may be well to correct here a misapprehension which has obtained considerable vogue. It has commonly been thought that, if any government recognizes the belligerency or the independence of an insurrectionary people, such action is a just cause of war by the parent State. Such is not the law. The recognition of belligerency or of independence affords no just cause for war against the recognizing power by the government against which the recognition is made. This is firmly settled, and it is one of the most enlightened principles of the law of nations. It is to be regretted that in the discussions which the subject

of recognition ~~have~~ has received in the public press and on the platform during the past two years, it has been too often assumed that recognition of belligerency or of independence is a hostile act which would precipitate the United States into war. We never thought of making war when the belligerency of the Confederate States was recognized by the powers of Europe. Spain never made it a cause of war when the belligerency, and afterwards the independence, of republic after republic, from the Mexican line to Cape Horn, which had wrested themselves from her sovereignty were recognized by the United States and all the powers of Europe.

A question concerning the survival of treaty obligations has frequently arisen in the development of the world's history from the annexation or absorption of one State by another. It was a very interesting question to the United States respecting Texas, and presents itself contingently as to Hawaii at the present time. The annexation of one State by another can be effected in two ways. One, by the forcible annihilation of a State by conquest and the subjugation of its people by the conqueror; or, second, by the consent of both parties by treaty. It is just as much an indefeasible right of a people to go out of existence as a State, as it is an indefeasible right in them to bring forth a State. Several very interesting questions arise as to the effect of annexation upon the treaties of the annexed State. Every State which submits to annexation, whether its duration has been long or short, has, of course, many treaties with other nations. Hawaii has some thirty or forty treaties with the powers of the world. The question is, what is the effect upon its treaties of a complete absorption of one State into another, as Texas was absorbed into the United States, as Hawaii will be absorbed into the United

States, as the various small States of Italy were absorbed and transformed or amalgamated into the Kingdom of Italy, or as various small principalties, kingdoms and duchies became component parts of the German Empire? Does the absorbing State take them *cum onere?* That is the question. After a great deal of discussion over very practical situations the principle has finally come to be settled to be this: That the annexation of one State by another in the sense of its absorption into a different political system, terminates all treaties of the annexed and absorbed State. Rights that have vested under those treaties before the annexation, are preserved upon familiar principles of property and public morality. As to such rights the treaties have been performed and executed. But the executory and promissory stipulations of all existing treaties, no matter how solemn their language or how perpetual by their terms, all their obligations of future performance become instantly as if they had never been contracted, and the people of the State annexed pass under the sway of the annexing State, subject to the treaties which it may have made with the powers which formerly may have made treaties with the annexed State.

I said that rights which have vested under a treaty are preserved. That was thought at one time to be counteracted by another principle that war abrogates all treaties between the belligerent nations. The war of 1812 between the United States and Great Britain was terminated by the treaty of Ghent, concluded in 1814. Great Britain contended in the negotiations, Mr. Clay, Mr. Adams Mr. Gallatin, Mr. Russell and Mr. Bayard being our negotiators, that by that war the right had been abrogated which had been granted (or rather partitioned), to us in the fisheries on the Banks of Newfoundland by the treaty

of 1782. Our representatives insisted correctly that the right was a vested right; that it had become ours, and then was ours, and could not be taken away except by conquest. In regard to any stipulations of the treaty of 1782 which may have been unperformed prior to the commencement of the war of 1812, the English contention might have prevailed. A very cogent illustration is that of Texas. Texas was an independent nation when she became annexed to the United States by a joint resolution of Congress and by the act of the legislature of Texas. During the short period of her independence she had concluded with Great Britain and France treaties promissory and executory in their nature. I forget the exact terms or what they were all about, but they were of great value to subjects of France and Great Britain. Immediately upon the annexation of Texas those powers advanced claims that this government, or that Texas through this government, ought to be held to the performance of those executory treaties. This proposition was promptly and firmly resisted, and Great Britain and France did not persist in their contention.

The question received its quietus, as a result of the coalescence of the great number of petty states into the present German Empire, and also of the several Italian States into the Kingdom of Italy. Take for instance, the Empire of Germany. We had treaties with the kingdoms of Saxony, Hanover, Wurtemburg and with a number of grand duchies and principalities; but when the Empire was formed these treaties, so far as their promissory and executory terms were concerned, ceased to be of effect. The result is that those governments, having come under the power of Prussia, the acquiring State and, for purposes of foreign relations integral parts of it, our relations today with

the German Empire, constituted as it is by this union of many states, are regulated by our treaty with Prussia concluded in 1828. This affords an illustration of my statement made a few moments ago that the treaties of the annexing power cover the whole ground by substitution for the extinguished treaties of the annexed State. So as to Italy. There were Naples and Sardinia; there were states large and states small, all independent, having their own systems of government and treaty relations with the nations of the world. But when the flame of liberation and unity was kindled and swept over Italy from the fires of Ætna to the snows of Mont Blanc, when by a magical transformation the people realized the glorious dream of a thousand years, when the classic spirit of Italy, "the Niobe of nations," arose and stood forth triumphant and royal where, discrowned, she had wept for long ages, all those little principalities, kingdoms and dukedoms vanished like a scroll that is consumed in the flames, and all their treaties ceased to be obligatory.

I have been asked to say a few words about our relations with Hawaii, and I think I can do so with particular relevancy for the reason that Japan has recently attempted to bring into question the proposed annexation of that Republic to the United States, and has raised inferentially some of the very questions concerning treaties that we are now discussing. The Hawaiian Islands are a most interesting group. They are some eight in number, not reckoning the smaller islands of the archipelago. They have about seven thousand square miles, and probably a population of 90,000. American enterprise and American missionaries went there more than fifty years ago, and they did what has never been done as to any other people of the islands of the Pacific. They established Christianity and civiliza-

tion. They reduced the language to writing; they educated the natives; they set up a press and printed newspapers and books in the Hawaiian language. The barbarian chiefs were succeeded by constitutional monarchs, and to them the existing Republic became a successor. Hawaii has been seized twice by the French and once I think by the English. They let go. About the time of their seizure or shortly after, Mr. Webster, who was then Secretary of State, declared in substance that the United States would never suffer Hawaii to be encroached upon, much less acquired by any foreign power. Other secretaries went further and declared that it was written by manifest destiny upon the pages of a visible future that in due process of time, when Hawaii should be willing, there should be absolute coalescence of that State with the United States. The declarations of Mr. Webster have been repeated, I think I can say with entire accuracy, by every Secretary of State since his time.

Now, why should we have Hawaii? What do we want with those islands out in mid-ocean? We need them for outworks of national defense and for the protection and expansion of our commercial interests. Lay the dividers upon a globe, one point at San Francisco and the other at Honolulu. You will see that Hawaii is about 2,100 miles from San Francisco. Remove the point of dividers from Honolulu to the island of Kyska, which is situate about two-thirds of the length of the group constituting the Aleutian Islands belonging to us, and you will find that that island is little more than 2,100 miles from San Francisco. It has a very capacious, deep harbor. From Honolulu to Kyska is also about 2,100 miles. In other words, these lines constitute an equilateral triangle, each of its sides being 2,100 miles in length. You will also see that, until you get to the Aleutian

group, the Hawaiian Islands are the only islands of any magnitude lying to the north of the equator. All of Australasia lies to the south of the equator. With the exception of the Hawaiian and Aleutian Islands, on all the broad Pacific until you come to Japan and Formosa there is not, north of the equator, an island of magnitude enough to be desirable for any purpose. The commerce of the Pacific will undoubtedly become at no distant time the most active aud lucrative that the world has ever known. Humboldt so predicted more than 70 years ago. China is waking from her immemorial slumber and Japan has assumed a surprising activity. Russia is constructing a railway across Siberia and is dropping down from the frozen waters of the north, from Vladivostock, to find its eastern terminus at the harbor of Port Arthur which is never closed. The western coast of the United States is very vulnerable. Our interests in the Pacific in the present and in the near future demand a better situation than we have at present. The Hawaiian Islands constitute an outer bulwark 2,100 miles from San Francisco; the Island of Kyska to the north, little more that 2,100 miles from San Francisco, supports them. The Aleutian group of islands stretches like the curved and sharpened blade of a scimetar and impends over Japan. The strategic advantages are palpably manifest. With Hawaii in the hands of a hostile power, only 2,100 miles from us, it would of course become a coaling station and base of supplies, from which any operation against our coast might be easily conducted. Turn the situation around; give Honolulu to the United States as a basis of supplies and operations, and we can protect American commere, honor and interests from that place with an efficiency which we can never otherwise hope for.

Again, you will notice upon the globe another

singular feature. As commerce traverses the Pacific in all directions, from Victoria, Portland and San Francisco to Auckland, Melbourne and Sydney, the track of every vessel to and fro lies through Honolulu. From the Nicaragua Canal to the northwest, to China and Japan, that track is through Honolulu. From Callao and Valparaiso and from around Cape Horn for vessels going to China and Japan the way is through Honolulu. Hawaii is one of the most important strategic and commercial points on the face of the earth. I believe that in time it will be the great entrepot and distributing point of the Pacific. It was founded by American intelligence and was built up by American civilization and Christianity. Its constitution is patterned on the constitution of the United States. Its government is administered by descendants from American citizens. The preponderating productive, proprietary and commercial interests of the islands are in the hands of the citizens of the United States. Should we not have Hawaii, and why should we allow any other nation to take it? These are some of the considerations that moved the President of the United States and the President of the Republic of Hawaii to negotiate the treaty now pending before the United States senate for the annexation of that most interesting Republic.

In the progress of international intercourse it is to be expected, and indeed it must inevitably happen, that disputes arise between nations. They disagree in their conceptions of each others' rights and duties. It therefore becomes proper and necessary now to consider the means by which international disputes are settled and terminated. In the first place, such disputes can be composed by negotiations followed by a treaty whereby both parties settle their controversies on the basis of compact, and make a law for

observance by each. That process is so familiar that it is not necessary to do more than to indicate it as the most usual, and generally the most efficacious way of adjusting international differences.

Sometimes a treaty cannot be negotiated; the views of the parties are irreconcilable; they do not understand the facts alike, or differ as to the law. Perhaps national pride and excited feeling restrain the nations from doing the proper and just thing.

One of the most feasible methods of adjusting such disputes next to that by treaty, one which allows time for the passions to cool and gives excuse ofttimes for an administration which is afraid either to act or to remain passive, is to accept the mediation of a friendly power. Mediation is not intervention; mediation is merely advisory. It has only such effect and force as the opinion of a judicious and conscientious friend would have upon two men in private life advising them how best to settle a dispute. I do not know a better instance of mediation than that to which the imperious will of Andrew Jackson consented. By treaty, concluded in 1831, France agreed to pay to the United States twenty-five millions of francs as indemnity for spoliations committed upon our commerce by France ~~at the end of the last~~ century. This indemnity was to be paid in six instalments. They were to be appropriated for by the French Chamber of Deputies. The first instalment was appropriated and paid. The United States gave a draft for the second instalment on the Bank of France to the Bank of the United States which was presented and dishonored. The high, unquenchable spirit of Andrew Jackson rose; he wanted to know the reason why, and he was informed that the French Chamber of Deputies had failed to make an appropriation. Louis Philippe had thus a good excuse for a reasonable delay, but

the imperious President would admit no excuse. He made a request of Congress for an appropriation to enable him to emphasize a demand for immediate payment. He irritated the spirit of a proud and sensitive people, many of whom had carried the eagles of France under the first Napoleon. It was a critical situation. Nobody had ever known how to restrain Andrew Jackson, but the good natured sailor king of England, William IV. (from all I can read of him a very good, sensibe man he was), offered his mediation. The offer was accepted. The mediator advised France to make an appropriation. The wrath of Andrew Jackson cooled, and one of the most critical complications in our history was relieved with the best results. The influence of William IV. on that situation was merely advisory; it had no binding force on either power. The King of England was not bound to enforce his decision; neither Louis Philippe nor Andrew Jackson was bound to accept it. I think that one of the best illustrations of mediation is the way in which our difficulties with France were thus adjusted.

Another mode of composing difficulties between States is by arbitration. Recent events have imparted great interest to that method of settling international differences. The United States has, in the course of its political existence, arbitrated under treaty in thirty-eight instances. I do not remember that the United States has ever refused to arbitrate any well defined issue arising out of any past transaction. It has shown its willingness beyond any nation that ever existed, powerful as it is, not to try the supreme arbitrament of the sword, but to submit to the decision of an impartial tribunal. Within the last two years, however, a great and respectable portion of the American people, misled by the illu-

sory word "arbitration," and thinking that they saw in a convention then recently concluded between the United States and Great Britain a harbinger and assurance of perpetual peace, insisted that the Senate of the United States should, without dotting an "i" or crossing a "t" advise and consent to the convention commonly called "the arbitration treaty." The Senate Committee on Foreign Relations reported in favor of its adoption with amendments which obviated the objections to which I shall call your attention.

The objections to the treaty in the form in which it was sent to the senate, were briefly these:

First. It bound the United States not only to arbitrate all contentions then existing, but it also bound the United States to arbitrate every controversy that might arise in the future. This was an unprecedented proposition. Of course, as to anything that might arise in the future, it was impossible to anticipate what would be the subject of contention. The entire field of operation of that treaty as to the future was vague, shadowy, and incapable of formulation. It was asking too much to require the United States to enter into a covenant of litigious amity applicable to all possible future differences.

Second. The treaty bound the United States to arbitrate all pecuniary claims, or groups of claims, exceeding £100,000, existing or to exist, in respect of which either party shall have rights against the other under treaty or otherwise. We would have bound ourselves to arbitrate under that provision the existence at the present time, and the effect of, the Clayton-Bulwer treaty, that sterile and useless compact, concluded in 1850, by which Great Britain has sought to hold us to the letter of a stale and unperformed bond, and by which she claims the right to a joint control with us of the Nicaragua Canal

when we shall have constructed that great work. We contend that the treaty has become inoperative. To determine whether a treaty has ceased to be operative is as much a function of sovereignty as it is to determine in the first instance whether a treaty shall be made. No such function of sovereignty should be submitted to the jurisdiction of any arbitral tribune whatever.

Again, the arbitration treaty provided, thirdly, that all pecuniary claims shall be decided in two modes, the second of which conferred jurisdiction to adjudicate questions of much greater moment than that of damages. If it were simply pecuniary claims, to be decided without also deciding some great question of national policy, little objection could be made. But we have a dogma of international relations proclaimed by the statesmen of three generations called "the Monroe doctrine," which we have inscribed upon our records as an immutable policy, to the effect that no monarchical institutions shall be established upon the western hemisphere, and that the United States will in any case where its safety requires it, resist the acquirement or colonization by any European power of territory on the American continents. It is not a doctrine of international law; it is an announced policy for which the United States has at any time been ready to go to the extreme of war, and to sustain which all the majestic powers of our people have risen whenever any Executive has asserted it. It is a declarative act of sovereignty; it is the doctrine of the balance of power for the western hemisphere; it is the equivalent here of the doctrine of the balance of power in Europe; and it has kept Europe out of the western hemisphere for nearly seventy-five years. England, France, Germany, and all the States of Europe deny that it has any force in international law; they say

that it is a mere policy and that we have not the right to assert it against them. They say, "Why should not we colonize South America as we are colonizing Africa? You have no right to dictate. Why should not Venezuela and the other States of Central and South America be allowed to make treaties with us to give us part of their territory? Why is this portion of the world barred against our acquisition by conquest or by any other process?" And this policy it was proposed to arbitrate before a tribunal constituted by this treaty, one-half of the members of which were necessarily to be subjects of foreign powers, and, certainly, as that half was to be nominated by Great Britain, would be subjects of one or more European powers.

The reasons against the ratification of a convention involving such consequences deserve careful consideration. I will discuss a few of them briefly, and show by what process our policy and sovereignty could thus be submitted to arbitration.

It is an ancient, axiomatic principle of the law of nations, indelibly written in its codes, text-books and decisions that any nation has the right to extend its territory and dominion over any portion of the world, and that no neutral nation has any right to object, even if by such extension the power and resources of the acquiring State be inordinately increased. It is to check the consequences of this principle that such policies as the balance of power and the Monroe doctrine have been adopted.

Let us suppose that, proceeding under this sanction of right, Great Britain should acquire Cuba, St. Thomas, or territory in Central America or South America by war or peaceful cession. The United States objects, setting up the violation of the Monroe doctrine as the ground of protest. Great Britain would advance this "right" to extend her territorial

possessions vested in her by this principle of international law, and claimed by her to be recognized in the treaty by the word "otherwise."

We must arbitrate this matter of difference, and obey the decision, if we are honorable. We set up as prohibitory of the right asserted by Great Britain the Monroe doctrine; to which the reply is that the doctrine is no right; that it is merely a policy; that international law does not recognize it as a right, while it does so recognize that immemorial right in Great Britain to acquire territory. To such a right the mere policy of an adversary nation is no defense. In other words, it would be insisted that this particular policy of the United States is unlawful. It would thus be submitted to the tribunal, and overruled as a defense, upon the very theory of the idolaters of the treaty, that the Monroe doctrine is a mere policy and not a right. The dilemma would be this: The United States, in such a case, must either abandon the doctrine, or submit it to the certainty of a decision which would adjudge it to be unlawful, and thus annul it.

The Monroe doctrine could also be subjected to abitration in a proceeding before this tribunal based upon pecuniary claims, which are specifically arbitrable without any limitation of the grounds upon which they may rest.

All civilized nations, and none more stoutly than Great Britain (and it is to her honor), resent personal injuries to their subjects perpetrated by or under the authority, or through the culpable negligence of other nations, and they exact pecuniary reparation therefor, sometimes by negotiation, sometimes through arbitration, sometimes by war. In such reclamations the prosecuting nation adopts the claims of its subjects and becomes vested with them as matters of enforceable national right.

Let it be supposed that after such an acquisition of territory by Great Britain as that instanced a few moments ago, the United States, asserting the Monroe doctrine, should remove the British colonists by force, or should subject them to any restraint or exaction whatever. For I assume that no one concedes that an abandonment of that doctrine was one of the latent designs and consequences of that treaty. Such an act would justify a declaration of war against us. But Great Britain would not be obliged to go to war. Another remedy was afforded her by that convention in its original conception and expression, and that remedy was arbitration of "all pecuniary claims or groups of claims," "groups of claims" meaning "pecuniary claims by one or more persons arising out of the same transaction, or involving the same issues of law and of fact." This language is most critically exact to provide for such a case as I am now supposing. The parties would fail to adjust any such case by diplomatic negotiations. We would never surrender the Monroe doctrine, nor would Great Britain abandon her right of territorial acquisition. A case for arbitration by the tribunal would thus be raised. Great Britain would advance her right to acquire territory, her peaceful possession, the personal injuries inflicted by us upon her subjects (thereby creating pecuniary claims), our avowed non-claim of territory or dominion. The Monroe doctrine would be the only defense possible for the United States. The tribunal would rule that the doctrine is not a "right," but a mere "policy." The opinions of those of our own people who maintain that the Monroe doctrine could not be brought into arbitration because it is a mere policy and not a right would be most persuasively cited against us. That doctrine would be overruled as a defense, and

we would be held to be obtrusive violators of the law of nations in undertaking to enforce it.

The Clayton-Bulwer treaty and the Monroe doctrine pertain to the foreign policy of the United States. The arbitration treaty would have imposed a new restraint upon the sovereignty of this government, an indirect and ever-pressing control and a power of final decision by an arbitral tribunal upon these essential factors of our foreign policy.

By Article I of the treaty of July 3, 1815, between the United States and Great Britain, it is agreed that there shall be between the territories of the contracting powers reciprocal liberty of commerce; that the inhabitants of the two countries respectively shall have liberty, freely and securely to come with their ships and cargos to all such places to which other foreigners are permitted to come; to enter into the same and to remain and reside in any part of the said territories.

A reasonable apprehension might well be entertained of the operation of the proposed convention upon questions which might arise under our laws prohibiting the immigration of contract alien laborers. These statutes were enacted in the assertion of a determination to protect the wage-earners of the United States against underbidding as to wages by alien immigrants brought here for that purpose. It is a wise policy. It is a matter of the most extreme domestic importance. Its beneficence extends to every community in the land.

By the act of February 26, 1885, the immigration or importation of contract alien laborers is forbidden. Every violation of its provisions by an importer subjects him to a fine of $1,000, and separate suits may be brought against him as to each alien imported by him. Every master of a vessel importing such an alien is guilty of a misdemeanor and

is liable to a fine of $500 for every such alien whom he imports. Every such alien may be imprisoned for six months.

By the act of March 3, 1891, it is provided that every such alien found within the United States shall be sent back immediately at the cost of the owner of the vessel importing him, and this deportation may be enforced at any time within one year after the date when the alien landed on our shores.

It is to be remarked that these statutes were not enacted in the exercise of the police power by which diseased, mendicant, ignorant or profligate aliens may be lawfully forbidden to come here to contaminate the mass of the American people. They were, on the contrary, enacted to carry out a most important domestic industrial policy. They apply to all contract alien laborers alike; to the hireling who accomplishes his day in the most menial employment; to the operative whose skill is artistic; to the musician; to the artisan who can cut the diamond or who can chisel the statue under the sculptor's eye, or who can with the cunning of his hand produce the most elaborate forms of beauty or of use; even to him who can grind to its proper curvature the great telescopic object-glass—that crystalline lens of the eye of science through which the profundities of the heavens are explored. These men who may come here, having so contracted, can be arrested, can be sent back, can be convicted of crime and imprisoned because they so came. The owners and masters of the ships that brought them are subject to onerous penalties.

It is not without reason that the apprehension arises that Great Britain, asserting a violation of the treaty of 1815, might adopt these acts of duress, violence and punishment perpetrated upon her subjebts, and assert them as pecuniary claims, either

singly or "in groups," or as being violations of a right she "shall have" against the United States "under treaty or otherwise" as provided in Article IV of the proposed convention.

We have similar treaties with other nations, conferring upon aliens the rights of intercourse, commerce and denization. In many instances, notably as to Germany and Italy, these rights are possibly more extensive than those which the treaty with Great Britain, strictly construed, confers.

The same treaty of 1815, in Article II, provides that "no higher or other duties shall be imposed on the importation into the United States of any articles the growth, produce, or manufacture of His Britannic Majesty's territories in Europe, and no other, or higher duties shall be imposed on the importation into the territories of His Britannic Majesty of any articles the growth, produce or manufacture of the United States, than are, or shall be payable on like articles being the growth, produce, or manufacture of any other foreign country."

This Article goes on to provide, with great particularity, to the effect reciprocally, that duties on the vessels of either power in the ports of the other shall be the same; that duties on the products of either power shall be the same when imported in the vessels of either power; that drawbacks on re-exportations shall be the same. It is plain that, under the provisions of the treaty of 1815 and those of the proposed convention for arbitration, many questions may be brought into arbitration solely by the action of this government in the exercise of its policies respecting protection by tariff duties, or raising revenues by duties on imports. No nation in this age goes to war because another nation contravenes its treaty obligation in such exercise of its policy. But any nation to whom such a treaty as this gives a

right of litigation for such a proceeding will not hesitate to prosecute its law suit for the infraction, and the unsuccessful nation will be bound by that treaty to obey the judgment of the tribunal. Such issues will certainly be presented if the United States shall enter into relations of reciprocity as to duties with other countries than Great Britain, by which the produce of those countries shall be allowed to be imported into the United States under a less duty than is imposed on similar articles, the produce of Great Britain.

I am not here supposing an imaginary case. Such an issue actually exists today between the United States and Germany. Great Britain can raise such a question now, as Germany has raised it. By the treaty of 1828 between the United States and Prussia, it is agreed, reciprocally, that no higher or other duties shall be imposed upon the products of either country imported into the other than are payable on the like articles being the produce or manufacture of any other foreign country. Our tariff statute of 1894 enacted that any country admitting American salt free of duty shall be entitled to the free admission of its salt product into this country, and that the salt of any country which imposes a duty upon our salt shall be dutiable here. Germany imposes a duty upon salt exported to that country from the United States, Shortly after the enactment of our tariff statute of 1894, the German ambassador, asserting that the German tax on American salt was a mere excise and not a duty, protested against the imposition of the duty on German salt, some other nation having made our salt free of duty and thereby having received a reciprocal equivalent in kind. Mr. Olney, who was then Attorney-General, held that the contention of Germany was not well founded. Germany has not acquiesced in this conclusion. The

question still remains. It would be subject to arbitration under such a treaty with Germany as the proposed convention.

This government was not sustained by the ruling of Mr. Gresham, the Secretary of State, upon another question raised by Germany, respecting the duty imposed by the same statute upon sugar. That duty was one-tenth of a cent per pound upon sugars which are imported from, or are the products of, any country which pays a bounty upon their exportation. Germany pays such a bounty; other countries do not, and consequently their sugars are imported into the United States free of the imposition of one-tenth of a cent per pound. Against the exaction of this duty on German sugar the ambassador of that Empire protested as a violation of the treaty of 1828. The secretary by a decision utterly erroneous, sustained the validity of that contention, and so advised President Cleveland.

It was given out, in commendation of this arbitration treaty, that Germany was willing to enter into a similar convention with the United States, and that the other great powers of Europe were anxious to conclude such a general league of litigation with this government. I do not doubt it. If we should make such a treaty with one State, we could not refuse to enter into a similar one with other States. Such conventions with the six great powers of Europe might not be "entangling alliances," but they certainly would enmesh us in entangling relations.

It is to be remarked that the great powers of Europe have never proposed to enter into any such treaty with each other. The United States is the only nation whose hands are to be tied; the only nation which is to submit its sovereign powers to the decision of a mixed court in a great international lawsuit.

Every illustration which I have presented raises the question whether the United States could successfully defend before the arbitral tribunal these impeachments of its right to exercise its own sovereignty in the determination of matters of foreign and domestic policy. But whether it could successfully defend is not the question. The question is whether we ought to agree to submit any such controversy, great or small, to the decision of any tribunal; whether we ought to litigate the policies of our government, domestic and foreign, the functions of our sovereignty, especially respecting the raising of revenue, or the right to assert for their advancement or protection those powers of independent action, aggressive and defensive, by which states ensure their safety by compelling other nations to respect them. There are cases involving all these in which the only course consistent with national honor and safety is—

"to ope
The purple testament of bleeding War."

It has been ordained from the beginning that the freedom and existence of nations, and even of man as an individual, often depend upon the rightful exercise of offensive and defensive hostility. Why this is so we do not and cannot know. We accept this fiat, as we must, as a condition, limitation, and preservative of national and personal existence. It is the veriest commonplace of history that all the nations of times past and times present have come into being by war, have preserved their existence by war, and have become mere

"crownless metaphors of empire"

when the power of war has departed from them. Our fathers created this nation by a sacred war whose consequences have been of incalculable benefit to mankind. Their sons of this generation preserved this nation by a war no less just, which emancipated

millions of men, which inscribed upon tables more enduring than brass the great guarantees of personal freedom, and which proved that a republic can by war exercise powers of self-preservation and regeneration to which the mightiest monarchy that ever reared its front in all the tide of time would have been inadequate, and which gave to our country an assurance of power and perpetuity which has never been vouchsafed to any other nation.

The Senate Committee on Foreign Relations proposed an amendment to Article I of the treaty which would have removed these objections:

"The high contracting parties agree to submit to arbitration in accordance with the provisions and subject to the limitations of this treaty all questions in difference between them which they may fail to adjust by diplomatic negotiation, and any agreement to submit, together with its formulations, shall, in every case, before it becomes final, be communicated by the president of the United States to the senate with his approval, and be concurred in by two-thirds of the senators present, and shall also be approved by Her Majesty the Queen of the United Kingdom of Great Britain and Ireland."

The amendment is presented in all that follows the words "diplomatic negotiation."

But such was the feeling which had been excited that the treaty was not advised and consented to. An arbitration treaty, with proper safeguards, will pass in due time; it is right that it should pass; it is right to arbitrate everything which does not concern the high self-preservative powers and policies of this government. Beyond that, we ought not to go. I see in the papers of this morning that a treaty so safeguarded is in process of negotiation, and I hope that it is. It is stated that it is cast upon

precisely the lines that the Senate Committee on Foreign Relations proposed by its amendment.

I trust, my fellow students, that you have thought to some extent, since I have had the pleasure of addressing you, upon the conception that there is such a thing as international law which binds States as municipal or social laws bind individuals, and that it has a sanction or coercive force.

It is contradictory to all the teachings of a universe governed by law to contend that nations are not subject to it, and that international law is merely an advisory homily, lacking all coercive sanction. Its supremacy is the very condition of all national existence. Two castaways on a desert island must establish legal relations with each other as conditions of coexistence. Law is the very postulate of the most rudimentary social organization. Its first basis is the connubial and parental affections. It began its sway in the morning twilight of time, with the authority of paternal justice as its first manifestation. As the tribe evolved from the family, the jurisdiction of Law expanded commensurately. The tribe became a nation, and Law grasped the scepter, enrobed the priest and ermined the judge. Nations came into being by migration and differentiation. They assumed the form of vast, concrete personalities, subject to duties, entitled to rights, and capable of crimes. They occupied a crowded world; they stood in unavoidable relation to each other—a relation of duties, rights, and wrongs which implied a law which granted the rights, prescribed the duties and denounced the wrongs. And thus International Law was revealed to the nations from the Sinai of History. It rules the Czar and the President alike; it applies as well to the most special as to the most general relations of all the States. There is not an inhabited spot on the earth's

surface exempt from its jurisdiction. It is with those "who go down to the great deep in ships." It is a universal code which governs all the civilized States of the world.

LECTURE IV.

Mr. Dean, and Fellow Students:

It is stated in the papers this morning that Prince Bismarck has declared the Monroe doctrine to be one of "uncommon insolence." I call attention to this fact to illustrate what I said in my first lecture, that not a day passes that the papers do not present to us some topic of immediate interest concerning our international relations. Of course whatever opinion is expressed on such a subject by the great statesman, whose words for twenty-five years made "monarchs tremble in their capitals," and who was during his term of power the primate of the diplomacy of Europe is of serious import even when spoken in his retirement. The phrase attributed to him was not happily chosen. Insolence is generally predicated of an inferior to a superior, and such a characterization of a great American policy, which was inaugurated when that eminent man was a schoolboy, is likely to touch the sensibilities of the American people in a very irritable place.

It may be interesting, and not improper, inasmuch as such words from such a man are sufficient to raise a question, to sketch in outline the history of the doctrine which he declares to be "uncommon insolence." It was promulgated in 1823 by James Monroe. It was suggested by Thomas Jefferson in the year 1808 and by James Madison in the year 1811. Before President Monroe announced it he

took counsel of Jefferson and Madison, who were then living in the retirement and dignity of their declining years, and it was approved by them and by John Quincy Adams, who was then Secretary of State. It had its origin in the most formidable combination against human rights that the world has ever seen, and it was a protest against that combination. It sprung from the declaration of the Holy Alliance, in 1815, composed of Russia, Prussia, Austria and France, and with whom England was in substantial accord, by which Europe had been in effect partitioned, by which the divine right of kings had been asserted, and by which all of the aspirations of humanity for a better system of government were to be repressed by an armed confederation of kings. When, in 1820, Spain revolted against the dominion of Ferdinand and its tyrannies, the Holy Alliance, through the armies of France, crushed the insurrection and, in 1823, those armies, having traversed Spain, stood in triumph upon the sea shore at Cadiz. At that time the South American, Central American and Mexican colonies had been for years in full and successful revolt against the mother country. They had established republican governments. The right of revolution had been denounced by the Holy Alliance at the conferences of Laybach, Troppau and Verona. It was then deliberately proposed that those nations, wielding a power which had overthrown the first Napoleon, should assist Spain in subduing these new born republics of the western world. In other words, monarchy was to be re-established on the western hemisphere by the intervention of the European powers, employing the same force which had crushed the insurrection in Spain. England refused to join in this and, partly at the instigation of Mr. Canning, through Mr. Rush, the American minister at London, James Monroe pro-

claimed the doctrine of which I have spoken, and which has ever since been cardinal and elementary in American international policy. What is that doctrine?

As promulgated by President Monroe in 1823, it can be fairly summarized as follows: That the American continents are not to be considered as subjects for future colonization by any European power; that we should consider any attempt on the part of such powers to extend their system to any portion of this hemisphere as dangerous to our peace and safety; that any interposition by European powers for the purpose of oppressing the independent nations of the American continents, or of controlling in any other manner their destiny, would be considered by the United States as the manifestation of an unfriendly disposition toward us; that there shall be noninterference by the United States with European possessions on this hemisphere as they existed in 1823. This doctrine was proclaimed as necessary to the peace and safety of the United States; it was proclaimed because it was intended that the powers of Europe should have no further rights upon this hemisphere; it was announced in support and for the perpetuity of the then struggling republics of South America, Central America and Mexico, which now stand upon firm foundations.

It was never violated in any substantial degree by any European power until in those dark days of our adversity and distress when, in our civil war, we were struggling for the perpetuity of the Union and for liberty to mankind, France, England and Spain joined in the attack upon Mexico, from which Spain and England withdrew, and in which France persisted until she seated an Austrian archduke on an imperial throne reared upon the ruins of that republic. When our struggle was over, and the Amer-

can people rose like a giant refreshed and strengthened by the very severity of the contest in which it had been engaged, the Monroe doctrine was asserted to Louis Napoleon in no uncertain tones and he, instead of considering it a matter of "uncommon insolence," betook himself and his troops from Mexico.

What I have said is somewhat discursive, and yet it is connected with the question we have discussed. If the Monroe doctrine means anything, or if we mean anything by it, we mean to assert it and stand by it. We did so two years ago when England proposed to engross 70,000 square miles of Venezuelan territory, and the result was that her claim went to arbitration. We say by the Monroe doctrine to all the nations of the earth that they shall not acquire Cuba, that we will not allow France or England or Germany to intervene or interfere in its affairs. So much greater is our duty in the case of that unfortunate island in the assertion and protection of our own interests.

The science of international law is not an abstract science; it is strictly one of practical application. It considers humanity and the nations as they are; it reads history as it has been written; it legislates for the future from the past. Accordingly, it considers that which every nation has had to encounter some time in the course of its existence, namely—war. It records the theories and speculations of St. Croix, of Kant, of Bentham, of Kamerowski, of Field respecting perpetual peace, but it also registers the fact that, back of the schemes and plans of these great men, recognized, and in certain contingencies invoked by them, is an ultimate appeal to war to compel that perpetual peace to which they so fondly and delusively aspire. International law deals with concrete and inevitable situations,

and, doing so, it must take into account the rights, liabilities and duties of nations toward each other in that state of war which, sooner or later, does come and must come to every people. Why war should be a necessity of national and human existence is an inscrutable problem. It is that state of suffering by which nations and the human race have grown to civilization and the enjoyment of liberty; it is the agonizing parturition by which national greatness and glory have been brought forth. It produced Washington, it produced Lincoln. By it the Republic of the United States of America was ordained and established. Under all conditions of national existence it is always to be apprehended that, as a very preservative of that existence, a resort to physical force will be sometimes necessary and just, and, much as we may wish and hope and pray for that era of perpetual peace which never yet has come, we cannot shut our eyes to the facts which confront us, and to the unerring prophecies which history has written on its scroll.

Take the last fifty years of this century now about to close—fifty years marked by more human progress, by more expansion of knowledge, refinement, softening of manners and improvement in social conditions than any of the preceding centuries, during which the force of public opinion has never been so great, and when the extension of the sway of morality has never been so efficacious—yet there have not been fifty years since the Christian era marked by more wars, nor by wars so destructive, so disastrous and, in many instances, so unjust. Since 1850 the following wars have been waged: The Crimean war, the Indian mutiny, the Italian war whereby the independence of Italy was achieved, the civil war in the United States, the war of Brazil with Paraguay, that between Austria and Prussia, that between France

and Germany, the African war, the war between Chili and Peru, that between Russia and Turkey, that between China and Japan, and that between Turkey and Greece. There is scarcely a State in the civilized or semi-civilized world which, in the course of the last forty-seven years, has not been engaged in war, and many of them in repeated wars; and now, in the bosom of a most profound peace throughout Christendom, look at the military and naval preparations by every nation. France and Germany have under arms more men than were marshalled at any time in the Napoleonic wars. The sea is covered with floating forts of steel. In the midst of universal peace the nations are watching each other with a grim expectancy that peace will be broken and that all the horrors of war will be precipitated upon them. Hence it is, that, however much we may deplore this and wish it were not so, it is the province of international law to teach, and it is teaching, the rights and obligations of States as to each other in time of war.

War is a state of hostility carried on by armed force between States. This definition does not include insurrectionary wars, which are subject to certain special limitations in definition not necessary here to be considered. War is made for the purpose of securing or defending rights. Unless for one of those purposes it is entirely unjustifiable and wicked. In the nature of things every nation, being independent, is the sole judge of the question of right as to whether it shall commit itself to war, and a fearful responsibility is thus imposed upon it. In former times no war was held to be legal unless a formal declaration had been made. By "formal declaration" was meant announcement by the nation proposing hostilities to its antagonist that war was to be made. This is no longer necessary. It is, however,

necessary, in order to fix the time of the beginning of the war, on account of various legal consequences and reasons, to announce to the world by proclamation or otherwise that a state of war exists.

When war begins between two nations, its immediate effect is that all the subjects of one of the belligerent nations become the legal enemies of all the subjects of the other belligerent nation. This principle has been controverted by philanthropic writers of recent times, but it is laid down by Grotius, it is the actual fact, and accords with the logic of war. Every subject of the one State becomes an enemy of every subject of the other State. War abrogates all treaties between the belligerents; it suspends all commercial intercourse and relations between their respective subjects and makes them unlawful; it dissolves all partnerships between subjects of the belligerents; it suspends the operation of all executory contracts during the war, although, as a general rule, it may be said that the operation of those contracts will revive after peace has been made. It opens a great gulf of non-intercourse between the two nations, and imposes disability upon the subjects of each to do any kind of civil business with those of the other or to have any transactions whatever except the interchange of those legal hostilities which constitute war.

The modes of conducting war have been meliorated in the progress of time. The best and most humane authorities maintain that a sudden, short and decisive war is the most merciful; that the true object of war is to conquer an honorable peace as quickly as possible. But all means are not permitted to accomplish this. There are laws of war as well as laws of peace. The use of poisoned bullets or of explosive bullets for small arms is forbidden by the laws of nations. It is unlawful to poison the springs

of water of a country ravaged by hostilities or to assassinate the combatants.

In regard to the effect of war upon persons, the progress of human enlightenment has wrought a great change. In the primeval times, and for many centuries after, it was lawful to kill the enemy taken in battle. You see repeated instances of that in the history of the Jews, and the earlier histories of all the ancient nations. Little by little, as a logical deduction, it was concluded that the right to kill an enemy implied the right to permit him to live on certain conditions, and from that arose the reduction to slavery of captives taken in war. That practice subsisted for many ages, but finally it is now the settled law of nations that no captive taken in war shall be killed, but is entitled to quarter. It is also the law that such a prisoner cannot be reduced to slavery, but may be exchanged during the war and must be released at the conclusion of peace. The good that these modifications of the ancient and bloody code of war have done cannot be estimated. A force of humanity, of courtesy, of chivalry and of right has been introduced into the conflicts of nations that has gone very far to temper the horrors of war.

When two nations become involved in war it becomes an important question to the States not engaged in it what their duties and rights are as neutrals. These are as follows: The neutral nations must not in any manner assist or give comfort to either of the belligerents; they must be actually and impartially indifferent in the contest. The right of their subjects to trade with either of the belligerent nations is not impaired except by certain risks and conditions which will presently be explained. The primary duty is that neutral nations, as States, shall, under no circumstances, in any way, form or manner, give aid or comfort to either of the belliger-

ent States. They must not permit the arming of cruisers in their ports; they must use reasonable diligence to enforce their own neutrality laws; they must not permit the enlistment of soldiers in the neutral territory for either of the contending armies.

Our own history furnishes several very illustrative examples. The first occurred more than one hundred years ago under the administration of Washington. The French Republic, which had then recently burst like an armed and demented giant into the family of nations, sent Citizen Genet to represent it in this country. Genet, calling international law a "rhapsody" as he did, and seeking to disregard it, proceeded to issue from his legation letters of marque and reprisal and commissions as against England. England protested of course. It was a breach of neutrality for this government to allow the French ambassador to do so. Washington remonstrated, kindly yet firmly, with Genet, but that irrepressible Frenchman took no warning from kindness or remonstrance and he was finally compelled by Washington, Thomas Jefferson then being Secretary of State, to leave this country.

At a later date, in 1854, I think, while the Crimean war was raging, agents of Great Britain undertook to enroll recruits in New York and other places in this country for service in their army in the war against Russia. Their minister at that time in Washington was Sir John Crampton, and the result of that effort was that he was, in a sense, given his passports by this Government, on account of the breach of neutrality by Great Britain and her agents in enlisting with his connivance, on American soil, recruits for the British army at war with a friendly power.

Great Britain failed to use due diligence to prevent the sailing of the Alabama and other privateers

of the Confederate States. The result was that she was adjudged to pay to the United States, by the award of the Geneva Tribunal, the sum of $15,000,000 for damages inflicted by those privateers upon our commerce.

The prohibition, however, as to neutrality applies only to the acts of a neutral State as a State or its negligence as a State; it does not prohibit the citizens of the neutral State from trading with either of the belligerents. This, however, is subject to the risk and consequences of carrying contraband of war or attempting to break a legal blockade.

The effect of war upon enemy's property was formerly the same on both land and sea. In former times enemy's property, property of the subject and of the State alike, when taken either upon land or sea, became the prize of the captor. This has been changed by the forces of advancing civilization. Private property on land not directly fitted or used for warlike purposes is not, as a general rule, subject to seizure and confiscation by the belligerents. It can sometimes be taken, used or destroyed for the purpose of subserving an overruling and pressing military necessity. The taking, use or destruction in that case is justified by necessity, but it must be a strict one. But never now, as in times past, except in case of such necessity, can an enemy who invades a foreign country lawfully spread out his parties of devastators and take the private property of non-combatants; it is as sacred as if no war existed.

But upon the sea it is different. The usages of the ocean lag far behind the usages of the land in becoming amenable to the processes of civilization. Upon the ocean, during a war, all enemy's property, ship and cargo, when taken ~~are~~ subject to condemnation and confiscation as prize. The old Adam is

strong in humanity, even in the days in which we live, and this barbarous principle of the law of nations is nothing more nor less than a survival of that piracy in which all nations in the earliest historic periods universally engaged. It is very strange that the efforts of the best exponents and creators of public opinion on international law, although they have been directed to that end for more than fifty years, have not been able to obliterate from the law of nations this pernicious barbarism. It was abolished as to several nations by the convention of Paris about forty years ago. That treaty, of course, bound only the signatory powers. The United States refused to accede to it as formulated, but was willing to do so upon the additional condition suggested by it that "private property of the subjects or citizens of a belligerent on the high seas shall be exempted from seizure by public armed vessels of the other belligerent, except it be contraband of war." This condition was not acceptable to the great European powers. They desired only to abolish privateering, and to leave private property on the sea subject to capture by their public ships of war. The proposition of the United States ought to have been agreed to. Its acceptance would have made substantially identical the exemption of private property both on land and sea. The canon of international law, therefore, still remains that all property of an enemy on the sea, when taken by a public vessel, namely a ship of war, of the adverse party or by a duly commissioned privateer, is liable to absolute forfeiture except in cases otherwise provided for by treaty stipulation. This of course ought to be, and will be, changed in the due progress of events.

Many questions arise as to the consequences upon the sea of a state of war as between the belligerent nations and neutral powers. One of the most im-

portant consequences of a state of war is the right of search by public vessels of the contending powers of the vessels of neutrals. This right means that if the United States and Spain should become involved in war concerning Cuba, the ships of war of either nation would have the right to search the ships of any neutral nation (excepting its ships of war) for the purpose of ascertaining whether they are carrying contraband of war destined to the ports of the other belligerent or whether the vessel is making a voyage the end of which was to enter a blockaded port.

The general principle of international law is this: That every vessel on the high seas is a part of the territory of the country whose flag it bears. In times of peace that vessel is absolutely inviolable upon the high seas. In times of peace no power has the right to arrest, detain, visit, or search upon the high seas the ship of any other nation. A state of war between nations introduces an exception to this general rule. It deprives the neutral vessel of that sanction and safeguard of territoriality which in times of peace exempt it from visitation and search. The right of search is strictly a belligerent right. But search, as I said, is to be in aid of a legal blockade or for goods that are contraband of war, destined to the ports of a belligerent, and the question arises: What is contraband of war; what are the goods or articles which, in the language of the prize courts, are guilty under such circumstances? It is difficult to define contraband of war. There have been three classifications on the subject. The first comprises such articles as powder, shot, cannon, guns, which are necessarily and indubitably useful for war, and for war only. As to those there can be no doubt. Then, there is a second class, namely: Articles such as books, domestic furniture, ordinary merchandise,

which cannot have any relation to war. Of course as to those articles there can be little doubt. But, midway between these classes of property, there is an infinite variety of articles such as horses, saddles, coal, provisions, cables, pitch, chains, medical stores, which may be, or may not be, useful in war, and may or may not therefore be contraband. It is only as to this class of cases that any question can arise, and it has been settled to be a question of fact whether, under the circumstances of the particular case, the property is contraband.

When a ship is captured carrying contraband goods the consequence is that such goods are forfeited, as also are all the other goods on board the vessel belonging to the same owner, and also the ship if it is his property. If the ship is not his property she merely loses her freight and voyage.

Another consequence as to the sea which results from a state of war between two nations is the right of blockade. The right of blockade is applicable properly to the sealing up of the sea side of a maritime place—the closing of its harbor. It is that process by which one nation, by a maritime force, closes to all commerce a port of its belligerent adversary. The blockade must be actual, physical, efficient. It cannot be effected by proclamation. Paper blockades are invalid. The British Orders in Council in the early part of this century which declared the coasts of France to be in a state of blockade, and the counter decrees of Napoleon from Berlin and Milan, which declared England and all her ports in a condition of blockade, and interdicted intercourse by neutrals with Great Britain, were all of no effect in international law. A blockade must be proclaimed, and it must then be established and continuously maintained by a squadron or number of ships with sufficient vigilance and actual presence to make

it extremely hazardous for any vessel to attempt to enter the blockaded harbor. When a vessel is captured in the attempt to enter a port thus legally blockaded, the ship and cargo, no matter whether the goods are contraband of war or not, are forfeited to the captor. There is no penal consequence upon the persons engaged either in carrying contraband of war or running a blockade; no personal punishment can be inflicted. The only guilty thing is the ship and property engaged in the illicit transaction.

The title to all captured property vests primarily, from the mere fact of capture, in the captor State. No individual can have an interest in the prize, whether made by a public ship of war or by a privateer, except that which he receives under the concession of the State. The practice has become general, under the laws and ordinances of belligerent governments, to distribute among the individual captors the proceeds of the captured property when duly adjudicated and condemned as prize.

A prize taken at sea must be brought into some port of the captor for adjudication by a competent court, though, as between the belligerents, the title passes to the sovereign technically and completely from the moment of effectual capture. But the property is not changed in favor of a neutral vendee, or a recaptor, so as to bar the original owner, until a regular decree of condemnation has been pronounced by a court of competent jurisdiction belonging to the sovereign of the captor, and the purchaser must, in order to support his title, be able to show record evidence of such an adjudication. If the ship escapes or is retaken before condemnation by the prize court the title of the original owner revests under what is called the *jus postliminii.*

But war ends as all things in this world must

end; a treaty of peace composes and settles a conflict which perhaps should never have been engaged in. The effect of a treaty of peace is just as decisive as the force of a declaration of war. We have seen that such a declaration immediately severs all connections and ties between the people of the belligerent States, and makes them enemies. The treaty of peace closes the chasm, and makes the enemies of yesterday the friends of to-day; the interrupted contracts regain their obligatory force, the severed relations are reunited, and war, as to these, is as if it had never been. Treaties, however, must be formally renewed.

And now, my fellow students, I complete one of the most interesting and agreeable tasks of my life. I never before stood in the presence of an assembly of students and attempted to instruct them. I feel all too painfully how imperfectly I have performed this duty, but it has, nevertheless, been a most delightful one to me and if I have succeeded in awakening in your minds an interest in the subject and, here and there, have dropped seeds of information which will germinate and grow to maturity in your minds, I shall feel more than amply rewarded.

I have spoken here under a sense of considerable responsibility. I am told that this University has three thousand students. It is the most priceless trophy that the State of Minnesota has wrested from the struggles of its thirty-nine years of existence. The influence of three thousand students coming into these cloisters from the various scenes of life and going from them into all the avenues of activity in which the duties of citizenship are to be performed will be very potent, and if you add to those who are here their fellows in other colleges and universities throughout the land, you will have marshalled an enormous host into the armies of civilization.

Within twenty years this audience and their fellows throughout the United States will be a very large factor in conducting this government, and they who now fill the public eye will have begun "to lag superfluous on the stage." The duty of preparation by an audience of this character for that sublime task cannot be overstated. In that field of lofty performance in which you are to labor there is no place more ample for a purer patriotism; there is no temple more sacred for the performance of duty; there is no upper air more serene and less troubled by the storms of partisan and internal politics; there is no bulwark where your country will need more patriotic defenders than that of International Law, concerning which I have, in a very imperfect and desultory manner, endeavored to give you some information.

THE END.