

of maritime capture, the principles of the law of prize, and the duties and privileges of neutrals, have grown into very important titles in the system of national law.

48. *What evidence of the rules of public law do we possess?*—18.

We now appeal to the decisions of those tribunals, to whom, in every country, the administration of that branch of jurisprudence is specially intrusted; and, also, to the official documents and ordinances of particular states, which have professed to reduce into a systematic code, for the direction of their own tribunals, and for the information of foreign powers, the law of nations, on those points which relate particularly to the rights of commerce and the duties of neutrality. In the absence of higher and more authoritative sanctions, the ordinances of foreign states, the opinions of eminent statesmen, and the writings of distinguished jurists, are regarded as of great consideration on questions not settled by conventional law. In cases where the principal jurists agree, the presumption will be very great in favor of the solidity of their maxims.

49. *How are the United States guided in their foreign negotiations, and domestic discussions of questions of international law?*—19.

We pay the most implicit respect to the practice of Europe, and the opinions of her most distinguished civilians.

50. *What are referred to, as containing the most authentic evidence of the immemorial, and customary maritime law of Europe?*—19.

The most celebrated collections and codes of maritime law, such as the *Consolato del Mare*, the laws of Oleron, the laws of the Hanseatic League, and, above all, the maritime ordinances of Louis XIV.

51. *To whom is a knowledge of international law necessary?*—20.

A comprehensive and scientific knowledge of international law is highly necessary, not only to lawyers practicing in our commercial ports, but to every gentleman who is animated by liberal views, and a generous ambition to assume stations of high public trust.

LECTURE II.

OF THE RIGHTS AND DUTIES OF NATIONS IN A STATE OF PEACE.

1. *Are nations equal to, and independent of each other, in a state of peace?*—21.

They are equal in respect to each other, and entitled to claim equal consideration for their rights, whatever may be their relative dimensions or strength, or however greatly they may differ in government, religion, or manners. This perfect equality, and entire independence of all distinct states, is a fundamental principle of public law.

2. *What is a necessary consequence of this equality among nations?*—21.

It is a necessary consequence of this equality, that each nation has a right to govern itself as it may think proper, and no one nation is entitled to dictate a form of government, or religion, or a course of internal policy, to another. No state is entitled to take cognizance, or notice of the domestic administration of another state, or of what passes within, as between the government and its own subjects.

3. *When may circumstances justify an interference with the internal concerns of other states?*—23.

Every nation has an undoubted right to provide for its own safety, and to take precaution against distant as well as impending danger. The danger, however, must be great, distinct, and imminent, and not rest on vague and uncertain suspicion. The British government officially declared to the allied powers, in 1821, that no government was more prepared than their own "to uphold the right of any state or states to interfere, where their own security, or essential interests were seriously endangered by the internal transactions of another state;—that the assumption of the right was only to be justified by the strongest necessity, and to be limited and regulated thereby;—that it could not receive a general and indiscriminate application to all revolu-

tionary movements, without reference to their immediate bearing upon some particular state or states;—that its exercise was an exception to general principles of the greatest value and importance, and as one that only properly grows out of the circumstances of the special case; and exceptions of this description could never, without the utmost danger, be so far reduced to rule, as to be incorporated into the ordinary diplomacy of states, or into the institutes of the law of nations." The limitation to the rights of interference with the internal concerns of other states, was defined, in this instance, with uncommon precision.

4. *Why is it that no form of civil government, which a nation may think proper to prescribe for itself, can be admitted to create a case of necessity justifying an interference by force?—24.*

Because a nation, under any form of civil policy which it may choose to adopt, is competent to preserve its faith, and to maintain the relations of peace and amity with other powers.

5. *When may assistance be afforded by one nation to the subjects of another nation, consistently with the law of nations?—24.*

In extreme cases, it is said, as when rulers have violated the principles of the social compact, and given just cause to their subjects to consider themselves discharged from their allegiance. The right of interposition must depend upon the special circumstances of the case. It is not susceptible of precise limitations, and is extremely delicate in the application.

6. *What are the most unexceptionable precedents, as to the right of interference?—24.*

Those in which the interference did not take place until the new states had actually been established, and sufficient means and spirit had been displayed to excite a confidence in their stability.

7. *Are treaties affected, or positive obligations of any kind with other powers or with creditors, weakened by mutations in governments, or revolutions?—25.*

It is well understood, that treaties or positive obligations of any kind are not weakened by any such mutations. A state neither loses any of its rights, nor is discharged from any of its duties, by a change in the form of its civil government.

8. *What if a state be divided in respect to territory?—25.*

Its rights and obligations are not impaired; and if they have not been apportioned by special agreement, those rights are to be enjoyed, and those obligations fulfilled, by all the parts in common.

9. *What extent of jurisdiction over adjoining seas, may a nation exercise?—26.*

It is often a difficult question, and of dubious right. As far as a nation can conveniently occupy, and that occupancy is acquired by prior possession or treaty, the jurisdiction is exclusive. Navigable rivers which flow through a territory, and the sea-coast adjoining it, and navigable waters included in bays, and between headlands and arms of the sea, belong to the sovereign of the adjoining territory, as being necessary to the safety of the nation, and to the undisturbed use of the neighboring shores.

10. *Is the open sea capable of being possessed as private property?—26.*

It is not. The free use of the ocean, for navigation and fishing, is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated.

11. *Have nations any territorial jurisdiction at sea?—26.*

No nation has any right or jurisdiction at sea, except it be over the persons of its own subjects, in its own public and private vessels; and so far territorial jurisdiction may be considered, or preserved, for the vessels of a nation are, in many respects, considered as portions of its territory, and persons on board are protected and governed by the law of the country to which the vessel belongs.

12. *In what state is the claim of dominion to close or narrow seas?—28, 29.*

It is still the theme of discussion and controversy. All that can reasonably be asserted is, that the dominion of the sovereign of the shore over the contiguous sea, extends as far as is requisite for his safety, and for some lawful end. A more extended dominion must rest entirely upon force and maritime supremacy.

13. *How far into the sea does the general territorial jurisdiction extend?*—29.

According to the current of modern authority, it extends into the sea as far as cannon shot will reach, and no farther, and this is generally calculated to be a marine league.

14. *How have Congress recognized this limitation?*—29.

By authorizing the District Courts to take cognizance of all captures made within a marine league of the American shores.

15. *To what distance around our territory should the neutral immunity extend?*—30.

It ought, at least, to be insisted that no belligerent rights should be exercised within "the chambers formed by headlands, or anywhere at sea within the distance of four leagues, or from a right line from one headland to another."

16. *Have maritime states a right of visitation and inquiry, within those parts of the ocean adjoining to their shores?*—31.

It was so judicially declared in England; and the exercise of jurisdiction to that distance, for the safety and protection of the revenue laws, was declared, by the Supreme Court, to be conformable to the laws and usages of nations.

17. *Why should nations cultivate a free intercourse for commercial purposes?*—32.

To supply each other's wants, and promote each other's prosperity.

18. *How is the freedom of trade to be regarded?*—32.

However reasonably and strongly it may be inculcated in the modern school of political economy, it is but an imperfect right, and necessarily subject to such regulations and restrictions as each nation may think proper to prescribe for itself. Every state may monopolize as much as it pleases of its own internal and colonial trade, or grant to other nations, with whom it deals, such distinctions and particular privileges as it may deem conducive to its interests.

19. *Has a nation, in time of peace, the right to interfere with commerce not its own?*—33.

No nation has a right, in time of peace, to interfere with,

or interrupt, any commerce which is lawful by the law of nations, and carried on between other independent powers, or between different members of the same state.

20. *How far is the right to make commercial treaties recognized by the law of nations?*—34.

Every nation may enter into such commercial treaties, and grant such special privileges as they may think proper; and no nation, to whom the like privileges are not conceded, has a right to take offence, provided those treaties do not affect their perfect rights. A state may enter into a treaty, by which it grants exclusive privileges to one nation, and deprives itself of the liberty to grant similar privileges to any other. These are matters of strict legal right.

21. *How far is the right of passage over foreign territory recognized by the public law?*—34.

Every nation is bound, in time of peace, to grant a passage, for lawful purposes, over their lands, rivers, and seas, to the people of other states, whenever it can be permitted without inconvenience; and burthensome conditions ought not to be annexed to the transit of persons and property. If, however, any government deems the introduction of foreigners, or their merchandise, injurious to those interests of their own people which they are bound to protect and promote, they are at liberty to withhold the indulgence.

22. *Is this entry of foreigners and their effects an absolute right?*—35.

It is not an absolute right, but only one of imperfect obligation, and it is subject to the discretion of the government which tolerates it.

23. *May the state levy a tax, or toll, upon the persons and property of strangers in transitu over its territory?*—35.

It may, by way of recompense for the expense which the accommodation creates.

24. *What if a nation possess only the upper parts of a navigable river?*—35.

She is entitled to descend to the sea without being embar-

rassed by useless and oppressive duties or regulations. It is a right of an imperfect obligation, but one that can not justly be withheld without good cause.

25. *Are strangers entitled to protection?*—36.

When foreigners are admitted into a state upon free and liberal terms, the public faith becomes pledged for their protection. The courts of justice ought to be freely open to them as a resort for the redress of their grievances.

26. *Are strangers bound to obey the laws?*—36.

They are equally bound with natives, to obedience to the laws of the country during the time they sojourn in it, and they are equally amenable for infractions of the law.

27. *Are governments bound to surrender, upon demand, fugitives from justice?*—36.

It is declared, by some of the most distinguished public jurists, that every state is bound to deny an asylum to criminals, and, upon application and due examination of the case, to surrender the fugitive to the foreign state where the crime was committed. It is the duty of government to surrender up fugitives upon demand, after the civil magistrate shall have ascertained the existence of reasonable grounds for the charge, and sufficient to put the accused upon his trial.

28. *What difficulty lies in the way of discharging the duty?*—37.

The only difficulty, in the absence of positive agreement, consists in drawing the line between the class of offenses to which the usage of nations does, and to which it does not apply, inasmuch as it is understood, in practice, to apply only to crimes of great atrocity, or deeply affecting the public safety.

29. *Is legislative provision for the purpose requisite?*—37.

It is, for the judicial power can do no more than cause the fugitive to be arrested and detained, until sufficient means and opportunity have been afforded for the discharge of this duty, to the proper organ of communication with the power that makes the demand.

30. *Do ambassadors form an exception to the general case of foreigners resident in the country?*—38.

Yes, they are exempted absolutely from all allegiance, and

from all responsibility to the laws of the country to which they are deputed, as they are representatives of their sovereigns, and requisite for negotiations and friendly intercourse.

31. *Are their persons inviolable?*—38.

They are, by the consent of all nations.

32. *What if ambassadors insult, or openly attack, the laws or government of the nation to whom they are sent?*—38.

Their functions may be suspended by a refusal to treat with them, or application can be made to their own sovereign for their recall; or they may be dismissed, and required to depart within a reasonable time; and every government has a perfect right to judge for itself, whether the language or conduct of a foreign minister is admissible.

33. *May force be applied to confine or send away an ambassador, when the safety of the state absolutely requires it?*—38, 39.

The writers on public law allow force to be applied to confine or send away an ambassador, when the safety of the state, which is superior to all other considerations, absolutely requires it.

34. *Is an ambassador considered as if he were out of the territory of the foreign power to which he is accredited?*—39.

By a fiction of law he is so considered; and it is an implied agreement among nations, that the ambassador, while he resides within the foreign state, shall be considered as a member of his own country, retaining his original domicil, and the government he represents has exclusive cognizance of his conduct and control of his person.

35. *Is an ambassador deemed under the protection of the law of nations, in his passage through the territories of a third and friendly power?*—39.

He is, while upon his public mission, in going to and returning from the government to which he is deputed.

36. *Are the attendants of the ambassador attached to his person, under his protection and privilege?*—39.

The attendants of the ambassador, and the effects in his use,

and the house in which he resides, and his domestic servants, are under his protection and privilege, and equally exempt from the foreign jurisdiction.

37. *What is the distinction between ambassadors, ministers plenipotentiary, envoys extraordinary, and resident ministers?*—39.

It relates to diplomatic precedence and etiquette, and not to their essential powers and privileges.*

38. *May a government refuse to receive an ambassador?*—40.

It may in its discretion, and without affording any just cause of war, though the act would, probably, excite unfriendly dispositions, unless accompanied with conciliatory explanations.

39. *In a state of civil war, to whom belongs the right of sending ambassadors?*—40.

To the government *de facto*, which is in the actual exercise of power.

40. *How far is the sovereign bound by an act of his minister?*—40.

This will depend upon the nature and terms of his authority. It is now the usual course for every government to reserve to itself the right to ratify, or dissent from, the treaty agreed to by its ambassador. A general letter of credence is the ordinary letter of attorney, or credential, of the minister; and it is not understood to confer a power upon the minister to bind his sovereign conclusively.

41. *What are consuls?*—41.

They are commercial agents, appointed to reside in the seaports of foreign countries, with a commission to watch over the commercial rights and privileges of the nation deputed them.

* *Chargé d'Affaires* is a diplomatic representative or minister of the fourth grade; and a resident minister seems not to be equal to a minister plenipotentiary. Nor is a minister plenipotentiary of equal rank and dignity with an ambassador, who represents the person of his sovereign. A minister extraordinary has not by that title any superiority of rank. The United States are usually represented at the courts of the great powers of the first class by ministers plenipotentiary, and at those of an inferior class by a *chargé d'affaires*; and they do not send representatives of the rank of ambassador in the diplomatic sense.

42. *At what time were consuls appointed?*—41.

About the twelfth century, in the opulent states of Italy, such as Pisa, Lucca, Genoa, and Venice.

43. *Can a government invest its consuls with judicial power over its own subjects, in a foreign country?*—42.

It can not, without the consent of the government of the foreign country, founded on treaty.

44. *Are nations bound to receive foreign consuls?*—43.

No nation is bound to receive a foreign consul, unless it has agreed to do so by treaty; and the refusal is no violation of the peace and amity between the nations.

45. *What if a consul be guilty of illegal and improper conduct?*—43.

He is liable to have his *exequatur*, or written recognition of his character, revoked, and to be punished according to the laws of the country in which he is consul, or he may be sent back to his own country, at the discretion of the government which he has offended.*

46. *Does the character of consul give any protection to that of merchant, when these characters are united in the same person?*—44.

It does not.

47. *Is a consul considered as a public minister?*—43.

He is not considered such a public minister as to be entitled to the privileges appertaining to that character, nor is he under the special protection of the law of nations. He is entitled to privileges to a certain extent, such as for a safe conduct. In civil and criminal cases, he is subject to the laws of the country in which he resides.†

48. *What court in the United States, has exclusive jurisdiction in all cases affecting consuls, as well as ambassadors, and other public ministers?*—45.

The Supreme Court of the United States.‡

* *Brown v. The United States*, 8 Cranch, 110.

† A foreign consul's exemption from suits in a state court, is a privilege which he can neither waive nor renounce. *Valarino v. Thompson*, 3 Seld. (N. Y.) R. 576. *Griffin v. Dominguez*, 2 Duer (N. Y. S. C.) R. 656.

‡ The Act of Congress to regulate the diplomatic and consular system of the United States, of August 18th, 1856, explicitly defines the functions and authority of consuls.