acteristics which have won distinction in other fields of enterprise that it would be most unwise to restrict the Presidential power. If we had obtained all our Ambassadors and Ministers by promotion, we would not have had men at London like E. J. Phelps and Joseph H. Choate, or in the present crisis men like Myron T. Herrick and Brand Whitlock. Such men, inexperienced in diplomatic practice but equipped with qualities which command respect and achieve success, are the ones who have brought lustre to American diplomacy.

I realize that sometimes mistakes will be made, and that some of the untried diplomats sent abroad are failures; that is natural; but after nearly twenty-five years of more or less intimate acquaintance with the Department of State I can say that the large majority—the very large majority—of our diplomatic representatives have maintained the dignity and standard of excellence, which have in the past characterized the diplomatic service of the United States.

Now what I have said will not, I know, meet with the approval of all of you. The idea of competitive examinations for public service is pretty deeply imbedded in popular favor. It has in a measure prevented public office from being the victim of favoritism. But it should not go too far. The President is responsible to the people for the conduct of our foreign affairs. He should be free to choose his agents where he will. They should be his friends, and in full harmony with the ideas and aspirations of his Administration, men who have a personal interest in carrying out the President's will.

VIOLATIONS OF NEUTRAL WATERS

It was announced in the press that, on March 14, 1915, the German cruiser *Dresden* was captured off Chilean waters. The facts appear to be, however, that the *Dresden* sought refuge within Chilean waters near Juan Fernandez Island, that the Chilean authorities had ordered it to put to sea or to be interned, and that the British cruisers *Glasgow* and *Kent* and auxiliary cruiser *Orama* entered Chilean waters and destroyed the *Dresden*. The British Government has admitted that the *Dresden* was destroyed by British cruisers within Chilean waters and has offered an apology for the violation of Chilean sovereignty, without seeking to excuse the action of its overzealous agents, for whose conduct there is no excuse in point of law.

This question is one which, as Lord Mansfield would say, can only be obscured by argument. The authorities are clear and in point. They hold that a belligerent should not attack a ship of the enemy within neutral jurisdiction, that if the enemy ship is thus attacked it should not defend itself, at least not in the first instance, but that it should appeal to the neutral country to prevent this violation of its neutrality; that the capture, although made within neutral jurisdiction, is valid between the belligerents, as enemy property may be taken where

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found, and that it is the right of the neutral, not of the enemy whose vessel has been captured, to protest.

As neutral jurisdiction has from time to time been violated by over-zealous and irresponsible officers, it may be well to cite and to quote the material portions of some of the leading cases on the subject.

The facts in the case of the *Eliza Ann* (1 Dod. 244), decided in 1813, are thus briefly stated by the reporter: "These were three cases of American ships, laden with hemp, iron, and other articles, and seized in Hanoe Bay, on the 11th of August, 1812, by His Majesty's ship *Vigo*, which was then lying there, with other British ships of war. A claim was given, under the direction of the Swedish minister, for the ships and cargoes, 'as taken within one mile of the main land of Sweden, and within the territory of his Majesty the King of Sweden, contrary to and in violation of the law of nations, and the territory and jurisdiction of his said Majesty.'"

Upon this statement of fact Lord Stowell (then Sir William Scott) said:

> A claim has been given, by the Swedish consul, for these ships and cargoes, as having been taken within the territories of the King of Sweden, and in violation of his territorial rights. This claim could not have been given by the Americans themselves; for it is the privilege, not of the enemy, but of the neutral country, which has a right to see that no act of violence is committed within its jurisdiction. When a violation of neutral territory takes place, that country alone, whose tranquillity has been disturbed, possesses the right of demanding reparation for the injury which she has sustained.[1] It is a principle which has been established by a variety of decisions, both in this and the Superior Court,[2] that the enemy, whose property has been captured, cannot himself give the claim, but must resort to the neutral for his remedy. Acts of violence by one enemy against another are forbidden within the limits of a neutral territory, unless they are sanctioned by the authority of the neutral state, which it has the power of granting to either of the belligerents, subject, of course, to a responsibility to the other. A neutral state may grant permission for such acts beforehand, or acquiesce in them after they shall have taken place; or it may, as has been done in the present instance, step forward and claim the property.

The British ship *Anne* (*The Anne*, 3 Wheaton, 435), with a cargo belonging to a British subject, was, to quote the language of the reporter, "captured by the privateer *Ultor*, while lying at anchor, near the Spanish part of the island of St. Domingo, on the 13th of March 1815, and carried

[1] *The Purissima Conception*, 6 C. Rob. 45; the *Diligentia*, 1 Dod. 412.

[2] *Etrusco*, Lords, 1795.

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into New York for adjudication." After stating that "the capture was made within the territorial limits of Spanish St. Domingo," Mr. Justice Story, speaking for the Supreme Court, said:

> The claim of the Spanish Government for the violation of its neutral territory being thus disposed of, it is next to be considered, whether the British claimant can assert any title founded upon that circumstance? By the return of peace, the claimant became rehabilitated with the capacity to sustain a suit in the courts of this country; and the argument is, that a capture made in a neutral territory is void; and therefore, the title by capture being invalid, the British owner has a right to restitution. The difficulty of this argument rests in the incorrectness of the premises. A capture made within neutral waters is, as between enemies, deemed, to all intents and purposes, rightful; it is only by the neutral sovereign that its legal validity can be called in question; and as to him and him only, is it to be considered void. The enemy has no rights whatsoever; and if the neutral sovereign omits or declines to interpose a claim, the property is condemnable, *jure belli*, to the captors. This is the clear result of the authorities; and the doctrines rest on well established principles of public law.
>
> There is one other point in the case which, if all other difficulties were removed, would be decisive against the claimant. It is a fact, that the captured ship first commenced hostilities against the privateer. This is admitted on all sides; and it is no excuse, to assert that it was done under a mistake of the national character of the privateer, even if this were entirely made out in the evidence. While the ship was lying in neutral waters, she was bound to abstain from all hostilities, except in self-defence. The privateer had an equal title with herself to the neutral protection, and was in no default, in approaching the coast, without showing her national character. It was a violation of that neutrality which the captured ship was bound to observe, to commence hostilities, for any purpose, in these waters; for no vessel coming thither was bound to submit to search, or to account to her for her conduct or character. When, therefore, she commenced hostilities, she forfeited the neutral protection, and the capture was no injury for which any redress could be rightfully sought from the neutral sovereign.

The *General Armstrong* (2 Moore's International Arbitrations, p. 1071, decided in 1852) an American privateer, put into the port of Fayal, in the Azores, September 26, 1814, in order to obtain a supply of fresh water. The next day a British squadron entered the port of Fayal. A fight ensued in which the privateer, after defending itself with great spirit, was abandoned and destroyed by its crew to prevent its falling into the hands of the British. The United States maintained that Portugal should have protected the American vessel and that, having failed to do so, it was liable in damages for its loss. Portugal refused to accept liability and, after much correspondence, the case was submitted in 1851 to the President of the French Republic, later the Emperor,

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Napoleon III. After stating the facts as he understood them, the Prince-President thus concluded:

> The weakness of the garrison of the island, and the undoubted decay of the guns in the forts, rendered all armed intervention on his [the Portuguese governor's] part impossible;
>
> Considering, in this state of things, that Captain Reid [the commander of the *General Armstrong*], not having applied, in the beginning, for the intervention of the neutral sovereign, and having had recourse to arms for the purpose of repelling an unjust aggression, of which he claimed to be the object, thus failed to respect the neutrality of the territory of the foreign sovereign, and released that sovereign from the obligation to afford him protection by any other means than that of a pacific intervention;
>
> From which it follows that the Government of Her Most Faithful Majesty cannot be held responsible for the results of a collision, which took place in contempt of her rights of sovereignty, in violation of the neutrality of her territory, and without the local officers or lieutenants having been requested in proper time and warned to grant aid and protection to those to whom it was due;
>
> Therefore, we have decided and we declare that the claim presented by the Government of the United States against Her Most Faithful Majesty has no foundation, and that no indemnity is due by Portugal, in consequence of the loss of the American brig, the privateer *General Armstrong*.

The case of the *Florida* (101 U. S. 37, decided in 1879), which happened during the Civil War, is very interesting. The *Florida*, a Confederate steamer, was lying in the port of Bahia, Brazil. On the night of October 7, 1864, it was attacked and captured by the U. S. steamer *Wachusett* against the protest of the Brazilian authorities. The *Florida* was brought to Hampton Roads, where it was sunk by a collision. The commander of the *Wachusett* libelled the *Florida* as prize of war. On confirming the judgment of the District Court dismissing the case, the Supreme Court said, per Mr. Justice Swayne:

> The legal principles applicable to the facts disclosed in the record are well settled in the law of nations, and in English and American jurisprudence. Extended remarks upon the subject are, therefore, unnecessary. See Grotius, De Jure Belli, b. 3, c. 4, sect. 8; Bynkershoek, 61, c. 8; Burlamaqui, vol. ii, pt. 4, c. 5, sect. 19; Vattel, b. 3, c. 7, sect. 132; Dana's Wheaton, sect. 429 and note 208; 3 Rob. Ad. Rep. 373; 5 id. 21; The *Anne*, 3 Wheat. 435; La Amistad de Rues, 5 id. 385; The *Santissima Trinidad*, 7 id. 283, 496; The *Sir William Peel*, 5 Wall. 517; The *Adela*, 6 id. 266; 1 Kent, Com. (last ed.), pp. 112, 117, 121.
>
> Grotius, speaking of enemies in war, says: "But that we may not kill or hurt them in a neutral country, proceeds not from any privileges attached to their persons, but from the right of the prince in whose dominions they are."
>
> A capture in neutral waters is valid as between belligerents. Neither a bellig-

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erent owner nor an individual enemy owner can be heard to complain. But the neutral sovereign whose territory has been violated may interpose and demand reparation, and is entitled to have the captured property restored.

The latter was not done in this case because the captured vessel had been sunk and lost. It was, therefore, impossible. * * *

The Brazilian Government was justified by the law of nations in demanding the return of the captured vessel and proper redress otherwise. It was due to its own character, and to the neutral position it had assumed between the belligerents in the war then in progress, to take prompt and vigorous measures in the case, as was done. The commander was condemned by the law of nations, public policy, and the ethics involved in his conduct.

The late Mr. W. E. Hall, thus comments upon the case:

The latter [the Cabinet at Washington] was unable to restore the vessel, which had foundered in Hampton Roads, but it surrendered the crew, and offered a more special satisfaction for the affront to Brazilian sovereignty by saluting the flag of the Empire at the spot where the offence had been committed, by dismissing the consul at Bahia [who had incited the attack], and by sending the captain of the *Wachusett* before a court-martial. (Hall's International Law, 4th ed., p. 644.)

In view of these authorities, comment on the action of the British cruisers in attacking and sinking the *Dresden* within Chilean waters would seem to be unnecessary. It may, however, be stated in conclusion that, in 1793, Great Britain demanded the return of the British ship *Grange*, seized in the Delaware Bay by the French cruiser *L'Embuscade*, and the United States complied with this request.

The consensus of opinion on this subject is thus stated in the Hague Convention concerning the Rights and Duties of Neutral Powers in Naval War, of October 18, 1907:

Article 1. Belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory or neutral waters, from any act which would, if knowingly permitted by any Power, constitute a violation of neutrality.

Article 2. Any act of hostility, including capture and the exercise of the right of search, committed by belligerent war-ships in the territorial waters of a neutral Power, constitutes a violation of neutrality and is strictly forbidden.

Article 3. When a ship has been captured in the territorial waters of a neutral Power, this Power must employ, if the prize is still within its jurisdiction, the means at its disposal to release the prize with its officers and crew, and to intern the prize crew.

If the prize is not in the jurisdiction of the neutral Power, the captor government, on the demand of that Power, must liberate the prize with its officers and crew.

It is believed that the last clause of Article 3 "implies," as specifically stated by the United States in adhering to the convention, "the duty

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of a neutral Power to make the demand therein mentioned for the return of a ship captured within the neutral jurisdiction and no longer within that jurisdiction."

THE INTERNMENT OF GERMAN VESSELS IN THE UNITED STATES

It is of interest to refer to the number of German war vessels which have been interned in the United States since the outbreak of the war on August 1, 1914, and to explain the consequences of internment. As far as is known to the JOURNAL, the following is a list of the interned vessels:

The *Geier* entered the port of Honolulu on October 15, 1914, and interned November 8, 1914. Its tender, the *Locksun*, entered Honolulu on October 16, 1914, and interned November 7, 1914.

The *Cormoran* arrived at Guam on December 14, 1914, and interned December 15, 1914.

The *Prinz Eitel Friedrich* entered the port of Newport News on March 10, 1915, and interned April 7, 1915.

The *Kronprinz Wilhelm* arrived at Newport News on April 11, 1915, and interned April 26, 1915.

The vessels of the Hamburg American Line and the North German Lloyd Line, lying in the port of New York, are merchant vessels, not ships of war, and they are not to be considered as interned, as internment is applied solely to ships of war.

Internment of ships is a recent comer in international law and made its formal, if not its first, appearance during the Russo-Japanese war. It was, however, well-recognized in land warfare, the most striking example being that of the disarmament of the French Army of the East, numbering 84,000 men, which, hard pressed by the victorious Germans, crossed the Swiss frontier early in 1871. The responsibility for the maintenance of the interned troops was not definitely settled at that time, and Hall, in commenting upon the incident, while pointing out the burden to neutrals which the support of these men involved, thought it would be unfair to tax their governments with the cost of their support, since such action would relieve its enemy of the expense of keeping them and the trouble of guarding them, while he was as safe from further danger from them as if they were prisoners of war. Hall suggested that such fugitives be released under a convention between the neutral and belligerent states, by which the latter should undertake not to employ

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