PAPERS

RELATING TO

FOREIGN AFFAIRS,

ACCOMPANYING THE

ANNUAL MESSAGE OF THE PRESIDENT

TO THE

SECOND SESSION THIRTY-EIGHTH CONGRESS.

PART IV.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1865.

CORRESPONDENCE.

SPAIN.

Mr. Seward to Mr. Perry.

[Extract.]

No. 12.] DEPARTMENT OF STATE,
Washington, October 5, 1863.

SIR:

* * * * * * * * * * *

We hear as yet nothing from her Catholic Majesty's government concerning the question of maritime jurisdiction. We are frank, direct, and friendly in our attitude towards Spain. I need not say that we do not fear aggression, although we deprecate it.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HORATIO J. PERRY, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Mr. Perry.

No. 14.] DEPARTMENT OF STATE,
Washington, October 6, 1863.

SIR: Your two despatches written from Valencia, one without a number, dated August 24, and the other numbered 111, and dated August 27, have been received. The political information contained in the latter is very interesting.

Your proceedings relative to the occurrence which induced you to repair to Valencia are approved.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HORATIO J. PERRY, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Mr. Koerner.

No. 53.] DEPARTMENT OF STATE,
Washington, October 8, 1863.

SIR: I have the honor to acknowledge the reception of despatches as follows: from Mr. Perry, late in charge of the legation, No. 113, bearing date September 15, and No. 114, of the date of September 18. From yourself, No. 53, of the date of September 18, and No. 54, of the date of September 20.

In the present paper I shall confine myself to so much of these despatches as relates to the question of the maritime boundary of Spain in the waters which surround the island of Cuba. Mr. Perry's proceedings on that question are approved, so far as their spirit and general effect are concerned, but he has unfortunately erred in regard to the form of proceeding he chose for referring the question to the arbitrament of his Majesty the King of the Belgians. Mr. Perry has assumed, and has left the Marquis of Miraflores to infer, that the President can properly make the reference without first obtaining the consent of the Senate of the United States. On the contrary, the United States cannot contract any binding engagement whatever with a foreign power except by a solemn treaty, which in every case must be submitted before ratification to the Senate for its approval. This point was explicitly reserved in my note to Mr. Tassara, of the 10th of August, and it ought to have been distinctly brought by Mr. Perry to the notice of the Marquis of Miraflores. You will please make the necessary explanation at the earliest convenient moment to the Marquis. With a view to carry the agreement into effect without any loss of time, I herewith send you the project of a treaty, a copy whereof I have also furnished to Mr. Tassara. You will submit this project to the Marquis of Miraflores, who will be expected to suggest any modifications of it which he may think necessary, and to give full powers to Mr. Tassara to close the negotiation. When I shall have agreed with him, the treaty can then be signed here, and having been duly executed, the President will promptly submit it to the Senate, and ask its approval thereof. If, as the President expects, that approval shall be given, the treaty will be formally ratified and exchanged. When thus exchanged, it will be the authority upon which his Majesty the King of the Belgians can proceed to examine and determine the question, and his award will be final and conclusive upon both parties.

I am not to be understood as raising any objections to the proposition of the marquis that her Catholic Majesty shall address a letter to the King, requesting him to assume the office of arbitration; though the request must, of course, admit the reservation of the approval of the measure by the Senate of the United States. A letter of that form would be a proper demonstration of respect to his Majesty, and the President will concur in it by addressing a similar letter to the King.

It will require due consideration on your part so to conduct this affair as, in the first place, to satisfy the cabinet of Spain that the departure from the course agreed upon between Mr. Perry and the Marquis of Miraflores is rendered necessary by the form of our organic law; and secondly, to relieve Mr. Perry of a misapprehension of our course on the subject; to which end you are authorized to say to him that his error is set down to the account of mere inadvertence, and does not at all derogate from the highest appreciation of his ability and diligence in conducting the important negotiation with which he has been charged.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid.*

PROJECT.

Convention between the United States of America and her Catholic Majesty.

The United States of America and her Catholic Majesty, being equally desirous of preserving and strengthening the amicable relations which have so long existed between them, and, with that view, of disposing satisfactorily of the disputed question concerning the maritime jurisdiction of Spain in the waters

which surround the island of Cuba, have agreed to conclude a convention for that purpose, and have named as their plenipotentiaries the following persons: The President of the United States, William H. Seward, Secretary of State of the United States, and her Catholic Majesty, Señor Don Gabriel Garcia y Tassara, who, having exchanged their full powers, found in good and due form, have signed the following articles:

ARTICLE I.

The contracting parties agree that a copy of the correspondence between William H. Seward, Secretary of State of the United States, and Señor Don Gabriel Garcia y Tassara, accredited to the United States as her Catholic Majesty's envoy extraordinary and minister plenipotentiary, touching the maritime jurisdiction claimed by Spain beyond the shores of the island of Cuba, and also the correspondence, on the same question which has taken place between Mr. Horatio J. Perry, &c., &c., &c., and the Marquis of Miraflores, &c., &c., &c., shall be submitted to the consideration of his Majesty the King of the Belgians, in order that his said Majesty, as arbiter, may determine the single question involved therein, namely, whether the maritime jurisdiction of her Catholic Majesty in the waters which surround the island of Cuba extends only three miles, or whether it extends six miles from the coast of said island.

ARTICLE II.

The contracting parties further agree to abide by the decision of his said Majesty from and after the time when the same shall have been made known to them.

ARTICLE III.

This convention shall be ratified, and the respective ratifications shall be exchanged at Washington, within ——— months from the signature hereof, or sooner if possible.

In faith whereof, we, the plenipotentiaries of the United States of America and her Catholic Majesty, have signed and sealed these presents.

Done at Washington, on the —— day of ———— in the year of our Lord one thousand eight hundred and sixty-three, and of the independence of the United States the eighty-eighth.

Mr. Seward to Mr. Koerner.

No. 55.] DEPARTMENT OF STATE,
Washington, October 23, 1863.

SIR: Your despatch of September 26, No. 56, has been received, and is approved.

The note of the Marquis of Miraflores to Mr. Perry, which bears date on the 18th September, was designed to define the question which is to be submitted to the arbitrament of the King of Belgium, and to deprive it of all uncertainty. The note is very properly conceived, yet it contains one expression that may possibly tend to confuse the question. This expression is found in the first paragraph, and is in these words: "Seeing that she (meaning Spain) has been in peaceful possession of it," meaning the six miles of maritime jurisdiction around the island of Cuba.

Now it is proposed that for the purpose of elucidating the subject, the correspondence of the two governments upon the question of the maritime bound-

ary of Cuba shall be submitted to arbitration. Of course, the above-mentioned note of the Marquis of Miraflores would fall among the papers submitted to the proposed royal arbiter. But this government, while it leaves her Catholic Majesty free to assert that she has been in possession of the belt claimed, does not by any means admit the accuracy of the assertion thus made. It is very clear that the Marquis does not design to claim that we have admitted it, since the fact has been controverted in our part of the correspondence. You will please give a copy of this despatch to the Marquis, and ask him to strike out from his note the words I have quoted, or to give you a new note in which he will express his acquiescence in the views I have herein presented.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid.*

Mr. Seward to Mr. Koerner.

No. 57.] DEPARTMENT OF STATE,
Washington, November 17, 1863.

SIR: Your despatches, No. 57, of the 8th of October, and No. 58, of the 11th of October, have been received. The facts they communicate touching the efforts of the French emperor to increase his influence in Spain, and on the subject of the insurrection in Santa Domingo, are very interesting.

You were quite right in assuring the Marquis of Miraflores that the accusations to which you allude, concerning our participation in the troubles at Santa Domingo, were utterly groundless. All reports or intimations of any kind that the government or people of the United States have practiced, or are practicing, interference in that quarter, or in Cuba, or elsewhere, are entirely without any foundation in fact.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid.*

Mr. Seward to Mr. Koerner.

No. 58.] DEPARTMENT OF STATE,
Washington, November 23, 1863.

SIR: Your despatch of October 24, No. 59, has been received, and I give you my sincere thanks for the fidelity with which, as it seems to me, you have fixed upon a permanent plate the political scene now passing at the Court of Madrid.

The idle calumny that the United States have stirred up and are giving aid to the revolutionary movements now occurring in the island of San Domingo would not be thought worthy of notice if it had not been presented to me by Mr. Tassara. I give you, for your information, a copy of the correspondence which has been held on that subject between him and this department. I am further not unwilling to have an occasion to let it be known to Spain, as well as to other nations, how faithfully we practice the duties, as well as assert the rights, of a sovereign state. The United States neither contrive, nor aid, nor encourage, nor mix themselves up in civil or international wars of other nations.

form a cabinet, the present Cortes would, at all events, have to be dissolved, and an appeal made to the people. Should a new election give a decided majority to the ministry, a somewhat more permanent government might be expected.

Personally I regret the retirement of the Marquis of Miraflores. He was a model gentleman of the old school, formal to a certain degree, yet very courteous and even cordial. He was frank, and, I think, a man of honor. His mental capacities were not considered very high, yet he has considerable experience in public affairs, and I think he made, upon the whole, a pretty good minister.

I am just informed of the formation of a new ministry; although Narvaez is not in it, its complexion is "moderado." President and minister of state is Arrazola, judge of the supreme tribunal of Spain. He was a cabinet minister many years ago. Minister of war is General Lersund, Colonies, Alexander de Castro. The other ministers are gentlemen of whom little is known outside of Spain.

I have the honor to be, very respectfully, your most obedient servant,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

Mr. Seward to Mr. Koerner.

No. 67.] DEPARTMENT OF STATE,
Washington, February 6, 1864.

SIR: By the 9th article of the treaty of Washington of the 9th of August, 1842, between the United States and Great Britain, it is stipulated that the parties will unite in all becoming representations and remonstrances with any and all powers within whose dominions such markets [for African negroes] are allowed to exist, and that they will urge upon all such powers the propriety and duty of closing such markets effectually at once and forever.

Spain is believed to be the only Christian state into whose dominions African negroes are now introduced as slaves. She has a treaty with Great Britain stipulating for the suppression of that traffic. The instrument was concluded at a time and under circumstances which, as it seems to us, imposed a peculiar weight of moral obligation on Spain to see that her stipulations were carried into full effect. It is understood, however, that the just expectations of the British government in that respect have been signally disappointed. This has no doubt been mostly owing to the fact that a great part of the public revenue of Spain has hitherto been derived from Cuba, the prosperity of which island has in some quarters been erroneously supposed to depend upon a continued supply of imported slave labor. This is believed to be the source of the disregard of Cuban slave-dealers of the humane policy of the home government, and the alleged inefficiency at times of the colonial authorities.

We have no treaty with Spain on the subject of the slave trade; but, as the laws of the United States characterized it as piracy long before our treaty with Great Britain above referred to, we think ourselves entitled to consider that trade an offence against public law, so far as to warrant our faithful compliance with the stipulation contained in that treaty. Herewith I transmit a copy of an informal note on this subject of the 4th instant addressed to me by Lord Lyons, and of the papers to which it refers. From these it appears that though the number of Africans introduced into Cuba is diminishing, yet that the municipal laws in force there require amendment before a stoppage of the traffic can be expected. The peculiar relations of Great Britain to Spain with reference to this topic may justify to the full extent the text of the note of Sir John Crampton to the Marquis of Miraflores. The relations of the United

States to Spain, however, are of a different character, but the President authorizes and directs you to address a communication in general terms to the Spanish minister for foreign affairs, setting forth the treaty stipulations between the United States and Great Britain on this subject, and stating that it would afford the utmost satisfaction in this country if any obstacles existing in Cuba to the complete suppression of the African slave trade should be removed.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid.*

Mr. Koerner to Mr. Seward.

[Extract.]

No. 76.] LEGATION OF THE UNITED STATES,
Madrid, February 14, 1864.

SIR: * * * * *

The Santo Domingo question is lately occupying very much the thoughts of the reflecting portion of the nation. Some papers boldly advocate an abandonment of the island. It is certain that the cabinet has been very much engaged with the subject. Officials lately arrived from the theatre of war have been examined by the ministers. It is reported, upon pretty good authority, that a commission will be sent there to make a thorough investigation into the condition of affairs. Letters from the island, freely published in the papers here, represent a thorough conquest, and the restoration of lasting tranquillity there, as impossible. It is easy enough for the Spanish troops to subdue the insurgent places near the coast, where such troops can be subsisted by the fleet. But the interior is said to be so thinly peopled, so little cultivated, so densely covered by primeval forests, so destitute of roads, that no armies can penetrate into the country, where bands of natives can exist with ease, ready to issue forth, whenever an opportunity offers, to assail the Spanish posts.

I believe that the government of Hayti does its best (at least apparently) to prevent encouragement and material aid being given to the Santo Domingo people; but this being a war of races, and Spain being feared as a neighbor in the island, it cannot, weak as it is, restrain the Haytians from affording great assistance to the insurgents. Add to all this the terrible climate, which is making fearful ravages in the Spanish army, and it may well be believed when it is said that there is hardly a man now in Spain but regrets deeply this annexation, and denounces it now as a most egregious blunder. A strong and powerful ministry alone, however, could take the step of abandoning the fatal gift, and such a one does not at present exist, and may not exist for a long time to come. In the meanwhile the finances of Spain, never very flourishing, though lately improving, will suffer very greatly.

The Dutch and Prussian ministers here, as also the consul general of the Hanseatic towns, have received instructions from their respective governments to present claims for damages done to their shipping by the bombardment of Puerto Plata by the Spanish forces. The English minister has also received notice that claims will be presented. Upon the supposition that the United States had similar claims I have been applied to for joint action in the matter. But as I have not received any information on the subject, I have of course refrained from saying or doing anything.

Your circular despatch of the 12th of August, 1863, presenting succinctly and forcibly a tableau of the condition of military affairs in our country, and of the steady progress of the Union cause, has been translated by Mr. Perry into

of General Prim, (*El Condé de Reus,*) in which he gives a brief sketch of his journey to the United States, and dwells more particularly on the great military and financial resources of the United States. The Iberia being the principal organ of the great *Progressista* party, and having a very wide circulation, the views of the general, so favorable to the great Union cause, and so flattering to our national power, cannot fail to create an excellent impression among the people of Spain.

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It is understood that the ministry have last night tendered their resignation to the Queen; whether it will be accepted, or whether the Cortes will be dissolved, is not yet ascertained.

I have the honor to be your most obedient servant,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

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Mr. Koerner to Mr. Arrazola.

LEGATION OF THE UNITED STATES,
Madrid, February 27, 1864.

SIR: The subject of suppressing the inhuman African slave trade has been one of deep anxiety to the government of the United States from the time of its foundation. The United States have been among the first of nations, if not the first, that have denounced this traffic in human beings as piracy, and have visited their own citizens implicated in it with the severest penalties. At very heavy pecuniary sacrifices, and at the risk of the lives of their own naval officers and seamen, they have for more than twenty years supported a squadron on the western coast of Africa, in a most destructive climate, in order to prevent the successful carrying on of this nefarious trade.

They have, with a like view, entered into stipulations with the government of her Britannic Majesty, in the year 1842, contained in what is called the treaty of Washington, the 9th article of which is as follows:

[Here follows the article entire.]

The attention of the President of the United States has lately been directed to certain difficulties which have presented themselves, and which appear to prevent a complete suppression of the slave trade in the colonial possessions of her Catholic Majesty, and more especially in the island of Cuba, which difficulties do not arise from any desire of the Spanish colonial authorities to favor the said trade. It is well known that the efforts made by the captain general of that island correspond entirely to the wise and humane policy which the home government of her Catholic Majesty has adopted in regard to the subject in question, and which is thoroughly appreciated by the President and the people of the United States. The difficulties spoken of seem to be inherent in the laws and regulations in existence, which are supposed to give room to interpretations by which their force may be evaded.

In view of the general policy of the United States, which looks upon the African slave trade as an offence against the public law of nations, and has denounced it as piracy; in view, also, of the treaty stipulations existing between them and the government of her Britannic Majesty, the President of the United States has instructed me to respectfully call the attention of her Catholic Majesty's government to this subject, and to suggest such a revision of the existing laws and regulations concerning the unlawful introduction of slaves into

the island of Cuba as will best accomplish the object which her Majesty's government had in view when those laws and regulations were enacted.

It is hardly necessary for the undersigned to assure your excellency that these suggestions arise from the purest motives, and would not have been made unless the President had considered the very friendly and cordial relations existing between the United States and Spain as justifying this application, and had he not been bound to another friendly nation by engagements which it is his duty as well as his pleasure to carry out faithfully.

It is almost equally unnecessary for me to inform your excellency that it would afford the utmost satisfaction to the President and the people of the United States if any obstacles existing in the island of Cuba to the complete suppression of the African slave trade should be removed by the considerate action of the government of her Catholic Majesty.

The undersigned takes great pleasure to assure, &c., &c., &c.

GUSTAVUS KOERNER.

His Excellency Señor D. L. ARRAZOLA,
Minister of State of her Catholic Majesty, &c.

Mr. Seward to Mr. Koerner.

No. 71.] DEPARTMENT OF STATE,
Washington, March 7, 1864.

SIR: On the 6th of last month a note was received at this department from Mr. Tassara, requesting that a certain shipment of leather accoutrements destined for Spanish troops in Cuba, which had been detained at the New York custom-house, might be allowed to proceed to their destination. The existence of a general order of the War Department, which prohibits the exportation of arms and military accoutrements, forbade a compliance with the request of Mr. Tassara. As information upon this subject will probably be communicated by him to his government, it is deemed proper to bring the matter to your attention, in order that you may be able to explain to her Catholic Majesty's minister for foreign affairs the grounds upon which the refusal of Mr. Tassara's request was based. At the present time the resources of the country are taxed to the utmost to supply our own troops, and for this reason the government is compelled to enforce rigidly the executive order of November 21, 1862, prohibiting the exportation of arms, ammunition, and military stores. It is hardly necessary to add, that under other circumstances the request of her Catholic Majesty's minister would have been most cheerfully complied with.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., &c., Madrid.*

Mr. Koerner to Mr. Seward.

No. 79.] LEGATION OF THE UNITED STATES,
Madrid, March 8, 1864.

SIR: Some weeks ago the British steamer Princess, Captain St. Clair, from New Castle to Ancona, in ballast, entered the port of Malaga to coal.

Suspicion being aroused, a somewhat thorough search by the port authorities discovered secreted in the hold several rifled cannon, revolvers, sabres, a large amount of powder, military accoutrements, Congreve rockets, boarding hooks,

will formally accept the Mexican crown and assume the title of the "Emperor of the Mexicans." Ambassadors and ministers will be immediately sent to the European powers before he embarks. The name of the person designed to represent him here is already given in the papers. I would thank you for an intimation as to the manner in which you desire me to regulate my conduct towards him. He will, of course, make me an official visit. Shall it be returned officially, or only privately?

Your obedient servant,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Seward to Mr. Koerner.

[Extract.]

No. 73.] DEPARTMENT OF STATE,
Washington, March 21, 1864.

SIR: I have the honor to acknowledge the receipt of your despatch of February 28, No. 78, and to inform you that the manner in which you have executed my instructions to communicate with her Catholic Majesty's government concerning the slave trade in Cuba is entirely approved.

I thank you for the copy of the publication made by the Condé de Reus, containing the results of his observations in America. The article has been already transferred to our journals, and it has given much satisfaction to the American people.

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I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Mr. Koerner.

No. 74.] DEPARTMENT OF STATE,
Washington, March 22, 1864.

SIR: For your information I enclose herewith a copy of a despatch of the 12th instant from the consulate general at Havana, on the subject of an apprehended revolt of the negroes on the island, through the agency of Dominican and Haytian emissaries.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Mr. Koerner.

No. 75.] DEPARTMENT OF STATE,
Washington, March 25, 1864.

SIR: I enclose herewith a copy of a letter, dated the 23d instant, which has been received at this department from the Secretary of the Navy, calling attention to certain facilities extended by the Spanish Admiral Don F. Pavia to the commander of the United States steamer Wyoming, in allowing that vessel to be repaired and replenished with coal at the Spanish naval depot at the port of Cavite. Pursuant to the suggestion contained in this letter, you are instructed,

use your good offices to secure a continuance of friendly relations between Spain and Peru are regarded by the President with special approbation.

The answer of Mr. Pacheco to your representations on that occasion is liberal and honorable, and encourages a hope that the accommodation desired may be effected without serious difficulty.

I notice your request for specific instructions concerning a basis upon which such an accommodation would be advised by this government. On the contrary, my No. 88 will have shown you that I still adhere to the opinion, that in a matter between two friendly governments, in which the United States have no direct interest, and therefore no other right to intrude except the good feelings they cherish for both the parties concerned, it is most suitable to refrain from taking cognizance of the exact controversy which is to be adjusted. The information you give me confirms this opinion, since it assures me that Spain wants only that her subjects in Peru, when accused, have a fair and just trial; and I understand that Peru has already conceded, or at least that she is willing to concede, this reasonable demand on the part of Spain, as it is defined by Mr. Pacheco.

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I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid.*

Mr. Seward to Mr. Koerner.

No. 91.] DEPARTMENT OF STATE,
Washington, May 17, 1864.

SIR: Herewith you will receive a transcript of a despatch to this department from Mr. Savage, vice-consul general of the United States at Havana, dated the 29th ultimo, relative to the arrival at Matanzas of three escaped convicts from the Tortugas, and their subsequent rendition to our authorities by order of the captain general of Cuba. You will lose no time in bringing this gratifying fact to the notice of her Catholic Majesty's government, and in expressing the satisfaction with which the friendly conduct of the captain general on the occasion referred to is regarded by the government of the United States.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid.*

Mr. Seward to Mr. Koerner.

No. 92.] DEPARTMENT OF STATE,
Washington, May 17, 1864.

SIR: Your despatch of the 2d ultimo, No. 90, has been received, and that part of it which relates to the assumption of imperial authority in Mexico by the Archduke Maximilian has been read with much interest. For your information in regard to the course of the United States in connexion with this event I herewith enclose a copy of an instruction addressed by me to Mr. Dayton, our minister to Paris, on the 30th ultimo.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., &c., &c., &c., *Madrid*

Mr. Koerner to Mr. Seward.

[Extract.]

No. 98.] LEGATION OF THE UNITED STATES,
Madrid, May 30, 1864.

SIR: I had hardly finished my No. 97, giving an account of my action respecting the Peruvian troubles, when I received your despatches 86, 87, 88, and 89. Your No. 88, marked confidential, referring to the same subject, enjoins upon me "as earnest an exertion of my good offices in that matter as shall be consistent with the sincere respect and courtesy which are entertained by this country towards Spain."

On the same evening the journals contained telegraphic despatches dated Panama, May 10, transmitted by the Spanish consul at Southampton to the government here, to the effect that the Spanish squadron had occupied fourteen islands of the Chincha archipelago, taking prisoners the governor and officers; that the squadron had then gone to Callao to surprise the Peruvian squadron, which, however, had escaped and taken shelter under the forts; that great agitation prevailed in Peru; a loan had been authorized; that land and sea forces were to be raised, &c., &c.; that the English, American, and Bolivian ministers had held a meeting at Lima, had declared themselves in favor of Peru, and had determined to petition their respective governments for an immediate intervention to regulate the difficulties.

Your despatch and this telegraphic news made me change the determination which I had formed after I had received Mr. Pacheco's note, and which was, as I informed you in my last despatch, to take no further action in this matter, at least for the present. * * * *

I am, sir, your obedient serva,nt

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Seward to Mr. Koerner.

No. 102.] DEPARTMENT OF STATE,
Washington, June 3, 1864.

SIR: Your interesting despatch of May 15, No. 96, has been received, and your proceedings therein mentioned are approved.

This government has no interest or other motive for urging upon the government of her Catholic Majesty any diligence in regard to the treaty for the settlement of the limits of the maritime jurisdiction of Spain in the waters of Cuba.

We are sincerely hoping for a peaceful solution of the controversy which has arisen between Spain and Peru.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., &c., Madrid.*

Mr. Koerner to Mr. Seward.

[Extracts.]

No. 99.] LEGATION OF THE UNITED STATES,
Madrid, May 30, 1864.

SIR: In reply to your despatch No. 87, of the 6th of May, 1864, which refers to the proposition of the government of Hayti to offer its mediation in

if we would, in a confidential manner, not by way of official mediation, continue to exercise our good offices.

I give you barely a rough sketch of the conversation, as time again presses, the mail closing in about an hour, and our interview having ended but a half hour ago.

Very respectfully, your most obedient servant,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Koerner to Mr. Seward.

[Extract.]

No. 105.] LEGATION OF THE UNITED STATES,
Madrid, June 22, 1864.

SIR: On yesterday I sent you a despatch (No. 104) giving an account of my interview with Mr. Pacheco concerning Peruvian affairs. In the evening Mr. P. was called upon in the senate for explanations, and I now enclose you his speech, from the Official Gazette, hoping that it will reach you the same time as my despatch of yesterday, since I send it direct, and not through our despatch agent at London.

The speech has several weak points. It shows clearly that the original cause of all this trouble, the Talambo affair, was really a very insufficient one for any sort of reclamation. The case was pending in the courts, and if it did proceed slowly, it was certainly according to Spanish custom. If Mr. Salcedo, upon whose plantation the row happened, has, by his influence, obstructed the course of justice, (which it may be hard to prove,) he has done no more than what is alleged to take place here almost every day.

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I am, sir, &c.,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Seward to Mr. Koerner.

No. 108½.] DEPARTMENT OF STATE,
Washington, June 24, 1864.

SIR: I enclose for your information a transcript of a communication which I have this day addressed to the honorable Jas. F. Wilson, chairman of the Committee on the Judiciary of the House of Representatives, on the subject of the extradition of Colonel Arguelles.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., Madrid.*

DEPARTMENT OF STATE,
Washington, June 24, 1864.

SIR: I have the honor now to give you the information which is found in this department, and the view which is taken of the matter referred to in your note of the 20th June instant.

The resolution which was introduced by the honorable Mr. COX, of Ohio, and

which is referred to in your note, impugns the action of the President of the United States in the recent extradition of a Spanish subject, as a violation of the Constitution of the United States and of the law of nations, and as a proceeding in derogation of that right of asylum which the resolution describes as a "distinguishing feature of our political system." That this action of the Chief Magistrate of the nation was taken "in the absence of a law or treaty on that subject," is assigned as the ground or occasion of its being open to these animadversions.

The gravity of the subject requires a full and careful examination of the proceeding of the Executive complained of, in its circumstances, its occasion, its motives, and its results, and a thorough inquiry into the precepts of the law of nations and the provisions of the Constitution which that proceeding is alleged to have violated. On the one hand, it never can be a matter of trivial concern to the nation that the conduct of the Chief Magistrate should really be at variance with the law of nations, which must furnish the rule for so large and important a part of the duties of his high office, or with the Constitution, to which he owes that office, and of which he is not only the servant, but also an appointed protector and defender. On the other hand, hasty or careless imputatons of such grave misconduct, if not corrected, tend to impair confidence in the government at home and respect for it abroad.

The case presented to the notice of the government of the United States, and upon which the intervention of the Executive was asked by the government of Spain, is set forth in the correspondence communicated to the Senate by the President, in answer to a resolution of that body.

In this correspondence it appears that on the 20th of November, 1863, the United States consul general at Havana apprised this government that more than one thousand African negroes had just then been brought to that city; that they had been landed at Cardenas, or Sagua, from a steamship whose name and nationality were unknown, and that very prominent and wealthy persons were implicated in the business, and that the steamer was not captured, but went to Nassau after delivering her cargo.

On the 28th of March the Secretary of State communicated this information to the Secretary of the Navy, and also to the British government. Thereupon this government and the British government, proceeding under the provisions of the treaty for the suppression of the African slave trade, united in an urgent appeal to the government of Spain to execute the laws of that country so effectually as to suppress the introduction of African slaves into the island of Cuba. The government of Spain responded to this united appeal in a kind and liberal spirit, and especially approved of the energetic action of the governor general of Cuba in executing the laws.

On the 5th of April, 1864, the minister plenipotentiary of Spain addressed a note to the Secretary of State, informing him that José Agustin Arguelles had escaped from the island of Cuba, under the charge of having sold into slavery a large number of recaptured Africans, and taken refuge in New York. The minister stated the circumstances of the case as follows, namely: That Arguelles, then an officer in the Spanish army, was, in November last, lieutenant governor of the district of Colon, and while serving in that capacity effected the seizure of a large expedition of African negroes, (being the same thousand negroes before mentioned;) that the government of Spain, pleased with his zeal, paid him a large sum, as his share of the prize-money usually allowed to the captors of such expeditions; that he subsequently obtained a leave of absence for twenty days, to proceed to New York, on false pretences, and that after his departure it was discovered that he and other officers of the district of Colon retained and sold into slavery one hundred and forty-one of the negroes which they had recaptured; that the superior court of the island, having exclusive jurisdiction over such cases, had taken cognizance of the case, and then

required the presence of Arguelles before it, to insure the prompt liberation of the one hundred and forty-one slaves, and that, without such presentation, it would be very difficult, and, at all events, it would require a long time, to attain that object.

Her Catholic Majesty's minister asked that Arguelles might be delivered up to the government of Spain, not upon the ground of a right to demand it, but as an act of comity in the interest of justice and humanity. The culprit, being found at large in the city of New York, was delivered to the Spanish authorities by direction of the President of the United States. Immediately after the arrival of Arguelles at Havana, he was placed in custody for trial, according to the laws of his own country, and eighty-six of the recaptured Africans, whom he had sold into slavery, were restored from bondage to freedom.

It will be readily admitted that no application to our government for the discharge of a duty, or the exercise of a right which rested with it under the law of nations, could present more solemn and imposing considerations to engage its attention to an earnest and solicitous inquiry into its obligations and its powers in the premises, that it might faithfully perform the one and exercise the other. That our territory—the refuge of the innocent and oppressed—should not furnish an asylum for the guilty betrayer of human freedom; that our cherished policy for the suppression of the slave trade, to which every department of the government—legislative, judicial, and executive—had been so long and so firmly committed, should meet no check in its purpose, by its law and by its power, to drive from every sea the odious and abominable traffic; that the victims of this atrocious crime should not be left in the misery which our protection of this outlaw from the pursuing justice of his own country must fasten on them—such were the interests of society and of humanity which pressed upon the conscience of the nation, and called for the exercise of every faculty of justice and authority which the law of nations and the Constitution had vested in the Executive.

The act required by the exigency of the case was the surrender of the fugitive criminal to the public authority of the country from whose justice he had fled. The practical question for the decision of the President was, whether, in his official capacity, he possessed the authority to make this surrender. That this was the only question cannot be doubted, for no one will gainsay that to possess the requisite authority and to refuse to execute it in the case presented, when the will is free, imports moral complicity in the guilt of the criminal, and cold indifference to the continuing misery of his victims.

To determine this question of the authority and duty of the Executive involves the examination of the following considerations:

1. Whether by the law of nations the government of the United States in its relations to foreign nations is under the obligation, or possesses the authority, to surrender to the pursuing justice of a foreign state a fugitive criminal found within our territory.

2. Whether, in the absence of express treaty stipulations on our part for the surrender of such fugitive criminals, and of any legislation by Congress on the subject, the President of the United States is charged with the obligation, or vested with the authority, to make the surrender, provided such obligation rests upon, or such authority is vested in, the government.

3. Whether the occasion presented in the actual case called for the performance of this obligation by the President, if he were charged with it, or for the exercise of this authority, if he possessed it.

It will be convenient, if not essential, to consider these propositions in the order in which they are stated, and to observe a just discrimination between them as separate in their nature, and in the topics and authorities which bear upon them. By this method, too, the threefold censure of the resolution before the Committee on the Judiciary will be met, and either justified or refuted.

The points of discussion upon which the first proposition turns are few and

simple. Whatever obligations, duties, powers, and relations the law of nations prescribes or attributes to any one nation as towards the other nations of the world, it prescribes and attributes to all nations equally and alike. The internal structure or distribution of the powers and duties of government, that belong to the various forms or constitutions of government which nations adopt for themselves at will, do not in the least affect the measure or the application of the precepts of the law of nations which adjust and govern international rights and obligations. No nation has been more careful to insist upon this equality of nations, whenever we had occasion to claim an international right, or, we may fairly assume, more solicitous to respect it, when a foreign state has asserted an international obligation on the part of our government. But it follows necessarily, from this primary proposition, that the domestic constitutions of government are not in the least degree the source of the *international* rights or obligations which nations may justly claim, or must justly submit to. These observations bring us to the same conclusion, that the United States has precisely the same obligations to perform, and possesses the same authority to exercise, towards foreign states, in the extradition of criminals, as all other nations, and that the measure and force of those obligations and of that authority are to be found exclusively in the law of nations, and not in the Constitution or in municipal legislation. It may be superfluous to sustain so obvious a truth by illustration, but our present attitude on this point towards Great Britain, France, Spain, the Netherlands, and all other maritime powers of Europe, has been so distinct, and has been so widely understood, and so fully approved by the country, that it is well to understand that it rests upon no other principles than those just laid down. We surrendered Mason and Slidell to Great Britain, we demanded the restoration of the Chesapeake, and we protest against the outfit of the Alabama, the Alexandra, and other British and French naval expeditions, and we demand indemnity for the damages which they inflict, upon these principles, and no other.

We have said to all the maritime powers that the *law of nations*, and not their municipal legislation or domestic jurisprudence, furnished the measure of our rights and of their obligations in the matter of naval equipments from their ports to disturb the peace of the seas and prey upon our commerce, and that the resentments and remedies of the *law of nations* were justly open to us if our rights and their obligations were not observed.

When we come to look at the authorities, whether institutional or judicial, which lay down the doctrine of the law of nations on the subject of the surrender of fugitive criminals, we shall find the only controverted point to be, whether such extradition is an *absolute obligation* without treaty stipulations concerning it, or is, in the absence of such stipulations, dependent for its exercise upon the circumstances of each case as they shall or shall not seem to the nation, to which the request is made, to furnish a just occasion for its exercise on the principles of justice, humanity, and international comity.

It would be out of place to explore and compare, in an extended survey, the text writers or the judicial decisions upon this point; yet it is important that the entire concurrence of *all* the authorities that the surrender of criminals is a just and proper exercise of national right, wherever the motives of the particular case are adequate, should be understood; and that it should be also understood that the *absolute obligation* to make such surrender is asserted by a weight of authority equal to that which imposes a qualifying limitation upon it.

Wheaton, in his Elements of International Law, says:

"The public jurists are divided upon the question, how far a sovereign state is obliged to deliver up persons, whether its own subjects or foreigners, charged with or convicted of crimes committed in another country, upon the demand of a foreign state, or of its officers of justice. Some of these writers maintain the doctrine that according to the law and usage of nations every sovereign state is obliged to refuse an asylum to individuals accused of crimes affecting the general peace and security of society, and whose extradition is demanded

by the government of that country within whose jurisdiction the crime has been committed. Such is the opinion of Grotius, Heimeccius, Burlamaqui, Vattel, Rutherforth, Schmelzing, and Kent. According to Puffendorf, Voet, Martens, Kluber, Leyser, Kluet, Saalfeld, Schmaltz, Mittermeyer, and Hefter, on the other hand, the extradition of fugitives from justice is a matter of imperfect obligation only, and though it may be habitually practiced by certain states, as the result of mutual comity and convenience, requires to be confirmed and regulated by special compact, in order to give it the force of an international law." —*Wheaton's International Law*, 1863, p. 232.

Halleck's International Law upon the same point says:

"The extradition of persons charged with or convicted of criminal offences affecting the general peace and happiness of society is voluntarily practiced by most states, where there are no special compacts, as a matter of general convenience and comity. Some distinguished jurists have treated this question as a matter of strict right, and as constituting a part of the law and usage of nations. Others, equally distinguished, explicitly deny it as a matter of right. The weight of authority is in favor of regarding it as a matter of comity rather than of strict right, under the rules of international law, as universally received and established among civilized nations. If it be regarded as a right at all, it is one of those imperfect rights which cannot be enforced, as the obligation on the other party is also imperfect and not universally, even if generally, admitted."—*Halleck's International Law*, p. 174.

Judge Story, in his Conflict of Laws, and in his Commentaries on the Constitution, observes upon the same point as follows:

"It has been often made a question, how far any nation is by the law of nations bound to surrender, upon demand, fugitives from justice, who, having committed crimes in another country, have fled thither for shelter. Mr. Chancellor Kent considers it clear upon principle, as well as authority, that every state is bound to deny an asylum to criminals, and, upon application and due examination of the case, to surrender the fugitive to the foreign state where the crime has been committed. Other distinguished judges and jurists have entertained a different opinion."—*Story on the Constitution*, S. 1808.

"There is another point which has been a good deal discussed of late, and that is, whether a nation is bound to surrender up fugitives from justice who escape into its territories and seek there an asylum from punishment. The practice has beyond question prevailed, as a matter of comity, and sometimes of treaty between some neighboring states, and sometimes also between distant states, having much intercourse with each other. Paul Voet remarks, hat under the Roman Empire this right of having a criminal remitted for trial to the proper *forum criminis*, was *unquestionable*.

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"It has, however, been treated by other distinguished jurists as a strict right, and as constituting a part of the law and usage of nations, that offenders charged with a high crime, who have fled from the country in which the crime has been committed, should be delivered up and sent back for trial by the sovereign of the country where they are found. Vattel manifestly contemplated the subject in this latter view, contending that it is the duty of the government, where the criminal is, to deliver him up or to punish him; and if he refuses so to do, then it becomes responsible, as in some measure an accomplice in the crime. This opinion is also maintained with great vigor by Grotius, by Heimeccius, by Burlamaqui, and by Rutherforth. There is no inconsiderable weight of common-law authority on the same side, and Mr. Chancellor Kent has adopted the doctrine in a case which called directly for its decision."—*Story's Conflict of Laws*, pp. 517, 520, 521, sec. 626, &c.

Chancellor Kent, in a judicial decision, where the very point was in judgment, gives an unqualified support to the view that the extradition is *obligatory*, in the absence of treaty stipulations, by the law of nations:

"It is the law and usage of nations, resting in the plainest principles of justice and public utility, to deliver up offenders charged with felony and other high crimes, and fleeing from the country in which the crime was committed into a foreign and friendly jurisdiction.

"This doctrine is supported equally by reason and authority."

He quotes the foreign text writers, and the English cases, and finds no authority for Coke's rejection of the right in the passage so frequently cited from the Institutes.

The 27th article of the British treaty, 1795, "was only declaratory of the law of nations, as well as, also, a number of other articles in the same treaty."

"These articles were the recognition, not the creation of right, and are equally obligatory upon the two nations, under the sanction of public law, since the expiration of that treaty as they were before.

"If the treaty *restricted* the application of the rule, yet upon the expiration of that treaty the general and more extensive rule of the law of nations revived."—*Matter of Washburn*, 4 *Johns, Ch. R.* 106.

Chief Justice Tilghman, of Pennsylvania, in a case which came before him, decided that the judiciary could not act in the arrest of a foreign criminal *upon the complaint of a private person*, and that the Executive alone can initiate the proceeding of extradition. He is the principal judicial authority in this country opposed to Chancellor Kent upon the controverted point of the *obligation* to surrender foreign criminals. Yet in the following observations he fully maintains *the right and power* of a government to make the surrender upon motives satisfactory to itself:

"The more deeply the subject is considered, the more sensible shall we feel of its difficulties, so that upon the whole the safest principle seems to be that no state has an *absolute and perfect right to demand* of another the delivery of a fugitive criminal, though it has what is called an *imperfect* right—that is, a right to ask it as a matter of courtesy, good will, and mutual convenience. But a refusal to grant such a request is no just cause of war.

"It is certain that this matter of delivering up is an affair of state, in which the judges and inferior magistrates cannot act, but as auxiliary to the executive power. The demand of the foreign court is addressed to none but the Executive; and none other power than the Executive has a right to comply with that demand.

"If these principles be just, it follows that under existing circumstances no magistrate in Pennsylvania has a right to cause a person to be arrested in *order* to afford an *opportunity* to the President of the United States to deliver him to a foreign government. But what if the Executive should hereafter be of opinion, in the case of some enormous offender, that it had a right, and was bound in duty to surrender him, and should make application to a magistrate for a warrant of arrest? That would be a case quite different from the one before me, and I should think it imprudent at the present moment to give an opinion on it. Every nation has an *undoubted right* to surrender fugitives from other states. No man has a right to say, I will force myself into your territory, and *you shall protect me.*"—*Commonwealth* vs. *Deacon*, 10 S. and R., 123.

It has sometimes been said that Judge Story, though he expresses no opinion in his Commentaries (cited above) on this point in difference between Chancellor Kent and Chief Justice Tilghman, yet, incidentally, gives the great weight of his authority against the *obligation* of surrender, aside from treaty stipulations, in a reported case. An examination of that case, however, will show that his observations are only upon the point, and to the effect, that the *judiciary* cannot by any original authority make the surrender.

The prisoner in the case before him had been acquitted, on the ground that the homicide was committed within the jurisdiction of the Society Islands, and not on the high seas. The district judge suggested whether it was not the duty of the *court* to remand the prisoner to the foreign government for trial. Mr. Justice Story said:

"That he had never known any such authority exercised by our *courts*, except where the case was provided for by the stipulations of some treaty. He had great doubts whether, upon principles of international law, and independent of any statutable provisions or treaty stipulations, any *court of justice* was either bound in duty or authorized in its discretion to send back any offender to a foreign government whose laws he was supposed to have violated."—2 *Sumn.*, R., 486.

It is manifest from these citations that a violation of the *law of nations* is not predicable of the surrender by one nation to another of a fugitive criminal. Indeed, it might as well be charged that a treaty stipulation between the nations making such surrender of reciprocal obligation was in violation of, and not in obedience to, the law of nations, as that an individual act of extradition of a criminal was such violation. The quality of the act, as at variance or in accord with the law of nations, is not affected by its frequency or by the stipulation in advance for its performance.

We may conclude, then, upon the plainest reason and a uniform concurrence of authority, that the United States, in its relations to foreign nations, certainly possesses the authority to surrender to the pursuing justice of a foreign state a fugitive criminal found within our territory.

It is not at all important to solve the dispute whether this authority is accompanied or not with an absolute obligation to make the surrender. If the surrender, by the true principles of the law of nations, be indeed obligatory, then

a refusal or omission to make the surrender would be a violation of that law. If, on the other hand, it be a mere right, and not a complete obligation, the exercise of that right is a pursuance, and not a violation, of the law of nations. Whether a surrender of a criminal, as actually made, was by the proper authority or department of the government making it, is never a question under the law of nations, but wholly under the constitutional or municipal law of that government, distributing powers and duties among its own magistrates and departments.

Whether the executive act under consideration is amenable to censure, as not within the competency of the President under the Constitution, is yet to be considered; but, however this may be, the censure of such executive act, as a violation of the *law of nations*, (asserted in the resolution before the Judiciary Committee,) is conceived in error and unsupported by the authority of any publicist or of any adjudication.

The second topic of the inquiry is now to engage our attention, and it is well to state how far the preceding views, if correct, have advanced its discussion, and what are the true limits of its further consideration.

It appears, then, that there rests with the United States, as a nation, either an obligation or an authority to make extraditions, whenever the case presented calls for the exercise of the power.

It appears that there is not, and never has been, any treaty stipulations with Spain on the subject of the extradition of criminals. It appears that there is not, and never has been, any national legislation touching the subject of the extradition of criminals, except in connection with treaty stipulations with particular nations; that, consequently, the legislative will has never been expressed as to the mode by which, or the department of the government by which, the actual discharge of the international obligation, if it be such, or exercise of the national authority for the extradition of criminals, is to be performed.

In this predicament of the public and municipal law it will at once be seen that there is room for much diversity of opinion as to the legal consequences, as affecting the authority and duty of government, which flow from it. Accordingly, it will be found that in the discussion and action upon the subject which have arisen, upon the exigencies which presented themselves, various theories have divided the assent of the best instructed and most candid minds. These may all be assigned to one or the other of the following views:

1. That the extradition of criminals, in cases where the law of nations called for its being made, could not be directed or executed by any department of the federal government for want of an act of Congress in the premises.

2. That the several States of the Union might make extradition of criminals to foreign nations, even if the national authority on the subject were set in activity by the treaty-making or legislative power of the federal government, and certainly if these powers remained dormant.

3. That the international obligation to surrender criminals was not absolved, nor the national authority to make such surrender paralyzed or suspended, by the omission of Congress to legislate as to the manner and form of effecting the extradition; and that it belongs to the executive of the nation to perform this international obligation, or execute this national authority, by virtue of his office as established by the Constitution of the United States, excluding, on the one hand, the competency of the federal courts to make the surrender as a judicial function, and, on the other, the authority of the separate States of the Union to make it at all.

It is believed that no judicial decision of the federal courts upon the direct question of the power or duty of the President of the United States in the premises has ever been made, and that no case has ever presented the point directly for decision. In the case already cited from Johnson's Reports, Chancellor Kent adjudicated the point in favor of the President's authority. In the

case of Holmes, which came before the supreme court of Vermont in banc, the precise point, as a legal question, was decided in favor of the executive authority, that authority having been exercised by the governor of Vermont for the extradition of a Canadian murderer, *before* the treaty with Great Britain of 1842, and without any legislation of the State on the subject. The supreme court of Pennsylvania, in the case already cited from Sergeant *vs.* Rawle, expressly withheld its opinion upon the point, as not being in judgment before it, and left it for future consideration, when a case should arise, whether the executive of the nation, or of the State, possessed this power, without the support of a treaty or of legislation.

In this posture of judicial *decisions* upon the point, there are some principal sources of instruction and assistance in arriving at a correct conclusion, which might aid or correct general reasoning and general authorities on the subject:

1. The observation of learned judges and their decisions, in cases involving any of the principles, or presenting analogies.

2. The practice of the government in its foreign intercourse in questions arising under the law of nations, whether in its own conduct towards foreign nations, or in its demands and expectations from them.

Before proceeding to the examination of these sources of information and instruction, it is well to recur to a consideration of the true nature and limits of the determination to be sought, as not being wholly *legal* or *judicial*, but of *State* and of *administration*.

Attorney General Wirt, in one of his opinions, to be referred to hereafter more at large, thus clearly presents this important distinction, in reply to questions propounded by the Secretary of State:

"The questions which I understand to be propounded for my opinion are:

"1st. Whether we are under obligation and have the power to restore the slave? and if so,

"2d. What form of proceeding should be adopted for this purpose?

"I beg leave to premise that both these questions rest chiefly on national and constitutional law, and on the practice of the government, of which I presume the evidence is to be found in the archives of the state. They are not, therefore, exclusively within the province of this office; but, on the contrary, are questions which address themselves as appropriately to the statesman as the lawyer. I remind you of this truth, that more weight may not be attached to my opinion, under the notion of its being official, than it fairly deserves; and having made this suggestion, I proceed with great respect to express my opinion on the question propounded to me."

The attention of the government to this precise subject of the action of the Executive in the surrender of criminals, and of the rules of the law of nations on the subject, seems first to have arisen upon a demand by Spain for the delivery of one Jones, a criminal who had fled from Florida, a Spanish dominion. Attorney General Lee gives to the Secretary of State, on the 26th January, 1797, this opinion:

"If a demand were formally made that William Jones, a subject and fugitive from justice, or any of our own citizens, heinous offenders within the dominion of Spain, should be delivered to their government for trial and punishment, the United States are in duty bound to comply; yet, having omitted to make a law directing the mode of proceeding, I know not how, according to the present system, a delivery of such offender could be effected. To refuse or neglect to comply with such a demand may, under certain circumstances, afford to the foreign nation just cause for war, who may not be satisfied with the excuse that we are not able to take and deliver up the offenders to them. This defect appears to me to require a particular law."—*Opinion of Attorney General, vol.* 1, *pp.* 69, 70.

It will be observed that this opinion recognizes the complete obligation, though there was no treaty, and the exposure even of the country to war for its non-fulfilment, but finds a complete paralysis of means to perform the duty or

avert the perils, for lack of a law of Congress in the premises. In a word, the Attorney General puts the matter distinctly upon the same considerations as would govern if there were a *treaty requiring extradition*, but no law of Congress providing modes and forms for executive action under it. For no one can demand for a treaty stronger obligation or sanction than that "the United States are in duty bound to comply" with it, and that "to refuse or neglect to comply may, under certain circumstances, afford the foreign nation *just cause of war*."

The next occasion upon which the question arose for the action of the government was in the noted case of Thomas Nash, *alias* Jonathan Robbins, in the year 1799, claimed under the 27th article of the British treaty. The surrender of the alleged criminal was made by the President, there being no act of Congress as to the mode or agent for the execution of the stipulations of the treaty.

The legal question then of the power of the *President* to make the surrender, which was obligatory upon the nation, was precisely the same as Attorney General Lee had conceived it; and if his view of the necessity of an act of Congress to invigorate the executive function was sound, the extradition should have been refused to England in 1799, as it had been to Spain in 1797.

The action of the Executive in the extradition became the subject of an earnest and most able debate in the House of Representatives, where the arguments on one side and the other were pressed with the utmost skill and force. The celebrated speech of John Marshall, sustaining the action of the President, in its exposition of the doctrines of the law of nations and of the Constitution, which controlled the subject, carried, with Congress and with the country, a judicial weight scarcely surpassed by that awarded to any of his subsequent judgments as Chief Justice.

This debate, in its result, may be considered as establishing two propositions: First, that an international obligation, resting upon the government, may be discharged under the Constitution without the aid of an act of Congress. Second, that it was an executive and not a judicial function, to be performed by the President by mere virtue of his office under the Constitution, without the need of any authority from Congress, or of any agency of the courts. It was strenuously contended that the function was in its nature judicial, and must be attributed to the judicial tribunals, and the action of the President was sought to be impugned as wresting the subject from the constitutional control of the judiciary.

Mr. Marshall thus announced the doctrines on this point, which received the assent of Congress and of the country:

"The case was in its nature a national demand made upon the nation. The parties were two nations. They cannot come into court to litigate their claims, nor can a court decide on them. Of consequence, the demand is not a case for judicial cognizance.

"The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.

"He possesses the whole executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.

"He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.

"The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been prescribed? Congress unquestionably may prescribe the mode, and Congress may devolve on others the whole execution of the contract; but till this be done, it seems the duty of the executive department to execute the contract by any means it possesses.

"The executive is not only the constitutional department, but seems to be the proper department to which the power in question may most wisely and most safely be confided.

"The department which is intrusted with the whole foreign intercourse of the nation, with the negotiation of all its treaties, with the power of demanding a reciprocal performance of the article, which is accountable to the nation for the violation of its engagements with foreign nations, and for the consequences resulting from such violation, seems the proper department to be intrusted with the execution of a national contract like that under consideration.

"If at any time policy may temper the strict execution of the contract, where may that political discretion be placed so safely as in the department whose duty it is to understand precisely the state of the political intercourse and connexion between the United States and foreign nations, to understand the manner in which the particular stipulation is explained and performed by foreign nations, and to understand completely the state of the Union?"

The whole speech of Mr. Marshall, by the method of the closest and most irresistible reasoning, exhibits the conformity of these doctrines with the Constitution, with the principles of international law, and with the established practice of the government, in the maintenance of the international obligation of neutrality, in the surrender by the Executive to one belligerent of prizes taken by the other, in violation or in fraud of our neutrality. This international obligation, though without treaty, he asserted, rested upon the same principles, and was identical in character, with the extradition of criminals. He exposes the error which had described the surrender of prizes in the practice of the government as a judicial proceeding, and exhibits it in its true light as an executive act under the law of nations. A brief quotation from his argument on this point is not out of place, and the whole speech is most worthy of attention. It is found in full in the appendix to 5 Wheat. Rep., in 2 Benton's Debates, and in Wharton's State Trials.

Mr. Marshall says:

"It has been contended that the conduct of the Executive on former occasions, similar to this in principle, has been such as to evince an opinion even in that department that the case in question is proper for the decision of the courts.

"The fact adduced to support this argument is the determination of the late President on the case of prizes made within the jurisdiction of the United States, or by privateers fitted out in their ports.

"The nation was bound to deliver up those prizes, in like manner as the nation is now bound to deliver up an individual demanded under the twenty-seventh article of the treaty with Britain. The duty was the same and devolved on the same department.

"The decision then on the case of vessels captured within the American jurisdiction by privateers fitted out of the American ports, which the gentleman from New York has cited with such merited approbation, and which he has declared to stand upon the same principles with those which ought to have governed the case of Thomas Nash, which deserves the more respect because the government of the United States was then so circumstanced as to assure us that no opinion was lightly taken up and no resolution formed but on mature consideration—this decision, quoted as a precedent and pronounced to be right, is found, on full and fair examination, to be precisely and unequivocally the same with that which was made in the case under consideration. It is a full authority to show that, in the opinion always held by the American government, a case like that of Thomas Nash is a case for executive and not judicial decision.

Of the acquiescence of Congress and of the public opinion of the country in the positions of Mr. Marshall, sustained at the time by nearly a two-thirds vote of the House of Representatives, the strongest evidence is to be found in the omission of Congress to pass any act during the period that the extradition article of the British treaty of 1795 was in force, and from a similar omission after the negotiation of the treaties of 1842 with Great Britain, and of 1843 with France—each containing an extradition article—until the year 1848, after a judicial doubt thrown upon the point by a difference between the federal judiciary and a justice of the supreme court of New York, arising in the case of Metzger, claimed under the French treaty. In this case of Metzger, arising in the year 1847, the learned judge of the district court of the southern district of New York held that an act of Congress was unnecessary to enable the Executive to carry into effect the extradition article of the treaty with France. A learned justice of the supreme court of New York held otherwise, and that, in the absence of an act of Congress, the federal Executive could not make the extradition. (1 Barb. S. C. R., 248.) The case was then brought before

the Supreme Court of the United States in a petition for *habeas corpus*. The court dismissed the petition on the ground that it had no jurisdiction to issue a *habeas corpus* for the purpose of reviewing the decisions of the United States district judge; but in the opinion of the court, delivered by Mr. Justice McLean, it is declared that the action of the Executive in the case was "proper," and "the most appropriate, if not the only mode of giving effect to the treaty," and that the aid of legislation was unnecessary. (5 How. U. S. Rep., 188–9.)

It may be considered, therefore, that the political and judicial departments of the government concurred in the opinion, that when there was an obligation, or an authority, resting with the federal government, for the extradition of a criminal, it was to be carried out as an executive and not as a judicial act, and that the aid of Congress was not needed for the competent discharge of the obligation or exercise of the authority.

This point being now cleared up, namely, that the absence of an act of Congress does not paralyze the executive function in the discharge of an international duty, or the exercise of an international power, the question reverts to the original one, viz: does the absence of an *express treaty* displace the international obligation and the national authority on the subject of the extradition of criminals, in the maintenance of the foreign intercourse of the government?

The interval between the expiration of the extradition article of the British treaty of 1795 and the negotiation of the treaty of Washington, in 1842, raised the point for Executive consideration in several cases, and in a case of marked interest and difficulty brought it for judicial observation, though not for express judgment, before the Supreme Court of the United States.

It was undoubtedly the *habit* of the federal Executive to decline to make a surrender of a fugitive criminal, during the interval, upon the application of the British government, and in the cases presented to it, which were of ordinary, though sometimes heinous, crime. From this arose another *habit* of extradition in satisfaction of what was clearly recognized as a necessary measure of justice and humanity, as well as of self-protection—that is to say, an extradition by the State governments upon the direct application of foreign governments. This habit was acquiesced in (and approved in some instances) by the executive department of the federal government.

The legislature of New York passed a general law regulating the proceedings for such extraditions by the Executive of the State, and the surrender of criminals, of course without treaty, under the general authority or obligation of the law of nations, and in the notion that this right of sovereignty pertained to the States, became systematic.

In this situation of the *habits* of the federal and State governments on the subject a notorious case of crime occurred in the Netherlands, in the robbery of the jewels of the Princess of Orange. The diplomatic representative of that government applied to the government of the United States for the extradition of the criminal, who was found in the city of New York. Attorney General Taney gave to Mr. Livingston, then Secretary of State, an opinion as to the propriety of the surrender by the federal Executive in these terms: "As there is no stipulation by treaty between the two governments for the mutual delivery of fugitives from justice, I think the President would not be justified in directing the surrender of the person upon whom a part of the stolen articles may have been found, in order that he may be brought to trial in the country where he is supposed to have committed the robbery." (Opinions of Attorneys General, vol. 2, p. 452.) Mr. Livingston, in communicating the decision of the President, expresses to the minister of the Netherlands his hopes "that, from the authorities of the State of New York having taken cognizance of the matter, the objects in view may be obtained by the means now pursuing, as effectually and more constitutionally than they could have been by a literal compliance with the request which has been made." The Department of State sent the

correspondence with the minister of the Netherlands, at his request, to the governor of the State of New York, and that magistrate (Governor Throop) issued his executive warrant for the delivery of the criminal to the minister of the Netherlands, "to the end that he may be placed under the jurisdiction of the said kingdom of the Netherlands, to be dealt with for his supposed crime, according to the laws and justice of the said kingdom."

In the State of Vermont a like *habit* of extradition had sprung up, and there the governor, *without any law of the State on the subject*, and, of course, without treaty, as a direct exercise of authority under the law of nations, and not forbidden to the States by the federal Constitution, made the extradition by his executive warrant. Upon *habeas corpus* sued out by the criminal, upon solemn argument the supreme court of Vermont, in full bench, held the extradition to be in pursuance of the law of nations, to be valid without legislation, and to be competent to the State under the Constitution of the United States. The judgment of the State court was brought up for review to the Supreme Court of the United States, and the opinion of the learned justices of that court will, by a little attention to the true point in controversy, be seen to bear upon the point we are now considering, viz., whether a treaty is the source, under the Constitution of the United States, of the executive authority to surrender criminals, or whether the law of nations supplies that authority to the nation, and the Constitution itself confers the exercise of it upon the President.

The point in judgment in Holmes *vs.* Jennison (14 Pet. Rep., 649) was whether the States had authority to surrender criminals *when the United States had made no treaty and no law upon the subject.* It was conceded on all hands that this authority belonged to sovereignty, and that its exercise remained with the States unless, at the time of such exercise, it rested with the United States *under the Constitution, and* unless its concurrent exercise by the States was incompatible with its *possession* by the federal government. It was apparent, therefore, that if a treaty was necessary to put the federal government in possession of this authority, there being no such treaty, the action of the State of Vermont was within its competency; but if the federal government was in possession of this authority *without* a *treaty*, then the action of the State was beyond its competency, unless a concurrent authority was admissible.

Accordingly, Mr. Justice Thompson with his usual discrimination makes *the turning point of the jurisdiction of the court* to be, whether this power of surrendering criminals was in the government of the United States *by the Constitution*, or whether it needed to have its being and origin in a treaty. He rejected the jurisdiction for the reason that he held a treaty necessary to *confer* the power on the government. He observes:

"There is certainly no specific provision in the Constitution on the subject of surrendering fugitives from justice from a foreign country, if demanded, and we are left at large to conjecture upon various parts of the Constitution, to see if we can find that such power is, by fair and necessary implication, embraced within the Constitution. I mean, whether any such obligation is imposed upon any department of our government by the Constitution to surrender to a foreign government a fugitive from justice; for unless there is such a power vested somewhere, it is difficult to perceive how the governor of Vermont has violated any authority given by the Constitution to the general government. If such a power or obligation in the absence of any treaty or law of Congress on the subject rests anywhere, I should not be disposed to question its being vested in the President of the United States. It is a power essentially national in its character, and required to be carried into execution by intercourse with a foreign government, and there is a fitness and propriety of this being done through the executive department of the government, which is intrusted with authority to carry on our foreign intercourse.

"And unless the President of the United States is, under the Constitution, vested with such power, it exists nowhere, there being no treaty or law on the subject. And it appears to me indispensably necessary, in order to maintain the jurisdiction of this court in the present case, to show that the President is vested with such power under the Constitution."

"The Secretary of State, in answer to the letter of the governor of Vermont on the subject, says:

"I am instructed by the President to express his regret to your excellency that the request of the acting governor of Canada cannot be complied with under any authority now vested in the executive government of the United States, the stipulation between this and the British government for the mutual delivery over of fugitives from justice being no longer in force, and the renewal of it by treaty being at this time a subject of negotiation between the two governments.

"Here, then, is a direct denial by the President of the existence of such a power in the executive, in the absence of any treaty on the subject; and such has been the settled and uniform course of the executive government of the United States upon this subject since the expiration of our treaty with England. And if this be so, it may be emphatically asked what power in the general government comes in conflict with the power exercised by the governor of Vermont? In order to maintain the jurisdiction of this court in the present case, it must be assumed that the President has under and by virtue of the Constitution, in the absence of any treaty on the subject, authority to surrender fugitives from justice to a foreign government; otherwise it cannot be said that the governor of Vermont has violated the Constitution of the United States.

"This power to surrender fugitives from justice to a foreign government has its foundation, its very life and being, in a treaty to be made between the United States and such foreign government, and is not by the Constitution vested in any department of our government without a treaty."

On the other hand, Chief Justice Taney, and Justices Story, McLean, and Wayne, sustained the jurisdiction, the Chief Justice delivering an elaborate opinion. A few citations from this opinion will show that these four learned justices took the opposite view to Judge Thompson's, and construed the Constitution itself as lodging the power in the federal government, antecedent to and independent of treaty stipulations.

Chief Justice Taney says:

"This case presents a question of great importance, upon which eminent jurists have differed in opinion. Can a State, since the adoption of the Constitution of the United States, deliver up an individual found within its territory to a foreign government, to be there tried for offences alleged to have been committed against it? This involves an inquiry into the relative powers of the federal and State governments upon a subject which is sometimes one of great delicacy.

"The power which has been exercised by the State of Vermont is a part of the foreign intercourse of this country, and has undoubtedly been conferred on the federal government.

"As the rights and duties of nations towards one another in relation to fugitives from justice are a part of the law of nations and have always been treated as such by the writers upon public law, it follows that the treaty-making power must have authority to decide how far the right of a foreign nation in this respect will be recognized and enforced when it demands the surrender of any one charged with offences against it. Indeed, the whole frame of the Constitution supports this construction. All the powers which relate to our foreign intercourse are confided to the general government. The power of deciding whether a fugitive from a foreign nation should or should not be surrendered was necessarily a part of the powers thus granted."

The writ of error was dismissed on an equal division of the court, some special grounds of dissent from the opinion of Chief Justice Taney being taken by the other associate justices. But it was so apparent that, on the merits, a majority of the court were with the Chief Justice, that upon a new hearing in the supreme court of Vermont the prisoner was discharged, on the ground that it was contrary to the Constitution of the United States for a State to make extradition of criminals.

In the case of Kaine, whose extradition had been claimed under the British treaty by a direct application to a judicial officer of the United States, the question was brought up for review, and the point was taken that the application must be made by the foreign government to the Executive of the United States, and that the auxiliary judicial inquiry of fact must be made upon his institution. The case was dismissed upon the concurrence of a majority of the court on a question of jurisdiction. In the opinion of Mr. Justice Nelson, in which Chief Justice Taney and Mr. Justice Daniel concurred, the character of extradition, as an executive and not a judicial function, is thus stated:

"It may, I think, be assumed at this day, as an undoubted principle of this government, that its judicial tribunals possess no power to arrest and surrender to a foreign country fugitives from justice, except as authorized by treaty stipulations and acts of Congress passed in

pursuance thereof. Whether Congress could confer the power independently of a treaty is a question not necessarily involved in this case and need not be examined. If it was, as at present advised, I am free to say that I have found no such power in any article or clause of the Constitution delegated to that body by the people of the State.

"When the *casus fœderis* occurs, the requisition or demand must be made by the one nation upon the other; and, upon our system of government, a demand made upon the nation must be made upon the President, who has charge of all its foreign relations, and with whom only foreign governments are authorized or even permitted to hold any communication of a national concern. He alone is authorized by the Constitution to negotiate with foreign governments and enter into treaty obligations binding upon the nation; and in respect to all questions arising out of these obligations, or relating to our foreign relations, in which other governments are interested, application must be made to him. A requisition or demand, therefore, upon this government must, under any treaty stipulation, be made upon the Executive, and cannot be made through any other department or in any other way."

And the learned justice then quoted, with approval, certain propositions of Mr. Marshall on this point, above given from his speech in the case of Thomas Nash.

Upon a survey of all these cases before the federal and State judiciaries, in much diversity and no inconsiderable contrariety of theory and reasoning, it may confidently be asserted that the weight of authority holds—

First. That the function of extradition is executive and not judicial.

Second. That it pertains to the federal and not to the State governments.

Third. That it is conferred on the federal government by the Constitution itself, and exists antecedent to and independent of treaties.

Fourth. That it is attributed to and may be exercised by the Executive without the need of legislative aid.

Upon the primary question whether, by the law of nations, extradition of fugitive criminals is absolutely obligatory, or only discretionary, upon considerations of justice, humanity and comity, it may be stated that the latter seems to be the view more generally accepted in the federal jurisprudence, the *obligation* being considered as imposed only by treaty stipulations to that effect. This view was held by Attorney General Wirt, and the expediency of exercising this discretionary power by the Executive, in proper cases, was recognized by him. In giving these views in a case presented by the Executive for his official advice, he accompanies them with the suggestion that the aid of legislation is necessary, and should be given. An examination of Mr. Wirt's opinion given to the government on the subject of the surrender of *property* by the Executive, on requisition, (which Mr. Marshall, as we have seen, demonstrated to be identical in principle with the extradition of criminals,) will, we think, forcibly expose his error in this view of the need of legislative aid to invigorate the executive authority.

Mr. Wirt says, in an opinion under date of November 20, 1821:

"The truth seems to be that this duty to deliver up criminals is so vague and uncertain as to the offences on which it rests, is of so imperfect a nature, as an obligation, is so inconveniently encumbered in practice by the requisition that the party demanded shall have been convicted on full and judicial proof, or such proof as may be called for by the nation on whom the demand is made, and the usage to deliver or to refuse, being perfectly at the option of each nation, has been so various and consequently so uncertain in its action, that these causes combined have led to the practice of providing by treaty for *all cases* in which a nation wishes to give herself the right to call for fugitives from her justice.

"I am further of the opinion that even if, by the laws and usages of nations, the obligation existed, and were a perfect obligation, and the proof which is offered of the guilt of the accused also satisfied the requisitions of that law, still the President has no power to make the delivery. The Constitution, and the treaties and acts of Congress made under its authority, comprise the whole of the President's power. Neither of these contains any provision on the subject. He has no power to arrest any one, except for the violation of our own laws. A treaty or an act of Congress might clothe him with the power to arrest and deliver up fugitive criminals from abroad, and it is, perhaps, to be desired that such a power existed, to be exercised or not, at his discretion, for although not *bound* to deliver up such persons, it might very often be expedient to do it. There could certainly be no objection to the exercise of such power in a case like the present. It would violate no claim which these fugitives have on us. Humanity requires us to afford an asylum to the un-

fortunate, but not to furnish a place of refuge to the guilty. On the other hand, respect for ourselves, and a prudent regard for the purity of our society, admonish us to repel rather than to invite the admixture of foreign turpitude and contamination.

"There is another consideration connected with this subject which I beg leave to bring to your view. The people of the United States seem to have contemplated the national government as the sole and exclusive organ of intercourse with foreign nations. It ought, therefore, to be armed with power to satisfy all fair and proper demands which foreign nations may make on our justice and courtesy, or, in other words, with power to reciprocate with foreign nations the fulfilment of all the moral obligations, perfect and imperfect, which the law of nations devolves upon us as a nation. In this respect our system appears to me crippled and imperfect. It might be set to rights, with regard to the subject under consideration, by an act of Congress providing for the punishment of our own citizens who, having committed offences abroad, come home for refuge, and for the delivery of foreign culprits who flee to us for shelter".—*Opinions of Attorneys General*, p. 519, &c.

Attorney General Legare, in an opinion given October 11, 1841, puts the matter of declining the extradition wholly on the practice of the government:

"According to the practice of the executive department, the President is not considered as authorized, in the absence of any express provision by treaty, to order the delivering up of fugitives from justice.

"Whatever I might think of the power of the federal executive in the premises, were this a new question, I consider the rules laid down by Mr. Jefferson, and sanctioned after the lapse of upwards of thirty years by another administration, as too solemnly settled to be now departed from."—*Opinions of Attorneys General*, vol. 111, p. 661.

Attorney General Cushing, in an opinion under date August 19, 1853, gives his views on the general subject, in disposing of an application to this government to demand the extradition of a criminal, fled to the British provinces, charged with a crime not enumerated in our treaty with Great Britain. Mr. Cushing says:

"I have examined the papers which you were pleased to submit to me in the case of the people of New York *vs.* Aaron Wing, from which it appears that said Wing is under indictment for larceny, alleged to have been committed by him in violation of the laws of the State of New York, and is now a fugitive from justice in the British provinces, and application is made to you for process to obtain the extradition of said Wing.

"Larceny is not among the cases provided for by any convention between the United States and Great Britain. The crimes enumerated in the treaty of 1842, which now governs the question, are murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery in the utterance of forged papers. It is, therefore, in these cases only that by treaty either government *can claim* the extradition of fugitives from justice taking refuge in the dominions of the other.

"It is the settled political doctrine of the United States that, independently of special compact, no state is bound to deliver up fugitives from the justice of another state."—*See the authorities collected in Wheaton's Elements*, p. 172.

"It is true, any state may, in its discretion, do this as a matter of international comity towards the foreign state, but all such discretion is of inconvenient exercise in a constitutional republic organized as is the federal Union; and accordingly it is the received policy of this government to refuse to grant extradition, except in virtue of express stipulations to that effect."—*Mr. Legare's opinion*, October 11, 1841.

"Special reasons exist to dictate reserve in the matter of extradition. If the enumeration of cases for the claim of extradition in existing treaties be not sufficiently ample, it would seem better to enlarge the same by further mutual stipulations rather than at the mere discretion of the President."—*Opinions of Attorneys General*, vol. 6, pp. 85, 86.

It is believed that these opinions of successive Attorneys General indicate the views, from time to time, on which the practice of the government of the United States has been to decline the extradition of *criminals* in such cases as have arisen, in the absence of treaty stipulations. The theory upon which this practice has from time to time been rested, has not always been fully indicated in the opinions given by these learned officers, but unquestionably it has had its origin in the error, as it is confidently submitted later judicial discussions have shown it to be, that treaties *conferred* the power on the government, and legislation must attribute the function to the Executive; whereas the very existence of the government, as that of a nation among nations, devolved this

power and responsibility upon the government, and the Constitution itself attributed this executive function, with all others, to the President.

It has already been suggested that the practice of the government upon a branch of international relations whose just conduct, under the law of nations and the Constitution of the United States, rests upon the same principles which must govern this subject of extradition, has uniformly recognized the duty and ability of the government, in its executive department, to represent and act for the nation, without deriving power from treaties or from Congress.

Under the administration of Washington the whole subject of the powers and duties of the government, under the law of nations, and of the assignment of these powers and duties to the executive department, was settled upon the surest foundations of principle. And the practice of the government has never departed from the rules then established.

An adherance to these rules, upon all occasions, when the nation, as a neutral, has been called upon to fulfil obligations to belligerents, has preserved us from being drawn into hostilities, and made our conduct an illustrious example and guide for the great powers of the civilized world. Under the present administration the Executive has adhered to the same principles in the relations which the civil war has induced between this government and the maritime powers of Europe. To these principles the Executive has looked for the measure of the obligations of one nation to another, under the law of nations, and for the measure and support of the executive authority in the premises without the presence of treaty stipulations or of the legislation of Congress. The course of discussion, diplomatic and popular, has brought so distinctly and so recently before the public mind the historical illustrations of the conduct of our government, and the action of the present administration is so freshly in the public attention, that it is unnecessary to insist upon the transactions in detail. It is sufficient to say that the proposition of Mr. Marshall, assented to by his great opponents in debate, that the executive function of the extradition of criminals, under the law of nations and the Constitution of the United States, "is precisely and unequivocally the same" as that of the surrender of prizes, has never been refuted, and is believed to be impregnable.

Mr. Wirt, in his office of Attorney General, was called upon to advise the Executive as to its duty in certain cases where surrender was claimed from the government by foreign nations. In two of these cases the subject of the surrender claimed was *slaves*—a subject, under the general law of nations, falling more properly under the head of extradition of persons, than of delivery of property. In neither of these cases, besides, were the slaves charged as *criminals*, so that their case fell within the privilege of *asylum*, which civilized nations, and this nation more than all others, so strenuously and so resolutely maintain in protection of all refugees from political prosecution or personal oppression.

I proceed to quote from Mr. Wirt's opinions. Under date of November 7, 1821, the Attorney General, in the case of a vessel under consideration, upholds the executive power, and insists upon the international duty to make the surrender, even to the point of arresting private judicial proceedings against the vessel.

"If the President of the United States is satisfied that the seizure of La Jeune Eugenie by the United States schooner Alligator, Lieutenant C. Stockton commander, was a violation of the sovereignty of the King of France, and that she ought to be restored on the demand of the French minister, I can perceive no impropriety in adopting the course which was pursued in the case of the Exchange, and approved by the Supreme Court, (7th Cranch, 116,) that is, to disclose this fact to the court, before which the case is depending, by a suggestion to be filed by the attorney for the United States. It was the course which was pursued by President Washington in 1796, with regard to the Cassius, an armed vessel bearing the commission of the French republic."—(2 *Dallas*, 365.)

"The federal courts are not more completely vested with the judicial power of the nation than the Executive is with that portion of the national power which relates to foreign nations;

and when one of our citizens (in that freedom of action which belongs to them all) has carried before our tribunals a subject in which, according to the opinion of the Executive, they cannot proceed without violating the rights of foreign nations, and endangering thereby the peace of our own, it appears to me that it would be a palpable dereliction of duty on the part of the Executive to withhold the communication of this opinion from the court."—*Opinions of Attorneys General*, vol. 1, pp. 504–'6.

Again, under date of January 22, 1822, Mr. Wirt advises the surrender to the French government of certain Africans:

"I have again considered the request of the French minister that the Africans found on board the French brig La Pensee, on her recapture from the pirates, should be delivered to him, as having been found on board of a French vessel, he proposing to restore them to their native land, from which they have been unlawfully taken; and it appears to me entirely proper to accede to his request.

"The Africans in question are not in the predicament in which our statutes prescribe the duty of the President; there has been no intention to violate our laws; they were not on their way to this country when captured by the pirates, nor when recaptured from them. They are not, therefore, within the provisions of any of our statutes.

"It has been doubted whether you have any power to act on the subject, but it was determined in the case of the Jeune Eugenie that we had no right to meddle with the flag of France, and that when a vessel covered by that flag had been turned from her course by one of our cruisers the President had power to restore her, or to hand her over, on application of the minister of France, to the French consul. It is, in my opinion, for the exercise of the same power only that the French minister has called here."—*Opinions of Attorneys General*, vol. 1, pp. 534, 535.

In the year 1822 the minister of Denmark demanded the extradition of a slave who had hid himself on board an American vessel when in a port of the Danish island of St. Croix. The presence of the fugitive on board had not been discovered till the vessel was well on its voyage, and he was brought to New York. The views of Mr. Wirt on the public and constitutional questions presented to him are remarkably clear and thorough. That so lamentable and perverse a misapplication of them should be made, must be ascribed to the then policy and principles of our government on the subject of slavery. Under date of September 27, 1822, Mr. Wirt says:

"From these views I am of the opinion that it is due to the sovereignty of Denmark, and to our own character as a nation, to restore this slave to the condition from which he has been taken, by a ship carrying our flag, and belonging to our citizens, and that the policy of our own laws conspires to enforce the performance of this duty.

"With regard to the President's power to order the restitution, I consider the question as settled long since by the practice of the government, sanctioned by the acquiescence of the people. The point once conceded that Denmark alone has the right to pronounce upon the condition of this man, that she has pronounced him a slave, and the property of a Danish subject, I see no difference between the President's authority to restore a ship or any other property belonging to a subject of a foreign power, which has been improperly taken from his possession by our citizens, or by a force furnished from the United States. This question, as regards ships, was very solemnly and on great deliberation settled by President Washington, assisted by the officers of the government who formed his first council in 1793, and the existence of the power was unanimously affirmed. The same power has been since repeatedly exercised on various occasions, and in different forms. Even where proceedings have been instituted against the subject in a court of admiralty, and the President has been required by the government to which or to whose people the property belongs to cause it to be restored, the President has, by a mere suggestion, filed in court by the attorney of the United States acting avowedly under his authority, arrested the proceedings of the court, and thus effected a restoration of the property, of which the following instances occur: The cases of the Cassius, in 1796; the Young Eugenie, in 1821. In all these cases the restoration was the mere effect of the interference of the President, and I can perceive no sound distinction in principle between these cases and the case under consideration.

"After so long an acquiescence in the exercise of this power on the part of the President it would seem unnecessary to investigate the source from whence he derived it. But I understand the process of reasoning which has led to the exercise of this power to be this: The President is the executive officer of the laws of the country; these laws are not merely the Constitution, statutes, and treaties of the United States, but those general laws of nations which govern the intercourse between the United States and foreign nations, which impose on them, in common with other nations, the strict observance of a respect for their national rights and sovereignties, and thus tend to preserve their peace and harmony. The United States in taking the rank of a nation must take with it the obligation to respect the rights of

other nations. This obligation becomes one of the laws of the country; to the enforcement of which the President, charged by his office with the execution of all our laws, and charged in a particular manner with the superintendence of our intercourse with foreign nations, is bound to look, and where wrong has been done to a foreign government, (invasive of its sovereignty and menacing to our own peace,) to rectify the injury so far as it can be done by a disavowal and the restoration of things to the *status quo*.

"In the particular case before us the performance of this duty would find sanction in the spirit and policy of our statutes prohibitory of the introduction of people of color among us, in relation to which so large a power is given to the President by the second section of the act of the 3d of March, 1819, in addition to the acts prohibiting the slave trade.

"II. What form of proceeding should be adopted for this purpose?

"I presume that the President might, by an order directed to the marshal of the State of New York, require him to deliver this slave to the order of the minister of Denmark. But as I understand that the civil authorities of New York have taken possession of this slave for the purpose of guarding the State against the danger of being burdened with the expenses of his maintenance, I submit to you, sir, whether it may not be due to comity to make the case known to the governor of the State, and to request that he will cause the slave to be delivered to the marshal for the purpose aforesaid, giving to the marshal the necessary corresponding instructions."—*Opinions of Attorneys General*, vol. 1, p. 567, &c.

In closing this examination of the principles of the Constitution, and of the practice of the government touching the extradition of criminals, (in the absence of treaty stipulations, or of an act of Congress to control,) it would seem to be demonstrated that, however reasonable and expedient, in the particular cases in which the extradition was declined, the action of the Executive may have been, (a topic not pertinent to the present inquiry,) an extradition in these cases could not have been pronounced a violation of the Constitution of the United States. It would have been but an exercise of discretionary authority, under the law of nations, vested by the Constitution in the President. In any one of these cases an extradition might have been open to condemnation, as unsuitable and oppressive, if its circumstances had given it that character, but it could not be condemned as a usurpation of power and a violation of the Constitution. So in the case now under consideration. Though the particular exercise of this authority of extradition may be at variance with principles of justice and humanity, if such a pretence can be made, yet *that* inculpation of the Executive would not involve a usurpation of power or a violation of the Constitution.

A few words should be devoted to that phrase of the resolution which charges the action of the Executive to have been "in derogation of the right of asylum." That the practice of civilized nations, and especially of this country, has maintained this privilege of asylum, and that this nation at least would consider its honor engaged to vindicate it, no one will be disposed to deny. This privilege is understood to embrace refugees from personal oppression and from the consequences of political offences. But no civilized nation, and our own as little as any, has included within this privilege criminals guilty of crimes proscribed by nature and humanity. In these cases, to afford protection against pursuing justice is an offence against humanity and against our own society. Mr. Wirt, in a passage already quoted, draws the distinction with force and precision. In speaking of the case of the criminals before him, he says their surrender "would violate no claim which these fugitives have on us. Humanity requires us to afford an asylum to the unfortunate, but not to furnish a place of refuge to the guilty. On the other hand, respect for ourselves and a prudent regard for the purity of our society admonish us to repel rather than invite the admixture of foreign turpitude and contamination."

Attorney General Cushing has presented the matter with admirable clearness in an opinion under date of October 4, 1853. The head note of his opinion is as follows:

"The mutual extradition of fugitives from justice is an object alike interesting to all governments.

"Emigrants and exiles, for cause of political difference at home, are entitled to asylum in this country, but not malefactors. On the contrary, the foreign government which reclaims its fugitive malefactors is serviceable to us by ridding us of the intrusive presence of crime.

Hence, when reclamation of a fugitive from justice is made, under treaty stipulation, by any foreign government, it is the duty of the United States to aid in relieving the case of any technical difficulties which may be interposed to defeat the ends of public justice, the object to be accomplished being alike interesting to both governments, namely, the punishment of malefactors, who are the common enemies of all society."

In closing the opinion, Mr. Cushing says:

"The object to be accomplished in all these cases is alike interesting to each government, namely, the punishment of malefactors, the common enemies of every society. While the United States afford an asylum to all whom political differences at home have driven abroad, it repels malefactors, and is grateful to their governments for undertaking their pursuit and relieving us from their intrusive presence."—*Opinions of Attorneys General*, vol. 7, p. 536, &c.

It seems to be well settled now, in the jurisprudence of the United States, that the several States have the right to exclude by legislation, and through executive power, criminals, paupers, vagrants, and other injurious elements of society, under the powers reserved to the States under the frame of our government.—(State of New York *vs.* Miln, 11 Pet. Rep., 102; Holmes *vs.* Jennison, 14 Pet. Rep., 649; the Passenger cases, 7 How. Rep., 283.)

An instance of the exercise of this right of exclusion of criminals by a State, upon motives of self-protection against the burden and pollution of their presence, occurred in 1855, when Mr. Marcy was Secretary of State, and Mr. Wood was mayor of New York. By the correspondence on file in the Department of State it appears that, upon information communicated to the department by the consul at Hamburg, and imparted to the mayor of New York, that magistrate arrested and sent out of the country the alleged criminals. As illustrative of the general subject, this correspondence is annexed.

It is, then, a misconception to speak of the extradition of a *criminal*, not within the description of a political refugee, as "in derogation of the right of asylum."

We are brought, now, by the course of this inquiry to the only remaining question which the nature of the subject, or the method adopted for its treatment, has left for consideration. We have seen the true position of the national obligation and authority for the extradition of criminals, as defined and established by the law of nations. We have seen that this obligation and authority, under the Constitution of the United States, and in the absence of treaty stipulations and statutory enactments, rest with the President. We have only further to consider whether the occasion presented, in the actual case, properly called for the performance, by the President, of this national obligation, and the exercise of this national authority.

It is obvious that, in the very nature of such an application made to our government by a friendly power, there is no opportunity for the suggestion of any motives or interests of a private or personal character, as possibly inviting or shaping the action of the Executive. The question presented to him has no connexion with topics or considerations except of the most public, the most important, and the most elevated character. Nor can there be any hesitation in feeling that, upon such an application, all purely official considerations would prompt the Executive to decline, rather than assume, affirmative and responsible action, when such a disposition of the matter might find a ready justification, and an opposite course might invite criticism or incur censure. In judging, therefore, whether the case presented to the President was suitable for the exercise of his authority, we may feel sure that the plain and substantial features of the case, in its relations to our national character and duty, and to the principles and policy of our government, are all that were before the mind of the President in determining his action, and all that have any place in this discussion.

The request made by the Spanish minister for the extradition of Arguelles to the justice of his government, recognized the relations of the two governments

as imposing no express or stipulated obligations upon one or the other for the reciprocal surrender of fugitive criminals, and placed the application upon the grounds of comity, in the interests of justice and humanity. Although we had never had, in the whole course of our amicable and intimate diplomatic and commercial relations with Spain, any treaty clause for the extradition of criminals, it was a most pertinent and important consideration for the President, in meeting this request of the Spanish government, that our government had not hesitated, with some frequency, when its important interests were concerned, to make similar demands upon the comity of the Spanish government in the same interests of justice and humanity. Our commerce with the Spanish West Indies, carried on almost entirely by our own marine, made us frequent applicants to the Spanish government for the extradition of seamen of our vessels charged with mutiny, murder, and piracy. It is believed that to all such applications the promptest and most respectful compliance has been yielded by the Spanish government, and it may well be doubted whether our extensive and valuable West India trade could have reached and maintained its prosperity had the Spanish ports furnished protection and immunity to these maritime offences. The consular correspondence on the files of the Department of State exhibits many cases of these extraditions, all resting upon the same grounds of international relations between the governments, upon which the case of Arguelles was put by the Spanish minister and treated by the President. A brief notice of a few cases will illustrate our obligations to Spain in this behalf, and the sentiments and policy upon which our government, with the universal approval of the people, has proceeded. In 1857 three seamen were arrested, lodged in jail in Havana, and sent to this country in irons, charged with the murder of the master, two mates, and a seaman of the brig Albion, of Portland. In 1860 several prisoners were sent from Havana to this country, charged with a murder on board the Henry Warner, *committed in the port of Havana.* In 1861 a seaman was sent to this country, as a prisoner, from Havana, charged with mutiny and stabbing the chief mate of the brig Nebraska, *the crime having been committed in the port of Havana.* And in the same year two seamen were surrendered as prisoners, and sent home from Havana, charged with mutiny and stabbing the mate of the ship Ocean Traveller. In all these cases the authority of the captain general of Cuba was exerted to the end of these extraditions at the request of our consuls, and as early as the year 1835 the footing upon which this action was had was settled in the correspondence of Consul Trist with the captain general of Cuba, according to the statement of the latter, as being "without prejudice to this (the local) jurisdiction, and in the spirit of cultivating harmony with the United States."

It is apparent, upon these established relations between our government and that of Spain in the extradition of criminals "upon the grounds of comity and in the interests of justice and humanity"—relations the permanence of which was of continual importance to our commerce—that it was impossible for the President to treat the equivalent application of the Spanish government otherwise than as that government had dealt with our requests; that is to say, according to the character and circumstances of the case presented.

But if our attitude and obligation towards the government of Spain on the general subject of the reciprocal extradition of criminals was such as I have stated, our attitude and obligations towards all Christian states on the subject of the African slave trade were special, unequivocal, and emphatic. The crime of Arguelles touched this subject in its most vital point, and the application of the Spanish minister for his surrender for punishment, exhibited an earnest and practical purpose of the Spanish government to concur with the policy of this government and of Great Britain for the absolute extermination of this infamous traffic, by suppressing the slave market in Cuba. This co-operation on the part of Spain had seemed so essential to the success

of the combined efforts of the governments of the United States and of Great Britain, that, at the very moment of the occurrences in the island of Cuba which gave rise to the application for the extradition of Arguelles, these two governments were about uniting in a representation to the government of Spain on the urgent occasion for efficient and decisive measures on its part for breaking up the market for slaves in Cuba. The point of this representation was the better securing the freedom of slaves landed on the island of Cuba when these unlawful importations were detected. This step on the part of this government was taken in pursuance of the interest and policy which had induced the stipulation of the ninth article of the treaty of Washington, that the parties to that treaty would unite in all becoming representations and remonstrances with any and all powers within whose dominions markets for African negroes were allowed to exist. The correspondence, heretofore referred to as laid before the Senate, shows the communications on this subject between the governments of Great Britain and the United States, and between them, respectively, and the government of Spain.

It is difficult to conceive a situation in which the request for the surrender of a criminal could have been enforced by more clear or more weighty considerations of our own national policy and engagements, to apply all just means of influence or of action in aid of the objects sought, and to be promoted by the application, than this case of Arguelles presents.

The preceding suggestions, however weighty, are quite independent of and introductory to what usually must constitute the sole elements of consideration upon which the Executive is to determine, whether or not a proposed case of extradition should or should not call forth the exercise of this power and duty under the law of nations, and the precepts of humane and Christian civilization. These elements are the traits of the alleged criminality, as involving heinous guilt against the laws of universal morality and the safety of human society, and the gravity of the consequences which will attend the exercise of the power in question, or its refusal.

The crime imputed to Arguelles, whether it be regarded as an offence against the justice of his own country, or against society and humanity, is of too dark a character to be deepened by epithets or invective. Holding high official position under the crown of Spain, and appointed in that office to the discharge of a particular and important trust in the interest of humanity, for the rescue from perpetual slavery of the wretched victims of the nefarious traffic which our laws denounce as piracy, a crime against the human race, he is charged with having himself sold into personal bondage one hundred and forty-one of these poor creatures, making to himself the great gain of their merchandise, and covering this violence from detection by manifold artifices of fraud, while at the same time he receives from a grateful government a large reward for his supposed fidelity and efficiency in carrying out its beneficent purposes in the trust confided to him. It is perceived at once that every circumstance which, in the view of the publicists, may be rightfully required by a sovereign power as a condition for the exercise of the authority of extradition, is here present in an extreme measure.

But the case presented to the Executive upon the request of the minister of Spain did not limit its appeal to considerations touching the punishment of heinous crime and the general interests of social and human welfare which make this the policy of all civilized nations. The representations of the Spanish authorities made it evident that the presentation of the person of Arguelles for trial under the offended laws of his own country was a necessary step towards the relief from their misery of the numerous victims of his crime. The subjection of Arguelles to trial was the key which was to unlock their dungeons, and thus a responsibility of inestimable force and vividness was impressed upon the President's decision. Negative action, as towards Arguelles and his punishment

became affirmative action for the continuance of his inhuman oppressions, and of the woes his crime had inflicted upon this crowd of innocent sufferers. That the chief magistrate of a great nation, in whom the law of nations and the Constitution of his country had reposed the power to meet this exigency, should hesitate to exercise it, upon cold and timid calculations of official ease, would be to make himself the careless spectator of the unaided misery, if not the moral accomplice of the unpunished crime.

Upon these considerations, then, it would seem that the action of the President of the United States, in directing the extradition of Arguelles upon the application of the government of Spain, was in pursuance of a national authority, sanctioned by the law of nations; was in exercise of an executive function belonging to his office under the Constitution; was not in derogation of any right of asylum; was a just recognition of our relations with a friendly power; was conformed to the cherished policy of this country for the extinction of the traffic in slaves, and was an obligation to justice and humanity which could not have been withheld.

I have the honor to be, sir, with great respect, your obedient servant,

WILLIAM H. SEWARD.

Hon. JAMES F. WILSON,
Chairman of the Committee on the Judiciary, Ho. of Reps.

No. 19.] CONSULATE OF THE UNITED STATES OF AMERICA,
Hamburg, August 17, 1855.

SIR: I deem it my duty to inform you that I have just reasons to believe the Hamburg ship Deutschland, Popp, master, left here the 2d instant for New York, has on board four criminals, sent by the authorities of Güstrow, duchy of Mecklenburg-Schwerin, from the penal establishment of said Güstrow, to be landed at New York.

I have notified the collector and mayor of New York of all the facts I know in the premises, and am, sir, very respectfully, your obedient servant,

SAMUEL BROMBERG.

Hon. WILLIAM L. MARCY,
Secretary of State, Washington, D. C.

DEPARTMENT OF STATE,
Washington, September 19, 1855.

SIR: Your despatch, No. 19, has been received, and an extract therefrom relating to the deportation of certain criminals to New York by the authorities of Güstrow has been sent to the mayor of the former place.

I am, sir, &c.,

WILLIAM HUNTER,
Assistant Secretary.

SAMUEL BROMBERG, Esq.,
United States Vice-Consul, Hamburg.

DEPARTMENT OF STATE,
Washington, October 20, 1855.

SIR: Referring to your No. 19, relating to the shipment to New York of four criminals by the authorities of Güstrow, I have now to inform you that the mayor of New York, to whom an extract from your despatch was sent, has in-

It is my determination to return all such, forthwith, in every case known to me, by the same vessel, and at the expense of those who bring or those who send them. That which was intended as a pecuniary or moral advantage will thus cease to be so, for, besides the exposure to be followed by the universal condemnation of every honorable or intelligent people, it will also receive the additional mortification of being an unprofitable operation within itself.

Very respectfully,

FERNANDO WOOD.

Messrs. BECK & KUNHARDT,
62 *Beaver Street, New York.*

NEW YORK, *September* 23, 1855.

SIR: We beg to acknowledge receipt of your communication of yesterday in which you informed us that the rigid inquiry instituted by you on board of the ship Deutschland, Captain Popp, from Hamburg, has confirmed the information previously received by you regarding the character of four passengers by said vessel, and that the same were sent directly from the penal establishment of Güstrow, duchy of Mechlenburg Schwerin, by order and at the expense of the authorities of that place.

We beg to repeat herewith what we already expressed to you verbally, that the owners of the Deutschland are entirely unaware of the unfavorable character of the four passengers referred to, and that nothing would be further from their thought than to have their vessel and their confidence abused by the smuggling on board of any passengers who are sent from penal establishments. We feel certain that the present case will cause the greatest indignation to the owners of the Deutschland—the more so, as the line to which the vessel belongs was established less with a view to pecuniary profit, than in order to promote the welfare and comfort of the German emigrants. The Deutschland will sail from here to Hamburg about the 10th of next month, and we shall reserve room for the four persons, so as to return them to where they came from. We shall give you timely notice when the vessel is ready.

Very respectfully, your most obedient servants,

EDWARD BECK & KUNHARDT.

His Honor FERNANDO WOOD,
Mayor of the City of New York.

Mr Savage to Mr. F. W. Seward.

UNITED STATES CONSULATE GENERAL,
Havana, March 5, 1864.

SIR: In reply to your despatch of the 5th ultimo, accompanying a copy of a note from Lord Lyons of the preceding date, I have to state that, notwithstanding the most diligent inquiries among my friends, I have been unable to ascertain the name of the steamer that brought the large lot of African negroes (upwards of a thousand) captured by the Spanish authorities. These negroes were landed in the district of Colon, on the south side of this island. The steamer had been originally English; came from England to Cadiz, where she was put under Spanish colors, fitted out for the slave trade, and cleared ostensibly for a lawful voyage to Fernando Po, a Spanish island on the coast of Africa.

The negroes were captured on shore by the lieutenant governor of the district, and I am confidentially informed that the steamer proceeded again to Africa for another load of the same kind, the necessary stores having been placed on board

immediately on the discharge of her cargo. It is said that Don Julian Zulueta, Don Salvador Sania, Marquis of Marianao, the Brigadier Garcia Munoz, and other prominent persons, among whom General Concha is mentioned, were interested in that expedition.

Several slave expeditions have been landed for the same parties; but two besides the above have been captured, one of about six hundred negroes and the other of about two hundred, most of the cargo of this latter having been landed, and the vessel conveying them has the appearance of being English-built. Don José Carreras, a partner of Mr. S. Senia, has been for some time past in confinement, charged with being implicated in these violations of law. Should any further trustworthy information reach me I will not fail to transmit it at the earliest opportunity.

I am, sir, with great respect, your obedient servant,

THOMAS SAVAGE,
Vice-Consul General.

Hon F. W. SEWARD,
Assistant Secretary of State, Washington, D. C.

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, March 11, 1864.

MY LORD: Recurring to your note of the 4th ultimo respecting the arrival in Havana of a thousand imported negroes, in which the desire of her Majesty's government for any information on the subject is signified, I have the honor to enclose a copy of a despatch of the 5th instant from the United States consul general at that port which relates to the matter.

I have the honor to be, with high consideration, my lord, your obedient servant,

WILLIAM H. SEWARD.

Right Hon. LORD LYONS, *&c., &c., &c.*

Mr. Savage to Mr. Seward.

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,
Havana, March 27, 1864.

SIR: I have just returned from an interview had with the captain general by his request, the object of which was to ascertain if the United States authorities can return to this island the person of an officer of the Spanish army named Don José Agustin Arguelles, who is believed to be in New York. This officer was, in November last, the lieutenant governor of the district of Colon, in this island, that effected the capture of the large expedition of African negroes reported by me to the department on the 20th of November last, despatch No. 107. The government was highly pleased with his zeal, and paid him $15,000 for his share of the prize money usually allowed to captors of such expeditions. The officer subsequently obtained a leave of absence of twenty days, upon his represenation that the object of his journey to New York was to purchase the Spanish journal there published, called La Cronica, has not returned, and since his departure it has been discovered that he and other officers of the district of Colon retained and sold into slavery one hundred and forty-one of the negroes captured by them. Some of these negroes were sold at $700, and others at $750 each.

The superior court of the island, having exclusive jurisdiction over such causes, has taken cognizance of this case, and requires the presentation of Don José

Agustin Arguelles before it, to insure the prompt liberation of these one hundred and forty-one victims. The captain general gave me to understand that, without Arguelles's presence, it would be very difficult, and, at all events, it would require a long time to attain that humane object. His excellency pronounced Arguelles to be a scoundrel, worse than a thief or highwayman, inasmuch as he took advantage of his position, as the local authority, to commit that outrage with little risk to himself.

I told the captain general that in the absence of an extradition treaty between the two governments, or of any law, public or municipal, authorizing the rendition, our government could not grant the request, but promised to lay the matter in this confidential way before you, which he desired me to do by the earliest opportunity.

I beg of you to consider the subject, and to advise me at at an early day of your views thereupon.

I have the honor to be, with great respect, your obedient servant,

THOMAS SAVAGE,
Vice-Consul General.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, November 28, 1863.

MY LORD: It appears, from information this day received from the consul general of the United States at Havana, that over one thousand African negroes were recently brought to that city. It is reported that they were landed from a steamship, whose name and nationality are unknown, in the neighborhood of Cardenas, or Sagua, and that very prominent and wealthy persons are said to be implicated in the business. The steamer was not captured. It is believed that she went to Nassau after landing the negroes. This intelligence has been communicated to the Navy Department.

I have the honor to be, with high consideration, your lordship's obedient servant,

WILLIAM H. SEWARD.

Right Hon. LORD LYONS, *&c., &c., &c.*

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, November 28, 1863.

MY DEAR LORD LYONS: I have taken the President's instructions upon the suggestion, communicated in your note of October 15, of Earl Russell, concerning a joint or concurrent appeal to be addressed to the government of Spain for an amendment of her law which tolerates the bondage of imported Africans landed in Cuba after they have become in form the property of an owner of an estate in that island. If Earl Russell, with his large experience of this evil and of the difficulty of obtaining a correction of it, will prepare the draught of such a communication as he shall think may properly be addressed to the Spanish cabinet, the President will, with great pleasure, authorize me to communicate with the Spanish government in the same sense and spirit with those which

shall be adopted by her Britannic Majesty's government. I shall be thankful if you will inform Earl Russell that the President appreciates very highly the liberal and humane sentiments which have inspired the suggestion to which I have thus replied.

I am, my dear Lord Lyons, very truly yours,

WILLIAM H. SEWARD.

Right Hon. LORD LYONS, &c., &c., &c.

Lord Lyons to Mr. Seward.

WASHINGTON, *February* 4, 1864.

MY DEAR SIR: I did not fail to forward to Lord Russell a copy of the letter of the 28th November last, in which you did me the honor to inform me that if his lordship would prepare the draught of such a communication as might, in his opinion, properly be addressed to the Spanish cabinet, with a view to procure an amendment of the laws affecting the introduction of slaves into Cuba, the President of the United States would authorize you to communicate with the government of Spain in the same sense and spirit with those adopted by her Majesty's government.

Lord Russell has desired me to thank you for taking the President's instructions on this matter at a time when other pressing affairs must have occupied the attention of the Chief Magistrate. He has also authorized me to communicate to you the enclosed copies of a despatch from her Majesty's minister at Madrid, and of a note in which, in execution of instructions from her Majesty's government, that minister has pointed out to the government of Spain the measures which, in the opinion of her Majesty's government, are required for the suppression of the Cuban slave trade.

Her Majesty's government do not doubt that a similar representation addressed to the government of Spain by the United States minister at Madrid would have great weight with the Spanish cabinet, and they would learn with much satisfaction that the United States representative had been directed to make a communication to the Spanish minister for foreign affairs in the same sense as that made by her Majesty's minister in the note of which a copy accompanies this letter.

Believe me to be, my dear sir, your very faithful, humble servant,

LYONS.

Hon. WILLIAM H. SEWARD, &c., &c., &c.

[Enclosures.]

The present captain general of Cuba has acted in good faith in carrying out the treaty obligations of Spain for the suppression of the slave trade, and the Spanish government appears to have hitherto approved the proceedings of that officer. The result has been that the number of slaves introduced into Cuba within the twelve months ended the 30th of last September is estimated at from seven to eight thousand, as compared with eleven thousand two hundred and fifty-four, the number introduced in the corresponding twelve months of the preceding year.

This diminution in the Cuban slave traffic would be satisfactory if it were not that it is mainly owing to the exertions of one individual alone, General Dulce, the present captain general of Cuba, who, it must be borne in mind, is liable to be removed at any moment, when, in all probability, the traffic would again resume its wonted vigor.

General Dulce complains bitterly of the want of sufficient power conferred

upon him, and of the inadequacy of the provisions of the Spanish penal code for suppressing the Cuban slave trade; and if an officer so well disposed as is the present captain general of Cuba finds it impossible to put a stop to the importation of slaves into Cuba, it may be easily inferred that a less honorable officer would find ample excuses for the non-performance of his duties in this respect.

In order to put an end to the slave trade in Cuba, it is necessary that the Spanish government should take steps for amending the laws prohibiting the introduction of slaves into that island. The existing laws are admitted by the Spanish authorities to be insufficient for the purposes for which they were framed, and until they are amended the sincerity and good faith of the Spanish government will be liable to be called in question.

The 4th and 13th articles of the penal code only serve as a protection to the slave dealers. The former of these articles prohibits the seizure by the authorities of any newly imported slaves, no matter how notorious may have been the violation of the Spanish laws in introducing the negroes, if once the slaves have been conveyed to a property or plantation in the island.

The 13th article, on the other hand, provides that the legal punishment of slave dealers and their accomplices can only be inflicted in virtue of a sentence of the "Royal Audiencia Pretorial;" but in consequence of nearly the whole of the population of Cuba, as well as the subordinate authorities, being more or less mixed up and interested in the slave trade, it is impossible to procure evidence to convict the parties engaged in the traffic, and this article remains, therefore, entirely inoperative.

Eleven hundred slaves have, as is well known to the government of the United States, been recently seized by the captain general of Cuba after they had been successfully landed and conveyed to a plantation in that island. Attempts will doubtless be made to procure their restitution on the ground that they have been illegally seized by the captain general; but if one of these negroes is given up to the slave dealers, either by the orders of the Spanish government or by the decision of a judicial tribunal, her Majesty's government trust that the government of the United States will unite with her Majesty's government in addressing a serious remonstrance on the subject to the Spanish government.

FEBRUARY 4, 1864.

MADRID, *December* 16, 1863.

M. LE MIN'RE: In conformity with the wish expressed by your excellency in the conversation which I had the honor of holding with you on the 14th instant upon the subject of the slave trade in the island of Cuba, I proceed to particularize in writing those measures to which I alluded as being, in the opinion of her Majesty's government, calculated to put a final stop to that deplorable traffic, the adoption of which measures I am instructed to press upon her Catholic Majesty's government.

As I had the honor of stating to your excellency, the government of the Queen, my mistress, have learned with extreme satisfaction, from the official reports of her Majesty's consul at Havana, that a considerable diminution in the number of negroes illegally imported into Cuba within the year ending the 5th of September last has taken place, as compared with former years, and also that a well-judged amelioration in the treatment of those legally held in slavery there has been encouraged by the authorities of her Catholic Majesty—a measure, as her Majesty's consul remarks, which has happily combined a regard for humanity and a sensible increase in the productiveness of the plantations in which it has been adopted.

Her Majesty's government have pleasure in recognizing the good will and

activity displayed by the present captain general of Cuba, as well as the measure of his success, in checking the slave trade. It appears, however, that such are the temptations to unprincipled individuals to introduce slaves into Cuba, and such the facilities still afforded to them by the defects of certain parts of the Spanish laws regarding the subject, that without some modifications in these, his well-meant efforts must continue to fall short of their intended object.

The measures to which her Majesty's government would call your excellency's attention are—

1st. An enactment declaring slave trade to be piracy. This is a measure which has been adopted by many nations, including those possessing large numbers of slaves. Its success has been signal in checking the slave trade in countries where it most prevailed. It has mainly contributed to free Brazil from the stigma attaching to this inhuman traffic, and that without any injury to her productiveness or material prosperity. Her Majesty's government are not aware of any sound argument which can be alleged against this measure.

2d. A modification of the 9th and 13th articles of the Spanish penal code in force in the island of Cuba.

According to the former of these articles, the authorities cannot seize imported negroes when once they have been conveyed to a property or plantation, however notorious the fact of such violation of the law having been committed may be.

According to the latter, the legal punishment of slave traders and their accomplices can only be inflicted in virtue of a sentence by the Royal Audencia Pretorial. Now, it is well known that the difficulty of producing evidence before this court is so great, that proof to convict those accused of such charges is seldom, if ever obtained, however morally convinced the ruling authorities may be of their guilt. It is true that the captain general has power to remove officers of whose delinquency he feels certain, and it is true that the present Captain General Dulce, his predecessor, the Duke de la Torre, and others, have exercised this power in regard to certain flagrant cases; but how much more effective as regards public opinion, how much more satisfactory to her Catholic Majesty's government, would it be that such punishment and degradation should result from a legal conviction, rather than from the exercise of discretional power.

I believe that in stating that the experience of the Duke de la Torre, as well as that of General Dulce, have caused them to coincide in the opinion that the adoption of both the measures to which I have above adverted would be expedient and necessary for the final extirpation of the slave trade in Cuba. I am not overstepping the truth in bringing, however, these measures under your excellency's attention. I feel confident that they will be submitted to the enlightened examination due to the intrinsic merits of the great end they are meant to forward, and also with the most friendly disposition on your excellency's part to set at rest forever a serious and painful matter of discussion between the governments of Great Britain and Spain.

I avail, &c., &c.

J. F. CRAMPTON.

His Excllency the MARQUIS DE MIRAFLORES, *&c.*, *&c.*

MADRID, *December* 16, 1863.

MY LORD: In conformity with the instructions contained in your lordship's despatch of the 12th ultimo, I did not fail to express to the Marquis de Miraflores the gratification of her Majesty's government at the diminution of the slave trade, and the amelioration in the treatment of slaves in Cuba, reported by

her Majesty's acting consul general in his despatch to your lordship of September 30.

I said that it was satisfactory to know that these improvements resulted from the determination of the present captain general; and on the Marquis de Miraflores replying that General Dulce, by the manner in which he had acted, had faithfully carried out the wishes of her Catholic Majesty's government, I observed that, such being the case, I could feel no doubt that his excellency would take into serious consideration two measures, which appeared to her Majesty's government, and, indeed, to all persons acquainted with the subject, were wanting to enable that officer, who does not lack the will, to put a stop at once to the importation of slaves into Cuba, and to realize a wish which his excellency had so often concurred with me in expressing, that the serious and painful question which was continually recurring between the two governments in regard to this matter should be forever set at rest.

The two measures I alluded to were, I said: 1st. An enactment declaring the slave trade to be piracy. 2d. The modification of the penal code in force in Cuba, and particularly of the 9th and 13th articles.

With respect to the first of these measures, I observed that its efficacy had been shown in the case of Brazil, and no reasonable objection had ever been alleged against it by the Spanish government.

With respect to the second, the 9th and 13th articles of the code acted as a protection to the slave-traders, and defeated the intention of the law and the well-intended efforts of the Spanish superior authorities. The Marquis of Miraflores promised that he would take these matters into his consideration, and assured me that good will on his part would not be found wanting to do all that was possible to put an end to the slave trade.

As I had referred to particular articles of the penal code, he requested me to address him a note, in which they should be particularized, in order that he might be able at once to direct his attention to the points to which her Majesty's government alluded.

I have consequently, in the note of which I have the honor to enclose a copy, pointed out to the Marquis de Miraflores the effect of the articles 9 and 13 of the code, which are clearly stated in Mr. Crawford's report No. 12, of September 30, 1361, enclosed in your lordship's of that year.

I have, &c.,

J. F. CRAMPTON.

The EARL RUSSELL

Lord Lyons to Mr. Seward.

WASHINGTON, *February* 4, 1864.

SIR: I hastened to communicate to her Majesty's government the note dated the 21st instant (28th November last,) in which you did me the honor to inform me that you had learned from the United States consul general at Havana that more than one thousand recently imported African negroes had been brought to that city.

Her Majesty's government had already received intelligence of a steam vessel having left the African coast with a cargo of upwards of 1,100 slaves on board, and also of these slaves having been landed in Cuba. They have since been informed by her Majesty's consul general at Havana that eleven hundred and five of the newly imported slaves have been seized by the captain general of Cuba.

Her Majesty's government are not at present acquainted with the particulars relative to the vessel from which the slaves were landed, but they will take

measures to discover, if possible, the name of the vessel and the parties implicated in her proceedings, and they will be very much obliged if the government of the United States will communicate to them any information on the subject which the United States authorities may be able to furnish.

I have the honor to be, with the highest consideration, sir, your most obedient, humble servant,

LYONS.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

Mr. F. W. Seward to Mr. Savage.

DEPARTMENT OF STATE,
Washington, February 5, 1864.

SIR: Your despatches from No. 116 to 118, both inclusive, have been received. Referring to your despatch No. 110, relating to the landing of certain negroes from Africa, I have now to transmit herewith a copy of a note from Lord Lyons, from which you will perceive that the government of Great Britain desires further information in regard to the name of the vessel and the parties implicated in her proceedings. You will have the goodness, therefore, to endeavor to obtain such further information as you can, and communicate it to this department.

I am, sir, your obedient servant,

F. W. SEWARD,
Assistant Secretary.

THOMAS SAVAGE, Esq.,
United States Vice-Consul General, Havana.

Mr. Seward to Mr. Koerner.

DEPARTMENT OF STATE,
Washington, February 6, 1864.

SIR: By the 9th article of the treaty of Washington, of the 9th of August, 1842, between the United States and Great Britain, it is stipulated that the parties will unite in all becoming representations and remonstrances with any and all powers within whose dominions such markets (for African negroes) are allowed to exist, and that they will urge upon all such powers the propriety and duty of closing such markets effectually at once and forever.

Spain is believed to be the only Christian state in whose dominions African negroes are now introduced as slaves. She has a treaty with Great Britain stipulating for the suppression of that traffic. The instrument was concluded at a time and under circumstances which, as it seems to us, imposes a peculiar weight of moral obligation on Spain to see that her stipulations were carried into full effect. It is understood, however, that the just expectations of the British government in that respect have been signally disappointed. This has, no doubt, been mostly owing to the fact that a great part of the public revenue of Spain has hitherto been derived from Cuba, the prosperity of which island has in some quarters been erroneously supposed to depend upon a continued supply of imported slave labor. This is believed to be the source of the disregard of Cuban slave dealers of the humane policy of the home government, and the alleged inefficiency at times of the colonial authorities.

We have no treaty with Spain on the subject of the slave trade; but as the laws of the United States characterized it as piracy long before our treaty with

Great Britain above referred to, we think ourselves entitled to consider that trade an offence against public law, so far as to warrant our faithful compliance with the stipulation contained in that treaty. Herewith I transmit a copy of an informal note on this subject, of the 4th instant, addressed to me by Lord Lyons, and of the papers to which it refers. From these it appears, that though the number of Africans introduced into Cuba is diminishing, yet that the municipal laws in force there require amendment before a stoppage of the traffic can be expected. The peculiar relations of Great Britain to Spain, with reference to this topic, may justify to the full extent the text of the note of Sir John Crampton to the Marquis of Miraflores. The relations of the United States to Spain, however, are of a different character; but the President authorizes and directs you to address a communication in general terms to the Spanish minister for foreign affairs, setting forth the treaty stipulations between the United States and Great Britain on this subject, and stating that it would afford the utmost satisfaction in this country if any obstacles existing in Cuba to the complete suppression of the African slave trade should be removed.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Lord Lyons.

DEPARTMENT OF STATE,
Washington, February 6, 1864.

MY DEAR LORD LYONS: I have the honor to acknowledge the receipt of your note of the 4th instant, communicating the copy of a despatch from her Majesty's minister at Madrid, and of a note framed under the instructions of her Majesty's government, pointing out to the government of Spain the measures which, in the opinion of her Majesty's government, are required for the suppression of the Cuban slave trade.

In reply, I have the honor to acquaint you that, in conformity with the suggestion contained in your note, the minister of the United States at Madrid has been instructed to address to the Spanish minister for foreign affairs a representation, in the same sense as that made by her Majesty's minister in the note above referred to.

I am, my dear Lord Lyons, very truly yours,

WILLIAM H. SEWARD.

Right Hon. LORD LYONS, *&c. &c., &c.*

P. S.—I enclose a copy of my instruction to Mr. Koerner.

Mr. Koerner to Mr. Seward.

[Extract]

LEGATION OF THE UNITED STATES,
Madrid, February 28, 1864.

* * * * * * * *

Some time previous to the receipt of your last, Sir John Crampton had called upon me, and had explained the grounds and the object of the remonstrances which his government had felt itself compelled to make to the Spanish government respecting certain failures in the proper execution of treaty stipulations

existing between Great Britain and Spain as to the suppression of the slave trade. He also informed me of the President's promises to support the British reclamation, according to the Washington treaty. Subsequent to the receipt of your despatch upon that subject, I had another interview with Sir John, in which he informed me of the conversation and the correspondence which he had already had with the minister of state on the question, and of his prospects of success.

In pursuance of your despatch, I have addressed a note to Señor Arrazola, the minister of state, a copy of which I have the honor to enclose. I have also furnished a copy to Sir John. * * *

I have the honor to be your most obedient servant,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

LEGATION OF THE UNITED STATES,
Madrid, February 27, 1864.

SIR: The subject of suppressing the inhuman African slave trade has been one of deep anxiety to the government of the United States from the time of its foundation. The United States have been among the first of nations, if not the first, that have denounced this traffic in human beings as piracy, and have visited their own citizens implicated in it with the severest penalties. At very heavy pecuniary sacrifices, and at the risk of the lives of their own naval officers and seamen, they have for more than twenty years supported a squadron on the western coast of Africa, in a most destructive climate, in order to prevent the successful carrying on of this nefarious trade. They have, with a like view, entered into stipulations with her Britannic Majesty in the year 1842, contained in what is called the treaty of Washington, the 9th article of which is as follows:

(Here follows the article entire.)

The attention of the President of the United States has lately been directed to certain difficulties which have presented themselves, and which appear to prevent a complete suppression of the slave trade in the colonial possessions of her Catholic Majesty, and more especially in the island of Cuba, which difficulties do not arise from any desire of the Spanish colonial authorities to favor the said trade. It is well known that the efforts made by the captain general of that island correspond entire to the wise and humane policy which the home government of her Catholic Majesty has adopted in regard to the subject in question, and which is thoroughly appreciated by the President and the people of the United States.

The difficulties spoken of seem to be inherent in the laws and regulations in existence, which are supposed to give room to interpretations by which their force may be evaded.

In view of the general policy of the United States, which looks upon the African slave trade as an offence againt the public law of nations, and has denounced it as piracy; in view, also, of the treaty stipulations existing between them and the government of her Britannic Majesty, the President of the United States has instructed me to respectfully call the attention of her Catholic Majesty's government to this subject, and to suggest such a revision of the existing laws and regulations concerning the unlawful introduction of slaves into the island of Cuba as will best accomplish the object which her Majesty's government had in view when those laws and regulations were enacted.

It is hardly necessary for the undersigned to assure your excellency that

these suggestions arise from the purest motives, and would not have been made unless the President had considered the very friendly and cordial relations existing between the United States and Spain as justifying this application, and had he not been bound to another friendly nation by engagements which it is his duty as well as his pleasure to carry out faithfully.

It is almost equally unnecessary for me to inform your excellency that it would afford the utmost satisfaction to the President and the people of the United States if any obstacles existing in the island of Cuba to the complete suppression of the African slave trade should be removed by the considerate action of the government of her Catholic Majesty.

The undersigned takes great pleasure to assure, &c., &c., &c.,

GUSTAVUS KOERNER.

His Excellency Señor Don L. ARRAZOLA,
Minister of State of her Catholic Majesty.

THE EXTRADITION OF COLONEL ARGUELLES.

OFFICIAL PAPERS.

The President of the United States on the 1st instant communicated to the Senate, in answer to a resolution of that body, the following report from the Secretary of State and accompanying documents.

Mr. Seward to the President.

DEPARTMENT OF STATE,
Washington, May 30, 1864.

The Secretary of State, to whom was referred the resolution of the Senate of the 28th instant requesting the President to inform that body, "if he shall not deem it incompatible with the public interest, whether he has, and when, authorized a person, alleged to have committed a crime against Spain, or any of its dependencies, to be delivered up to officers of that government; and whether such delivery was had; and, if so, under what authority of law or of treaty it was done," has the honor to submit to the President a copy of the papers which are on file or on record in this department relative to the subject of the resolution.

By the act of Congress of the 15th of May, 1820, the African slave trade is declared to be piracy. By the ninth article of the treaty of 1842 with Great Britain, it is stipulated that, "Whereas, notwithstanding all efforts which may be made on the coast of Africa for suppressing the slave trade, the facilities for carrying on that traffic, and avoiding the vigilance of cruisers, by the fraudulent use of flags and other means, are so great, and the temptations for pursuing it, while a market can be found for slaves, so strong, as that the desired result may be long delayed. unless all markets be shut against the purchase of African negroes, the parties to this treaty agree that they will unite in all becoming representations and remonstrances with any and all powers within whose dominions such markets are allowed to exist, and that they will urge upon all such powers the propriety and duty of closing such markets effectually at once and forever."

There being no treaty of extradition between the United States and Spain, nor any act of Congress directing how fugitives from justice in Spanish dominions shall be delivered up, the extradition in the case referred to in the resolution of the Senate is understood by this department to have been made in virtue of the law of nations and the Constitution of the United States.

Although there is a conflict of authorities concerning the expediency of exercising comity towards a foreign government by surrendering, at its request, one of its own subjects charged with the commission of crime within its territory, and although it may be conceded that there is no national obligation to make such a surrender upon a demand therefor, unless it is acknowledged by treaty or by statute law, yet a nation is never bound to furnish asylum to dangerous criminals who are offenders against the human race, and it is believed that if, in any case, the comity could with propriety be practiced, the one which is understood to have called forth the resolution furnished a just occasion for its exercise.

Respectfully submitted.

WILLIAM H. SEWARD.

To the PRESIDENT.

CORRESPONDENCE.

Mr. Savage to Mr. Seward.

UNITED STATES CONSULATE GENERAL,
Havana, November 20, 1863.

SIR: Over one thousand African negroes were brought to this city a few days since. It is reported that they were landed from a steamship (whose name and nationality are unknown) in the neighborhood of Cardenas, or Sagua. Very prominent and wealthy persons are said to be implicated in this business.

I have the honor to be, with great respect, your obedient servant,

THOMAS SAVAGE,
Vice-Consul General.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

The steamer was not captured. It is believed that she went to Nassau after landing the negroes.

T. S.

Mr. Tassara to Mr. Seward.

LEGATION OF SPAIN IN WASHINGTON,
Washington, April 5, 1864.

The undersigned, envoy extraordinary and minister plenipotentiary of her Catholic Majesty, has received information of the arrival in this country of an officer of the Spanish army, named Don José Agustin Arguelles, escaped from the island of Cuba under the charge of having sold negroes into slavery.

The circumstances of the case seem to be as follows:

The above named officer was, in November last, lieutenant governor of the district of Colon, and effected, whilst in this capacity, the seizure of a large expedition of African negroes. The government, pleased with his zeal, paid him a large sum as his share of the prize money usually allowed to the captors of such expeditions. The officer subsequently obtained a leave of absence of twenty days to proceed to New York, upon representing that the object of his journey was to purchase a Spanish journal published in that city, but since his departure it has been discovered that he and other officers of the district of Colon retained and sold into slavery one hundred and forty-one of the negroes

captured by them. The superior court of the island, having exclusive jurisdiction over such causes, has taken cognizance of this case, and requires the presence of Arguelles before it to insure the prompt liberation of the one hundred and forty-one victims. Without such presentation it would be very difficult, and, at all events, it would require a long time to attain that humane object.

The undersigned is well aware that no extradition treaty exists between the United States and Spain, in virtue of which the surrender of Arguelles to the authorities of Cuba might be obtained. Yet, considering the gross and scandalous outrage which has been committed, as well as the interests of humanity at stake in the prompt resolution of this matter, he has not hesitated in submitting the case in this confidential way to the consideration of the United States government, in order to ascertain whether an incident so exceptional could not be met with exceptional measures.

The undersigned has been the more induced to take this step, that he has good reason to believe a similar application to have been made also in a confidential form by the captain general of Cuba.

The undersigned avails himself of this occasion to renew to the honorable Secretary of State the assurances of his highest consideration.

GABRIEL G. TASSARA.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

Mr. F. W. Seward to Mr. Savage.

DEPARTMENT OF STATE,
Washington, April 14, 1864.

SIR: Your despatch No. 136 has been received, in which you call attention to the case of Don José Agustin Arguelles. I am instructed to inform you that if the captain general will send to New York a suitable officer, steps will, if possible, be taken to place in his charge the above named individual for the purpose indicated in your despatch. You will immediately communicate the purport of this instruction, in confidence, to the captain general.

I am, sir, your obedient servant,

F. W. SEWARD,
Assistant Secretary.

THOMAS SAVAGE, Esq.,
Vice-Consul General of the United States, Havana.

Mr. Seward to Mr. Tassara.

DEPARTMENT OF STATE,
Washington, April 16, 1864.

SIR: In acknowledging the receipt of your confidential communication of the 5th instant, I have the honor to inform you that the consul general of the United States at Havana has been instructed to state to his excellency the captain general of Cuba, that if a suitable officer be sent to New York, such steps as may be proper will be taken to place in his charge, for the purpose indicated in your note, the Spanish officer Don José Agustin Arguelles.

Be pleased to accept the renewed assurance of my very high consideration.

WILLIAM H. SEWARD.

Señor Don GABRIEL GARCIA Y TASSARA, *&c., &c., &c.,*
Washington.

Mr. Savage to Mr. Seward.

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,
Havana, April 23, 1864.

SIR: I have the honor to acknowledge the reception of despatches from the department, Nos. 70 to 77, both inclusive. I also received yesterday the despatch, No. 79, signed by F. W. Seward, Assistant Secretary, and immediately communicated the purport thereof, in confidence, to the captain general. He had likewise a despatch from the Spanish minister at Washington, advising him of the interview he had had with you on the subject of the rendition of the Spanish officer, Don José Arguelles. His excellency was very much pleased, and very warmly expressed his thanks to me for the promptness with which I had attended to his request in this matter. He read me the Spanish minister's letter, and said that he would send a proper officer to perform the service, who will probably proceed to New York by the steamer Columbia on Monday next, and, on arrival, immediately repair to Washington and place himself under the direction of the Spanish minister.

In this connexion, I deem it proper to make known to you that the captain general is under the impression that Arguelles will be surrendered as accused of crime, to be subjected to trial here, in which case, from what I can learn, he will certainly be convicted and sentenced to the chain-gang, which will be the fate of the curate of Colon, and three or four others who were accomplices, aiders, and abettors of Arguelles in the nefarious business. I did not say anything to his excellency to the contrary, not feeling authorized to do so.

The one hundred and forty-one negroes sold into slavery by Arguelles, as alleged, were represented by him and his accomplices as having died of disease after landing, and the curate of Colon is charged with having made a new register of deaths, wherein those supposed deaths were inserted. This new register supplanted the regular one which the captain general says Arguelles took away and now has in his possession. Conclusive evidence of this fact is before the court.

I have the honor to remain, with great respect, your obedient servant,

THOMAS SAVAGE,
Vice-Consul General.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

[Translation.]

SUPREME CIVIL GOVERNMENT OF THE EVER-FAITHFUL ISLAND OF CUBA,
POLITICAL DEPARTMENT.

YOUR EXCELLENCY: In reply to your communication dated 15th instant, (No 19,) I have to say to you that it is convenient that the individual mentioned in your aforesaid communication, to which I have the honor to reply, be placed on board the vessel coming immediately to this place, and the persons who are pointed out in the margin of this letter will take charge of him.

D. Aristides de Santales, command'te grad'do Cap. de Infa. de este Ej'to.
DULCE.

I ask you to make known to his excellency Secretary Seward how much I thank him for his co-operation in this affair, because by it he assists the ex

posure and punishment of a crime totally distinct from any political matter, the result of which will be that more than two hundred human beings who are groaning in slavery will owe to his excellency the recovery of their freedom.

God save your excellency many years.

HAVANA, *April* 26, 1864.

DOM'O DULCE.

His Excellency the MINISTER OF SPAIN *at Washington.*

[Translation.]

SUPREME CIVIL GOVERNMENT OF THE EVER-FAITHFUL ISLAND OF CUBA.

OFFICE OF SECRETARY—POLITICAL.

MOST EXCELLENT SIR: My aide-de-camp, with the person expected, arrived in the steamer Eagle. I request your excellency to render thanks in my name to Mr. Seward for the service which he has rendered to humanity by furnishing the medium through which a great number of human beings will obtain their freedom, whom the desertion of the person referred to would have reduced to slavery. His presence alone in this island a very few hours has given liberty to eighty-six.

I also render thanks to your excellency for the efficiency of your action.

God preserve your excellency many years.

HAVANA, *May* 19, 1864.

DOMINGO DULCE.

His Excellency the MINISTER OF SPAIN *at Washington.*

Mr. Savage to Mr. Seward.

[Extract.]

UNITED STATES CONSULATE GENERAL,
Havana, May 23, 1864.

SIR: In consequence of my temporary illness previous to the sailing of the steamship Eagle from this port for New York, I was unable to inform you of the arrival in Havana, per same steamer from New York, of the late lieutenant governor of Colon, José Agustin Arguelles. He arrived here at about 8 o'clock at night, accompanied by the captain general's agent and two United States deputy marshals. He was immediately lodged in jail, and was next morning conveyed to Moro Castle, where he still remains. Various rumors were put in circulation on his arrival, which created considerable excitement. One rumor obtained great circulation, that he had been kidnapped from New York, and that the captain general intended to condemn him to the chain-gang.

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THOMAS SAVAGE,
Vice-Consul General.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

THE ARGUELLES CASE.

Early in the morning of the 11th ultimo Don José Agustin Arguelles, an officer of the Spanish army, sojourning in the city of New York, was seized by

authority of the President of the United States and secretly conveyed to a steamer in that port bound for Havana, in the island of Cuba. So secretly and summarily was the arrest effected, as he was in the act of making his morning toilette in a room adjoining the chamber of his wife, that his wife remained in ignorance of his condition or his destination until, some days afterwards, she learned both from the Spanish minister in this city.

From the official correspondence, which we published on Tuesday last, it will be seen that Colonel Arguelles was formerly the lieutenant governor of the district of Colon, in the island of Cuba, and that he effected the capture of a large cargo of African negroes illegally landed within that district on the 20th of November last. The captain general, it is said, was highly pleased with his zeal, and paid him fifteen thousand dollars for his share of the prize money usually allowed to captors of such expeditions. Arguelles subsequently obtained a leave of absence of twenty days, upon his representation that the object of his journey to New York was to purchase the Spanish journal published in that city called "La Cronica."

It is represented by the captain general that after the departure of Arguelles from Cuba it was discovered that he and other officers of the district of Colon had retained and sold into slavery one hundred and forty-one negroes captured by them. Some of these negroes, it is said, were sold at seven hundred dollars, and others at seven hundred and fifty dollars each. It is further represented that the superior court of the island, having exclusive jurisdiction over such causes, had taken cognizance of this case, and required the presentation of Don José Agustin Arguelles before it to insure the prompt liberation of those one hundred and forty-one victims. Without Arguelles's presence it would be very difficult, or at all events it would require a long time, to attain that humane object.

Mr Thomas Savage, our vice-consul general at Havana, when approached on the subject of the reclamation of Colonel Arguelles, stated to the captain general of Cuba that, "in the absence of an extradition treaty between the two governments, or of any law, public or municipal, authorizing the rendition, our government could not grant the request," but promised to lay the matter, in a confidential way, before the Department of State.

In like manner, Señor Don Gabriel G. Tassara, the Spanish minister at Washington, in communicating the facts of the case to our government, (employing almost the *ipsissima verba* of Mr. Savage, and thus showing that both Mr. Tassara and Mr. Savage wrote from representations prepared for them by the Cuban authorities,) took care to state that he was "well aware that no extradition treaty exists between the United States and Spain, in virtue of which the surrender of Arguelles to the authorities of Cuba might be obtained; yet, considering the gross and scandalous outrage which has been committed, as well as the interests of humanity at stake in the prompt resolution of this matter," it was added, "he has not hesitated in submitting the case in this confidential way to the consideration of the United States government, in order to ascertain whether an incident so exceptional could not be met with exceptional measures."

Thus addressed on the subject, the President ordered the "exceptional measure" of arresting and surrendering Colonel Arguelles on his sole responsibility, in the absence, as Mr. Savage phrases it, "of any extradition treaty, or of any law, public or municipal, authorizing the rendition" of the alleged fugitive from justice. And the Secretary of State, in reporting the transaction to Congress, is frank to avow that the "exceptional measure" was taken in obedience only to general considerations of international comity. To this effect he writes:

"There being no treaty of extradition between the United States and Spain, nor any act of Congress directing how fugitives from justice in Spanish dominions shall be delivered up, the extradition in the Arguelles case is understood by the State Department to have been made in virtue of the law of nations and the Constitution of the United States. Although

there is a conflict of authorities concerning the expediency of exercising comity towards a foreign government by surrendering, at its request, one of its own subjects charged with the commission of crime within its territory, and although it may be conceded that there is no national obligation to make such a surrender upon a demand therefor, unless it is acknowledged by treaty or by statute law, yet a nation is never bound to furnish asylums to dangerous criminals who are offenders against the human race; and it is believed that if, in any case, the comity could with propriety be practiced, the one which is understood to have called forth the resolution of inquiry of the Senate furnished a just occasion for its exercise."

The apologetic language in which this statement is couched, and the candid manner in which the whole transaction is characterized by our consular representative at Havana, and by the Spanish minister in the very act of asking what he admits to be an "exceptional measure," might perhaps be justly held to absolve us from the necessity of instituting any inquiry into the legal aspect of a question which is thus admitted on all hands to be outside of the sphere of law. But, as we have always been taught that our government is a government of *laws* and not of *men*, it may be proper for us to restate the principle of international and municipal jurisprudence which we understand to govern the practice of civilized states in the mutual extradition of fugitives from justice.

There was a time in the history of nations when, as the laws then stood, alleged criminals might be lawfully surrendered, and when in fact they frequently were surrendered, by executive authoritiy alone. It was in the days when the monarch or ruler gathered into his single person lla the powers of the state, and when "the government" meant nothing more than the authority of the sovereign who swayed the destinies of the people. In his learned work on the Conflict of Laws, Judge Story states that the practice of mutually surrendering up fugitives from justice had long prevailed between neighboring nations under the civil law as a matter of comity and sometimes of treaty stipulation. Under the Roman Empire this right of having a criminal remitted for trial to the proper *forum criminis* was unquestioned, as it resulted from the very nature of the universal and common dominion of the Roman laws.

And, at a later period, considerations of humanity, such as are now invoked to sanction the secret arrest and informal surrender of Colonel Arguelles, were held among the sovereigns of Europe to be legitimate grounds on which they might mutually ask and allow the remitter of alleged criminals. But in more modern times, since in the progress of civilization there has been a greater articulation in the powers of government, so that "the government" is no longer embodied in the person of the Executive alone, there has been a corresponding change in the principles and usages regulating the surrender of criminals escaping from one country into another. Criminals and still surrendered by *the sovereign authority* of each country, but as in free and constitutional governments this sovereign authority no longer resides in the person of the Executive alone, the machinery for their legal surrender has come to partake of the complexity resulting from the partition of powers in such governments. In this country, for instance, the Executive is only a part of "the government," and, as such, has no plenary power by virtue of which to assume a discretionary jurisdiction in regard to any subject-matter as to which such discretion has been expressly precluded by the letter of the law whose minister he is.

We shall proceed to show that the matter and manner of the extradition of alleged fugitives from justice are so regulated by general principles of modern international law, and by express statutes of our national legislature, as to deprive the Executive of all original and independent authority in the premises. Any assumption of such authority is not only without law, but is in direct contravention of both public and municipal law.

The legal traditions of our government on this subject are ancient, uniform, and undisputed. As early as 1792, Mr. Jefferson, while Secretary of State under President Washington, authorized our ministers at the court of Spain, Messrs. Wm. Carmichael and Wm. Short, to negotiate a treaty with that power

for the mutual delivery of persons charged with the crime of murder. (See American State Papers, Foreign Relations, p 257.) It was stipulated in the project of the convention then proposed by Mr. Jefferson that the person authorized by the Spanish government to pursue the alleged murderer in the United States should apply to "any justice of the Supreme Court of the United States, or to the district judge of the place where the fugitive is, and should exhibit proof, on oath, that a murder had been committed by the said fugitive within the territory of the said government." The judge was thereupon to be empowered to issue a warrant for the arrest of the fugitive, and "a special court of inquiry" was to be held, and a grand jury summoned thereto, charged with the duty of inquiring whether the fugitive had committed the crime of murder; and, on the finding of a true bill, the judge was to order a surrender of the fugitive to the Spanish government. In the memoranda accompaning this project of the convention Mr Jefferson gives his reason why the government of the United States at that date was unwilling to provide for the delivery of others than persons charged with the crime of murder. And this delivery, it is seen, was to be surrounded with all the guards of a preliminary judicial inquiry. It is needless to add that no such convention as he projected was ever formed between our government and that of Spain on this subject, and we have adverted to it only for the sake of ascertaining at the threshold of this inquiry the principles on which the extradition of alleged criminals was based by our government.

In the 27th article of the treaty negotiated by John Jay with the government of Great Britain in the year 1794, the same principles were solemnly recognized. The article reads as follows:

"It is further agreed that his Majesty and the United States, on mutual requisitions by them respectively, or by their respective ministers, or officers authorized to make the same, will deliver up to justice all persons who, being charged with murder or forgery committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other: *Provided*, That this shall only be done on such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the offence had there been committed. The The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive."

Under this article of Jay's treaty, one Thomas Nash, alias Jonathan Robbins, was delivered to the British authorities by Judge Thomas Bee, district judge of the United States, in the year 1799. The transaction caused much excitement at the time, as Nash represented himself to be a native-born citizen of Connecticut, and the case has been frequently reviewed in Congress and in the public press of the country. The correspondence and proceedings had in the case may be seen in the "American State Papers, Foreign Relations," vol. 2, pp. 284, 285.

In the year 1797, one William Jones, a Spanish subject residing in the State of Georgia, and owning slaves therein, went into Florida, then belonging to Spain, and, with the aid of some citizens of Georgia, forcibly abducted certain of his slaves who had fled into that province. This invasion and violation of the sovereign territorial rights of Spain naturally irritated the government of that country, which made strong representations on the subject to President Washington; and the question, whether it would be right to deliver up this criminal for punishment, having been referred to the Attorney General of the United States, the Honorable Charles Lee, that officer held that, though the case was an aggravated one, the Executive had no power to surrender Jones in the absence of a law regulating and authorizing such surrender. He held:

"If a demand were formally made that William Jones, a subject and fugitive from justice, or any of our own citizens, heinous offenders within the dominion of Spain, should be delivered to their government for trial and punishment, the United States are in duty bound to comply; yet, having omitted to make a law directing the mode of proceeding, I know not how, according to the present system, a delivery of such offender could be effected. To refuse or neglect to comply with such a demand, may, under certain circumstances, afford to

the foreign nation just cause for war, who may not be satisfied with the excuse that we are not able to take and deliver up the offenders to them. This defect appears to me to require a particular law."

In the year 1821 Daniel Sullivan, a British subject and master of a British schooner, aided by six accomplices, likewise British subjects, ran away with the vessel into a port of the State of Maine, where she was seized by an officer for having entered in violation of our laws. The British government thereupon demanded that the vessel and cargo should be restored to their lawful owner, and that the British subjects who had committed the offence in question should be delivered up for trial. On this state of facts Mr. Attorney General Wirt, in a most able and elaborate opinion, held that the ship and cargo should be restored, but that, in the absence of treaty stipulations and municipal regulations, there was no power in the President to surrender the alleged conspirators who had run away with the schooner. He wrote, (1 Opinions of Attorneys General, pp. 519–521)—

"The truth seems to be, that this duty to deliver up criminals is so vague and uncertain as to the offences on which it rests, is of so imperfect a nature as an obligation, is so inconveniently encumbered in practice by the requisition that the party demanded shall have been convicted on full and judicial proof, or such proof as may be called for by the nation on whom the demand is made, and the usage to deliver or to refuse being perfectly at the option of each nation, has been so various, and consequently so uncertain in its action, that these causes combined have led to the practice of providing by treaty for *all cases* in which a nation wishes to give herself a right to call for fugitives from her justice. As instances of this, I refer you to the treaties made by Great Britain with Denmark, in 1660; with Portugal, in 1654; with the same kingdom, in 1810; with Sweden, in 1661, &c.

"In our treaty of 1794 with Great Britain, the 27th article provided for the cases in which the contracting parties agreed to bind themselves to surrender criminals, and the degree of proof which should be sufficient to impose the obligation to surrender. The two cases were *murder and forgery*, and the proof such as should be sufficient to justify an arrest according to the laws of the country in which the demand was made. This article was, by the terms of the treaty, to continue in force for twelve years only; that is to say, the parties agreed to remain bound to this mutual surrender of criminals in the two specified cases for twelve years and no longer. The twelve years have expired; and with them, in my opinion, has expired the right to make the demand even in the specified cases." * * * *

"Upon the whole, I am of the opinion that there is nothing in the law of nations, as explained by the usage and practice of the most respectable among them, which imposes on us any obligation to deliver up these persons; more especially on the very imperfect proof of their guilt, or rather the total absence of everything like judicial proof, on which the application is founded. And this conclusion, drawn from an examination of the general law and usage of nations, derives confirmation in the particular case from the expired article of the treaty with Great Britain, to which I have adverted.

"I am further of the opinion, that even if, by the laws and usage of nations, the obligation existed, and were a perfect obligation, and the proof which is offered of the guilt of the accused also satisfied the requisitions of that law, *still the President has no power to make the delivery. The Constitution, and the treaties and acts of Congress made under its authority, comprise the whole of the President's powers. Neither of these contains any provision on this subject. He has no power to arrest any one, except for the violation of our own laws.* A treaty or an act of Congress might clothe him with the power to arrest and deliver up fugitive criminals from abroad; and it is perhaps to be desired that such a power existed, to be exercised or not at his discretion; for, although not *bound* to deliver up such persons, it might very often be *expedient* to do it. There could certainly be no objection to the exercise of such power in a case like the present. It would violate no claim which these fugitives have on us."

In the year 1831 Attorney General Taney, the present Chief Justice, was called to express an opinion whether the President of the United States could return to Holland for trial a person alleged to have stolen some diamonds of the Princes of Orange. He gave it as his opinion that, in the absence of a treaty stipulation, the President "would not be justified in directing the surrender of the persons." (2 Opinions of Attorneys General, p. 452.)

To the same effect Attorney General Taney wrote as follows, it was alleged, under date of April 16, 1833, in respect to an application of the King of Portugal for the delivery of two seamen who had committed the crime of piracy—2 Opinions of Attorneys General, p. 559:)

"There is no law of Congress which authorizes the President to deliver up any one found in the United States who is charged with having committed a crime against a foreign nation; and we have no treaty stipulations with Portugal for the delivery of offenders. In such a state of things it has always been held that the President possesses no authority to deliver up the offender."

In the year 1841, while Mr. Seward, the present Secretary of State, was governor of the State of New York, he addressed a communication to Daniel Webster, then Secretary of State under President Tyler, inquiring whether it was lawful for him, as governor of New York, to surrender one Dewit, a fugitive from justice, demanded of him by the governor general of Canada. The question being referred by Mr. Webster to the office of the Attorney General, Mr. Legaré held as follows—(3 Opinions of Attorneys General, p. 661:)

"I think, from the whole argument of the bench in the case of Holmes *vs.* Jennison, 14 Peters, 540, we may consider it as law, first, that no State can, without the consent of Congress, enter into any agreement or compact, express or implied, to deliver up fugitives from justice from a foreign state who may be found within its limits; second, that according to the practice of the executive department, as appears from the official correspondence both of Mr. Jefferson and Mr. Clay, your predecessors in office, *the President is not considered as authorized, in the absence of any express provision by treaty, to order the delivering up of fugitives from justice.* In the absence, therefore, of such treaty stipulations, I am of opinion that it is necessary to refer the whole matter to Congress, and submit to its wisdom the propriety of passing an act to authorize such of the States as may choose to make arrangements with the government of Canada, or any other foreign state, for the mutual extradition of fugitives, to enact laws to that effect, or acts approving such laws as may already have been passed in the several States to that effect.

"Whatever I may think of the power of the federal Executive in the premises, were this a new question, I consider the rules laid down by Mr. Jefferson, and sanctioned after the lapse of upwards of thirty years by another administration, *as too solemnly settled to be now departed from.*"

In the year 1853, Mr. Attorney General Caleb Cushing reaffirmed the doctrine of our government on the subject. He wrote under date of August 19, in that year—(6 Opinions of Attorneys General, p. 86:)

"It is the settled political doctrine of the United States, that, independently of special compact, no State is bound to deliver up fugitives from the justice of another State. (See the authorities collected in Wheaton's Elements, p. 172.)

"It is true, any State may, in its discretion, do this as a matter of international comity towards the foreign state; but all such discretion is of inconvenient exercise in a constitutional republic, organized as is the federal Union; and accordingly it is the received policy of this government to refuse to grant extradition except in virtue of express stipulations to that effect."

It will thus be seen that the line of legal tradition on this subject in our country is as unbroken as it is express. And if we turn to the institutes of the law as held in Great Britain, we shall find that the same maxims obtain. We need but refer to a single occasion when they were formally enunciated in the British Parliament with all the authority attaching to the highest law officer of the realm, and the occasion was one which makes these declarations especially interesting to American readers.

The ship Creole was sailing with a cargo of one hundred and thirty-eight slaves from one slaveholding port of the United States to another slaveholding port. In the course of the voyage the slaves rose upon the captain and crew, seized the vessel, and took her into the port of Nassau, in the Bahamas. In the act of her seizure by the slaves a scuffle occurred, in which the master of the slaves was killed. Upon their arrival in the Bahamas one hundred and twenty of the slaves were landed and liberated, and the remaining eighteen, engaged in the capture of the vessel, were taken into custody on the charge partly of murder and partly of piracy.

The question therefore arose, whether these slaves could be lawfully held in custody by the British authorities in the Bahamas for the crime thus alleged against them; and whether, in answer to a demand of the government of the United States, they could be rightfully given up for trial in this country. Upon

these questions Lord Brougham held the following language in the House of Lords on the 3d of February, 1842:

"He ventured to state, that, by the law of this country, no person, whether he were a British subject returning from abroad, or an alien coming to our shores, no person charged with having committed an offence out of the jurisdiction of Great Britain could be seized, or detained, or given up to any foreign government whatever, which might demand to have him given up, in respect to the offence with which he was charged. For example, if an Englishman in France were to commit a felony—say even a murder—and return to this country, or if a Frenchman in France were to commit a murder and escape to this country, the French government might in vain demand of the English government to have the alleged murderer given up for the purpose of being tried for his offence in France. There had at different times, no doubt, been treaties between this country and France, and at one time there was a treaty between this country and the United States of America, for the mutual surrender by each government, on the requisition of the other, of persons charged (according to the American treaty of 1795) with the two offences of murder and forgery; and (according to the treaty of 1802 with France) of persons charged with the three offences of murder, forgery, and fraudulent bankruptcy. But before those treaties could be carried into effect in this country it was necessary to pass especial acts of Parliament, to enable the government to perform the obligation which it had incurred by the treaties; and accordingly the 37th George 3d gave the powers required for executing the treaty with America, and the 42d George 3d, commonly called the alien act, not satisfied with the general powers of the alien act, had a clause referring to the French treaty, and arming the government with the power to arrest, detain, and surrender parties. He hoped that their lordships would excuse his entering into these particulars, on account of the great importance of the question. There was no lawyer who could entertain any doubt upon the subject. It was clear that the surrender of any of the slaves, or even of any of the persons charged with the felony, the alleged murder having been committed beyond the territory of Great Britain, would be utterly without warrant, and, by the law of this country, could not possibly be accomplished, even if the government were disposed to do it. A doubt may possibly arise as to whether the act committed on board the Creole might not be piracy. The facts as stated did not appear to constitute piracy. If there were any who considered that a doubtful or debatable point, then he apprehended that the true course of proceeding would be to put the matter into a course of investigation—to have a judicial inquiry, so that all the facts and circumstances might be fully ascertained, and that the legal import of those facts might be determined. But even if the circumstances connected with the seizure of the Creole amounted to piracy, it did not follow that those who had been guilty of it should be given up by the government of England to the government of any other country. If the facts amounted to piracy the parties, though aliens, were triable in our courts. If any doubt lingered in his mind, it was as to the right of delivering up aliens charged with piracy; and if any persons held that such a power of surrender existed, the question might be put in a course of judicial investigation. He would fain hope that this accidental occurrence of the capture and bringing into port of the Creole, when rightly understood in America, would have no effect in delaying the successful accomplishment of that most important mission upon which his noble friend opposite (Lord Ashburton) was about to proceed—greatly to the advantage of the negotiations, greatly to the benefit of the two countries, which had a high and an equal interest in perpetuating the friendly relations so essential to the prosperity of both, and greatly to his own honor, in having undertaken, in the circumstances of the case, this most important service."

On the 14th of the same month Lord Brougham referred to the subject in the following terms. We quote from Hansard's Report of the Parliamentary Debates, volume 60 of the third series:

"What right existed, under the municipal law of this country, to seize and deliver up criminals taking refuge there? What right had the government to detain, still less to deliver them up? Whatever right one nation had against another nation—even by treaty, which would give the strongest right—there was, by the municipal law of the nation, no power to execute the obligation of the treaty. If such a treaty existed between any two countries, say between America and this country, and no act of Parliament had passed enabling the government in either country to perform its conditions, that treaty became utterly unavailable, because the law of the land prevented the possibility of its being executed. Suppose it was clear, and no doubt existed that a treaty were in force binding on the two parties, (and such an obligation would be much more clear than any that could be pretended under the general law of nations, the common international law,) and suppose either party had omitted to take power from its own legislature to carry the treaty into execution, the mere existence of the treaty would not enable that power to carry the treaty into effect. The treaty would be a dead letter if the municipal law of that country did not authorize the fulfilment of its provisions. It was necessary to say so much, because he thought some of those who had argued the subject, particularly in America, had not kept the two questions of international

law and of municipal law sufficiently apart. It was necessary that a municipal law for detaining and giving up criminals should exist, as well as the law of nations. Such a municipal law did not exist in this country. There was no power by our municipal law to seize, still less to surrender, any person having committed an offence, however grave that offence might be, within the jurisdiction or limits of any other country; whether he were an alien or not, there was no power to give him up until the legislature of this country should arm the government with a power to do so. He had on the first night of the session referred to two cases, the acts of 1797 and 1802, passed for the purpose of arming the government with the power of performing their obligations contracted by Mr. Jay's treaty and the treaty of Amiens, and without which acts it would have been impossible to have performed those obligations. He had stated that the only doubt in his mind with regard to the case of the Creole arose from the suggestion that a piratical offence had been committed. No doubt the case of piracy was in two particulars different from the general law respecting charges against aliens for crimes committed beyond the jurisdiction of the country; for whereas in any other case they had no power to seize or detain, yet in a case of piracy, although the party was an alien, they had power to seize and detain. That was one particular in which a difference existed; but another particular was the power of trying the alien pirate, and therefore he had no doubt that, even in the case of piracy, we had not, and ought not to have, the power to deliver up, because where the offence was piracy we had not only the power of seizing and detaining the person, but we could send him to his trial; so that here was no deficient jurisdiction, and no fear that the criminal would go unpunished, whilst in the case of a murder alleged to have been committed by an alien in a foreign country there was no power either of arresting or of bringing him to trial. It was impossible to deny, and he did not deny, that this was a state of law which ought not to continue. He thought it highly expedient—he thought the interests of justice required, and the rights of good neighborhood required—that in two countries bordering on one another, as the United States, Canada, and even that in England and in the European countries of France, Holland and Belgium, there ought to be laws on both sides giving power, under due regulations and safeguards, to each government to secure persons who have committed offences in the territory of one and taken refuge in the territory of the other. He could hardly imagine how nations could maintain the relationship which ought to exist between one civilized country and another without some such power; at present, however, such a power did not exist in this country; so that the whole territory of one country became an asylum for fugitives from justice in another. But as to the laws now in force there could be no doubt. Such a proceeding as seizing and detaining, much more of delivering up fugitives, was wholly illegal."

The Earl of Aberdeen, who was then the British secretary of state for foreign affairs, expressed his concurrence in the views of Lord Brougham as follows:

"As their lordships might well imagine, her Majesty's government had given the question their most serious and anxious attention; and after taking advantage of all the assistance which they thought desirable on the subject, they had satisfied themselves that by the laws of this country there is no machinery or authority for bringing those persons to trial for mutiny and murder, still less for delivering them up or detaining them in custody. His noble friend,' the secretary of state for the colonial department, had therefore sent out instructions for releasing those persons who had hitherto been detained."

Lord Denman, the lord chief justice of England at the same time, spoke as follows:

"He believed that all Westminster Hall, including the judicial bench, were unanimous in holding the opinion expressed by the noble earl, and that in this country there was no right of delivering up, indeed no means of securing, persons accused of crimes committed in foreign countries. The matter was under discussion frequently when the alien bill had been year after year before the House of Commons, and the lawyers of all parties had come to the same conclusion.

"Nor were these opinions confined to the lawyers of Europe. Great lawyers of America—men distinguished by their profound erudition, whose decisions are so highly respected among us, and whose valuable works on great legal questions are studied and consulted in this country with the highest advantage—held the same doctrine. Indeed, Chancellor Kent, in his Commentaries on American Law, (1836,) appears to incline to the opinion of Grotius and Vattel, against that of other eminent jurists, that persons accused of crimes ought to be delivered up to the country where they are accused, and one case appears to have been decided by himself when he held his office in conformity with that doctrine. But it may be remarked that the peculiar constitution of a federal government, comprehending many States with various laws, renders any decision, however respectable, of less extensive application, at least till all the particular provisions existing when it was made are fully canvassed. But Justice Story, in his more recent edition of The Conflict of Laws, (1841,) concludes a discussion on this subject by citing the passage from Lord Coke, adding, in terms, one chief

justice in America has adhered to the same doctrine in a very elaborate judgment; that the reasoning of another chief justice, in a leading case, leads to the same conclusion; and that it stands indirectly confirmed by a majority of the judges of the Supreme Court of the United States in a very recent case of the deepest interest.

"Therefore, although distinguished jurists may feel a desire for some arrangement for the surrender of foreign criminals, it would seem that the municipal law of America rests on the same principles as our own, which, as he had already stated, recognized no right and provided no machinery by which the subjects of another state seeking refuge here could be given up to the country to which they belonged. He had, therefore, come prepared respectfully to warn secretaries of state, if it had not been rendered unnecessary by what had passed, that they could not seize or detain aliens seeking refuge here without subjecting themselves to actions for damages for false imprisonment, and without further incurring the risk of a still heavier and more awful responsibility; for if a man attempted to seize an alien under such authority he might resist, and if death ensued, he would be justified in inflicting it, while those who ordered his arrest and detention would be liable to be tried for murder. He agreed with his noble and learned friend that the *comity* of nations might be properly employed in considering of treaties and laws which would allow nations to seize and give up to each other their respective criminals; but this could only be done on the supposition that the laws of all nations should be reasonable and just, for no country could be justified in enforcing those laws which it believed to be founded on injustice, oppression, and cruelty. Some few great criminals had possibly been given up without notice; but he believed that the United States of America had refused to give up an English subject charged with forgery, because they disapproved of the punishment of death for that crime; and until the internal law of all countries was such that each would have no objection to adopt it, he feared that this desirable object could not be accomplished. He indulged a hope that those distinguished persons, the judges and jurists in America, who had been referred to, would, in common with those of other countries, apply their minds to these considerations."

Lord Campbell held the following language on the subject:

"He said that after the statement of their opinions by his two noble and learned friends, he should not have felt it necessary to address their lordships if it had not been asserted, and widely circulated, that he had, when attorney general, advised that men similarly circumstanced should be sent home for trial. Nothing could be more contrary to the fact than such a statement. He had never given any opinion of the kind. On the contrary, he had held that, by the law of nations, no state had a right to demand from another the surrender of any of its subjects; and that in the case of England, the municipal law did not authorize or enable the executive to comply with any such demand. He agreed with the lord chief justice that it might be very convenient to have treaties under which persons accused of murder and other high crimes should be surrendered, but such treaties would not justify the demand being acted on until the municipal law provides the means for carrying the treaties into execution. Without an act of Parliament there was no authority for giving up a refugee to any foreign state."

The Lord Chancellor spoke as follows at the close of the debate:

"He apprehended that he was the only law lord in the house who had not yet given his opinion. He had been consulted upon the question, as well as the attorney and solicitor general, and without pretending to state the terms in which their opinion had been given, he might say that it fully agreed with what had been advanced by noble and learned lords who had already spoken. He did not think that a second opinion could be entertained."

It will thus be seen that, according to the universally received maxims of law as held in the United States and Great Britain, the executive authority is not authorized, in the absence of treaty stipulations and of municipal legislation carrying them into effect, to arrest and deliver up fugitives from justice. Hence the origin and purpose of the 10th article in the treaty of Washington, negotiated between the United States and Great Britain, in the year 1842, by Mr. Webster and Lord Ashburton, providing for the extradition of persons charged with certain specified crimes. The treaty, under this head, ordained that "the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive, that he may be brought before such judges or other magistrates to the end *that the evidence* of criminality may be heard and considered; and if, on such hearing, *the evidence be deemed sufficient to sustain the charge*, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive."

The treaty, it will be seen, contemplated a judicial inquiry preliminary to every act of surrender. And an act of Parliament was passed in the year 1843, (6 and 7 Victoria, chap. 76,) to carry this part of the treaty into effect. How important, we should say how *indispensable*, such municipal legislation is to effectuate stipulations for the extradition of fugitives from justice, was illustrated by a notable case in our judicial records, a case which led to the enactment of corresponding laws in our own country for the regulation of this whole matter as covered by treaty engagements, and extending the exercise of such authority in all cases not covered by treaty.

An extradition treaty was concluded between the United States and France in the year 1843. Under this treaty, in the year 1847, the French minister to this country demanded the arrest and surrender of one Nicholas Lucien Metzger, and a mandate to that effect was issued from the State Department, signed by President Polk, and countersigned by Mr. Buchanan, as Secretary of State. The fugitive was arrested, and while on his way to a French frigate then lying in the harbor of New York, a writ of *habeas corpus* was sued out, returnable before Edmonds, circuit judge. The case was twice elaborately argued before the judge by the honorable B. F. Butler, United States district attorney for the government, and with him were associated Mr. F. B. Cutting and Mr. F. Tillou, as counsel for the French minister, and by Mr. Ogden Hoffman and Mr. N. B. Blunt for the prisoner. The prisoner was discharged, and mainly on the ground that, being a resident of this State, he was a "member" of it within the meaning of our Constitution; that, as such, *he could not be deprived of his liberty without a resort to courts of justice;* that, though the treaty with France contained an extradition clause, yet *Congress had never passed a law authorizing the courts to enforce it*, and as without such law the courts could have no jurisdiction in the matter, there could be no judicial determination of the question of arrest and surrender; that such determination could not be made by the executive department alone, and that therefore the mandate of the President was void.

The prisoner was accordingly ordered by Judge Edmonds to be discharged. The French minister was much dissatisfied with the result—so much so that our government directed a writ of error to be brought, in order to take the case to the Supreme Court of the United States. At the ensuing session of Congress the subject was laid before the Senate, by whom it was referred to the Judiciary Committee, on which were Daniel Webster, Robert J. Walker, and Wm. L. Dayton, our present minister to France. Their examination convinced them that the decision was right; the writ of error was abandoned, and Congress passed a law supplying the defect complained of, and providing for the action of the judiciary in such cases. That law was as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases in which there now exists, or hereafter may exist, any treaty or convention for extradition between the government of the United States and any foreign government, it shall and may be lawful for any of the justices of the Supreme Court or judges of the several district courts of the United States, and the judges of the several State courts, the commissioners authorized so to do by any of the courts of the United States, are hereby severally vested with power, jurisdiction, and authority, upon complaint, made under oath or affirmation, charging any person found within the limits of any State, district, or territory with having committed within the jurisdiction of any such foreign government any of the crimes enumerated or provided for by any such treaty or convention, to issue his warrant for the apprehension of the person so charged, that he may be brought before such judge or commissioner, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient by him to sustain the charge under the provisions of the proper treaty or convention, it shall be his duty to certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, *that a warrant may issue, upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of said treaty or convention;* and it shall be the duty of the said judge or commissioner to issue his warrant

for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made." * * * * * * * *

"*And be it further enacted*, That this act shall continue in force during the existence of any treaty of extradition with any foreign government, and no longer."

In the light of this historical review, and especially in the immediate presence of the statute of our Congress, we can clearly read this law and usage of the United States on this subject. To compass the extradition of a fugitive from justice there must be a treaty stipulation, enforced by corresponding municipal legislation; and it is expressly declared by the Congress, in the 5th section of the above-cited act, that such municipal legislation taken shall "continue in force only during the existence of any treaty of extradition with any foreign government." If, even under a treaty of extradition, a criminal cannot be given up without the co-operation of our statutes, what shall be said of the arrest and surrender of a criminal without the authority either of treaty stipulation or of municipal law?

We have seen that the Cuban authorities and the minister of Spain did not ask the delivery of Arguelles as a matter of right, but only as a matter of grace, in the interest of humanity. It may be interesting to know how far the government of Spain was entitled to expect that our government would act on this principle, even supposing it had the right to do so.

A recent transaction between the two governments, recorded in the diplomatic correspondence of Mr. Seward, as transmitted to Congress at the opening of the present session, affords an illustration of the principles and precedents which have been heretofore understood to govern the right of asylum and the conditions on which the extradition of alleged criminals may be claimed by one government and granted by another. As this case was fresh in the minds of the Spanish authorities when they reclaimed Colonel Arguelles, and in the memory of the administration when it yielded to their request, we may recite the circumstances under which it arose, using for this purpose the words of the government when giving an account of the transaction—(Papers relating to Foreign Affairs, 1863, vol. 2, p. 994 :)

"In the month of September, 1862, the city of New Orleans had been reclaimed by the naval and military forces of the United States from insurrectionary occupation, and was then held as a military position, in an actual state of civil war. The blockade regulations of the port were relaxed so far as to admit trade under military regulations. Three Spanish vessels-of-war, in conformity with the liberal practice which the United States had adopted towards all the maritime powers, were admitted into the port of New Orleans without question. The city was then in a condition of great distress, and permission was freely given by the authorities of the United States to any foreign government which should ask it, to receive and remove any of their suffering countrymen who were not compromitted in the insurrection. A number of such persons went on board of the three Spanish vessels with passes from the military authorities, such passes being given to all unoffending persons who applied for them. The commander of the Blasco de Garay, being also in command of the other two vessels, not content with giving passages to persons of the class before mentioned, went further, and knowingly and without consulting with the military commander of the port, received on board and conveyed away eighty native citizens of the United States who had been compromised in the insurrection, and this in violation of known and well-understood military regulations, which forbade any person without a pass to leave the city. On the 25th day of October the major general commanding called the attention of the captain of the Blasco de Garay to this subject, and then asked to be informed of the names of the passengers, not belonging to the government service of Spain, whom he had taken in his ship, on the voyage before mentioned, to Havana, and especially to state whether one Mr. Roberts, of New Orleans, was a passenger. *The commander of the Blasco de Garay declined to comply with this request.*"

The case as thus represented was at this stage submitted by Mr. Seward to the government of Spain, with an expression of the hope that it would receive "the prompt attention of her Catholic Majesty's minister at Washington." Thus addressed on the subject, M. Tassara, the Spanish minister, referred the matter to the government of her Catholic Majesty at Madrid, requesting at the same time reports from the captain general of Cuba and from the Spanish consul at New Orleans. The decision of the Spanish government in the prem-

ises was announced by the Marquis de Miraflores, the present minister of state in Spain, as follows:

"The right to give asylum to political refugees is in such manner rooted in the habits, in such sort interwoven with the ideas of tolerance of the present century, and has such frequent generous and beneficent applications in the extraordinary and ensanguined political contests of the times we live in, that there is no nation in the world which dares to deny this right, and, moreover, not any one that can renounce its exercise. What would become of the most eminent men of our days if, in the political tempests in which success may be against them, they could not protect themselves beneath the inviolable mantle of foreign hospitality, offering to them haply a friendly country, where they may breathe tranquil and safe; haply a shelter whose thresholds their pursuers cannot overstep, or haply, in fine, the shadow of a national flag floating in a port? In such cases it can be said that the flag which shields them is not merely the ensign of a foreign nation, but rather the banner of humanity and civilization, under whose ample folds all those can be received who are pursued because they are enemies, rather than because they are criminals. We are empowered, therefore, and we ought to give asylum on board our vessels-of-war in the United States to political refugees. *The limitation of asylum lies in the offence. Asylum ought not to serve to give impunity to those guilty of ordinary crimes;* that would be to encourage crime, and no civilized nation may do that. But it may be said that it is not easy for the commander of a ship-of-war to know whether the man who presents himself on board, asking for asylum, is or not guilty of ordinary crimes. In such cases the commander should require his word of honor that he has not committed such offences. But should he give that, and afterwards turn out that he has lied, there could be no difficulty in handing over to the authorities a man who to former offences had added that of the abuse of good faith, in being wanting to his parole. *And if the government of Washington wishes to acquire a perfect and positive right to the delivery to them of those guilty of ordinary crimes, it will be enabled to do so by means of a treaty of extradition, to the conclusion of which the Spanish government would not oppose itself, as it has not refused to conclude such with other states.*"

It will thus be seen that the Spanish government sustained the proceedings of the commander of the Blasco de Garay, who declined even to give the names of the passengers whom he had taken in his ship. Our government was simply informed that if it desired to reclaim ordinary criminals it could acquire "a perfect and positive right to do so" by concluding an extradition treaty, and that in the absence of such a treaty it would give no heed to our reclamations.

It remains for us, at the close of these historical citations, to sum up the logical conclusions suggested by the principles and precedents thus passed in review.

From the history we have given it appears that while the obligation of nations not to grant asylum to criminals, but to deliver them up for trial, receives the general assent of civilized nations, it is one subject to too many limitations and modifications. It is a duty of "imperfect obligation," so called, like those interwoven with the private life of individuals, and the neglect of which destroys the reputation of the man without rendering him amenable for violating the law. It is a duty resting upon the conscience of the nation, to be discharged under such circumstances, in such cases, and in such manner, as in the judgment of the nation, expressed through the constituted authorities, may seem best adapted to subserve the cause of virtue and the interests of humanity.

In some political systems the monarch is the authority who at once determines the question and executes the judgment; but in those countries where the principles of constitutional government obtain—in other words, where the rights of the person are recognized—the maxims of law limit the otherwise absolute power of the executive authority, and in performing their obligations to the human race, the legislature, in such countries, is careful not to overlook their obligations to the individual. Thus in Great Britain, as we have seen, while the sovereign may make treaties, he cannot fulfil a treaty binding him to surrender fugitive criminals without the express sanction of that part of the government which is charged with the guardianship of the life and liberty of the individual. He may make war or conclude peace without the consent of Parliament; but without its consent he cannot deprive the humblest individual of liberty, though that individual be charged with the deepest crimes.

In our own political system we find the same careful process for reaching the ends of justice. The treaty-making power determines what offences the nation will lend its aid to punish, and into what hands it is willing to deliver offenders for punishment. The tenth article of the treaty of Washington, concluded between the United States and Great Britain on this subject, shows, by the catalogue of crimes it embraces, that we are willing to trust the enlightened criminal jurisprudence of England in a wider class of offences than we would remand to some other countries whose creeds are less conformed to the humane spirit of the age. When the treaty-making power has ascertained the extent of the obligation of surrender, and assumed the corresponding duty, the legislative power comes forward to provide for the fulfilment of that duty; and in so doing Congress has thought proper to omit none of those safeguards which have been found essential to protect the accused against baseless charges, and which, necessary as they are in cases where the accused is to be tried in the jurisdiction where he is found, are doubly and trebly necessary where the charges are put forward, not for trial here, but as the means of obtaining possession of the accused and carrying him abroad.

It is not improbable that factitious accusations should be brought for the mere purpose of procuring the arrest and surrender of a fugitive. Hence it is that the careful provisions of the statute, regulating extradition in this country, commit to the judiciary—versed as that department already is in all the proceedings preparatory to a trial—the duty of arresting the fugitive and of ascertaining whether in fact a crime has been committed, and whether there is sufficient evidence to hold the accused for trial. When these questions have been settled by the judiciary, and not till then, does the nation consent to deny the right of asylum to the fugitive who has sought its protection and deliver him into the hands of the alien prosecutor.

It is needless to add that in the case of Arguelles the Executive has assumed all the authority which by the Constitution is distributed among the treaty-making power, the law-making power, and the judiciary. Without treaty, without law, and without judicial action, the Executive has assumed to do what only all three combined could lawfully empower him to do.

And in making this statement as a proposition of law, we indulge in no personal crimination of the President's motives. As he makes no legal defence of his conduct, but bases that defence on his good intentions, we make all due allowance for such good intentions while bringing his proceedings to the bar of the law he has transcended. It is one of the inconveniences which attach to such errors of judgment, and which illustrate their practical dangers, that all punishments visited on criminals outside of the laws array a certain sympathy in favor of the culprit, however guilty he may be. Colonel Arguelles may be the criminal he is represented to be by the Cuban authorities, but as these authorities are now seized of his person in a way not authorized by our laws, the penalty he may be called to pay for his alleged crime is one which concerns the honor of the nation in the eyes of the civilized world. It is to be hoped, for the sake of our own credit on the score of humanity, that the proceedings of Spanish jurisprudence in his case may be such as to show that only justice has been done him in the forum to which we have remitted him, even if something less than justice, as justice is understood in this country, has been done him by our authorities in the circumstances under which they have delivered him up for trial. The civilized world sits in judgment not only on the crimes of men, but on the processes by which these crimes are redressed; and when justice is inflicted against the received rules of justice, men never fail to resent the wrong done to the latter, whatever may be their abhorrence at the wickedness of the criminal. It was thus that all Europe thrilled with indignation and horror at the conduct of the King of Saxony, when, in the early part of the 18th century, he delivered up the person of the unhappy Patkul to the vengeance of his

sovereign, Charles XIIth, of Sweden, who broke him on the wheel. Men refused to consider the provocations which that nobleman had offered to his king, or the offences he had committed against his country, in their resentment at the wrong done to the "right of asylum" in his person. And so, whatever may be the crimes of Colonel Arguelles, (about which we know nothing personally, as the President of the United States knows nothing legally,) the civilized world, in its respect for the principles of public law and private right violated by his clandestine arrest and deportation, will not hesitate to deplore the process by which this Spanish subject has been brought to justice.

[Translation.]

Sentence in the criminal cause prosecuted in this supreme court against Don José Agustin Arguelles, formerly lieutenant governor of the district of Colon; D. Antonio Pratts, local judge of Palmillas; D. José Toral, lieutenant in the municipal guard; D. José Palma, deputy captain at Macaqua; D. Manuel Azuela, who filled the like grade at Yaguaramos; D. Mariano Aguirre, secretary of the lieutenancy of the governorship of Colon; D. José Hilario Valdez, parish curate at the same point; D. Luis Arias, deputy lieutenant at Palmillas; D. Saturnino Santurio, lieutenant, municipal alcalde of Colon; D. Manuel Martieres, commissary of police of the same settlement; D. Matias Gispert, professor of medicine and secretary of the board of health; D. Eugenio Aroiaza, advocate and prefect of the municipality; D. Maximiliano Molino, secretary thereof; and D. Antonio Zucarriche, for stealing some Bozal negroes, apprehended as belonging to a shipment captured within the judicial district of Colon and Cienfuegos, and for falsifications committed to hinder the discovery of this crime.

It appearing in regard to the proceeding that the suit was instituted by this court for ascertaining who were the persons responsible for an introduction of Dozal negroes, effected within the jurisdictions referred to, in the month of November, 1863, and that the individuals aforesaid, subject to this proceeding, were comprehended therein for the culpability which might attach to them from the subtraction of a considerable portion of the captured negroes, for the sale of same, and for the falsifications practiced to cover up these crimes; and that the summary inquiry being ended, and conclusion reached that the stealing and falsifications are criminal acts, entirely distinct from the introduction of African negroes, inasmuch as they constitute ordinary crimes, which in this case were perpetrated through an abuse of the administrative authority which was exercised by D. José Agustin Arguelles. Separate action was instituted for that investigation, and report was made to the supreme court of justice, which, by directions dated the 25th April last and 12th August ordered that certifications of progress should be periodically rendered to it.

[The continuance of this document, in brief, shows the devices resorted to by the accused to evade the administration of the laws bearing on the offence of stealing negroes, and making falsified returns to government of the Bozals landed, and then captured by order of Arguelles. The negroes were landed, brought into the jurisdiction and the safeguards of the law. Prats reports that on Novemver 12, 1863, he took what were reported as 1,009. Arguelles reported fewer, and that many had died, and several missing. Other reckonings made 1,008, and various other numbers. Investigation being had, it was proven that more than 100 had been sold as slaves, among them 11 to Onagdren, 7 to Requo, 1 to Capote, 5 to Perey, 4 to Criade, 9 to Medens, 2 to Lama, 1 to Castellanos, 1 to Escobar, 21 to Pedro, 42 to Fovente, 1 to Escobedo. That Arguelles gave in pay and compensation of service 12 to Santurio, 1 to Roque, 1 to Arriagh, 1 to Granado, 1 to Diez, 2 to Font, 1 to Tejada, 1 to Cadero, 1 to Lamdem, 8 to a sister of Pratts's. This number recovered, being

126, purchases of most of these were shown to have been made from Arguelles at nearly $1,000 per head; he claiming to have been authorized to sell them, and also authorized to give many away in compensation of service and loyalty in capturing the *imported Bozals*. All the details of fraud and falsehood are developed—*Arguelles, convicted of stealing negroes, (Bozals,) and of false and fraudulent reports to his superior authority to conceal his crimes, aggravated by the fact that he held high official trust, was sentenced to* 19 *years (de cadena) at the chain, and* $50,000 *fine, interdiction of civil rights during the time, and perpetual inability for place of trust, honor, or profit, or political rights, and constant surveillance by the authority until restitution to some of the parties* (those he sold to under pretence of authority to do so) *of the sums paid by them to him. Valdez*, to 8 years in prison, lasting inhabilitacion and payment of costs; *Pratts, Toral, Aguirre*, and *Palmer*, to 6 years each (in presidio;) *Aria*, 2 years; Molino, 5 years in prison; and all six to make restitution to those who had bought from them, and for the damages they had suffered in consequence; *Santurio*, 7 years in prison; *Gispert* and *Arriaza*, 4 years each, to make restitution like the former, and pay costs; *Arguelles* and *Valdez* also to make restitution and pay the proportion of costs and charges, notwithstanding their civil inhabilitation.

Zucarriche and Azuela were acquitted, and Martinez subjected to some small conditions.

Sentence passed, Habana, April 3, 1865.]

Mr. Seward to Mr. Koerner.

No. 109.] DEPARTMENT OF STATE,
Washington, June 27, 1864.

SIR: I have especial satisfaction in acknowledging the receipt of your despatch of the 3d of June, No. 101. It was written, indeed, before the Spanish government had received direct and full information from its agents in Peru. Nevertheless, your account of the demonstrations which that government has made concerning the unhappy difficulties at Lima seems to authorize an expectation that these difficulties will be adjusted in a way that shall be at once peaceful and consistent with the safety, honor, and welfare of both countries. I find no occasion at present to enlarge my instructions heretofore given.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

GUSTAVUS KOERNER, Esq., *&c., &c., &c.,*
Madrid.

Mr. Koerner to Mr. Seward.

[Extract.]

No. 106.] LEGATION OF THE UNITED STATES,
Madrid, June 27, 1864.

SIR: On the 20th of this month there were ratified by the Queen two treaties of recognition, peace and friendship made some time in 1863; one with the perpetual president of Guatemala, and the other with the Argentine Republic.

On the 24th of June the ministers of both those republics were received in audience by the Queen. At the same time the minister of Nicaragua, Señor de Marcoleto, presented his credentials; a treaty of recognition, peace and friendship having existed between Spain and that republic for some time previous.

I enclose the treaties and reception speeches. Whether these ratifications and receptions were purely accidental, or whether they were made to take place just at this juncture, with a view to show cordial relations with some of the Spanish American republics, and to quiet certain apprehensions which have necessarily arisen on account of the Peruvian troubles, I am not able to decide positively. But the latter alternative seems probable enough. I believe none of the ministers of these republics will remain here. They are or have been for some time accredited at Paris and other courts to which they will return.

Despatch No. 96 is still missing. Since I acknowledged receipt of your despatches 98, 99, 100 and 101, I have received 102, 103 and 104.

In regard to the treaty for the settlement of the limits of the maritime jurisdiction of Spain, in the waters of Cuba, I had heretofore confined myself to a bare statement to Mr. Pacheco, that it does not appear that Mr. Tassara had received instructions to sign it.

He said he only recollected that there had been some such question, but he said he would look into it. I have since ascertained from the chief of the bureau to which the relations with the United States belong, that no instructions had been sent by the Marquis of Miraflores. I judge from your despatch 102 that you do not wish me to urge the matter.

* * * * * *

I have the honor to be, with the highest respect, sir, your obedient servant,

GUSTAVUS KOERNER.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Koerner to Mr. Seward.

No. 107.] LEGATION OF THE UNITED STATES,
Madrid, June 28, 1864.

SIR: Some days ago Mr. Moreira, the consul of Peru at Madrid, handed me a memorandum of certain propositions made by the Spanish government to that of Peru to be transmitted by him to his government. Mr. Moreira told me at the same time of Mr. Pacheco's having informed him that I would be furnished with a copy of the memorandum for communication to my government. I have not yet received it, but have ascertained that such a copy has been ordered to be made, and to be sent to me, but, owing to the customary delay in the different bureaus here, it has not yet reached me. I enclose a translated copy.

I confess that those propositions do not entirely correspond with the conciliatory language held to me by Mr. Pacheco on previous occasions, nor even with his speech in the Cortes. They are not in form, nor in substance, such as will, in my humble opinion, secure at once a peaceable settlement. They are conceived in a spirit which seems to take it for granted that Peru has committed a series of wrongs, and that the conduct of Spain, or rather her agents, is wholly immaculate.

It appears right enough for Spain to demand that Peru should disavow its complicity with the alleged attempts on Mr. Salazar's life, and that this avowal should precede all further negotiations; but whether the Spanish government may insist that this should be done by a special commissioner to be sent for that express purpose to Madrid is quite a different question. It seems to me that the manner in which to make the disavowal ought to have been left to the choice of Peru.

Again, this avowal having been made, should not the *formal* reception of the Spanish commissioner (assurances of such reception being previously given by

Mr. Perry to Mr. Seward.

[Extract.]

No. 123.] LEGATION OF THE UNITED STATES TO SPAIN,
San Sebastian, August 23, 1864.

SIR: I have the honor to enclose a copy of a long letter from Señor Barreda, of August 22, at London, and of my reply of August 27, which closes this correspondence.

I was certainly under the impression, when I received his letter of August 6, already forwarded to you, that he was an authorized negotiator sent to Spain by his government, though he would receive further instructions here as indicated in your despatch No. 113, of July 15, to Mr. Koerner. * * *

With the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

Hon. WILLIAM H. SEWARD,
Secretary of State, &c., &c., &c.

Mr. Perry to Mr. Seward.

No. 124.] LEGATION OF THE UNITED STATES TO SPAIN,
San Sebastian, August 28, 1864.

SIR: I have the honor to enclose a translation of the note of Mr. Pacheco, dated the 11th instant, at San Ildefonso, in which he informs me that the government of the Queen has decided to approve the order of the captain general of Cuba, prohibiting foreign men-of-war, who remain outside of the port of Havana, from sending in their boats to that port, except in the sole case that the vessel is in need of succor.

With sentiments of the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington.

Mr. Pacheco to Mr. Perry.

[Translation.]

MINISTERIAL DEPARTMENT OF STATE,
San Ildefonso, August 11, 1864.

SIR: In fulfilment of what was said by this department to that legation of the 17th of April of last year, I have now the honor to inform you that the government of her Majesty has been pleased to approve the measure adopted by the superior governor of the island of Cuba, in respect to impeding the entrance into the port of the Havana of the boats of foreign vessels-of-war which themselves remain outside. In the sole case that the said vessels should be in urgent need of succor, it will be permitted to the vessel demanding it to remain without communication at the entrance of the port, whilst the consul of the nation to which the vessel belongs furnishes the same. In the adoption of this measure, observed by all nations in their port regulations, the government of her Majesty has had no other object than to put in operation the rules of maritime police and of sanitary police of that island.

I avail myself of this occasion to renew to you the assurances of my distinguished consideration.

J. F. PACHECO.

The CHARGÉ D'AFFAIRES *of the United States.*

So far as our interests are concerned it would be premature to specify in what manner they have been affected by this change. The journals say that Narvaez will immediately abandon Santa Domingo, and withdraw the Spanish flag from that island. He has energy enough for that step, but whether he will think proper to take it or not, the journals are probably ignorant.

* * * * * *

The members of the new cabinet have all been ministers before, and four of them prime ministers. They are able men, and if they continue united under the impulse of the rigorous will of Narvaez, may yet give a strong government to Spain.

Your despatches Nos. 21 and 22 have reached me, and I take special notice of your interview with Mr. Tassara, in which the neutrality of the Isthmus of Panama, under certain circumstances, was the subject of conversation.

I hope soon to have an interview with Marshal Narvaez, which I have no doubt will be interesting, upon the subject of the questions pending with Peru.

With the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

Hon. WILLIAM H. SEWARD, *&c., &c., &c.*

Mr. Llorente to Mr. Perry.

[Translation.]

MINISTERIAL DEPARTMENT OF STATE,
Palace, September 16, 1864.

SIR: The Queen, my august sovereign, having been pleased to accept, by royal decrees of this date, the resignation presented by the cabinet, of which Don Alexander Mon was president, has appointed President of the Council of Ministers, without portfolio, the Marshal Don Ramon Maria Narvaez, Duke of Valencia; Minister of Grace and Justice, Don Lorenzo Arrazola; Minister of War, Lieutenant General Don Fernando Fernandez de Cordova, Marquis of Mendigonia; Minister of the Navy, Admiral Don Francisco Armero, Marquis of the Nervion; Minister of Finance, Don Manuel Garcia Barzanallana; Minister of the Interior Government, Don Louis Gonzales Bravo; Minister of Instruction and Public Works, Don Antonio Alcalia Galiano; Minister of the Colonies, Don Manuel de Seijas Lozano; and Minister of State, the undersigned.

Whilst I have the honor to communicate this to you, I take pleasure also in expressing my desire and my hope that the friendly relations existing between Spain and the United States may be of that character of cordiality and good correspondence which distinguishes them to-day, for which I confide in finding on your part the most benevolent co-operation, and I propose on my side to omit no means which may conduce to facilitating in the affairs which I may treat with you the solutions most in harmony with the good understanding which reigns between the government of the Queen my Lady and that which you so worthily represent.

I avail myself of this occasion to offer to you the assurances of my distinguished consideration.

ALEXANDER LLORENTE.

Mr. Seward to Mr. Perry.

No. 26.] DEPARTMENT OF STATE,
Washington, September 19, 1864.

SIR: I have just received your despatch of the 28th of August, together with its accompaniment, which is a private letter addressed to yourself by Mr. Barreda,

Mr. Llorente said he had not seen Mr. Tassara's report of your interview with him, and thanking me for drawing his attention to the point, the conversation dropped.

I have the honor to remain, with the highest respect, sir, your obedient servant,

HORATIO J. PERRY.

Hon. WILLIAM H. SEWARD,
Secretary of State, Washington, D. C.

Mr. F. W. Seward to Mr. Perry.

No. 29.] DEPARTMENT OF STATE,
Washington, September 26, 1864.

SIR: I acknowledge with satisfaction the receipt of your despatch of August 28, No. 124, together with a translation of a note addressed to you by Mr. Pacheco, informing me of the course adopted by the captain general of Cuba in regard to the entrance into the port of Havana of foreign vessels-of-war.

I am, sir, your obedient servant,

F. W. SEWARD, *Acting Secretary.*

HORATIO J. PERRY, Esq., *&c., &c., &c., Madrid.*

Mr. Perry to Mr. Seward.

[Extracts.]

No. 128.] LEGATION OF THE UNITED STATES,
Madrid, October 2, 1864.

SIR: I had a long conversation with Señor Llorente on Thursday, which I endeavored to make as informal as possible, relating to the difficulties between Spain and Peru.

* * * * * *

Meantime I am informed that Admiral Pinzon is removed from his command, to take effect as soon as his successor can arrive out. Admiral Pareja, late minister of the navy, is designated to replace him; but I am told he has himself made some objection on account of his connexion with the last cabinet in power when the news of Admiral Pinzon's exploit reached Spain.

Mr. Llorente told me that he had information the Peruvian government was endeavoring to purchase ships-of-war in the United States to be used against Spain, and asked me whether that would be permitted? I said that I was ignorant of the circumstances of the case he referred to, but I had no difficulty in stating that, in case of war between the two nations, much as we should regret that termination to the present dispute, he might rely upon it that our neutrality would be impartially enforced. I said, also, that we did not understand neutrality as it had lately been practiced by England towards the United States; that we were complaining now of the facilities afforded to our own insurgents for the purchase of war ships in England to be used against ourselves, and that we certainly would not permit a similar abuse by either belligerent within our own jurisdiction. Mr. Llorente said he was satisfied with that reply.

Seeing the turn this business is now taking, I thought proper to show to Mr. Llorente your despatches, Nos. 114 and 115, addressed to Mr. Koerner, and

Mr. Seward to Mr. Perry.

No. 40.] DEPARTMENT OF STATE,
Washington, October 26, 1864.

SIR: I have your despatch of the 2d of October, No. 128, and I not only approve but I commend the zeal and diligence you have exercised in your labors to secure a continuance of peace between Peru and Spain. I shall not now approve of so much of the representations and suggestions which you have made to Mr. Llorente on that subject as was not warranted by express directions from this department. At the same time, I am far from being disposed to censure this portion of your proceedings, and, on the contrary, I rather incline to hope that your representations may be crowned with beneficial effect.

Upon a careful consideration of the state of the case as you have presented it to me, it has been deemed expedient on my part to advise Mr. Barreda, who is now in Europe, to seek an interview with you, and learn from you informally and unofficially the facts in regard to the disposition of the Spanish government which you have communicated to me. His sagacity will enable him to determine what course to suggest to his government at Lima. I shall communicate with Mr. Barreda by the mail which carries this despatch.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HORATIO J. PERRY, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Mr. Perry.

No. 41.] DEPARTMENT OF STATE,
Washington, October 31, 1864.

SIR: We learn unofficially that the United States ship Niagara lately overhauled and temporarily detained the Cicerone, a steamer which bore the Spanish flag. We have as yet no report of the transaction from the commander of the Niagara; but we are advised by a correspondent in London that the vessel had been described to the commander as an insurgent one recently engaged in the African slave trade, and now carrying a naval armament to the rebels. It is supposed, although not known here, that this information was, upon examination, found to be erroneous, and that the Cicerone was therefore released. I give you this information, which is all this government has received, with a desire that you shall communicate it to the Spanish government, and assure them that if any error has been committed in the transaction affecting the rights of Spain, this government will see that it is duly repaired.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HORATIO J. PERRY, Esq., *&c., &c., &c., Madrid.*

Mr. Seward to Mr. Perry.

No. 45.] DEPARTMENT OF STATE,
Washington, November 15, 1864.

SIR: On account of my late absence from the department of a few days, it has not been practicable for me to return an earlier answer to your despatch of

Mr. Seward to Mr. Perry.

No. 52.] DEPARTMENT OF STATE,
Washington, December 2, 1864.

SIR: Your despatch of the 8th ultimo, No. 139, which relates to the detention of the Spanish steamer Cicerone by the sloop-of-war Niagara has been received, and your note upon the subject to Mr. Llorente is approved. I had already, before the receipt of your communication, been informed of the circumstances referred to, and had called upon the Secretary of the Navy for fuller information, which, however, has not been furnished.

In a late despatch from our vice-consul at Havana the Cicerone is referred to as a slave trader.

I am, sir, your obedient servant,

WILLIAM H. SEWARD.

HORATIO J. PERRY, Esq., *&c., &c., &c., Madrid.*