A COMMENCEMENT ADDRESS
AT THE LAW SCHOOL, YALE UNIVERSITY
JUNE 23, 1903

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THE DOCTRINE OF ANARCHISM

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THERE is a thought to-day in the minds of all of us to which I shall not refrain from giving expression at the outset. It is one of gratitude for the services, regret for the departure, and hope for the unbroken rest and enjoyment of the retiring Dean of the Yale Law School. My own gratitude goes to Dr. Wayland as a sort of inheritance, for over forty years ago, in a remote Western college, my first lessons in Moral Science and Intellectual Philosophy were taught from his honored father's text-books; yours is of that more intimate character that comes from seeing the son take the torch from the father's hands and bear it blazing forward over your own pathway.

May I venture further on an expression of the pleasure given to a great body of college-bred men throughout the length and breadth of the United States, and especially to almost every man who in the past quarter of a century has had to do, in however humble a way, with the foreign service of his country, by the continued duty here of the present acting Dean? To those who learned Morals and International Law from the tongue or pen of a former eminent President of Yale, no work of a Woolsey can fail to be weighty.

The Profession, not Trade, of Law

In looking over some of the impressive addresses called out by your Commencement in later years, I have observed that the learned speakers have generally had something to say more directly to the graduating class, and that this has been reserved for the conclusion of their remarks. The little I have in this kind is so simple that we may as well have done with it at once. I merely wish to express the hope that as you go out with the training and under the inspiration of Yale, it is to be the profession and not the trade of law that you are going to practice.

What the legal profession has been to this country, what in spite of the bewildering and unprecedented changes of later years its friends still love to recognize in it, may be seen in the picture drawn by a most intelligent and acute foreign observer, over two-thirds of a century ago. I quote from M. de Tocqueville:

"In America there are no nobles or literary men, and the people are apt to mistrust the wealthy. Lawyers consequently form the highest political class and the most cultivated portion of society. They have therefore nothing to gain by innovation, which adds a conservative interest to their natural taste for public honor. If I were asked where I place the American aristocracy I should reply, without hesitation, that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and bar. . . . In that country we easily perceive how the legal profession is qualified by its attributes, and even by its faults, to neutralize the vices inherent in popular government."

That, gentlemen, referred necessarily and exclusively to what I mentioned a moment ago as the legal profession, as distinguished from what under modern conditions, and in the intense life of our great cities, your critics are now apt to talk about as the legal trade. Of the latter no man has written such words and no man has thought of such praise. There is still cherished among our national glories the name of a great lawyer in New Haven, who flourished here a century ago. He is famous for his connection with the law, but he would have been famous without the law. He worked at a trade before he studied law. If he had then pursued the trade of law he might perhaps have retained the honor won in other fields, but we should have been prouder to speak of him solely as Roger Sherman, the shoemaker.

Perhaps the contrast between the profession and the very highest form of the trade of law was never more sharply and even exasperatingly drawn than in an old Boston oration, full of the fire and stern ethical exaction of our stormy anti-slavery days. Without approving its bitterness, and without accepting even its implications of principle in their extreme length, I am going to read a short extract from it that may serve you as a summons to the highest and best level of the great profession for which you have been fitting:

"Suppose we stood in that lofty temple of jurisprudence—on either side of us the statues of the great lawyers of every age and clime—and let us see what part New England—Puritan, educated, free New England—would bear in the pageant. Rome points to a colossal figure and says, 'That is Papinian, who, when the Emperor Caracalla murdered his own brother, and ordered the lawyer to defend the deed, went cheerfully to death rather than sully his lips with the atrocious plea.' And France

stretches forth her grateful hands, crying, 'That is D'Aguesseau, worthy, when he went to face an enraged King, of the farewell his wife addressed him — Go! forget that you have a wife and children to ruin, and remember only that you have France to save.' England says, 'That is Coke, who flung the laurels of eighty years in the face of the first Stuart, in the defence of the people. This is Selden, on every book of whose library you saw written the motto of which he lived worthy, Before everything Liberty! That is Mansfield, silver-tongued, who proclaimed, Slaves cannot breathe in England. . . . This is Romilly, who spent life trying to make law synonymous with justice, and succeeded in making life and property safer in every city of the empire. . . . That is Erskine, whose eloquence, in spite of Lord Eldon and George III, made it safe to speak and to print.'

"Then New England shouts, 'This is Choate, who made it safe to murder; and of whose health thieves asked before they began to steal.'"

Unjust to the lawyer no doubt it was, but as an estimate of what some walks of the law may be made, it is mordant and ineffaceable.

In that lofty Valhalla of which Mr. Phillips spoke, consecrated to the stern and awful figure of Justice herself, and peopled only by the sons of your profession whose conspicuous service approved them worthy to worship at her shrine — in that noble company, I say, you will look in vain for the statue of the modern "ambulance-chaser" or any species of the modern speculative damage-suit lawyer. Far less will you find the tradesman in litigation who has found ways to combine champerty and maintenance with safe standing in the courts. Nay, you will not even find there that sort of brilliant corporation lawyer whose practice is confined to teaching corporate wealth how to evade the laws of the land; or that other whose practice lies in teaching trades unions how to conduct campaigns against property without imperilling their own incomes, and campaigns against free labor by terrorism, by the bludgeon, by dynamite, without incurring responsibility for such deeds, while enjoying the victory they secure. Few, perhaps, in any Law School or in any age may hope to reach that lofty company, the nobles of your truly aristocratic profession, the laureates of the law; but better far fall short on that upward and shining professional path than race to the front in the downward road of the trade.

The Monroe Doctrine

When Theophilus Parsons undertook the task of training John Quincy Adams to the Law, the first book he assigned his pupil was Robertson's "History of Charles V," and the second was Vattel's "Law of Nature and Nations," while Gibbon and Hume came shortly afterward. On the assumption that the range and

dignity of law studies have not suffered at the hands of this great New England University since the days of that eminent New England lawyer, I make no apologies for now proceeding to invite the attention of the Yale Law School to certain recent aspects of public policy and international law, rather than to topics more directly related to current law practice. I wish to speak to you about the Monroe Doctrine, the Polk Doctrine, and the Doctrine of Anarchism.

To the average American the Monroe Doctrine seems so natural and necessary that he is always surprised at the surprise with which the pretension is regarded by Europe. Not one of our citizens out of a thousand has any doubt of its propriety or of our duty to maintain it. The slightest show of foreign opposition would call a practically unanimous country to its defence.

At the same time there is no very intimate familiarity with the circumstances of its origin, or the varying scope we have given it, and little attention has been paid to the changed conditions that must now affect its application. Considered at present merely in the old light, as a barrier against the reactionary designs of the Holy Alliance upon the new republics we had just recognized in the American continents at the close of the French Revolutionary and Napoleonic period, its condition somewhat resembles that of a long-neglected barrel around which has accumulated the debris of years. The hoops, the thing that made it a barrel, have dropped away; only the pressure of the debris outside holds the staves together. Remove that and the barrel would tumble to pieces. Keep up the outside pressure and it may last indefinitely.

I do not say that the illustration exactly fits the case, or that the Monroe Doctrine would disappear if Europe ceased to oppose it. I do say that under a show of European opposition it would be likely to last indefinitely; and that in a long absence of such opposition it may hold together less tenaciously. The things that made the Monroe Doctrine have disappeared: — the danger that the infant republics should be strangled by their cruel stepmother and her allies; that the Holy Alliance should check the spread of Republican institutions or overturn them in any place where they deserve to exist; or that Europeans should attempt now, under the shadow of the United States of the Twentieth Century, to colonize alleged unoccupied lands in America. Under such circumstances it may be easy, after a while, for us to look over the Monroe Doctrine again in the light of the present situation of the American continents and of our present necessities. We will certainly not abandon it; but we may find, if nobody is opposing

us, that perhaps its extension, quite so far beyond the original purpose of Mr. Monroe and Mr. Adams as the fervor of our patriots has carried it, may prove to be attended with wholly unnecessary inconvenience to ourselves.

For the sake of precision it may be well at the beginning to restate a few facts about it, not always remembered. The Doctrine is not International Law. It is not American Law. It consists merely of declarations of policy by Presidents and Secretaries of State, and these are not uniform. There is a Monroe Doctrine, suggested in part by Mr. Canning, extended and formulated by Mr. John Quincy Adams, and adopted by Mr. Monroe, in his message to Congress of December 2, 1823. There is a Polk Doctrine, starting in disputes about our Northwestern frontier and in an intrigue of the slave power for the seizure and annexation of Yucatan, collaborated by Mr. James Buchanan and his chief, and adopted by Mr. Polk, in his messages to Congress of December 2, 1845, and April 29, 1848. The Monroe Doctrine held that (1) "the American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by any European power"; and (2) that, as "the political system of the allied powers is essentially different . . . from that of America . . . with the existing colonies or dependencies of any European power (in America) we have not interfered and shall not interfere; but with the Governments who have declared their independence and maintained it . . . we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European power, in any other light than as the manifestation of an unfriendly disposition toward the United States." The second of these propositions was the one suggested and cordially welcomed by Great Britain; the first was met by instant dissent. Both, though resting wholly on the Presidential declaration, without a statute or resolution of Congress to sustain them, have become incorporated into the general American faith. But neither of them declares against any but Republican institutions for the future in this hemisphere; — in fact, about the same time we were recognizing two Emperors, Iturbide in Mexico and Dom Pedro in Brazil. Neither of them objects to transfer of dominion to Europeans by cession, purchase or the voluntary act of the inhabitants; and neither of them gives any pledge to any South American State that we would interfere in its behalf against the use of force for the collection of debts or the redress of injuries, or indeed against any European attack.

The Polk Doctrine

The Polk Doctrine, starting from Mr. Monroe's statement about colonization, says (1) "it should be distinctly announced to the world as our settled policy that no future European colony *or dominion* shall, with our consent, be planted *or established* on any part of the North American continent"; and again, quoting Mr. Monroe as opposing the extension of the European system to this hemisphere, Mr. Polk says (2) "while it is not my purpose to recommend . . . the acquisition of the dominion and sovereignty over Yucatan, yet . . . we could not consent to a transfer of this dominion and sovereignty to either Spain, Great Britain or any other European power." Thus, professing only to reaffirm the Monroe Doctrine, the Polk Doctrine extends it to forbid specifically the establishment or acquisition of dominion anywhere in North America, and inferentially anywhere in this hemisphere, by any European power. Not merely are they forbidden to claim unsettled lands and colonize them, or to interfere with the liberties of the Spanish-American Republics we had just recognized; but they must never take dominion, by cession, by purchase, by voluntary appeal of inhabitants or otherwise. Under the Polk Doctrine no American nation could part with any of its territory to Europeans to secure any advantage for itself; nor could its people determine their own destiny at their own will. Under that doctrine Germany could not buy a coaling station off the coast of Chili, or on the confines of Patagonia;—not even if the recognized sovereigns agreed to sell it and the inhabitants earnestly desired the transfer; nor could Venezuela pay its European debts by ceding—possibly even by leasing—the little island of Marguerita off its coast.

I suppose the logical basis of our original assertion of the Monroe Doctrine to have been our own National interests; and the only ground for any recognition or toleration of it by other nations to have been the national right, generally claimed, to hold our own interests paramount within the natural and legitimate sphere of our influence. Such a claim is known in international practice. What other nations cannot so clearly understand is why Patagonia, close to the Antarctic Circle and the Southern Frigid Zone, should be in our sphere of influence, any more than theirs; or, if it is, why the Azores and Morocco, less than a third as far away from us, are not also within our sphere of influence.

European Polk Doctrine.

It is always an advantage, in any effort to see all around a subject, to find the other man's point of view. Perhaps we may get a clearer insight into the action of the European mind on this subject if we should try to work out some European Monroe Doctrine, and especially some European Polk Doctrine.

China, or at any rate China and Russia combined, hold a position in Asia far more commanding than that of the United States in the three Americas. In both cases the governments are as absolutely committed to the despotic as we are to the republican idea; and there is no obvious proof that the overwhelming majority of their people do not believe in their system as much as the corresponding majority of our people believe in ours. Suppose China, or China and Russia together, had taken ground that the Asiatic continent, being entirely occupied by the existing governments which were mostly in form and principle like their own, was no longer a field for colonization or conquest by any American power; and on that ground at the outbreak of the Spanish-American War had warned us off Manila and the Philippines?

Great Britain, entrenched at the North and at the South of Africa, and reaching thence in each direction yet farther and farther toward the point where her two lines of settlement must meet, holds a position on the continent of Africa comparable at least to that of the United States on the continents of America. In connection with the minor colonies by other Governments of like tendencies toward constitutional monarchy with England herself, Belgium, Portugal and Germany, she has the immensely preponderating influence. Suppose Great Britain, with the concurrence of the rest, had said to the United States, that Africa, having already had governments under their control and committed mainly to the ideas of the constitutional monarchy, set up over her whole extent (so far as it is accessible excepting through their territory), is no longer a field for colonization by Republics, and so had warned us off, say, from Liberia?

Would the United States have cheerfully accepted that doctrine in Asia, or even in Africa? Suppose it had been announced when Dewey was compelled to leave Hong Kong, and had his choice between falling upon the national enemy at Manila or turning his back upon the Spaniard and steaming home across the Pacific? Or suppose that after the war China and Russia had called upon us to give up what we had conquered and restore the Philippines to Spain?

With our mental vision possibly a little clarified by this glimpse of how the boot might look on the other leg, it may be useful now to consider dispassionately the present advantage to us of the two doctrines, and particularly the doctrine of Mr. Polk; and to count from the only point of view a representative government on its own initiative has any right to take, that of the interest of its citizens, whether it is now worth to them what it might cost.

Our Interests and the Responsibilities

What would be our present precise motive for aggressively asserting against the world the two Doctrines, as to countries farther away from us than half Europe and Africa are? One obvious advantage, from the point of view of our naval and mercantile marine, must always be remembered, and never undervalued;—that of making naval and coaling stations scarce for our commercial rivals and possible enemies. And yet our position would seem a little curious, spending hundreds of millions on a Panama canal, so as to open to all the world on equal terms the trade on the Pacific, in which, until a canal is dug, we have such an enormous natural advantage ourselves, and then saying, Nevertheless, by our Polk Doctrine we can still delay you or hamper you a little about coaling stations! But as to the old grounds of the Monroe Doctrine, are we afraid now of peril to our own institutions? Have we any interest in forcing the maintenance of similar institutions elsewhere beyond the legitimate sphere of our influence, unless at least they give promise of bringing to others something akin to what they have brought to us? If it be true that in considerable parts of the regions to the south of us they have resulted, through the three-quarters of a century since the doctrine was announced, in tumult, lack of development, disaster and chronic revolution, what is the precise real advantage for our citizens which the United States derives from meddling, and aggressively insisting that the world must continue to witness this result of so-called republican institutions on so colossal a scale?

Mexico is now a model for all Spanish America, but in the short period since her escape from her colonial government, in 1821, a statistical historian has counted three hundred revolutions, successful or abortive.

There is one particular South American State in which, for one reason or another, and in one way or another, we have of late greatly interested ourselves. I hold the table of its revolutions, forcible removals of Chief Magistrates, and civil wars in my hands, with dates and duration of each, but shall not delay you by reading the list. From 1811, when it proclaimed its independence, till 1903, it has had, under Dictators, Supreme Chiefs, self-proclaimed Presidents and otherwise, over thirty changes, has spent over twenty-five years under three Dictatorships, each violently overthrown, and has had civil war for twenty-nine years.* No doubt as to this government, too, which has sustained its independence, and, to use the stately language of Mr. Monroe, whose independence, on great consideration and on just principles, we acknowledged, we could not view any interposition for

*See Appendix.

the purpose of oppressing it or controlling in any manner its destiny by any European power except as a manifestation of an unfriendly disposition toward the United States. It is directly within the sphere of our influence, as Cuba was, and if there should ever arise an imperative necessity for the restoration of order from the outside, the task would be ours rather than that of any European nation. But would that task be quite so imperative or exclusive if, instead of overhanging the Caribbean Sea and the Gulf of Mexico, this nation were double as far away from us as half Africa is?

Such turbulent and revolutionary governments commit offences against foreigners; sometimes injure foreign residents, sometimes affront or injure foreign vessels in their waters, sometimes run in debt and fail to pay. What then? Is the Monroe Doctrine, or, still more, the Polk Doctrine, to be construed into an international bankruptcy act, to be enforced by the United States for the benefit of any American Republic against all European creditors? Or, on the other hand, is it to degenerate into an international collection agency, maintained by the United States for the benefit of European powers which may have just claims against American Republics? In a recent conspicuous case the President has very properly and wisely given a practical negative to both these questions; while under his guidance the Secretary of State, with consummate skill, has secured the precedent that European powers first procure our consent before attempting to collect debts by force on these continents, and then only on their promise not to take territory. Perhaps it is also a useful precedent, secured at the same time, that under such conditions the game does not prove worth the candle.

But what then? What alternative is left? Shall we simply say to any European creditor that, as to any debt of any American Republic, the only rule is, *Caveat emptor?* Must the lender under any circumstances be merely told that he should have considered the risks before he made the loan, and that now he has no remedy? When the debtor country has no assets save its custom-houses and its lands, must the United States, a power aiming to stand at the head of the world's civilization, say for all time, You shall not touch the only assets of your debtor, because it is an American Republic? And, assuming that to be just, and our determination, are we ready to carry that doctrine, in case of need, as far afield as to Uruguay and Paraguay and Patagonia—and then to fight for it?

That is the vital point in the whole subject, as our First Assistant Secretary of State, Mr. Loomis, pointed out in a recent

sagacious address. It is better to consider the question before a case springs up and the patriotic temper of the people is aroused. Obviously we shall either modify the present extreme extensions of the old doctrine, which carry it far beyond any national interest it now serves, or some day or another we shall have to fight for it,—and ought to, unless we mean to play the part of a vulgar braggart, and loudly assert what we are not ready to maintain. How far would it really have concerned our interests in the case of the Argentine troubles, which prostrated the Barings and brought on a great financial crash in London, if Great Britain had found it necessary for the protection of the rights of her people to take steps in that remote country, twice as far from New York as London itself is, which would seem to infringe upon the extreme extensions of the Monroe Doctrine by Polk and Buchanan? Happily the case did not arise. But some day and with some nation it is reasonably sure to. We may better now, in a time of profound calm, and when there is no threat to affect our dignity or disturb the serenity of our judgment, give serious consideration ourselves to this question: How far south do we mean now, in the twentieth century, to push the Monroe Doctrine and the Polk Doctrine, and hold ourselves ready at any challenge to fight for them?

I am not seeking to prejudge the question or even to influence the answer. I am only presenting the subject in a light in which it has never yet had from the American people at large that serious and solemn consideration which should always precede acts of war.

In this day, in the light of the last hundred years and with the present unassailable strength of representative government on this continent, it is for us to say if there is any ground of justice or right on which we rest the Monroe Doctrine, save that of our proper predominance, in our own interest, and in the interest of republican institutions generally, within the legitimate sphere of our National influence. Unless we stop there, we cannot stop logically short of a similar care over republican institutions wherever they exist on the surface of the globe. For in an age of fast steamers and wireless telegraphy, the two American continents can no longer be treated as shut up to themselves and measurably isolated from the rest of the world. Oceans do not now separate; they unite. Buenos Ayres is actually nearer in miles to Cadiz and Madrid than to New York, and so is more than half of all South America.

e Future of
e Doctrine

Under such considerations, if no foreign interference arises suddenly to affect the National judgment, it is at least among the

possibilities that we may find two changes taking place in the National view of the ideas grouped under the popular term of the Monroe Doctrine. We may see a considerable increase in the stringency of their application, where our interest clearly calls for them, within the natural sphere of our influence. We may see them slowly moderated as to remote countries, which under changed modern conditions are no longer exclusively within that sphere. No one denies that the Gulf of Mexico, the Caribbean Sea and the waters of both oceans about the Isthmus are within that sphere. They must be forever dominated by the great Republic. It cannot tolerate a nuisance at its doors, and the races that people those shores must keep the peace and preserve order as to us, and conform to ordinary international obligations toward the world. To this the moral duty of our strength points and our material interest binds us. It was on this ground our action toward Cuba was justified; and reasons of equal strength would no doubt be found to conduct us again to similar action in any similar emergency throughout that whole region, on the continent, in the islands, or on the other ocean, at least from Los Angeles to Lima.

Toward the rest of the American continents it may some day prove more convenient for us to assume less responsibility. We shall certainly never cease to manifest our friendly interest in those countries. We do have a relation toward them which the rest of the world can never have, and we shall hope that the progress of the century may make it closer. The general spread of such order and prosperity as have made brilliant the administration of that great statesman, Porfirio Diaz, will be warmly welcomed farther south. A railroad through the three Americas will draw us more closely together. The currents of trade will change. The legitimate sphere of our influence will thus widen throughout those nations with the years; and it might be increased rather than diminished by a moderation of our extreme claim to interfere now with any exercise of their own sovereignty as to territory, government or otherwise, to which their calm judgment of their own best interests may bring them.

Political Offences in Extradition

If the hour is not already too far advanced, I should now like to ask the attention of these future lawyers and lawmakers of the Republic to another question of perhaps equal National and international concern.

Two years ago a man without an enemy was assassinated in a neighboring State in the presence of a multitude of friends. There was absolutely no cause save a political one — he was at the head of the Government. It was either a political offence or the act

of a lunatic. The assassin was promptly arrested, absence of lunacy was established, and, to the credit of the progress in the administration of American justice since previous Presidential assassinations, he was fairly but much more promptly tried and more promptly executed.

The crime was committed within a few miles of the Canadian frontier. Suppose the assassin had been able to escape to Canada. Could any British authorities have hesitated under any circumstances to give up a man who had sought on their soil after such an act the asylum their treaties have invariably granted for a political offence?

Bear in mind that the latest and only provision in any treaty of extradition between Great Britain and the United States that could apply to the case at all, that of March 11, 1890, expressly stipulates that fugitives from justice shall neither be surrendered nor punished for crimes of a political character; and further that on the question whether a crime is of a political character the decision of the government in whose jurisdiction the criminal is found must be final. It is pertinent also to recall that after the attempted assassination of the Third Napoleon in Paris by Orsini, by which a large number of victims were killed and many more maimed, the French Government suggested to Great Britain the surrender or further provision for the punishment of participants in this or kindred plots who had found asylum in London, and were in fact believed to have there originated and perfected their conspiracies; that the British Government did not comply; and that the Prime Minister who attempted to comply, Lord Palmerston, was thereby driven from office. It is equally pertinent to remember that never, with the exceptions of Belgium, Russia and Luxemburg, until some time after this assassination at Buffalo—never in fact until June 14, 1902, did the United States have a treaty for such surrender with any other nation, that its Ministers had more than once been cautioned against encouraging requests for such a clause in negotiations for any treaty, and that the only additional countries it has such treaties with to-day are Brazil and Denmark. At the time, therefore, although we had already suffered from two previous Presidential assassinations, we had not only made no agreement with Great Britain, but we had never made an agreement with any nation of the first rank (save one) to return such a prisoner ourselves, and were in no position to demand as a right more than we had stipulated to concede; while Great Britain was in some sort committed against such return in the conspicuous case I have named. On the other hand, let us always gratefully remember that when there was

thought to be some reason for imagining that the assassin of Abraham Lincoln might seek an asylum in England, our representative then at the Court of St. James, Mr. Charles Francis Adams, was able to report promptness and good will at the Foreign Office in facilitating any application that might be made for his surrender. It is also most gratifying to remember, as that accomplished student of International Law, Professor John Bassett Moore, of Columbia, reminded us in his "Case of the Salvadorean Refugees," that in June, 1894, a third of a century after the Orsini case, the Court of Queen's Bench delivered up to France a fugitive charged with the explosion at the Café Vêry, holding that, "in order to constitute an offence of a political character, there must be two or more parties in the State, each seeking to impose the government of their own choice on the other," and that the offence must be "committed by one side or the other, in pursuance of that object."

Of course this last decision makes the extreme case, as I have stated it, of a possible refusal to surrender the assassin of McKinley quite beyond all probabilities. Without a reasonable doubt he would have been surrendered at the earliest moment at which the requisite formalities could have been concluded. But it would have been an act of sympathy and international comity, due to the good will of the British Government of the day and its abhorrence of an atrocious crime, and not to the established law and practice of nations, or consistent with any uniform practice of its own.

The Assassination of Chief Magistrates

The state, then, of international law at the time of our last Presidential assassination, the record of some foreign governments, and the tenderfootedness of a part of our own treaty-making power on the subject of extradition are such that it may be useful to seize the occasion for reviewing our own actual attitude toward the most startling and, in view of certain tendencies of the age, the most dangerous of modern crimes.

At the outset we may take it for granted, I think, that it is not consistent with the dignity of the United States to be dependent on mere international comity or on isolated decisions, or on national sympathies or political currents at the moment in the country from which it may seek to reclaim such a criminal. As little is it consistent with the justice of the United States that it should leave its own attitude toward a foreign call on it for the surrender of such a criminal, to depend on the effect similar circumstances might produce upon the disposition of its Administration then in power. *Lex scripta manet.* This is too serious a

business to be left to good understandings and prevailing political currents. It surely ought to be embedded, for any two lands between which such a case can arise, in a written and solemn engagement which shall be for both of them the supreme law,—in fair weather or in foul, in times of cordiality or in times of alienation.

It is only twenty years ago that the Chief Secretary for Ireland, the real ruler of that land under the British sovereign, was assassinated in Phœnix Park. Suppose one of the men implicated in the plot had sought asylum in the United States?—as one of those thought to be involved in a subsequent plot did,—the person known for a time as "No. 1" and afterward as Tynan. Who does not know what would have been the temper, not merely of large classes of our population, but of many leaders in both political parties, in view of the feeling about Irish affairs then existing among us, toward any attempt at his extradition? Who does not see that the best intentions of the party in power here might have had a chance at least to end, in such a case, just as the best intentions of Lord Palmerston did, in nothing but political disaster? Can we afford to leave, or encourage other nations to leave, at the mercy of such fluctuating circumstances the punishment of a crime which strikes at the foundation of organized government itself?

The exact state of our own treaty law on the subject is this:

Practically every extradition treaty the United States now has in force contains a clause which stipulates that "the provisions of the present convention shall not be applied in any manner to any crime or offence of a political character." Trivial variations in phraseology occur in several of the treaties, but nothing materially restricting the meaning till we come to those already alluded to with Belgium in 1882 and with Luxemburg in 1883. There, for the first time, appeared an agreement that "an attempt against the life of the head of a foreign government, or . . . any member of his family, . . . comprising . . . murder, assassination or poisoning, shall not be considered a political offence."

It took the second Presidential assassination to bring us to that. Even then we were disposed to draw back, and requests for a similar agreement were set aside in the case of larger and more important nations. It took the third Presidential assassination to bring us, late and reluctant, to the present conventions with Brazil and Denmark. That with Denmark is of similar purport with the Belgian treaty. That with Brazil adds also to its exemption of heads of Government the Governors of States. With England, France, Germany, Austria, Spain, Italy, Mexico,

Chili, the Argentine Republic — with most of the world, in fact, we have no such agreement, but stand where we were. And our Department from the outset has held that "as a general rule there can be no extradition to a foreign State without treaty."

Statesmen have not hesitated to defend the old position, according to their lights. Thus Mr. Jefferson, as Secretary of State, wrote in 1792 to our Ministers:

"Most codes extend their definition of treason to acts not really against one's country. They do not distinguish between acts against the Government and acts against the oppressions of the Government. The latter are virtues, yet have furnished more victims to the executioner than the former. . . . The unsuccessful strugglers against tyranny have been the chief martyrs of treason laws in all countries. . . . Treasons, then, taking the simulated with the real, are sufficiently punished by exile."

Under that doctrine, strained to the limit, sustained by existing treaty protection for political offences and unrelieved by the general human abhorrence of monstrous crime, Czolgosz might have been sufficiently punished by exile.

Mr. President Tyler, in construing the treaty with Great Britain, said, in a document no doubt from the pen of his Secretary of State, Daniel Webster:

"In this . . . enumeration of crimes the object has been to exclude all political offences, or criminal charges, arising from wars or intestine commotions. Treason, misprision of treason . . . and other offences of similar character are excluded."

In quite recent years, men whose views controlled treaties have been known to object successfully to an agreement that the murderer of a King or a Czar should be distinctly excluded from the protection accorded to "political criminals."

Great Britain has at times eagerly sought what she has not always been willing to grant. She demanded from Denmark and the Low Countries the delivery of the regicides, and secured it. Again, in 1799, she secured from Hamburg the return of Napper Tandy and other Irish insurgents. On that occasion Napoleon Bonaparte addressed to the Senate of Hamburg this vehement reproach:

"Your letter does not justify your conduct. Virtue and courage are the support of States; servility and baseness their ruin. You have violated the laws of hospitality in a manner which would bring the blush of shame to the wandering tribes of the desert."

It was an irony of fate that his nephew, the Third Napoleon, should be found demanding in a graver case a like violation of

the laws of hospitality, and should meet a refusal from the very nation that had profited by the act of the Senate of Hamburg. "Ought English legislation," exclaimed Count Walewski, his Minister for Foreign Affairs, "to give hospitality to assassins, contribute to favor their designs and shelter persons who by their flagrant acts put themselves outside the pale of common rights and under the ban of humanity?" But his eloquence was in vain, and the only remedy was the outburst from officers of the French army, formally and fervently declaring their eagerness for a settlement "with the foul land which contains the haunts of these monsters who are sheltered by its laws." Nor is the United States able to claim that it is clearly and beyond possibility of question above the like reproach. If the assassin of that spotless President of the French Republic, M. Sadi Carnot, had escaped to our shores, we should surely have returned him as a voluntary act, but we had not, and we have not to this day, a treaty with France that would have required our surrendering him to justice.

The progress we have made since the assassination of McKinley starts us on the road to remove such reproaches. But for two exceptions the treaty with Brazil might be taken as embodying what in these days must be held the obvious duty of any civilized nation in the premises. It fails, however, to include all those who in either country stand in the line of succession, and it unhappily limits its exclusion of these crimes from the category of political offences rigidly to the case when they are "unconnected with political movements." Through the meshes of that last clause half the assassins in question could claim a right to escape. But with the precedents already established and with the present temper of the Senate, there seems to be no reason now why we might not promptly conclude treaties with all nations on the basis of that with Russia, merely extending it so as to include those in either country in the direct line of succession to the headship of the Government, and perhaps adding also in some form the protection of the Brazilian treaty for Governors of States.

The commonplaces of International Law and of our own practice on the subject are no doubt too familiar to require more than the briefest statement. Our government sprang from a revolution, and naturally cannot hold revolt against unjust rule a crime. No nation can be required to enforce within its own boundaries another nation's laws. The easiest and proper place to try for a crime is where it was committed. No nation can be expected to send back for such trial persons accused of acts which it does not hold criminal. It may even admit their criminality, and yet, be-

fore returning them, stipulate against a punishment greater than it thinks warranted by the nature of the crime. In proportion to the liberality of its own institutions, a nation will be predisposed to as lenient a view as possible of political offences arising out of efforts to liberalize to a similar point the institutions of other nations. The general exemption of political offences from the operation of extradition treaties among the more advanced nations thus has its origin in the nature of things. It cannot be prevented, and it ought not to be.

But since we began this exemption, enormous changes in the conditions affecting many revolts against established authority have occurred, without leading to any corresponding change in our policy. The movement from which many recent political offences spring is one not against an oppressive authority in favor of a more just one, but against any authority. Sometimes its advocates dream of an entire change in the principles of government, by which it shall cease to protect individual rights in property, and materially modify individual rights of the person. If they do not thus stop short at Communism, they go on to the overthrow of all existing government, the destruction of all authority.

These are principles that have nothing in common with the liberal institutions to which we are devoted, and struggles for which by others we have been unwilling to punish. They are principles as antagonistic to our welfare as to that of any monarchy or any autocracy. There is no reason in our views or our interests why we should protect fugitives guilty of crimes in the promotion of such principles, and no reason in the nature of things why any organized government of any sort should. They are necessary outlaws in all nations. The most vital question which every successful effort of theirs raises for us, and for all the world, is not, What form of government shall we favor? but, Shall we have any form of government? Their methods are those of the conspirator rather than the revolutionist, and their weapons the dynamite bomb, the revolver and the dagger. It is not to be tolerated that the fame of our Republic should be sullied by the slightest shade of sympathy in its international policy with these enemies of mankind who may seek shelter under our historic favor for political prisoners.

Anarchism

If in this summary of what I have termed the commonplaces of the subject I have not outrun your approval, you will then be ready to regard it as imperative on the United States, as a first step and at an early day, to free every extradition treaty it has

with any other nation from their present quasi protection under the guise of mere political offenders for the assassins of heads of government. You will be apt, I think, to go farther, and approach at least the views jointly expressed to us in the December following the assassination of President McKinley by the governments of Germany and Russia. They thought this, with previous anarchistic crimes and attempts upon the lives of Chief Magistrates, rendered it terribly evident that a struggle against the menace of anarchy is an urgent necessity for all governments. They accordingly proposed concert of action in measures to check the anarchistic movement, the strengthening of the penal code against anarchists, and particularly the expulsion of anarchists from countries of which they are not subjects.

The President had already recommended to Congress measures for keeping them out of the country, for deporting them if found here, or for their punishment; as well as an agreement by treaties making anarchy an offence against the law of nations. The response of Congress was a law merely forbidding the future admission of anarchists, or the naturalization of such as may be here. Meantime nothing is done to limit their present asylum here, and little to restrain their open propagandism.

At the same time the bill for protecting the life of the President failed, because certain Senators held that the head of the Government was entitled to no greater protection before the law than its humblest or most worthless and vicious citizen. Their motives are beyond reproach, but to me at least their logic and law seem to belong not to the America of which we are so proud, but to the sans-culotte period in France.

The efforts to overturn established governments or to throw all governments into chaos by the assassination of Chief Magistrates seem to have grown steadily more frequent and monstrous through the past century. The resulting situation is as bad now as at any period in the world's history more recent than the Roman Empire in the days of its decadent Cæsars. In forty years we have ourselves lost three noble Presidents by assassination, besides having a distinguished Secretary of State and his son murderously assaulted and the former maimed for life. In an imperfect list of assassinations, successful or attempted, on sovereigns or other Chief Magistrates during the last century, I have counted up over forty,—more than one in three years, nearly one every other year! And among them were the emancipating Czar of Russia, the emancipating President of the United States, the humane King of Italy, and the blameless and progressive President of France. To these might be fairly added

that most pitiful figure of all, the sad and suffering Empress of Austria. The men who committed some of these crimes are said to have enjoyed our hospitality and to have been chosen by lot for their infamous work at meetings under our protection. In at least one case a public meeting has been held to rejoice over the assassination of one of the most liberal and liberty-loving of modern Kings, if not to claim a share of the credit.

Gentlemen of the Yale Law School, is this your loftiest conception of law and of human rights? I present that foreign suggestion for surveillance of the anarchists and for their expulsion from all countries of which they are not subjects or citizens; and I put it to you whether the representatives of the Emperor and the Czar in that crisis came nearer than the American Congress to the demands of the highest Christian civilization.

APPENDIX

MEMORANDUM OF POLITICAL CHANGES IN VENEZUELA AND THE CENTRAL AMERICAN STATES, PREPARED BY RICHARD LEE FEARN, FROM DOCUMENTS IN THE LIBRARY OF CONGRESS.

VENEZUELA.

1811 July 14, Independence proclaimed; bloody fighting until Spaniards were driven from Venezuela and Peru.
1822 Bolivar chosen dictator by Peru, Paez being his military chief of Venezuela, the seven years succeeding.
1829 November, Caracas declared for Paez as Supreme Chief, disavowing Bolivar's authority, the latter being then in Colombia.
1830 Paez elected first President.
1835 "Revolucion de las Reformas" deposed and expelled second President Vargas. Paez took the field against "Reformistas"; civil war until
1836 "Reformistas" subjugated.
1839 Paez became "legitimate" head of Republic and ruled until
1847 General Jose Tadeo Monagas elected sixth President; Paez revolted against Monagas, who finally drove him from the country.
1854 J. T. Monagas forced to abdicate by fusion of the two parties (Oligarquia and Liberal). Succeeded by his brother Jose Gregorio Monagas, who had alternated with him in the Presidency since 1847.
1858 Monagas overthrown by General Tovar Castro, who became President; quickly succeeded by Gual and Paez in turn.
1859 General Falcon (Liberal) took Caracas and proclaimed himself; civil war until
1863 Falcon pacified the country, only to be quickly overthrown by a pronunciamento in favor of J. T. Monagas.
1870 Guzman Blanco (Liberal) took possession of Caracas, announcing himself dictator.
1873 Blanco elected President and acknowledged by whole country. Was autocrat with various figureheads in Presidency for 18 years.
1890 Raimundo Andueza Palacio elected by acclamation in Congress; inaugurated February 20 for two years.
1892 Palacio set himself up as Dictator, was denounced as usurper, and Joaquin Crespo, assisted by Rojas Paul, led revolt to enforce the Constitution. In five months Palacio fled the country, being succeeded in rapid succession by Urdaneta, Mendota, and Pulido. Crespo triumphed in October, was proclaimed provisional President and immediately ordered election for National Assembly, which met in
1893 October, and elected Crespo for a four-year term commencing February 20, 1894.
1894 Many small and brief revolts in various parts of the country.
1895 A larger revolt in favor of Rojas Paul, but soon smoothed over at instance of United States minister on account of need of national unity because of boundary dispute reaching acute phase.

1897 Andrade (Liberal) elected over Rojas Paul by overwhelming majority.
1898 General Hernandez started rebellion in which Crespo was killed in April; collapsed in June—caused by Andrade's dictatorial acts.
1899 Cipriano Castro (Liberal), Governor of Los Andes, took up last year's revolt; forces grew as he proceeded until Andrade fled the country in October. Castro became provisional President.
1900 Disaffection and fighting in many parts of the country until July, when peace and amnesty were proclaimed.
1901 Exiles invaded from Colombia; martial law all the year; half a dozen bodies in as many parts of the country in interest of various exiles including Hernandez and Matos. Castro formally elected President in October for two years.
1902 General Manuel A. Matos (formerly minister of the treasury under Crespo), "richest of Venezuelans," had as many as 15,000 men at one time, and controlled many interior sections, including Orinoco, but fled to Curaçoa in October, his numerous generals keeping up the revolt out of the reach of government troops.
1903 April, Matos in control of Eastern part of country.

GUATEMALA.

1825 April, Arce elected first President Central American Republic, followed by two years' fighting.
1828 February, "Arce retired without resigning."
1829 April, General Francisco Morazan, of Honduras, overthrew Central government, establishing Barrundia as President, subsequently taking the office himself.
1838 February, Rafael Carrera, mob leader, seized Guatemala, destroyed Morazan's power, leading in 1840 to destruction of Central American Republic.
1844 Rafael Carrera caused Guatemala to elect him President, had his term extended in 1854 "for life," and ruled till his death in 1865.
1870 Justo Rufino Barrios after several years' fighting secured absolute control of government and had himself elected President.
1887 June, President Manuel L. Barillas established temporary dictatorship on account of revolutionary bands menacing government.
1890 State of anarchy throughout country: son of Barrios, late dictator, and numerous other discontents, encouraged by Ezeta, President of Salvador, opposed Barillas, who continued dictator. General Alfonso Irungaray issued pronunciamento, and, joined by 1500 deserters, seized the capital, but failed to hold it. Dr. Rafael Ayala, "actual" Vice-President, set up a rival government, which lasted only a few months, until Barillas obtained peace with Salvador through mediation of American Minister.
1891 Barillas kept busy suppressing small risings.
1897 June to October, futile revolt, led by Vice-President Morales, with much fighting, because national assembly had prolonged term of President Barrios four years.
1898 Barrios murdered by British subject. Cabrera, friend of late dictator, was proclaimed acting President, in the absence of Vice-President Morales, who returned to take his place by force, but (September) Cabrera was elected President.

HONDURAS.

1828 to 1840 H. H. Bancroft gives list of 19 rulers in this period.
1865 José Maria Medina made President at dictation of Guatemala, after revolutions.

1872 March 25, Celeo Arias made President by Salvador and Guatemala, revolutions following.
1874 January 13, Ponciano Leiva overthrew Arias and established himself as dictator.
1876 June 8, Marco Aurelio Soto, Guatemalan ex-minister of foreign affairs, made President by Guatemalan troops.
1890 General Sanchez compelled President Bogran to become a fugitive from the capital, which Bogran recaptured in a few weeks.
1891 General Leiva again elected President; General Policarpo Bonilla, the rival candidate who received only one-third as many votes, raised 1400 men in revolt, but they were soon dispersed.
1892 Bonilla was proclaimed President by Liberals, General Leiva having resigned in favor of General Vasquez, his Minister of War, who finally in
1893 June, compelled revolutionists to disband, with Bonilla a fugitive.
December, Bonilla returned from Nicaragua, overthrew Vasquez, and in
1894 Autumn, had himself overwhelmingly elected President and his brother, Vice-President.

SALVADOR.

No peace at all until 1865.
1872 Liberals, assisted by Honduras, overthrew President Duenas, who had been installed by Guatemala in 1865.
1876 Valle ousted from Presidency by Guatemalans.
1890 June 22, President Mendenez killed at anniversary banquet. General Carlos Ezeta arrived with 600 men and was proclaimed provisional President.
Zaldivar, who had been living in Paris, and Alvarez, in Guatemala, raised forces in their own behalf, and General Rivas raised force in behalf of Vice-President Ayala.
Congress in September "unanimously elected" Carlos Ezeta provisional President until March, 1891.
1891 Numerous plots against Ezeta, who had himself elected for four years' term. Ayala, his principal rival, and several others were assassinated.
1894 General Rafael Antonio Gutierrez and army officers started revolution against Ezeta, April (Carlos, President, and Antonio, Vice-President), who fled (June).
Gutierrez proclaimed himself President, June 24.
1895 Ezeta brothers made a weak attempt to reassert themselves.
1896 Several small outbreaks.
1898 General Tomas Regolado headed an insurrection just before election of successor to Gutierrez and established provisional government without bloodshed.

NICARAGUA.

1824 to 1840 continuous fighting; numerous successful revolts; all rulers chosen by force.
1855 William Walker (filibuster) captured government and elected himself President in 1856.
1891 Roberto Sacasa "had himself elected"; small risings, because he expelled prominent men, quickly quelled.
1893 Joaquin Zavala and others united to overthrow Sacasa; organized provisional government, with Morales nominal President; American minister mediated, Sacasa resigning to Machado until election could be held. Zavala's army was admitted to Managua to disband, but seized the town (July), Zavala proclaiming himself President,

but gave way (August) to Zelaya, chosen as a compromise between opposing political parties. Colonel Ortiz with 10,000 armed men had in the meantime captured Corinto and proclaimed himself provisional President, but finally recognized the election of Zelaya.

1894 Marked by small disaffections in favor of Ortiz.

1896 Determined attempt to overthrow Zelaya, who promptly declared himself dictator.
(February) Vice-President Baca proclaimed himself provisional President, was assisted by Ortiz. Zelaya, helped by Honduras, triumphed (May).

1898 February, small revolts suppressed.

1899 Revolt in Mosquito territory very brief.

COSTA RICA.

1838 May, Braulio Carillo overthrew Jefe, of Costa Rica.

1841 General Morazan, of Honduras, seized government in April, to be driven out in September.

1855 July, General Juan Lopez drove out President Cabanas and caused new election to be held.

1859 August 14, Juan Rafael Mora, who had been elected by the masses three months before, was deposed by the property owners, merchants, and army and a successor duly elected.

1860 Mora landed with four hundred men but was captured and shot (September).

1869 Lorenzo Salazar, Maximo Blanco, and others headed a pronunciamento, deposed President Castro, and installed in his place Jesus Jiminez, who was First Designado.

1870 Jiminez similarly deposed and Bruno Carranza proclaimed in his place.

1877 Revolutionary movement forced President Herrara to surrender office to Tomas Guardia, who was President in 1872, and who the year before was First Designado, Herrara being Second.

1892 President Rodriguez dissolved Congress and suspended constitutional rights because of differences in policy; no fighting.

1893 Conspiracy to overthrow Rodriguez nipped in the bud.

MEXICO.

"Between 1821 and 1868 the form of government was changed ten times; over fifty persons succeeded each other as presidents, dictators, or emperors; both emperors were shot,—Iturbide in 1824, Maximilian in 1867,—and, according to some calculations, there occurred at least three hundred pronunciamentos."—*Encyclopedia Britannica*, 9th Edition.

TEXT OF THE LAW AGAINST ANARCHISTS PASSED ON THE LAST NIGHT OF THE LAST SESSION OF CONGRESS:

From Chapter 1012, *Session II, LVIIth Congress. Statutes at Large.*

§ 2. That the following classes of aliens shall be excluded from admission into the United States: All . . . anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States or of all government or of all forms of law, or the assassination of public officials; . . .

§ 38. That no person who disbelieves in or who is opposed to all organized government, or who is a member or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity or propriety of the unlawful assaulting or killing of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any Territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of the Treasury under such rules and regulations as he shall prescribe.

That any person who knowingly aids or assists any such person to enter the United States or any Territory or place subject to the jurisdiction thereof, or who connives or conspires with any person or persons to allow, procure, or permit any such person to enter therein, except pursuant to such rules and regulations made by the Secretary of the Treasury, shall be fined not more than five thousand dollars, or imprisoned for not less than one nor more than five years, or both.

§ 39. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States or of any other organized government, because of his or their official character, or who has violated any of the provisions of this Act, shall be naturalized or be made a citizen of the United States. All courts and tribunals and all judges and officers thereof having jurisdiction of naturalization proceedings or duties to perform in regard thereto shall, on the final application for naturalization, make careful inquiry into such matters, and before issuing the final order or certificate of naturalization cause to be entered on record the affidavit of the applicant and of his witnesses so far as applicable, reciting and affirming the truth of every material fact requisite for naturalization. All final orders and certificates of naturalization hereafter made shall show on their face specifically that said affidavits were duly made and recorded, and all orders and certificates that fail to show such facts shall be null and void.

That any person who purposely procures naturalization in violation of the provisions of this section shall be fined not more than five thousand dollars, or shall be imprisoned not less than one nor more than ten years, or both, and the court in which such conviction is had shall thereupon adjudge and declare the order or decree and all certificates admitting such person to citizenship null and void. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

That any person who knowingly aids, advises or encourages any such person to apply for or to secure naturalization or to file the preliminary papers declaring an intent to become a citizen of the United States, or who in any naturalization proceedings knowingly procures or gives false testimony as to any material fact, or who knowingly makes an affidavit false as to any material fact required to be proved in such proceedings, shall be fined not more than five thousand dollars, and imprisoned not less than one nor more than ten years, or both.

The foregoing provisions concerning naturalization shall not be enforced until ninety days after the approval hereof.

Approved March 3, 1903.