

her a man does not earn it all the more readily for not going to college at all; and as regards the work of the world of all kinds, the great bulk of it is done, and well done, by persons who have not received a university education and do not regret it. So that the benefits which the country derives from the universities consist mainly in the refining and elevating influences which they create, in the taste for study and research which they diffuse, in the social and political ideals which they frame and hold up for admiration, in the confidence in the power of knowledge which they indirectly spread among the people, and in the small though steady contributions they make to that reverence for "things not seen" in which the soul of the state may be said to lie, and without which it is nothing better than a factory or an insurance company.

There is nothing novel about the considerations we are here urging. The problem over which university reformers have been laboring in every country during the past forty years has been, how to rid the universities, properly so called, of the care of the feeble, inefficient, and poorly-prepared students, and reserve their teaching for the better fitted, older, and more matured; or, in other words, how, in the interest both of economy and culture, to reserve the highest teaching power of the community for the most promising material. It is exactly forty years since John Stuart Mill wrote a celebrated attack on the English universities, then in a very low condition, in which he laid it down broadly that the end above all for which endowed universities ought to exist was "to keep alive philosophy," leaving "the education of common minds for the common business of life" for the most part to private enterprise. This seemed at the time exacting too much, and it doubtless seems so still, but it is nevertheless true that ever since that period universities of the highest class, both in Europe and in this country, have been working in that direction—striving, that is to say, either to sift the applicants for admission, by imposing increasingly severe tests, and thus presenting to the professors only pupils of the highest grade to work upon; or, at all events, if not repelling the ill-fitted, expending all their strength in furnishing the highest educational advantages to the well-fitted. In the last century, Harvard and Yale were doing just the kind of work that the high schools now do—that is, taking young lads and teaching them the elements of literature. At the present day they are throwing this work as far as possible on the primary schools, and reserving their professors and libraries and apparatus, as far as the state of the country and the conditions of their organization will permit, for those older and advanced students who bring to the work of learning both real ardor and real preparation. A boy has to know more to get into either of them to-day than his grandfather knew when he graduated. Nevertheless, with all the efforts they can make after this true economy of power and resources, there is in both of them a large amount of waste of labor. There are men in both of them, and in various other colleges, much of whose work is almost as much a misuse of energy and time as if they were employed so many hours a day in carrying hods of mortar, simply because they are doing what the masters of primary schools ought to do, and what no man at a university ought to be asked to do. It is a kind of work, too, which, if it have to be done in colleges at all, is already abundantly provided for by endowment. No Maryland youth who desires to learn a little mathematics, get a smattering of classics, and some faint notions of natural science, or even to support himself by manual labor while doing this, will suffer if the Hopkins endowment is used for higher work. The country swarms already with institutions which meet his needs, and in which he can graduate with ease to himself and credit to his State. The Trustees of this one will do him and the State and the whole country most service, therefore, by providing a place to which, after he has got hold of the rudiments at some other college, he can come, if he has the right stuff in him, and pursue to the end the studies for which all universities should really be reserved.

PROPOSED CHANGES IN INTERNATIONAL LAW.

M. CALVO, author of the latest work in the French language upon international law, has published, in the form of a tract of a little less than one hundred pages, his report to the Institute of International Law at its late session at Geneva. It is entitled "Examen des trois Règles de Droit international proposées dans le Traité de Washington."

The tract is much more than the title indicates. It begins with an historic statement of the position of the United States in regard to the neutral powers during the civil war; of the facts relating to the *Alabama* and the other offending vessels; and of the diplomatic correspondence between the United States and Great Britain, down to the appointment of the Joint High Commission in 1871. It then gives a summary of the work of the Commission, with special reference to the Three Rules; and follows this

with an abstract of the American and English "Cases," arguments of counsel, opinions of the arbitrators, and debates in Parliament upon the subjects submitted to the Tribunal. The author then takes up the subject of the duties of neutrals and the rights of belligerents as to matters upon which the Three Rules have a bearing. He examines, in historical order, the principal treaties, acts of belligerent and neutral governments, opinions of jurists, and interior legislation of states, for the purpose of showing that the Three Rules introduce no new principle or practice into international law, but simply express and define what was already generally recognized. He considers the establishment of these Rules for the purpose of the decision by the arbitrators, and the agreement to promote their operation in future cases, to have been owing to the fact that they were in some respects called in doubt by England, and might hereafter be by any nation upon whom they might bear unfavorably, and not to the absence of a usual general acceptance of the principles on which they rested. He credits our Government with the intention to secure these principles beyond dispute or cavil hereafter by accepted definitions and solemn agreements to abide by them. He gives a thoroughgoing and unqualified support to the American side of this controversy, except as to the indirect damages, and entirely sustains the construction of the Three Rules adopted by the majority of the Tribunal at Geneva.

The latter part of the tract is devoted to the subject of contraband commerce, blockade, the prohibition of privateers, and the inviolability of the private property of enemy citizens on the high seas. On these points he inclines to the extreme views which have usually been taken by the jurists of the Continent of Europe, not as to what now is but as to what ought to be the law and practice between nations.

The learned author proposes that the Institute of International Law shall recommend the chief powers to establish a mixed commission; that this commission incorporate the new or the not undoubted propositions respecting neutrality into a declaration like that of Paris of 1856, to which all nations shall be invited to give their adherence. He suggests the substance of a form of declaration for the above purpose, in eight articles, of which the following is a sufficient sketch:

Art. I. The principles heretofore applied to private property on land shall hereafter be extended to private property at sea. Privateers shall not be licensed, and ships-of-war shall make no pursuit, search, or capture of any private vessels, neutral or enemy, whatever be the nationality of the owners of the cargo, except in the case of vessels engaged in acts of piracy, or convicted of having violated blockade, or of being loaded with contraband.

Art. II. No vessel bound to a blockaded port, having no contraband goods on board, shall be liable to seizure or capture, unless some commander of a blockading cruiser shall have first given her notice of the blockade by an endorsement on the ship's papers.

Art. III. limits contraband to some twenty articles specified, mostly weapons or ammunition,—"*et autres instruments quelconques fabriqués à l'usage de la guerre.*"

Art. IV. Each nation desiring to maintain neutrality shall give notice to the belligerents within three months after the declaration of war.

Art. V. To entitle a nation to the rights of neutrality, she shall be bound (1) to prohibit all manner of enlistments within her jurisdiction for the military or naval service of either belligerent. (2) Absolutely to prohibit the construction, fitting out, or selling for the account of either belligerent, of any vessel intended to be employed as a ship-of-war, privateer, or transport. (3) To prohibit the manufacture or exportation of contraband goods destined for either belligerent state.

Art. VI. The neutral state shall be held obliged to have sufficient legislation and penal provisions and police force, and shall make a *bonâ-fide* use of the same, with alacrity, to prevent or repress all attempts at the infraction of its duties respecting neutrality by sea or land, by all means in its power.

Art. VII. Any negligence in the performance of the duties announced in the preceding article, resulting in an effect upon the struggle, by impairing or embarrassing the results of operations in which a belligerent is engaged, shall lose the neutral state the benefit of its neutrality, and render it liable to make good in damages any injury its conduct has brought upon a belligerent state or its subjects.

Art. VIII. The neutral state which has strictly and in good faith conformed to its obligations as a neutral, may continue its commercial relations, except as to contraband goods, with all the ports of a belligerent which are not blockaded or invested.

That which will most interest the world is the changes which the report recommends. These changes relate to subjects which have been discussed

so fully for many years that no one can do much more than sum up arguments and considerations with which jurists are familiar. It is purposed to examine these proposed changes in their order.

PRIVATE PROPERTY AT SEA. (ART. I.)

This article proposes that the same principles be hereafter applied to private property at sea, as to capture, which have heretofore been applied to private property on land.

This is an attractive suggestion at first sight, but, on fuller consideration, many difficulties present themselves. First, what are the principles heretofore applied to private property on land? The rules respecting it are far more uncertain and complex, and depend far more on circumstances, than those bearing upon ships and cargoes at sea, as the kinds of property on land and their circumstances are infinitely more various. There are exigencies of battles and campaigns which authorize the destruction of all kinds of property, even the habitations and means of subsistence of man and beast. It is at the discretion of the invading force whether it shall subsist upon the invaded country; and, if it does so, it takes and uses everything it needs, subject to no law but humane considerations for the life and immediate comfort of the inhabitants. Merchandise stored for the purpose of sale would be taken without hesitation if needed. The invaders may take for their own use or destroy any kind of property which, if left untouched, would contribute directly to the military resources of the enemy state. Mere personal effects, works of art, science, or letters, would be spared, if used as such, and not held *in commercio*. (Nothing is captured at sea but merchandise, held *in commercio*, voluntarily embarked as such, *lucri causâ*.) In war on land no such thing is known as prize—that is, the transfer of commercial property or its proceeds, in which the enemy state has an interest, to the treasury of the capturing power, by judicial decisions. Simple booty or loot is sometimes permitted on land in special cases, but never at sea. An invading army may leave desolation behind it to delay the march of the enemy. What reasons or rules applicable to Sherman's march through Georgia and the Carolinas, or Sheridan's through the valley of the Shenandoah, can be transferred and applied to invoiced and insured cargoes, in ships registered and licensed by the enemy state, bound into an enemy port, there to pay duties to the enemy treasury equal perhaps to half their value or more? Besides, seizures of private property on land are made in territory where are the habitations and property of the citizens, where they have always been, and from which they cannot well be removed. Marine captures are made upon the common and neutral territory of the sea, where the property has been voluntarily sent as a commercial enterprise, the risks undertaken for the sake of the profits. The truth is there is so little analogy between marine and land captures that they have always been embraced in different categories and governed by different rules, as they rest upon widely different reasons. Property on land is of every possible character, variety, and degree, from the most sacred to the most common, from the most necessary to the most superfluous, from pure merchandise in the market to the most cherished personal objects. Search for it would involve the entering and searching of habitations, among women and children, the sick and the aged, by detached squads of soldiers, often with little chance for identification or control, where the captors are invaders, and where there is every liability and provocation to bloodshed, violence, and outrage. Private property at sea, subject to capture, is merchandise, selected for the purpose of the venture from the mass of property on land, the subject of insurance, and voluntarily embarked upon the common territory of the sea, solely *lucri causâ*, under regulations of the enemy state, contributing directly to its resources for war by duties and imposts levied at its discretion. It is put on board ships selected for the purpose, in the charge of seafaring men who have voluntarily embarked in the business with full knowledge, for the sake of the pay. The capture need never be attended by fighting; the unarmed merchantmen, if unable to escape, yielding to a necessity foreseen from the beginning by owners, insurers, and crew alike. The whole transaction may be as quiet as a transfer of credits from one belligerent to another on the books of the Barings. The responsible captor is the commissioned commander of a public ship, and all property captured must be taken into port and submitted to judicial investigation and decision, the officers of the captured vessel being always necessary witnesses. It has something of the features of a contention of exchequers under judicial supervision.

No one can satisfactorily examine the questions involved in the proposed articles unless he has a clear view of the one principle on which all belligerent restraint and repression of maritime commerce rest. War is coercion for a purpose. The more that coercion can be brought to bear upon materials and resources, and the less on life and limb, the better. It is within possi-

bility that the isolation of a state from all commerce by blockade and maritime capture, with an army of investiture, may be coercion enough, without much actual fighting on land. The purpose of maritime capture is not to punish, distress, or impoverish individuals, but to cripple the resources of the state. The test of liability to capture is the property's actual or possible contribution to these resources. Maritime capture does not rest upon any of the reasons which govern penal or criminal proceedings. There is nothing in the nature of penalty for offences about it, except of course in special cases of violation of the rules of war. The citizen of an enemy state is not, as such, an offender, or liable to any punishment or penalty, whether he is a combatant or a non-combatant. The motive or the state of mind of the owner of property is no test of its liability to capture, whether he be a citizen of an enemy state, or of a neutral state, or even a loyal subject of the capturing power. The nature and predicament of the property are the test as well in case of contraband as of what is called "enemy property." All private property of a citizen of the enemy state is not "enemy property"; and, on the other hand, the property of a neutral or a friend may be "enemy property" in certain predicaments. It is only such private property as is brought within the category of "enemy property" that is the subject of capture; and that category is determined by certain rules which mainly refer to the actual, possible, or presumed relations of the property to the resources of the enemy state.

Many writers, and some of our best, have spoken of neutral carriers of contraband as offenders, and of the condemnation of their goods as a punishment or penalty for their offence. This is not careful language, and lets in a good deal of error. Neither they, nor even neutral blockade-runners, are offenders against any law, either international or municipal. Neutrals have a legal right to deliver their contraband, or run a blockade, if they can, by peaceful means, and the belligerent has a right to intercept them and convert to his own use the cargo and, in some cases, the vessel. But he cannot treat the neutral persons concerned as offenders, or inflict any kind of penalty on their persons or property for having done or attempted those acts. These enterprises are like lotteries permitted by law, in which a man may lose his venture, but for which he cannot be punished. Even the citizen of an enemy state is not an offender, and must be treated, whether a combatant or non-combatant, as one engaged or involved in a lawful enterprise. The introduction into the discussion of war powers of the phraseology of penal or criminal law, penalties or forfeitures for offences (except in case of violations of laws of war), may lead to mistakes as to the radical principles and reasons governing the subject.

These are by no means all the reasons which might be given in explanation of the present system and as objections to the proposed rule, but they are perhaps enough to show that the subject is one requiring much graver consideration than is often given to it. The question is this: Do humanity and public policy require that the law of nations shall give to all citizens of a State engaged in war passports over the high seas for purely commercial enterprises, guaranteeing the payment of the duties and imports into its treasury, as sinews of war, against all hostile intervention? Especially, whether this is desirable as free institutions increase and citizens are more and more responsible for the acts and attitude of their state? Shall the repression of enemy commerce on the high seas be no longer a legitimate means of coercion in time of war?

CONTRABAND GOODS. (ARTICLES III., V.)

Article III. proposes to limit contraband to some twenty specified articles of military weapons and equipment, "et autres instruments quelconques fabriqués à l'usage de la guerre." As the law of nations now stands, articles in their nature ambiguous, or, as the phrase is, *incipitis usûs*, may be treated as contraband under certain circumstances. For instance, provisions destined to a besieged town; spars, coal, and steam-machinery bound to a port which is a naval arsenal; or ship's stores bound to a neutral port, not for a market, but to be delivered to the enemy's fleet lying at anchor in such port. The test is their liability to become a direct contribution to the war powers and resources of the enemy. As the rule of contraband is applied only to neutral property, the test of liability to contribute must be more clear, strong, and direct than is needed in case of property of an enemy citizen. All property of an enemy citizen may be said to contribute in some degree to the resources of the state. His property, found on the highway of nations, is liable to capture, except where it is exempted by certain rules dictated by humanity and an enlarged public policy. The property of the neutral, on the contrary, has, *primâ facie*, no relation to the enemy's state, is *primâ facie* exempt, and can be taken only where a strong case is made out against it; and that case is limited to one of direct contribution to the aid of the enemy, not in the way of general resources, but

of specific and immediate military use. Upon this principle, some articles, like swords, muskets, and powder, being mainly of military use, are always contraband, if destined to an enemy's port. Other articles, such as pianofortes, pictures, and marble statues, are never contraband. But the greater part of supposable articles are of a mixed and ambiguous character, yet may, under some circumstances, form a most direct and effective contribution to the relief of the enemy. Hitherto, prize courts have not limited themselves to an inspection of the physical nature of the articles, but have enquired into other facts bearing upon their destination and inevitable contribution to the aid or relief of the enemy. A cargo of steamer's coals, destined to Malta, Gibraltar, or Aden, of steam machinery to Norfolk, or of breadstuffs to a besieged town closely pressed by famine, would be held contraband; and so would a steamship, unarmed, and with only a navigating crew, if easily convertible into a cruiser, bound for an enemy's port in ballast, to be sold in the market. If the new rule is adopted, all circumstances will be shut out, and only what is purely a necessary weapon or equipment for battle can be cut off from reaching the enemy, if the property of a neutral.

But the most important proposal of all is that of Article V. It is scarce possible to limit the effects it may produce upon the duties of neutral states and the industries of neutral countries. It proposes that neutral states shall be required to prohibit the manufacture or exportation of articles contraband of war "qui seraient destinés à l'un des états belligérants." If this means destined to ports or territory of the belligerent state for a market, it is a proposal which we think will hardly be listened to by any state having large manufactures or commerce; nor would it be much more favored by a maritime state with small means of manufacturing articles of war and dependent for them on foreign trade. A large part of the capital, industry, and skill of the world is permanently invested in the manufacture and transportation, in time of peace as well as of war, of things which all admit to be contraband in case of war. Governments, corporations, and individuals must always be supplying themselves with such articles, not solely in view of possible war, but as a protection against domestic violence, private dangers from men or beasts, for purposes of the chase, civic celebrations, and many public works. That this whole industry, of so permanent a character, shall be subject to such repression and interruption in case of a war between two foreign powers, would be a most serious matter as regards those industries alone. But it becomes still more grave when we remember that the neutral government will be required, at the peril of war or reclamations, to be diligent in the use of detective and repressive force to prevent such manufacture and traffic. If the proposed article refers, as it probably does, only to such goods when intended to be sent and delivered directly to the authorities of a belligerent state, under a contract with such authorities, the objection will be diminished, but by no means removed. If a neutral citizen carries articles contraband of war, which are the property of the belligerent state before their exportation, or which, by a previous contract with such state, he is to deliver into its possession, he may be something more than a dealer in contraband; he may be liable to be treated as engaged in the enemy's service. If the obligation of the neutral state is confined to the prevention of the organizing and equipping of what is by itself a naval or military force or expedition, or the component parts of one, including vessels of war, it is a reasonable requirement. But it may well be doubted if it will be thought reasonable or even of much practical value to require watch and ward over the making and exporting of separate articles—such as guns, swords, powder, balls, saltpetre, saddles, and harness—though destined by contract for the possession of the public authorities of the belligerent. Whichever be the intent of the article, is it not better that these permanent industries of the world should be allowed to go on in spite of wars between other nations, the private parties interested taking the chance of their capture upon the high seas?

BLOCKADE. (ART. II.)

The learned author proposes, in this article, no change in the law of blockade, and no definition of points in doubt. As to notification of an existing blockade, the provision is substantially that which President Lincoln made in his proclamation of April 18, 1861, establishing the first blockade,—“If, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave, any of the said ports, she shall be duly warned by the commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning; and, if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured.” This clause was omitted in the proclamation of 27th April, extending the blockade to the ports of Virginia and North Carolina. Com-

modore Pendegrast, in a proclamation announcing the actual existence of this blockade, limits this warning to vessels approaching without knowledge of its existence.

Our diplomatic correspondence on this subject was not definite or decisive; but the prize courts of the United States gave to the paragraph the only construction, it must be confessed somewhat forced, which would not make the proclamation *felo de se*, namely, that it was intended for the benefit of the innocent and not of the guilty. Judge Grier says (‘Prize Causes,’ 2 Black, 678), “According to the construction contended for [by the claimant], the vessel seeking to evade the blockade might approach and retreat any number of times, and, when caught, her captors could do nothing but warn her, and endorse the warning upon her register. The same process might be repeated at every port on the blockaded coast. Indeed, according to the literal terms of the proclamation, the *Alabama* might approach, and, if captured, insist upon a warning and endorsement of her register, and then upon her discharge.” Indeed, under the proposed rule, during a large maritime war, the neutral ports nearest the blockaded region would be found full of fast-sailing steamers, advertised to take cargoes for running blockade, and warranted unwarned. If all that is meant by Art. II. is that such a notification shall be given to vessels having no actual or constructive notice of the establishment of a blockade at sea, it is of little value, such notices having always been legitimate, and used when necessary and practicable. To require them, to the exclusion of other modes of notification, even to an innocent vessel, would be unwise.

PRIVATEERS. (ARTICLE I.)

As to privateers, the world seems pretty well agreed that the objections to allowing them outweigh the policy and rights of states which are at the disadvantage of having small navies and a large and exposed commerce. Their prohibition is immediately in the interest of great naval powers, and the right to use them is one which smaller states cannot be required to relinquish but by consent. In our civil war we were able to dispense with privateers by the device of establishing a volunteer navy for the period of the war; and other states having a large mercantile marine may do the same.

FOREIGN ENLISTMENT OR NEUTRALITY ACTS. (ARTICLES VI., VII.)

These articles bear upon the points arising under the Treaty of Washington of 1871, and the decision of the arbitrators at Geneva.

It may be assumed as now settled that if a neutral state fails of its duty, the absence of adequate legislation or of detective or coercive machinery furnishes no justification. If this absence was without bad faith or gross neglect, it may be an excuse which a belligerent should accept. The importance of the proposed articles on this head lies principally in other directions. They propose to prohibit absolutely in neutral ports “la construction, l'armement ou la vente pour compte de l'un ou l'autre belligérant, de tout bâtiment destiné à être employé comme navire de guerre, croiseur ou transport.” They make it the duty of the neutral not only to have the proper machinery but to use it, *bonâ fide*, “avec empressement,” to prevent or repress any infractions of these duties attempted or committed. The articles do not use the phrase “due diligence,” but make the neutral answerable for the consequences of “toute négligence” in the performance of these duties. These consequences must be such as shall have had an influence upon the contest by affecting injuriously the results of operations of either belligerent. There seems to be no attempt at drawing a line between direct and indirect consequences, or at determining the extent to which the consequences of the injury can be traced, in respect to awarding damages. These omissions are no doubt intentional, and seem to be judicious. It is also proper to bear in mind that M. Calvo does not put forward these articles as the final definitions or the exact phraseology which the declaration should assume, but rather as sketches of the objects and bearing of the proposed rules. Article V., section 2, on the subject of building and fitting out vessels which are intended to be used by a foreign belligerent, does not seem to go beyond the provisions of the British Neutrality Act of 1870, or the judicial constructions which have been given to our own Act of 1818.

Whatever opinions may be entertained as to the expediency of some of the provisions recommended by these articles, and they are fairly open questions, not only the Institute of International Law, but the jurists and statesmen of all nations, are under obligations to M. Calvo for the great pains he has taken in bringing his studies and thought to bear upon these subjects, for the thoroughness of his preparation, and for the unquestionable value of many of his suggestions.

R. H. DANA, JR.