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LECTURE ON INTERNATIONAL LAW

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International Law, the law governing the relations of civilized states with one another, has been a badly abused science, if, indeed, it can be called a science.

Some there are who deny to it even the right to be called law. Law, they say, under the lead of Austin, is a body of rules imposed upon the bulk of a society by a superior, who is not himself in turn subject to any superior. Since International Law has not grown up in this way, in fact, cannot grow in this way, because there is no superior whether individual or sovereignty or court which is in a position to lay down the law and be listened to, these critics would make of it only a system of international morality or ethics.

Others give it the name of law, but refuse it that character —in fact, tend to deprive it of all character—by spinning its rules out of their own brains, and putting their own ideas of what should be law, alongside of the rules which have bound states for generations, on terms of perfect equality.

This sort of animal is apt to be a continental jurist, and is profoundly contemned by the man bred under the common law of England and the United States, with a wholesome respect for precedent and judicial decisions. He in turn may serve his mistress badly, if he falls back, hide-bound, upon the lessons of the past, its accepted rules, its unquestioned usages, its century old laws, with never an attempt to better or amend or replace what has been outgrown. Formalist, theorist, critical jurist, each has his value, but to get that value out, you must roll the three together and mingle their methods, as you rub your salt, and oil, and vinegar into one smooth resultant.

Thus the Austinian critic is wrong, because he does not account for the facts in the case; he does not explain the existence of a body of international rules and usages, by which states in their intercourse are, and agree to be governed, but which are far wider and more extensive than the sum of their treaty agreements.

NOTE.—This attempt to cover in a popular way and in brief space the entire field of International Law, is printed here for the first time, at the wish of the Editor, with the hope of making clearer a subject which most lawyers are too busy to master for themselves.

So is the theorist wrong, because he sets forth his wishes and fancies as law and fact. Were his method right, there could be, and probably would be, as many different bodies of International Law as there are jurists.

The follower of precedents is on safer ground, but, unless he infuses a progressive spirit and logical reasoning into his study of them, these precedents will have no element of growth within them, and soon become insufficient for complicated modern use.

Grotins, the patron saint of the International Lawyers, who published in 1609 and 1625, though striving to unite these methods, and though surprisingly correct and useful in many conclusions, is nevertheless an example of too seriously following the examples of past history. Thus he argues, that State A, in order to wage a just war vs. State B, may march an army across the territory of State C., though neutral, which separates them, and in proof cites Moses, Clearchus, Lysander, Cimon, Agesilaus and Frederick Barbarossa.

Now it happens that this right of military passage to-day does not exist. Fancy a German army in 1870 marching across Belgium or Switzerland in order to invade France. It would have been the grossest violation of neutrality. But how has the change come about? It has been gradual, and due to the growth in importance of the neutral interest, i. e. of those who do not share in a war which their neighbors, two or more, may be engaged in. Once war was all important and involved all within reach whether or no. Later it became exceptional and the neutral principle began to have influence. Now war is frequent enough, but its effects are limited just as far as possible to those actually engaged in it. The neutral interest has become predominant.

This is a fair illustration of the way in which the law of nations grows. Precedent is its source, but reason and utility are the shaping tools.

And here let me emphasize the fact that state policy is an inherent and important factor in almost every international rule. The existence of a law may be clear, its justice may be undoubted, its enforcement nevertheless will depend upon a dozen considerations, among which the size and strength of the other party is a chief one.

The other day a German missionary was maltreated in China. Redress was undoubtedly due. But China yields only to pressure, and pressure means taking redress into one's own hands. This Germany was not loath to do, and made that mis-

sionary worth the cession, under the veil of a lease, of an important Chinese seaport with a considerable district around it.

Now suppose the missionary incident to have happened in Japan, would Germany have used the same method? Would she have departed from the peaceable diplomatic method of securing redress? Most assuredly not, because Japan is in a position to give redress, and also, which is more important, to prevent its being taken. Japan is a sword fish, while China is a jelly fish. Japan is a homogeneous state, while China is chaotic. Thus in the one case the injured missionary was valued at a seaport and vicinity; in the other he would only have been worth an apology and a small amount of cash. Yet the law and the justice were the same in each case.

In determining this factor of state policy, there are two leading principles to be kept in view: One is self-interest broadly considered; the other is the right of self-defense, which has been called the first law of nations, as it is of individuals.

What has recently brought about the acceptance of the cession of the Philippines from Spain?

It is the belief of the Administration that the ownership of this archipelago will be of great political and commercial benefit to our country. But for this reason—a reason which many think ill-grounded—the civilization of the islanders and the responsibility for order would have but little weight. For the altruism which would sacrifice or hazard the advantage of one people in order to do good to another, while admirable in the individual, is misplaced in managing affairs of state. It would be the betrayal of a trust. As Judge Baldwin well says, our Constitution makes no provision for sending missionaries.

The right of self-defense is the obverse of the principle of self-interest. The one aims at getting a good, the other at preventing an evil. It is the basis of much of the political philosophy of the century. Thus the balance of power principle is founded upon it. This means that when one of several related states becomes so powerful by war or political means as to endanger the interests of the others, they may combine for protection, a principle older than the Christian era, yet to-day exemplified in the triple alliance and the Franco-Russian *entente*.

Self-defense is the foundation, too, of our own peculiar contribution to statecraft, the Monroe Doctrine. Certain South American colonies had achieved their independence of Spain, their mother country, which was too weak to control them. Then the Holy Alliance of European powers offered Spain its help in doing this. But our government very properly said, no.

President Monroe tells us why. "That we should consider any attempt on [their] part to extend their system to any part of this hemisphere as dangerous to our peace and safety."

This was President Cleveland's claim in the doctrine's latest manifestation, contained in his Venezuelan message, namely, that England's disposition to aggression rather than arbitration, in the matter of the boundary between Venezuela and British Guiana, was a menace. The enforcement of the docrine, he says, "is important to our peace and safety as a nation, and is essential to the integrity of our free institutions and the tranquil maintenance of our distinctive form of government." And he was entirely justified in his action, if one can discover this danger to our institutions lurking in the control of the far away swamps of the Guiana frontier.

Not to lose the train of thought through digression let me repeat.

The rules of International Law are founded upon precedent. They are added to or altered when reason and change of public sentiment and national interest demand, but only by consent of all civilized states can a new rule be properly incorporated into the body of the law.

State policy is a vital factor in the framing, the interpretation, the enforcement of international rules. Our next inquiry relates to the penalty for their violation.

When an individual violates a law, by the law he is punished. The system of justice has within itself the power and duty of enforcement. It is one of the defects commonly ascribed to International Law that it has no such power. To cure this lack as well as the kindred one of an authoritative interpreter of the law, for generations men have been trying to devise some kind of international court which should be able to judge a cause, and enforce its decision.

But political society is no nearer this consummation than when Kant inscribed his essay "zum ewigen Frieden," or Bentham advised states to abandon their colonies. Nevertheless there are two or three sanctions of its rules which the law of nations provides or at least contemplates. The first is ethical. Every state would be thought law abiding, not only because it is right, but because it is good form. Should it violate the law, it would be under cover of specious excuses which sufficiently show its recognition of the rule and obligation to respect it.

The second is based on the knowledge that a law or treaty breaking power can never negotiate on as favorable terms as

the one that keeps its word. Thus England believes that Russian faith is not to be trusted because in at least two modern instances Russia has refused to honor her treaty obligations. In consequence England would be likely to require better terms or additional guarantees in dealing with Russia than would otherwise suffice.

The third and chief sanction of International Law—that is, the principle deterrent from a deliberate violation of its rules—is war. So that war has been called the execution process of International Law, but with this peculiarity: that the state acts as judge in its own cause and then proceeds to execute its own verdict.

Here, again, is apparent a painful defect. War, as a remedy, a sanction, a legal process, is so immensely out of proportion in cost and character to the vast majority of those wrongs which it is appealed to to avert. Moreover, although the weak state is the one more likely to be wronged, it is precisely the weak state which cannot afford, from any point of view, to try such a remedy. National pride, miscalculation of strength, false reliance upon others, such reasons may lead the weak power to use the remedy of arms, but only to find that Providence and Justice appear to be on the side of the heavier battalions.

If Spain could have made up her mind to relinquish Cuba without a trial of strength she would have saved her other colonies and we would have been spared some harrowing problems.

So much for the origin and nature of International Law, its methods of growth, the way in which its rules are enforced, and the defects, or rather the weaknesses, which become apparent to the student. In spite of these, we may honestly say that there exists a body of law governing the relations of states which is fairly well agreed upon, and in accordance with which all states pretend to conduct their intercourse. These rules govern in part the peaceful relations of states, in part their rights and duties in time of war. For war is still a thing to be reckoned with, and it is in the softening and bettering of its methods that the progress of International Law is most apparent.

The characteristics of the state, and the nature and variety of the world's political organizations; how the state acquires territory; how it makes contracts and what they are like; the intercourse of states and the agents who conduct this—these are some of the major topics of that division of the subject which relates to peace. Of all this, within my present limits, I can give but a fragmentary idea. States are sovereign independent and equal. What does this mean?

(1) That they can exercise in the full all the powers of government. If they fall short of this they are not fully sovereign and are called accordingly semi-sovereign. Thus, to take an example near at home, Cuba *was* a dependency of Spain, with no sovereignty at all attaching to itself: then by treaty Spain relinquished sovereignty, but did not cede it. It must therefore revert to the Cubans, who but for one thing would therefore form a new state. That one hindrance is the treaty stipulation that the United States shall hold Cuba until its pacification is accomplished. This places responsibility for the acts of Cuba henceforth upon our shoulders; the foreign relations are undertaken by us; the domestic government will probably be of a character to correspond to the weight of our responsibility, i. e. will be pretty completely controlled by us, though it may be in Cuban hands. Yet no sovereignty, technically speaking, is acquired by the United States; it remains in abeyance, a de jure possession of Cuba, not to be brought out and enjoyed *de facto*, however, until the United States deems pacification completed and takes its hands off. Cuba thus halts between dependence and independence, its present status being a protectorate. May I digress a moment here to speak of a still looser tie than the protectorate, namely, the sphere of influence. It was a recent and brilliant discovery, due to the plethora of African opportunities, that an energetic power which desired to control uncivilized territory, or at least wished no rival to control it, yet was not ready to annex or to protect it itself, declared the said territory to be within the sphere of its influence, and warned all other powers to keep their hands off.

This usage reminds me of an Englishman's practice at my hotel in Athens, where two London dailies were taken. He sat on one until he had finished the other.

Independence, the second characteristic of the state, is just the negative side of sovereignty, the right to be let alone; it is an undoubted prerogative of statehood, and yet how many states there are which are not let alone, but on the contrary are under some form of tutelage or coercion, perhaps from the moment of birth, as has been the fate of Greece. In theory Greece is as much entitled to its own line of action as Russia, but in fact its entire foreign policy may be altered at any moment by the concert of the powers.

As independence is the rule, intervention must be the exception, needing in each case special justification, and sometimes capable of no justification at all.

We have just intervened in the relation of Spain with Cuba on the ground of humanity and self defense.

Three European powers prevented Japan from taking that war indemnity from China to which it thought itself entitled.

Russia intervened between Turkey and its subject Bulgaria, made an advantageous peace at San Stefano, but was itself held in check by the Berlin Congress, which nullified San Stefano.

And so without mutiplying instances, we may say that the rule is so marked by exceptions, as to be little more than a presumption.

So liberty is a right of the individual under our laws, yet the individual may be restrained of his liberty, if criminal or insane or a pauper or a witness; his property may be taken away by legislation, by taxation, by eminent domain—yet liberty exists.

The third characteristic is equality.

Equality does not involve power equal to other states, or equal commercial privilege or equal rank, but simply equality of sovereign rights. Judged by this standard, Hawaii, with a population not much larger than that of Hartford, and the United States stood on even terms, and on even terms they negotiated a union, as Texas had previously done.

The characteristics of the states are the same, but its nature and form of government may vary widely. States are simple or composite, like France and Austria. States are monarchical or republican, and either may be confederated. Confederations may place all power to enter into external relations in a central body, or reserve much of it for the individual members. There is no special distinction between an empire and a kingdom. The one may become the other by simple assumption of the coveted title, as Victoria became Empress of India a few years since.

With the form under which a state chooses to exist, International Law has nothing to do. It merely asks whether a certain body, aspiring to statehood, is in fact sovereign and independent, and whether it is capable of performing its duties and fulfilling its obligations to other states.

Think how often France has changed its form of government in the past century. Watch the changes in Europe which are imminent now. Norway and Sweden, bound to a single sovereign under a personal union, but each with its own army and legislature, are restless, like an uncomfortable married couple, yet conscious of loss of dignity and strength if they separate.

Italy, nearly bankrupt, has failed in her colonial policy, and seems drifting to some kind of socialistic experiment. Spain halts between Carlism and a republic.

Great Britain, with an even mind, contemplates a closer union with her colonies or complete separation from them, as expediency dictates, while Russia, mighty and mysterious, is ever contemplating the likelihood of her own eventual liberalization by revolution, leaving whatever form of government one may choose to imagine in its train.

Throughout this state of flux, the international lawyer fixes his eyes upon the one thing: the fact of a political organization in a position to claim the rights and fulfil the duties of statehood. Just when and within what limits to recognize this fact, is not always easy. For when a new state is in process of formation by its own exertions, whether by consolidation or avulsion, by patching together or tearing apart, there is inevitably a period, perhaps a long one, when the fundamental facts are obscure. The topics here to be studied are called recognition of belligerency and of independence, the first a usual, though not a necessary, step to the second. It was often debated in Congress since the last Cuban insurrection broke out whether or not the Cubans might be considered lawful belligerents. Some even urged that Cuba should be declared independent. But Cuba never had a political organization capable of performing international duties, or even an army which promised of itself to break the Spanish tie. Nor did Spain ever cease its efforts at coercion. So that our own precedents and the rules of International Law both forbade either kind of recognition and left intervention as the only permissible course.

But I must not enlarge upon any one topic, if we are to traverse many, and hasten to ask what a state's territory consists of.

Of all the land within its bounds, of course; of the bodies of water entirely surrounded by such land, like the Caspian Sea or Lake Michigan; of the mouths of its rivers, its bays and sounds where these are not so wide as like Fundy to be properly a part of the high seas; and of its coast sea, the water which washes its shores, to a distance of three miles from land. Over all this its jurisdiction extends; it also follows its ships on the high seas, and until they enter the waters of other states. But on its vessels of war a state's jurisdiction is not thus limited, for obvious reasons. How completely the local law governs foreign ships in port was shown in Charleston in slavery times. An English ship with free blacks in her crew was loading her cargo. There was a local rule that all masterless negroes must be jailed at night. This rule was applied to these free English blacks,

as well as to the wandering Charleston negroes, and there was nothing for it but submission.

National boundaries are a fruitful source of difference.

From the treaty of 1783, which laid down the limits of the United States, until now, there has never been a moment, I believe, when our boundaries have been unquestioned. We had a difficulty with Great Britain over our Northeastern line, our Northern line, our Northwestern line, and now the Alaska line is disputed. We differed with Spain over the Louisiana line. We made two treaties and half a dozen conventions with Mexico over the Mexican line. And but for the fortunate fact that our new possessions are islands, we should find in them material for boundary differences for generations to come. After the Revolution the Mississippi was our western limit. Beyond that river was an unknown country. By its discovery Spain claimed, under the title of Louisiana, a vast region reaching as far north as the 49th degree, our present limit, and indefinitely westward. Spain ceded it to France, and Napoleon sold it to us. Lewis and Clark explored it. Gray sailed into the mouth of the Columbia. Astor planted a fur trading post there. Later Whitman led the first wagon train over the mountains, and with his wheels cut the Oregon trail, which saved the far Northwest from English dominion. We annexed Texas. We seized New Mexico and California We bought South Arizona and Alaska. All this gave us an unoccupied empire of contiguous territory in a temperate climate where our own stock could labor and multiply. Now we are assuming other and more complex problems, the solution of which is far beyond our ken. Much of this new land the United States has owned. Over all of it its sovereignty extends. Our policy has been to sell, never to lease. But Texas, coming into the Union as a sovereign state, with its own land system, has presented another policy, and California, dotted with the great Spanish land grants still a third. Should the Prince of Wales buy a thousand square miles in Texas, it would be as completely subject to our jurisdiction as the spot we at this moment occupy.

In these and other ways a state acquires territory. Painfully and slowly it defines their limits. The character of its possessions is stamped upon the state. So likewise the peculiar characteristics of each state are stamped upon its possessions, until, gradually, we have a political unit, individual and separate, which comes to mean absolutism, or liberty, the false or the true democracy, the curse of misgovernment or the genius of self-control, poverty or progress.

And states of all these kinds are found in habitual intercourse. This is the presumption of International Law. Turkey and Persia, Germany and France, both classes alike have relations with us, political and commercial, and maintain the agents of such intercourse. Trade is the binding tie. Non-intercourse now-a-days is an anachronism. The first step in relations with a new state is to make a consular convention with it. The next is to exchange ministers. These are alike the agents of peace. When war threatens, they are withdrawn.

The person of the ambassador is inviolable. His mission is the maintenance of friendly relations. If he is incapable of helping this on, by reason of temper or prejudice, or lack of breeding, or lack of sense, he is a failure.

With this in mind, occasionally a state will refuse to receive a diplomatic agent in advance of his sending, because he would be a failure if he came. Thus Austria declined to receive a Jew nominated as minister plenipotentiary to itself, because his race was socially obnoxious and he therefore could not carry on his mission successfully.

A diplomatic agent is not subject to the law of the land where he is resident, because this would hamper his work. This exemption is called exterritoriality. In Hayti, the South and Central American Republics, and such like countries, our usage enlarges this right of exterritoriality considerably, so that our minister's residence is inviolable and he may shelter rebel leaders in it. But this excessive privilege is to be sparingly exercised.

There are many questions of precedence and etiquette involving perhaps the dignity of states, which might be mentioned here, but I pass to the second division of our subject, war and the events which lead to it.

When the Golden Age shall have come, this part of our topic will have only an historical interest. That will be a glad time. But how shall it be reached? Some hope to gain the dizzy mount of perpetual peace and universal brotherhood by a single effort, by same mechanical contrivance, which shall put an end to all war and alter the nature of mankind. But the reasonable thinkers, even holding up the same ideal, would approach their end gradually. Presupposing the existence of war, they would diminish its evils as far as possible, rather than strive for an impossible abolition. And it is on this line that much progress has been made during the present century.

The evils of war are of two kinds. They involve personal suffering and economic waste. Wounds and death, fever and

starvation, are still and must ever be the portion of those in the field. But non-combatants and their rights are legislated for, and, so far as may be, are freed from the effects of war. Their persons are inviolable, their property can be taken only by authority and upon payment; their local government is still administered by the occupant authority for their benefit.

The wastefulness of war is almost too varied for calculation. There is the burden of standing armies in anticipation of it, which withdraw multitudes of young men for a time from productive occupation to be instead a charge upon the state.

There is the preparation of ships of war, fortresses, coast defenses, barracks and all kinds of military material, while every few years much of this becomes antiquated and must be replaced.

There is the waste of life and labor, which should be productive, in war itself, together with tremendous expenditure upon military engines, supplies, transportation, wages, and so on indefinitely. Our Civil War is said to have cost $2,750,000,000.

There is also waste direct and intentional as a war measure, coupled with waste necessary and incidental as the effect of army movement or battle. Of this we in Connecticut have never known much, for since the earliest Indian war, and excepting trifling British descents upon the coast during the Revolution and war of 1812, this state has not felt the foot of an enemy upon its soil. There are few states in the world which have so secure a record, and yet the sons of Connecticut have borne an ample part in every war affecting the other colonies or the united country, a shining example of altruism. And lastly, but not finally, there is the burden of all this cost and loss in the shape of pensions and war debt, a tax upon industry weighing down generations yet unborn. Look at the financial condition of Europe to-day. Turkey, Greece, Italy, Spain and Austria are either bankrupt or crushed with taxes in the attempt to keep above water. Russia and France are better off, yet the Czar is proposing proportional disarmament on account of the intolerable burden of the present military system. Germany and Great Britain are the only great powers which seem to carry their load easily. As for ourselves we are deliberately choosing to travel the same road.

War, then, is not a cheap remedy. It always involves a wrong attempted or committed. It is not in accordance with the law of love. We are forced to assume its existence, however, as we assume that robbery and murder exist, and try to minimize its evils.

It is on this line perhaps that International Law has made its greatest advance, and this in two directions, in softening the rigors of war as felt by those who are not combatants, and in diminishing the effect of war upon property. In this second direction the influence of the neutral nation which dislikes to have its natural trade interfered with, has peculiar weight.

On the one hand, persons not bearing arms, even residents of an invaded territory, are not interfered with. The occupant conqueror has military jurisdiction over them, but in the shape of the local law. Undefended towns cannot be shelled. Labor on military works cannot be forced. Food cannot be taken without payment. On the other hand, public property, which does not relate to the conduct of war, is not subject to capture. Thus museums, churches, libraries, civic buildings and property, are sacred. So, too, is the property of all enemies not found on the field of battle and not consisting of military material, except that taken on the sea. Even this will be spared if other powers adopt a recent proposal of our own Congress. But as yet on the sea the old harsh rules of capture still prevail, except that privateering is under the ban, and enemy goods are commonly sheltered by the neutral flag. There was a check upon the kind of weapons allowable set by the St. Petersburg convention in 1868. This in no wise forbade the deadliest possible contrivances; it simply legislated against those inventions whose utility consisted in aggravating a wound or making recovery hopeless, like a poisoned bullet or an explosive of under a pound weight.

This is supplemented by the Red Cross neutralization of aid for the wounded which is outside of the belligerents' medical service. The origin of the Red Cross Association is a dramatic story.

A Swiss physician, M. Henri Dunant, wandered over the battlefield of Solferino in 1859, and described in print what he saw. The French army was left in possession of the field, but its medical corps was quite unequal to the care of the wounded of both nationalites there abandoned. The field hospitals, such as they were, were crowded. Many of their inmates, two days after the battle, had received no attention. Many more wounded still lay where a shot had dropped them, living, but without shelter or food or care. M. Dunant's story was a shock to the civilized world. It was instrumental in starting the movement which at Geneva, in 1863, drew up rules for the neutralization of those persons, vehicles and buildings which should have to do with the care of sick and wounded of either army in battle,

marking them with a distinctive sign, and placing them under rules. In our own country, the Red Cross Society has not confined itself to the European ideal, but aids the suffering in any great emergency, of flood, or fire, pestilence, or battle, whenever the local agencies are unequal to the task.

It is interesting to notice what an influence upon the art of war our Civil War has had. It first employed the breech-loader, though not very widely. It first made effective use of armored ships. It justified the spade as a military weapon. Our Sanitary Commission was a half-way precedent to the Red Cross Societies. And Lieder's code, being general order 100 for the government of the armies of the United States in the field, put into shape the accepted military law of the period. Upon this basis the later attempts to codify the laws of war have been founded.

A chief feature of our Civil War, the weapon which more than any other turned the scale in the North's favor, was the blockade. This prevented the exchange of cotton for those necessaries and military supplies which the South could not manufacture. At first it was slack, later very efficient, although on a vaster scale than has ever been carried out before or since. It involved much exciting service and various difficult legal questions. It also made profitable that organized evasion of blockade, which runs a cargo through the patrol lines, accepting the risk of capture. The chief feature of a legal blockade is, that it shall not be largely on paper only, but shall be made effective. And by this is meant, not absolute prohibition, but great danger of capture. During the last few years of the Napoleonic Wars, both England and France laid blockade without regarding this essential. France, without a navy, declared the British Isles under blockade; England, with an insufficient navy, pretended to blockade the whole coast of France and its allies, from the Elbe to the Mediterranean. Now since blockade is a very serious limitation of the neutrals carrying trade, shutting it out from its accustomed channels, and since it is penalized by capture of the offending ship when the breach of blockade is committed, it is clearly unjust to the neutral to lay it, when no force is at hand to make the declaration good.

In the case mentioned, the United States supported and protested but without avail, though the law was clear enough. Since then, by usage and by agreement, it has become clearer still, keeping pace with the growth of neutral influence, and now no neutral state would for a moment submit to a blockade on paper only.

This was one of the points dealt with by the Declaration of Paris, in 1856, which marked an epoch in the history of maritime warfare, abolished privateering, and enlarged the neutral privilege in the carrying trade, but only as between the signatory powers. The United States was invited to accede to this treaty, but declined on the ground that with our small navy, privateering was essential to the national defense. If all innocent property on the sea, even belonging to belligerents, were exempted from seizure, however, Secretary Marcy promised this country's accession. Thus the matter has stood ever since, most unfortunately, as it seems to me, for we need the privileges of the Declaration, and as the Spanish war has proved, do not in the least depend upon privateering to eke out our navy. In fact, privateers are almost an obsolete article owing to the excessive cost of a ship which can outsteam the modern merchantman. Unless an official notice of the laying of a blockade is given the neutral, he is not liable for trying to run it, for how can he be presumed to know that it exists. There must also be a breach of blockade, in fact or in intention, by entrance or by exit, to warrant a ship's capture. And so we formulate the law that there are three prerequisites to a valid capture for breach of blockade, declaration, effectiveness and attempt at breaking. If these are proven, the penalty falls first upon the ship as the vehicle of offense, and next upon the cargo, unless its complicity can be removed by evidence. In no case can the crew be punished, even with confinement, though, of course, they are subject to the casualties which attend blockade running.

In our Civil War, Nassau was a center of blockade evasion. Ships were specially built for it, fast, with light draught, low free board, and no top hamper, painted a dull grey to harmonize with sky and sea. Some of these made a round trip to Wilmington or Charleston monthly, and proved highly profitable, but it was dangerous business, and nearly all came to grief eventually. The onus of prevention rested on the shoulders of our government, so that the trade was preventible not by British law, but through American capture.

The other leading topic of maritime law relates to contraband, i. e. to the carrying by a neutral trader to the belligerents of such articles as relate directly to making war. Here again the neutral government limits its duty to notice of the fact of war, and of the penalty for carrying contraband; it does nothing to prevent that trade itself. Moreover, as two states may very well disagree upon the definition of contraband, it is customary to insert in a commercial treaty a list of articles which shall be

so considered. Even this is not final, for the progress of a war may introduce some new combination or invention which should fairly be included, like armor plate for ships of war, or a new explosive.

Here the prerequisites to a valid capture are two, that the goods shall be contraband in character and bound for a hostile destination. In our late war with Spain, French wine shipped to Havana would not have been contraband, nor French gunpowder destined to St. Thomas or Hayti, because in the one case the goods were not useful in waging war, in the other, the destination was neutral.

The penalty for contraband trade falls first upon the goods, but also upon the ship if she belongs to the same owner. To enforce these two great belligerent rights, of seizing contraband goods and of preventing neutral trade with one's enemy by blockade, the right to search any vessel one meets is necessary. For, as the greatest of English admiralty judges, Lord Stowell, said in a noted case: "If you cannot search every ship, how can you tell what her character, destination and cargo are?" And this right of search, as a corallary to the other rights, as essential to their existence, is as settled as anything can be. The only question is *how* it shall be exercised. For it is a most vexatious and exasperating thing even for an innocent merchantman to be hove to with a shot across her bows and have her character inquired into. Many treaties accordingly prescribe minutely how this search shall be conducted, by a single officer, for instance, with a small boat's crew and out of gunshot of his ship.

Certain treaties even provide a substitute for the right of search, if the suspected ship is in company of a man-of-war of her own nationality. This is called convoy, the theory being that the convoying ship has examined, and is answerable for, the innocent character of all vessels in her charge.

Strictly speaking, the right of search is a war right solely. But it is permissible in time of peace for the prevention of smuggling and upon suspicion of piracy, though the searcher is liable for his mistakes. The British government a century ago claimed the right to search American vessels for runaway seamen and to impress them. It also occasionally tried to search vessels suspected of being slavers without a treaty authorizing this. Both practices were resented by our own country. And finally search in one's own waters is lawful, and even on the high seas in time of peace when it is a question of self defense. Spain did this now and then in her two long contests with Cuban insurrection to prevent the furnishing of arms and reinforcements to the island—and properly so.

I have spoken repeatedly of the neutral without defining what neutrality is, and now, though the subject is as important as any, there is space for only the briefest summary of it.

Neutrality is *not* giving aid impartially to friendly states which are at war with one another. It is the abstention from such aid while yet maintaining peaceful intercourse with them, the one a duty, the other a right. This attitude of neutrality will be assumed and declared when a war breaks out by those states which are not parties to it, provided their interests are nevertheless affected. By proclamation they announce to their subjects their duties, to the belligerents their privileges. So that the whole of neutrality is made up of those restrictions upon its trade which the non-combatant state admits, and of those duties towards the belligerents which it enjoins. Its subjects may do what the state cannot do. The whole history of neutrality has been a long fight between the neutral's desire to augment his trade by carrying one's friend's goods in safety, and the belligerent's determination to limit this.

We have now glanced at most of the leading topics of our subject, though getting, I fear, but a muddled view of the whole field.

Your attention has been called to the lack of certainty in the law; to the fact that the interpretation of the victor in war is sure to be the right one; to the confusion between policy and justice; to the dozen other weaknesses of International Law, as it is studied in theory or put into practice.

Nevertheless, whether we ascribe it to the self interest of states or to their growing sense of right, each century witnesses tremendous changes for the better. Wars are more humane; trade is less fettered; the freedom of the seas and the free navigation of the great rivers are assured. Arbitration grows in usefulness as a way of settling international disputes. Big nations still bully little ones, but on the whole in the interest of peace. Rivalry in colonization and in trade seems to be replacing the commoner and bloodier ambitions between civilized states, while the uncivilized are fast going to the wall. We introduce them to new wants, satisfy those wants, and force their labor to pay the equivalent. This is the civilizing process. A garden of Eden is no longer permissible; skins and fig leaves have given way to calico prints; the fountains of the earth run in irrigating ditches or transmit power.

Nevertheless slavery has nearly disappeared; famine is less frequent; pestilence not so widespread; law and order reign more widely, and the nations which *don't* want to fight have the whip hand of those which *do*.

THEODORE S. WOOLSEY.