

POLITICAL SCIENCE QUARTERLY.

ASYLUM IN LEGATIONS AND CONSULATES AND IN VESSELS. II.

IV. *Asylum in America (concluded).*

3. *Paraguay.*

Under the rule of F. S. Lopez in Paraguay, the years 1867 and 1868 present a scene of exceptional disorder, aggravated by a war waged against that country by the allied forces of Brazil, the Argentine Republic and Venancio Flores, the invader of Uruguay. On October 14, 1867, Mr. Washburn, then minister of the United States at Asuncion, apprehending that Lopez might order the city to be evacuated, said :

Should the evacuation of the town be ordered . . . , it is uncertain whether the foreigners will or will not be permitted to remain. If they are not, I apprehend that many will ask admission to my premises and request protection, which it would be hard to refuse and might be embarrassing to grant. As against the enemy, however, I have not hesitated to say that this legation will give whatever protection it can to whosoever, save notorious criminals, may resort to it in time of danger.

Replying on January 14, 1868, Mr. Seward, then Secretary of State, said :

Your intention to afford asylum in the legation to those who may resort to it, save notorious criminals, as far as it can be done without compromising your neutral character or that of your country, is approved.

On the approach of the Brazilian fleet in February, the evacuation of the city was ordered. Mr. Washburn, however, refused to leave, and many persons applied to him for shelter.

Numbers were turned away; but he received about thirty of various nationalities, among whom were two Americans named Manlove and Bliss, and an Englishman named Masterman. On February 22, Mr. Washburn informed the minister of foreign relations that the critical condition of affairs in and near the capital had rendered it necessary for him to take into his "service" several persons in addition to those previously connected with the legation, at the same time transmitting a list of all those then "employed" by him. On this list were Manlove and Bliss. To this communication the minister of foreign relations replied on the following day. Adverting to the fact that the city had been transformed into a military post, subject to the orders of its commander, he declined to recognize Manlove and Bliss as members of the legation. In order to "avoid unpleasant incidents" they might, he said, remain in the legation building; but they could not be allowed to go out, lest they might be arrested by the guards, who had "orders not to let any persons but public officials go about." On the 24th of February, Mr. Washburn wrote another note, saying that he had omitted to specify Masterman as one of the persons attached to the legation and including his name with those previously transmitted. This note, however, was not sent till the 4th of the ensuing April. On the 3d of March, Manlove, while riding on horseback through the streets of Asuncion, was arrested for a breach of military regulations, but escaped, after a violent colloquy with the authorities. A few days later he was again arrested on the street for another violation of military regulations, and held as a prisoner. Mr. Washburn demanded his release, but when the authorities refused to grant it, discontinued the discussion and referred the correspondence to his government, at the same time declaring that the arrest of Manlove appeared to be "a great affront" to the legation, "if not a direct violation of its rights." No representations on the subject, however, appear to have been made by the Department of State.¹

¹ The circumstances under which Manlove was admitted to the legation of the United States by a man of such high character as Mr. Washburn forcibly illustrate

On the 20th of June, the minister of foreign relations officially inquired of Mr. Washburn whether Senhor Leite Pereira, a Portuguese subject, was in the legation, and if so, why he remained there. He also requested a list of all persons who, without belonging to the legation, were sheltered in it. Mr. Washburn, while disclaiming any "obligation, except as a matter of courtesy," to respond to inquiries pertaining "to the internal affairs" of the legation, stated that Leite Pereira, who had formerly acted as consul of the King of Portugal, came to the legation with his wife on the 16th of June "in the quality of guests," though he added: "Of his motives in coming here I am not further informed than that they are founded on the representations of Mr. Cuberville, at present in charge of the French consulate." Mr. Washburn also furnished a list of twenty-eight persons of various nationalities in the legation, not mentioned in his note of February 24 as belonging to it. On June 27, the minister of foreign relations wrote that Leite Pereira was "sheltered in the legation of the United States in contravention of all governmental regulations," and asked that, as he was "accused" and must "appear before the proper tribunal," he be delivered to the police officer who would present himself at the legation two hours after the delivery of the note. When the officer appeared, Mr. Washburn refused to comply

the liability of asylum to abuse. According to Mr. Washburn, Manlove was an adventurer who, after serving in the army of the Confederacy in the civil war in the United States, made his way to the scene of conflict in South America, where he succeeded by a ruse in getting through the lines of the allies and sought service under Lopez. His design, which was made known to Mr. Washburn before it was presented to Lopez, was to obtain from the latter blank commissions duly signed and executed, and, returning with them to the United States, to fit out cruisers to prey upon the commerce of Brazil as the *Alabama* and other Confederate cruisers obtained in England had preyed upon the commerce of the United States. As this projected violation of the neutrality laws of the United States was communicated to him in confidence, Mr. Washburn, while discouraging it as not likely to succeed, thought he should abstain from revealing it. Lopez, when the plan was presented to him, locked Manlove up as a spy and deliberated several weeks on having him shot; but in the end he was released and his expenses were paid to Asuncion. When the order was issued to evacuate the city, Manlove was, it would seem without justifiable cause and most unfortunately, received into the legation of the United States, which Mr. Washburn declared to be "for the time United States territory." History of Paraguay, vol. ii, pp. 216-223.

with the minister's request, but promised to answer his note on the following day. In his answer, dated June 28, Mr. Washburn, arguing upon the immunities of legations and citing the statement of Vattel that for persons charged with "ordinary transgressions," and often "rather unfortunate than criminal," the house of an ambassador might well serve as an asylum, said :

Under such circumstances I most respectfully request that the specific charges against Mr. Leite Pereira may be made known to me, when, if they shall be of the grave character that shall require it, he will be advised that this legation can no longer give him an asylum.

On July 11 the minister of foreign relations addressed to Mr. Washburn an extended review of the correspondence and of the circumstances out of which it arose. In answer to Mr. Washburn's quotation from Vattel, he cites a subsequent passage of the same writer, in which it is declared that

it belongs to the sovereign to decide, on occasion, how far the right of asylum which an ambassador claims as belonging to his house is to be respected ; and if the question relates to an offender whose arrest or punishment is of great importance to the state, the prince is not to be withheld by the consideration of a privilege which was never granted for the detriment and ruin of states.¹

It was in view of this passage, the minister said, that he had requested that "Leite Pereira should be placed in the hands of justice." He also referred to the fact that the motive originally assigned for permitting the legation to be used as an asylum, was the approach of the Brazilian fleet, and that it was "nearly five months since the two hostile vessels appeared and were momentarily in the port of Asuncion." "Since that time," he continued,

disagreeable circumstances have occurred between this ministry and the legation of your Excellency through the provocations given by your refugees, and, nevertheless, not one of them has left that residence in fulfilment of the orders of the government, and on the contrary, others are received, as is proved by your notes. . . . Laying aside, then, the question of the residence of your Excellency in Asuncion, where there

¹ Vattel, book iv, ch. 9, par. 48.

are no objects of diplomatic attention,¹ I proceed to state to you that the ostensible motive of the asylum given by the American legation having ceased, that asylum must also cease, especially as it has begun to seriously affect the military regulations of the post and the most precise orders of the government. . . . In view of what has been stated, I request you will please dismiss from your hotel to-morrow, before sunset, the said Leite Pereira, as well as all the other individuals who, not belonging to the legation, are at present in it, some as guests and others in other capacities, as your Excellency expresses it.

When the demand of the minister of foreign relations was made known in the legation, all to whom it was intended to apply went away, except Bliss and Masterman. On July 13 the minister of foreign relations asked that they, too, be dismissed, since they were "accused of crimes not less grave than the others whose dismissal" had been required. Mr. Washburn declined to dismiss them, on the ground that he would be abdicating his functions and rights as minister if he acknowledged that the government might ask for the surrender of persons whom he considered as members of his legation. He said that Masterman had come to reside in the legation as a medical attendant in the preceding September, and that when the list of February 24 of persons belonging to the legation was transmitted to the government on the 4th of the ensuing April, no objection was made to his inclusion in it. As to Bliss, who was included in the list of February 22 as well as in that of February 24, it was admitted that the government had promptly refused, on the 23d of that month, to recognize him as belonging to the legation, and had announced that he must confine himself to the legation premises, since he would be liable to arrest if found outside of them. "For the last three months," said Mr. Washburn, Bliss had scrupulously observed this injunction and, besides, had been of great assistance to him in his official duties. It seems that Bliss, who possessed considerable knowledge of languages, was a roving literary hack, and that both he and Masterman had been to some extent in the employ

¹ The note of the minister of foreign relations is dated at Luque, where the government then was.

of the government before they took up their residence in the legation. The minister of foreign relations, alleging that the two men were implicated in a conspiracy against the government and were sheltered as criminals, refused to recognize Mr. Washburn's claims in regard to them, and demanded their expulsion or delivery. Mr. Washburn still refused to yield, though he promised, as they were charged with holding communication with persons outside, to keep them as close prisoners in the legation till he could send them out of the country, or till such time as the government should not object to their being set at liberty. Under these circumstances they were not disturbed in the legation. But they were seized while accompanying Mr. Washburn to the United States man-of-war *Wasp*, in order to depart with him out of the country.

On September 26, 1868, Mr. Washburn, who had resigned and was then on his way to the United States, sent to the Department of State from Buenos Ayres a despatch in which, besides describing the deplorable condition of affairs in Paraguay, he said :

Lopez pretended some three or four months ago to have discovered some sort of a conspiracy, and after arresting almost all the foreigners, demanded of me that I should deliver up to the tribunals those who had sought asylum in my house at the time the Brazilian fleet went to Asuncion in February last. To defend these men¹ from the clutches of Lopez, I had a correspondence with the government long enough to make a volume of diplomatic despatches. It was all in vain, however. They all had to go ; though none, except Bliss and Masterman, were taken by force.

Owing to the situation in Paraguay, this despatch of September 26 conveyed to the Department of State the first report from Mr. Washburn as to the affairs of his legation since the 17th of the preceding April. Apart from describing Bliss and Masterman as "members" of the legation, all the information it afforded as to their seizure and the abandonment of the legation by other individuals, was that contained in the passage

¹ In writing this account, Mr. Washburn evidently overlooked the case of Leite Pereira, who was received into the legation June 16.

above quoted. The correspondence to which it refers and from which the narrative of those incidents has been derived, was transmitted with a despatch from Buenos Ayres, October 5, 1868. On the 18th of November, the despatch of September 26, but not that of October 5, having been received at Washington, Rear Admiral Davis was ordered to Paraguay to take such measures as might be found necessary

to prevent violence to the lives and property of American citizens there; and, in the exercise of a sound discretion, to demand and obtain prompt redress for any extreme insult or violence that may have been arbitrarily committed against the flag of the United States or their citizens.

In a letter to the Secretary of the Navy, preceding the issuance of this order, Mr. Seward says :

Mr. Washburn's despatch conclusively shows that the situation of all foreigners, including United States citizens, at Asuncion is greatly imperilled, and that especially Porter C. Bliss and George F. Masterman, United States citizens¹ lately in some way connected with the United States legation, have suffered personal violence and have perhaps been murdered.

At the same time Mr. Seward stated that the merits of the controversy could not be understood until the correspondence should have been received ; and it was for this reason that the admiral was invested with such general discretion.

When Admiral Davis sailed from Buenos Ayres for Asuncion he took with him General Martin T. McMahon, Mr. Washburn's successor, who had set out for his post in September. In a despatch dated on the United States flag-ship *Wasp*, off Angostura Batteries, Paraguay, December 11, 1868, General McMahon reports what had transpired. Immediately on arriving off the Batteries on the third of December, Admiral Davis addressed a note to President Lopez, stating that the American minister was on board and saying :

As an indispensable preliminary step to the presentation by General McMahon to your Excellency of his credential letter, I have to request

¹ This was an error, Masterman being an Englishman.

that Messrs. Bliss and Masterman, the persons arrested and detained in Asuncion while under the protection and attached to the legation of the previous United States minister, be restored to the authority of the United States flag.

In an interview with the admiral held on shore later in the day, President Lopez urged that Bliss and Masterman were guilty of serious crimes and were not members in good faith of the United States legation, and that they were then actually undergoing trial; nevertheless, confiding in the justice of the American government, he said he would deliver them up, though he requested the admiral to withdraw his assertion that they were under the protection of and attached to the legation, lest it might seem that the point had been conceded. On the 4th of December the admiral withdrew his first note and substituted another, in which he omitted all reference to the American minister and merely requested the delivery of the prisoners as "individuals" without reference to their status. On these terms Bliss and Masterman were, after further correspondence intended by the government of Paraguay to save all its contentions, surrendered with expressions of amity on both sides.

It is equally foreign from my purpose either to animadvert upon the desperate and sanguinary character of Lopez, or to pronounce judgment upon the criticisms which Mr. Washburn in his *History of Paraguay* makes upon the amicable course of General McMahon, and of Admiral Davis and other prominent naval officers, in their dealings with the Paraguayan President. But it is remarkable, as affecting both the so-called right of asylum and the expediency of giving it countenance, that, while it was the principal source of Mr. Washburn's difficulties, neither the instructions of Mr. Seward nor the subsequent correspondence complain of the refusal of the Paraguayan government to permit its continuance, though among those who were forced to abandon the legation were several American citizens. It was only in behalf of Bliss and Masterman, the one an American and the other an Englishman, who were not arrested in the legation but outside of it, that redress was asked by Admiral Davis; and in their case the claim of official connec-

tion with the legation, whether rightly or wrongly alleged, carried with it the assertion of the personal immunity which the diplomatic character generally confers.

The account of this case would be incomplete if we failed to notice the fact that from the time Leite Pereira came to the legation it was closely policed, probably fifty men, as Mr. Washburn stated, being kept on guard day and night.

4. *Guatemala.*

In May, 1870, Mr. Corbett, British minister in Guatemala, gave asylum to one Granadas, who was eluding prosecution for rebellion and whom Mr. Hudson, the minister of the United States, had refused to shield. On hearing that Granadas was in the British legation, the minister of foreign relations inquired of Mr. Corbett whether it was true. Mr. Corbett declined to answer, holding that "according to international usages" no one had a right to ask "any explanations" as to what occurred "within the house of Her Britannic Majesty's representatives." The minister of foreign relations, while admitting "the doctrine of immunity as . . . taught by the practice of enlightened nations," declined to accept Mr. Corbett's contention, since it might wholly defeat the action of justice and "establish the most complete immunity for abuses committed within the habitation of a foreign agent." Meanwhile, soldiers were stationed about the British minister's dwelling, with orders to arrest Granadas, if he attempted to escape. Nor were they withdrawn till, by the acceptance of conditions offered by the government, Granadas obtained permission to leave the country. Not long afterward the British minister went away on leave, and as his going was popularly attributed to the Granadas incident, the Guatemala government at his instance pronounced the surmise to be groundless.¹

Three months after his departure from the British legation, Granadas and another revolutionist appeared on the Guatemalan border with five hundred men, and stirred up an insurrection

¹ Foreign Relations, 1870, p. 443.

which resulted in the overthrow of the government. During the attendant commotion, the protection of the legation of the United States was extended to all parties and all nationalities.

The authorities [said Mr. Hudson] have in no instance objected to my action, but approved my course and claimed the protection of the legation. . . . Humanity called for the part I bore, and where there was so much to be justly apprehended, I believed my conduct would be excused, if not fully warranted, in acting in that behalf.

To these representations Mr. J. C. B. Davis, Acting Secretary of State, responded :

The efforts which you have made for the general protection of life and property, during the recent hostilities in Guatemala, meet with the approval of this department.¹

5. *Salvador.*

In the revolution in Salvador in 1871, the deposed President, Dueñas, found refuge with General Torbert, minister of the United States. The new government immediately placed a guard about the legation and demanded that the fugitive be surrendered for trial, promising that his life should be spared. General Torbert, "having," as he declared, "due respect for the sovereignty of the state," with the concurrence of Señor Dueñas accepted the guarantee of his life and delivered him to the agents of the government. Referring to this transaction, Mr. Fish, then Secretary of State, sent General Torbert a copy of certain instructions to Mr. Bassett, minister to Hayti, of December 16, 1869,² and said :

Having, however, whether for sufficient reasons or otherwise, granted a refuge to Mr. Dueñas, you thereby incurred an obligation which, it might be said, more or less implicated the honor of this government in its exact fulfilment. It appears that Mr. Dueñas assented to his own surrender. This assent, however, may be regarded as so important an element in the case that it would have been preferable if it had been given in writing. This would have made it a matter of record, which might have been used in possible contingencies to refute a charge that the surrender was contrary to the wishes of the refugee.³

¹ For. Rel. 1871, p. 542. ² *Infra*, p. 214. ³ For. Rel. 1871, pp. 693-695.

In April, 1872, charges against Señor Dueñas were presented to the Congress for various malfeasances in office, including the embezzlement and misappropriation of funds, usurpation of office and nepotism, and for assassination in unlawfully causing ex-President Barrios to be shot. The Senate, after investigation, remitted the charges to the ordinary tribunals, and it was surmised that the trial might end in a death sentence.¹ Mr. Fish, on being so informed, instructed the legation in that event to express to the government the expectation that the pledge given to General Torbert would be observed.² This contingency did not arise. On July 22 the prisoner was sent under guard to La Libertad *en route* for Panama, the government having taken his bond with five sureties in \$10,000 each that he would not return to Salvador within four years without the permission of the authorities, and having required "the hypothecation of all his large estate to abide the result of the civil procedures against him."³

6. *Bolivia.*

In 1874 an attempt at revolution, aided by a mutiny in the army, brought up the question of asylum in Bolivia. As many as thirty Bolivian citizens applied to Mr. Reynolds, minister of the United States, for protection against the action of their government. To all applicants he replied that "for criminal offences against the laws of the country, the American flag could afford no protection"; and that "for offences purely political," he "felt assured that the government and the administration of President Frias would not molest the parties implicated." "It was," he said, "common for the defeated party in any revolution" in Bolivia to seek "protection under foreign flags," and especially "under the flag" of the legation of the United States. Consequently he had extended protection to only two persons, named Criales and Poso, both of whom had filed statements to the effect that they were "not engaged, directly or indirectly, with arms in the mutiny"; and that they apprehended molestation because of false reports made to the

¹ For. Rel. 1872, p. 530.

² *Ibid.* p. 536.

³ *Ibid.* p. 541.

government by their personal enemies. Subsequently the minister for foreign affairs informed Mr. Reynolds that there were no charges of crime against either of the refugees, but that the government wished him to know that Poso once before "took refuge under the flag of the United States during the time that Mr. Markbreit was American minister, and at the same time was in conspiracy against the lawful government of Bolivia"; and that he was again attempting to do the same thing, by "communicating with outside parties to the injury of the government." Mr. Reynolds responded that if further acts of that character were alleged, he would notify Señor Poso that he could no longer enjoy the protection of the legation. This response the minister for foreign affairs accepted as "completely and highly satisfactory."

On March 20, 1875, Mr. Reynolds reported another attempt at revolution, in which the government palace at La Paz was partially burned. Recurring to the subject on April 7, he said:

I have refused asylum in this legation to all persons engaged in the burning of the palace building. . . . I was impelled to make this decision from the fact that, had they succeeded in their attempt to completely destroy the building by fire and set match to the magazine of powder, the United States would have had no legation-room in La Paz, if indeed any 'minister resident' living. The further fact that the government of Bolivia could rightfully demand them as criminals, to be tried by the courts of the country for incendiarism and murder, was a serious obstacle to my receiving them in asylum.¹

In the following October a Bolivian named Suarez ran into the legation and was followed by a police officer, who, finding that Mr. Reynolds was absent, awaited his return. When Mr. Reynolds arrived, Suarez informed him that he desired protection, since there could be no accusation against him of a criminal character, though he might be charged with political offences on the 20th of the preceding March. The police officer knew nothing as to the charges, having received only verbal orders to arrest Suarez and take him to police headquarters. Mr. Reynolds declined to grant asylum, and advised

¹ For. Rel. 1875, pp. 82-89.

Suarez to respond to any charges against him. Mr. Fish, then Secretary of State, approved the minister's course, saying that it had been "the universal practice" of the United States "to discountenance the granting of asylum by its diplomatic and consular officers." The practice, he said, was "believed to have no good reason for continuance, to be mischievous in its tendencies, and to tend to political disorder"; and the government of the United States, while "not able of itself to do away with the practice," had "not failed on appropriate occasions to deprecate its existence and to instruct its representatives to avoid committing it thereto"; for the practice must necessarily prove "a cause of annoyance and embarrassment to the minister, and tend to bring about questions of a vexatious and troublesome nature," which it was desirable for both governments to avoid.¹

7. *Mexico.*

In January, 1877, during the revolution which resulted in the elevation of General Diaz to the presidency of Mexico, General F. O. Arce, an opponent of Diaz, upon the occupation of Mazatlan by the forces of the latter, took refuge in the American consulate. A few days afterward, the consul informed the commander of the Diaz forces, Colonel Ramirez, that General Arce was under the protection of the consulate, whereupon the colonel gave assurance that the consulate would be respected. On February 20, Mr. J. W. Foster, then minister of the United States at the city of Mexico, learning that General Arce had taken refuge in the consulate and that there was a possibility of trouble with the military authorities growing out of the fact, wrote as follows:

It is to be borne in mind that the consulate does not possess the right of extraterritoriality, and that while it is an act of humanity to protect defenceless persons from mob violence and hasty revenge during the transition of governments, it is advisable to avoid giving permanent protection to political refugees, and thus prevent conflicts with the local authorities.

¹ For. Rel. 1876, p. 17 *et seq.*

It turned out that before these instructions were written a body of armed men had, in the absence of the consul and without his knowledge and consent, taken General Arce from the consulate, and that Colonel Ramirez, upon the complaint of the consul, had promised to restore General Arce and punish the officer making the arrest. But as the captive was not returned, and no steps were taken toward reparation, Mr. Foster presented the facts to the minister for foreign affairs, who subsequently informed him that instructions had been sent to the military commandant at Mazatlan to make a report of the affair, and assured him "that the government would not fail to punish any officer who should be found wanting in courtesy to the consul or to his flag." The case does not appear again, and it is probable that nothing more was done; indeed, before the matter was presented to the minister for foreign affairs, General Arce called upon Mr. Foster, having arrived in the city of Mexico under his parole to report as a prisoner to President Diaz.¹

8. *Colombia.*

During the insurrection in Colombia in 1885, in which Colon was raided and burned, the President by executive decree levied a war contribution on certain Colombian citizens. On their refusal to pay it, an order was issued for their arrest, when the Argentine minister at Bogota went to the house of one of them, Señor Uribe by name, and escorted him through the public thoroughfare to the apartments of the legation in one of the city hotels. A decree was then issued requiring all hotel keepers to furnish the government with the names of their guests, whereupon the Argentine minister removed to Señor Uribe's house and gave him asylum there. To meet this counterplot, the minister for foreign affairs sent out a circular note in which, after adverting to the great moderation the government had exhibited toward the insurgents, he expressed the hope that the diplomatic corps would not place the government under the necessity of demanding the surrender of persons for whom the

¹ For. Rel. 1877, pp. 398-400.

authorities might for any cause whatever be searching, since it could not be supposed that any foreign representative, there being no question of defending such refugees against barbarous maltreatment, would desire to "mix himself up in our unhappy domestic conflicts." Having endeavored, but in vain, to induce their Argentine colleague to give Señor Uribe up,¹ the members of the diplomatic corps replied to the circular note, each in his own way, though the responses of the English, German, Spanish, French and Chilian ministers were substantially the same as that of Mr. Scruggs, the minister of the United States. Mr. Scruggs, while maintaining that a minister's house was extraterritorial and could not be invaded "by order of either the civil or military authorities of the local government, no matter how apparent the necessity therefor," said :

I as frankly admit that these exemptions can never justify a public minister in converting his legation into an asylum ; and that if he should do so, and thereby attempt to shield a citizen of the country to which he is accredited from the operation of the local law, his conduct would be justly offensive and his recall, might with reason be asked. The right of such asylum is not sanctioned by public law ; and even in very extreme cases, and when prompted by the humane impulse to save life, its exercise can be justified only by exceptional circumstances, and then only as a temporary expedient.

The only criticism made by Mr. Bayard, then Secretary of State, on Mr. Scruggs's reply was that it asserted too broadly the extraterritoriality of foreign legations. Mr. Bayard accepted the view, as expressed by Dana in his edition of Wheaton, that the immunities of legations had often been exaggerated, by assuming the idea of extraterritoriality, and not the convenience of nations, as the basis of such immunities ; and that, while it was agreed that the functions of ambassadors must be performed with freedom, the ultimate test of the propriety of any exercise of local authority must be whether it constituted "an unreasonable interference with that freedom."²

¹ Señor Uribe afterward left the house secretly and went to some place unknown to the public or the diplomatic corps.

² For. Rel. 1885, pp. 205-219.

9. *Hayti.*

In the imperfect social and political conditions existing in Hayti and San Domingo, both legations and consulates have been used as asylums for persons engaged in the sanguinary disturbances that so often occur in those countries, and especially in Hayti. Writing to the minister of the United States in Hayti, October 4, 1865, Mr. Hunter, Acting Secretary of State, said :

Consuls may harbor political refugees, but as the law of nations confers upon them no right to do this, and as the treaty between the United States and Hayti is silent on the subject, no sufficient cause of complaint would arise if refugees so harbored were to be taken by the local authorities from the consular abode.¹

In a despatch of May 8, 1868, Mr. Hollister, then minister of the United States at Port-au-Prince, describes the disorders attending the return to that city of President Salnave at the head of his army, after an encounter with insurgents. The city, he said, was in a state of "consternation," and his dwelling was filled with "refugees—men, women and children—to the number of one hundred and fifty." Mobs roamed the streets, as they had done for two weeks, firing their muskets promiscuously. In conclusion he said :

I beg instructions in relation to the receiving of refugees. It does more mischief here than it does good, and is really, as it is practised, little more than offering a premium for factious disturbances and a bid for sedition. The three *chargés* here are ready to recommend the discontinuance of this much abused custom if our government is ready to take the step.²

On May 28 Mr. Seward replied as follows :

The right of a foreign legation to afford an asylum to political refugees is not recognized by the law of nations as applicable to civilized or constitutionally organized states. It is a practice, however, which, from the necessity of the case, is exercised to a greater or less extent by every civilized state in regard to barbarous or semi-barbarous coun-

¹ Wharton's Int. Law Dig. vol. i, § 104, p. 678.

² Dip. Cor. 1868, part ii, p. 354.

tries. The revolutionary condition seemed to become chronic in many of the South American nations after they had achieved their independence, and the United States, as well as the European nations, recognized and maintained the right of asylum in their intercourse with those republics. We have, however, constantly employed our influence, for several years, to meliorate and improve the political situation in these republics, with an earnest desire to relinquish the right of asylum there. In the year 1867 we formally relinquished and renounced that right in the republic of Peru. This government has also largely modified the exercise of that right among some of the Oriental nations. Thus we are prepared to accept the opinion you have deliberately expressed that it is no longer expedient to practice the right of asylum in the Haytian republic. Nevertheless, we should not be willing to relinquish the right abruptly, and in the midst of the anarchy which seems to be now prevailing in Hayti, in the absence of matured convictions on your part. Nor do we think it expedient that it should be renounced by the United States legation any sooner or in any greater degree than it is renounced by the legations of the other important neutral powers. With these reservations, the subject is confidently left to your own discreet judgment.¹

On June 25 Mr. Hollister reported that, owing to the breaking out of disease in the legation, President Salnave had as a "sanitary measure" agreed to the safe departure of the women and children, and had permitted all the men to be put on board a merchant vessel for New York, except six, who with the consent of the President remained under the diplomatic roof. On this report Mr. Seward observed :

I see no reason to censure or disapprove of your proceedings mentioned, by which you obtained relief from the excessive incumbrance of refugees. The proceeding is in harmony with the instructions you have received from this department, and with the settled policy of the United States. . . . In all cases the exercise of the right [of asylum] should be attended as far as possible with delicacy towards the state concerned, and with forbearance from all appearance of arrogance and dictation.²

On December 16, 1869, Secretary Fish, on the occasion of an insurrection in Hayti, wrote to Mr. Bassett, Hollister's successor, the following instructions on the subject of asylum :

¹ Wharton's Int. Law Dig. vol. i, § 104, p. 678.

² Dip. Cor. 1868, part ii, p. 360.

Occasions for this have of late years frequently arisen in the independent states of this hemisphere, but the proceeding has never been sanctioned by the department, which, however, appreciates those impulses of humanity which make it difficult to reject such appeals for refuge. The expediency of granting an asylum in such cases, especially by consuls, is more than questionable, and the obligation to take that course has no foundation in public law, however in Hayti or elsewhere it may be tolerated and customary. While you are not required to expel those who may have sought refuge in the legation, you will give them to understand that your government cannot on that account assume any responsibility for them, and especially cannot sanction any resistance by you to their arrest by the authorities for the time being.¹

In March, 1872, Mr. Jastram, vice-commercial-agent of the United States at Saint Marc, Hayti, afforded asylum to General Batrville, who was pursued for proclaiming an insurrection. The chief of the department demanded that the fugitive be given up, and when the demand was refused, sent troops to arrest him. At the consular office a fracas ensued, and the troops not only searched the office and arrested the general, but they also seized Mr. Jastram and took him through the public streets with many demonstrations of violence. From this "undignified position," as he termed it, Mr. Jastram was rescued through the intervention of the French vice-consul. Mr. Bassett, in accordance with the instructions of December 16, 1869, declined to make any claim on account of the arrest of General Batrville, but he obtained an expression of regret from the Haytian government for the indignity to the consul and a promise of future protection to consular officers. He also demanded the punishment of the officer at the head of the offending troops; but the government met this demand to Mr. Bassett's entire satisfaction by assuring him that it would not fail to censure or punish that officer, if he had not "paid, in his own person, the last tribute to nature." Mr. Hale, Acting Secretary of State, congratulated Mr. Bassett that the case had been "adjusted upon a basis compatible with the honor of both governments."²

In April, 1872, the British vice-consul at Cape Haytian

¹ For. Rel. 1871, p. 695.

² *Ibid.* 1872, pp. 264-284.

caused great excitement by receiving political offenders and refusing to give them up. The British and American consular representatives at Gonaives pursued the same course, and the authorities stationed guards about their offices. Ultimately the refugees were delivered to Haytian agents by whom they were embarked.¹ But in March, 1873, the authorities of San Domingo took from the British consulate at Puerto Plata, in that republic, by force and against the consul's protest, three Dominicans who had sought asylum there after heading an armed demonstration against the cession of Samana Bay to the United States. Mr. St. John, British minister at Port-au-Prince and *chargé d'affaires* to San Domingo, immediately demanded their release and, with the intervention of a British man-of-war, compelled the Dominican authorities to give up the prisoners, censure the officers concerned in their arrest and salute the British flag.² On the first of August Earl Granville, on learning the facts, instructed Mr. St. John to inform the government of San Domingo, as well as all Her Majesty's consular officers there, that the British government had determined to abandon the practice of receiving political refugees in its consulates in that republic.³

In March, 1875, the British minister in Hayti granted asylum to General Lamothe, whom the national constituent assembly had taken steps to prosecute for unfaithfulness in office as minister of the interior and of foreign affairs under the administration of President Saget. It seems that none of the cabinet of President Saget had rendered any accounts, and as one of them, named Rameau, was in the cabinet of the ruling President, Domingue, it was thought that the prosecution of General Lamothe had an ulterior motive. It was, however, finally arranged that he should return to his home on giving security for any sums he might have misappropriated, the government guaranteeing him against any irregular proceedings. Subsequently, on the receipt of a summons from a criminal tribunal not possessing jurisdiction of the case, General La-

¹ For. Rel. 1872, p. 270; 1873, vol. i, pp. 465-473.

² *Ibid.* 1873, vol. i, pp. 460-463.

³ *Ibid.* 1874, p. 584.

mothe returned to the British legation, but he again resumed his liberty on an assurance given by President Domingue to the British minister that the irregular proceedings would be discontinued.

On the 1st of May the country was thrown into a state of wild disorder. In the execution of a decree issued that day, assuming extraordinary powers and banishing forty-four persons whom he charged with conspiring against the government, President Domingue sent out squads of troops to make arrests. Many persons were seized and some were shot down in the streets. Ex-ministers Pierre and Brice, who forcibly resisted arrest, were besieged and killed in their houses, and in the fusillade of the soldiery the British and Spanish consulates were fired into. Simultaneously a company of troops was sent to take Boisrond Canal, charged with being the chief conspirator, who was at his home near La Coup. With four companions, two of whom were killed in the struggle, he fought his way to La Coup, and from thence escaped to the country house of Mr. Bassett, where he arrived with his surviving companions early in the morning of May 3. There were already at Mr. Bassett's house three persons, named Alerte, Iacinthe and Modé, who were included in the decree of banishment. On the 2d of May President Domingue issued another decree, declaring that, as Boisrond Canal had answered a legal requisition by recourse to arms, he and "all his followers" were put outside the pale of the law.¹ When Mr. Bassett went to his office in Port-au-Prince on the 3d of May, he received a note from Mr. Excellent, secretary for foreign affairs, stating that the government had been informed that there were certain rebels in his house and asking for a list of them. This was followed by another note specifically soliciting the surrender of Modé, Iacinthe and Alerte. Mr. Bassett refused to comply with either of these requests, on the ground that it had been the uniform practice in Hayti to furnish a list of refugees only with a view to their release or embarkation.

When Mr. Bassett returned to his home on the 3d, he found

¹ This and other violent features of the case render it very exceptional.

it surrounded by large numbers of disorderly troops who stopped up the avenues of approach and prevented the free egress and ingress of himself and his family, besides creating apprehensions of personal violence. On the following morning, when setting out for his office, he was stopped by some of these men, who seized the bridle of his horse, drew their weapons and used insolent language. One of his servants also was stopped and rudely treated while returning from market. Mr. Bassett asked that the troops be "at once retired from such near vicinity" to his house, and that those who had participated in the proceedings complained of be brought to a sense of responsibility. Mr. Excellent expressed regret at the disrespectful acts complained of, and assured Mr. Bassett that orders had been given to the agents of the government to observe proper respect towards him, and to permit those attached to his suite to come and go with freedom and security. He did not refer to the request for the removal of the troops to a greater distance. Two weeks later Alerte, Iacithe and Modé, together with one of the companions of Boisrond Canal, were permitted to embark, and only the latter and his younger brother remained in the legation. Two persons who were in the house of the British minister were also allowed to depart.

In reporting these May incidents to his government, Mr. Bassett defended his concession of asylum on the ground that it was necessary to prevent the refugees from being shot down. Moreover, he said that the government of Hayti, besides uniformly countenancing the practice of asylum, had once or twice refused to assent to its discontinuance, and that lately it had arrested negotiations for a consular convention with the United States by refusing to forbid the practice even in inferior consular offices. He also stated that in February, 1870, he had been instructed by Mr. Fish that since the custom was tolerated in Hayti by the other great powers, the Department of State was not disposed "to place the representative of the United States in an invidious position by positively forbidding him to continue the practice"; and in this relation Mr. Bassett said that the British minister had received a communication from

the Earl of Derby approving his action in granting asylum to the persons who were under his roof.¹ On June 4, the decree of outlawry against Boisrond Canal and his followers still being in force, Mr. Fish wrote to Mr. Bassett as follows:

It is regretted that you deemed yourself justified by an impulse of humanity to grant such an asylum. You have repeatedly been instructed that such a practice has no basis in public law and, so far as this government is concerned, is believed to be contrary to all sound policy. The course of the diplomatic representatives of other countries in receiving political refugees upon such occasions is not deemed sufficient to warrant this government in sanctioning a similar step on the part of the representatives of the United States. Among other objections to granting such asylum it may be remarked that that act obviously tends so far to incite conspiracies against governments, that if persons charged with offences can be sure of being screened in a foreign legation from arrest, they will be much more apt to attempt the overthrow of authority than if such a place of refuge were not open to them. Mr. Preston has been here by order of his government to ask that you may be directed to set at large the refugees who have sought your protection. I answered him, however, that though it might have been preferable that you should not have received those persons, it was not deemed expedient to comply with his request. I added that if his government would apply to you for them, in order that they might be tried, you would be authorized to give them up, provided the government gives you its assurance that no punishment shall result from the trial, but that, if convicted, the parties will be allowed, without molestation, to leave the country. If, too, the persons who are with you should themselves or through you offer to surrender to the authorities on the same condition, and it should be acceptable, you will dismiss them.

Before Mr. Bassett received this instruction, a new device was adopted to obtain the dismissal of the refugees. In order to worry him into compliance, the bands of armed men who overran his grounds and who had continued to act in an insolent

¹ Mr. Bassett subsequently reported that on June 23 his Lordship again wrote to the minister and, while approving his action in regard to the refugees in question, said: "You should, however, endeavor to arrange for their quitting Hayti." Mr. Bassett reports that the British minister, Major Stuart, when informing the minister for foreign affairs of the contents of Lord Derby's first instructions, said: "Now, Mr. Minister, I wish it distinctly understood that from this day forward I shall receive and protect, as I may judge best, in my legation any and every person who may apply for my protection. This I wish your government to understand well."

and offensive manner, began to spend the night in yelling, so that it was impossible for any one in the house to sleep. On the 26th of June Mr. Bassett addressed a note to Mr. Excellent, saying that while he did not dispute the right of the government "to exercise its own rightful measures of police within its own jurisdiction," such measures ought to be enforced "in such a way as not to become a marked trespass upon the rights and immunities of foreign ministers." The complaint made by Mr. Bassett was brought to the attention of Mr. Preston, the Haytian minister in Washington, by Mr. Cadwalader, Acting Secretary of State, August 6, in the following terms :

It cannot be believed that these annoyances are instigated by the Haytian government, and perhaps it may not be aware that they are practised. However this may be, it is expected that they will at once be discontinued. If this expectation should be disappointed, it will be regarded as an unfriendly proceeding on the part of the Haytian government. Indeed, the demonstrations adverted to and all the circumstances make it advisable, in the opinion of the President, that a United States man-of-war should visit Port-au-Prince.

It was not, however, till September 7 that Mr. Hunter, Acting Secretary of State, informed Mr. Bassett that it had been determined to send a man-of-war to Port-au-Prince with a view to his "protection from insult." This determination was reached after the receipt on the 2d of the month of dispatches from Mr. Bassett saying that the annoyances of which he had complained were increasing.¹ He also stated that the government had resorted to the expedient of trying the refugees in the legations *par contumace* and had condemned several to death.

Meanwhile negotiations were drawing to a close in Washington. Adhering to the proposition communicated by Mr. Fish to Mr. Bassett in the instructions of June 4, the Department of

¹ It is noticeable that in the representations of the Department of State there is no denial of the Haytian government's right to prevent by measures of police the escape of the refugees or communication with them, during their sojourn in the legation. This is clearly shown by Mr. Cadwalader's statement that it could not be supposed that the "annoyances" described by Mr. Bassett were instigated by the Haytian government, which had caused the house to be guarded. Mr. Bassett, as has just been seen, admitted the right of police.

State, while acknowledging Hayti's right to try the fugitives, maintained that the asylum granted them should be inviolable "so long as it should generally be tolerated," and that if convicted, they should be allowed of their own accord to leave the country. When this proposition was made to Mr. Preston, coupled with a requirement that the fugitives should be furnished with passports, he declined to recommend it to his government, insisting that they should be delivered to and embarked by agents of that government, though Mr. Bassett might accompany them. On September 27 the following agreement was concluded :

It is mutually agreed between Hamilton Fish, Secretary of State, and Stephen Preston, E.E. and M.P. of Hayti, that certain political refugees who for some time past have had an asylum in the residence of Mr. Bassett, the minister resident of the United States at Port-au-Prince, shall receive from the Haytian government a full amnesty for all offences up to the time of their departure from the island ; that Mr. Bassett shall give them up ; that they shall be placed on board a vessel bound to some other country ; that on their way to the vessel they shall be escorted by a Haytian military force, and that Mr. Bassett may accompany them to the vessel. It is to be understood, however, that the said refugees, or any of them, shall not return to Hayti without the permission of the government of the republic.

HAMILTON FISH,
Secretary of State.
STEPHEN PRESTON,
E.E. and M.P. of Hayti.

On the 2d of October, President Domingue issued a decree commuting the sentence of the refugees to banishment for life, and on October 5 they were embarked by Haytian officers, accompanied by Mr. Bassett and the French *chargé d'affaires*. On the same day the guard was withdrawn from Mr. Bassett's grounds.¹ A few weeks later Mr. Preston submitted to Mr. Fish a series of propositions in relation to the practice of asylum in Hayti. These propositions were to the effect that asylum should never be granted to common criminals; that it should be accorded to "political offenders only in exceptional

¹ For. Rel. 1875, vol. ii, pp. 682-748.

cases," and that in those cases the refugees should, if the Haytian government insisted, at once be delivered up to justice, though "the minister who had granted the asylum might still use his influence to secure, should there be any reason to do so, an ultimate commutation of the penalty." Mr. Fish replied that while "some, at least," of these propositions appeared to be "fair enough," the government of the United States was not "by itself, and independently of all others, disposed to absolutely prohibit" its representatives from granting asylum in every case in which an application for it might be made, and that until an understanding could be reached with other powers, it would be better to treat each case on its merits than be "fettered in advance by rules which may be found not to be practically applicable or useful."¹

Domingue's triumph was brief. In April, 1876, his government was overthrown and he fled to the French legation, whence he escaped on a French man-of-war to St. Thomas. His unpopular minister, Rameau, was killed by a mob in the street, while on his way with the French and Spanish ministers to the former's dwelling. Next day Boisrond Canal and other exiles, who had been directing the revolution from Jamaica, landed at Port-au-Prince, and a provisional government was set up with Boisrond Canal at the head. In July he was duly installed as President, with every sign of great popularity. Nevertheless, in the following year we find Mr. Bassett commenting upon the unpatriotic character of certain uprisings in the island; and in March, 1878, his successor, Mr. Langston, announced that Port-au-Prince was in a state of revolution, stirred up during the absence of the President by General Tanis, his "special and trusted friend and adviser." When the President returned and the insurrection was put down, General Tanis and some of his associates fled to the Liberian minister's; three took refuge in the American legation; others yet found asylum in the legations of France and Great Britain and in the Peruvian consulate. The diplomatic corps determined not to deliver up any one in a legation or a consulate.

¹ For. Rel. 1876, pp. 338-344.

Their action on this subject, said Mr. Langston, "was unanimous and emphatic." Under these circumstances the government abandoned punitive proceedings against the refugees, and designated agents to receive them and convey them to their embarkation. On this incident Mr. Langston observes :

This seems to be the natural ending of Haytian revolutionary attempts. If they succeed, the administration of the government is changed ; if they fail, their leaders and a few of the more conspicuous followers are exiled. Occasionally some more unfortunate one is shot by the mob. It cannot be denied that asylum, as furnished in the legations and consulates located in this republic, is in very important senses objectionable. It is surprising to witness the readiness and assurance with which a defeated revolutionist approaches the door of such places, demanding, as a matter of right, admission and protection. And before the revolutionary attempt is made, when the probabilities of success and defeat are being calculated, this protection in case of defeat is regarded and accounted as sure, and by this means, refuge and escape are sought and gained. Exile is regarded as the only possible infliction ; and this, tempered by that sort of care which results from diplomatic and consular interest and assistance. Such interest and assistance always tend, too, to dignify while they encourage revolutionary efforts. Antagonisms, also, as between foreign governments and that whose overthrow is attempted, under such circumstances are quite inevitable, especially if the latter is earnest and decided in its purpose to deal vigorously and severely with the rebellious.¹

In June, 1879, another insurrection broke out at Port-au-Prince. General François, secretary of war and marine, whom Mr. Langston described as "the most honorable and faithful man" in Hayti, was killed while charging the insurgents, who were put down only after considerable loss of life on both sides. Much property was destroyed, including several public buildings with all their records. The defeated leaders of the insurrection fled by the dozen to the foreign legations and consulates, which emptied their revolutionary contents at night, and without government military escort, chiefly into the British man-of-war *Boxer*. On the 17th of July President Canal resigned and left the country, his course doubtless being influ-

¹ For. Rel. 1878, pp. 431-444.

enced by insurrectionary movements in the north of the island. Among the members of the provisional government then set up, we find General Lamothe, who was translated from the "central revolutionary committee," and who had been protected by the British minister in 1875, when prosecuted by the government of President Domingue. General Salomon, who was soon elected to the presidency, enjoyed asylum in the Peruvian consulate after the insurrection of March, 1878.¹ A less fortunate individual, however, was General Bazelaïs. He was the leader of the unsuccessful outbreak at Port-au-Prince in June, 1879, and was among those who were granted asylum and who were subsequently embarked on the *Boxer*. When President Canal resigned, Bazelaïs proposed to come ashore and accept the presidency, but his former associates were found to be resolutely opposed to him. On the 1st of August he was transferred from the *Boxer* to a German steamer, from which he landed at Gonaïves, where he started another insurrection. Defeated by the forces of the provisional government, he fled to Jérémie and found refuge in the French consulate, from which he escaped to Jamaica.² On August 6, 1879, Mr. Evarts, then Secretary of State, wrote to Mr. Langston as follows :

If the so-called "right of asylum" (which this government has never been tenacious in claiming for its officers abroad) is to continue to exist as a *quasi* rule of public law in communities where the conspirators of to-day may be the government of to-morrow, it should at least be so exercised as to afford no ground of complaint on the score of aiding and comforting rebellion by conniving at communication between the refugees in asylum and their associates who are, it may be, engaged in hostilities against the existing government. It is evident that asylum would be as intolerable as reprehensible, were not the refugees supposed to be kept out of mischief as well as out of danger.³

President Salomon was driven from Hayti in 1888 ; and while he was escaping on a foreign man-of-war, the places just occupied by his enemies in the legations and consulates were quickly

¹ For. Rel. 1878, p. 436.

² *Ibid.* 1879, pp. 564-582.

³ *Ibid.* 1879, p. 582.

filled by his partisans. His tenure of power had been unusually long and had been marked by remorseless determination in putting down insurrections which the exiles, *via diplomatica*, in Jamaica and other neighboring islands kept inciting. Most serious of all these outbreaks was that started at Jacmel in 1883 by the same General Bazelaïs whose career as a revolutionist protected by the legations has already been sketched. On that occasion President Salomon directly charged in the presence of the diplomatic corps that the responsibility for the insurrection rested with the British consul at Jacmel, who had permitted the conspirators to make his consulate their base of operations while enjoying asylum there.¹ On December 15, 1883, Mr. Frelinghuysen, then Secretary of State, wrote to Mr. Langston as follows :

This government is well aware that the practice of extraterritorial asylum in Hayti has become so deeply established as to be practically recognized by whatever government may be in power, even to respecting the premises of a consulate as well as a legation. This government does not sanction the usage, and enjoins upon its representatives in Hayti the avoidance of all pretexts for its exercise. While indisposed from obvious motives of common humanity to direct its agents to deny temporary shelter to any unfortunates threatened with mob violence, it is proper to instruct them that it will not countenance them in any attempt to knowingly harbor offenders against the laws from the pursuit of the legitimate agents of justice.²

In an instruction to Mr. Thompson, Mr. Langston's successor, dated November 7, 1885, Mr. Bayard, then Secretary of State, said that the United States did not claim any right or privilege of asylum, but on the contrary discountenanced it, especially when it might "tend to obstruct the direct operation of law and justice"; that if, however, it prevailed in any country as a custom and was "tacitly or explicitly recognized by the local authorities," the exercise of the customary privilege by American representatives could not be deemed exceptional, and if refugees found their way "to places of shelter under the Amer-

¹ For. Rel. 1883, p. 591.

² Wharton's Int. Law Dig. vol. i, § 104, p. 690.

ican flag," the United States would expect such privileges as would be accorded were the like shelter under any other flag.¹ In October, 1888, Mr. Goutier, consul of the United States at Cape Haytian, instructed his consular agents that in the revolution then pending they were not to receive political refugees, and that if they did, they "would in that case have forfeited all claims to the support" of their government. On October 31, 1888, Mr. Rives, Assistant Secretary of State, reaffirming the views expressed by Mr. Bayard, corrected Mr. Goutier's statement in the following language:

We do not regard extraterritorial asylum, either in a legation or a consulate, as a right to be claimed under international law. We do not sanction or invite the exercise of asylum in those countries where it actually exists as a usage, but in such cases we recognize and admit its existence, and should circumstances bring about the uninvited resort of a political refugee for shelter to a consulate or legation of the United States, we should expect equal toleration and privilege in this regard with that allowed by such local usage to any other consulate or legation. . . . Only the reported facts of an actual case arising could enable the department to determine whether an abuse of the local usage had been committed.²

In an instruction to Mr. Douglas, United States minister at Port-au-Prince, of March 27, 1890, Mr. Blaine, Secretary of State, says that as to the general question of asylum, "there appears to be no occasion to add to the department's instructions on this subject heretofore."³

10. *Chili.*

In 1851 Mr. Webster, whose opinions are always entitled to great deference, instructed the minister of the United States at Santiago that if the Chilian government objected to his sheltering a particular refugee, he must advise such refugee that shelter could no longer be afforded.⁴

¹ Wharton's Int. Law Dig. vol. i, § 104, p. 692.

² For. Rel. 1888, p. 938. A copy of this communication was sent to the minister at Port-au-Prince for his guidance.

³ For. Rel. 1890, p. 523.

⁴ Wharton's Int. Law Dig. vol. i, § 104.

During an insurrection in Valparaíso in 1859, Mr. Trevitt, consul of the United States, undertook to grant asylum in his house to certain political refugees. His house was subsequently attacked by Chilean soldiery, the refugees were taken out, and his *exequatur* was revoked by the Chilean government. Mr. Bigler, minister of the United States in Chili, when reporting these facts, stated that the English consul at Talcahuano had lately given asylum to political refugees and had not been molested, and that such a practice on the part of consuls was "almost generally admitted in the Pacific republics"—in none more frequently than in Chili. Mr. Cass, then Secretary of State, replied that such a usage, taken in connection with the facts stated in regard to the English consul, "would go far to induce" the government of the United States "to require the restoration of Mr. Trevitt's *exequatur*."¹

During the summer of 1891, while the civil war growing out of the dispute between President Balmaceda and the Chilean Congress was raging, Mr. Egan, minister of the United States at Santiago, afforded asylum to Señors Augustin Edwards and Eduardo Matte, prominent Congressmen, on the ground, as he stated, that there was reason to apprehend that their lives were in danger. Subsequently Señor Edwards was given a safe conduct and went to Callao, leaving Señor Matte in the legation. A few days later an unofficial intimation was conveyed to Mr. Egan through the dean of the diplomatic corps that the President was much annoyed at the granting of asylum to Congressmen, and that if they did not leave immediately the legations might be searched, that of the United States being particularly mentioned. On hearing of this threat, Mr. Egan called at the ministry of foreign relations and stated that, while he was prepared to discuss the question of asylum in a friendly spirit, his legation could not be searched but by force, and that he would himself shoot the first man who attempted to enter it.

¹ Wharton's Int. Law Dig. vol. i, § 104, p. 676. It seems that the *exequatur* was not restored. Mr. Cass took the ground that violent entrance into a consul's house by soldiers and misconduct therein constituted an international wrong for which redress could be demanded.

for that purpose. On the following day he received from the President an assurance that there was no intention to search any of the legations, "and above all that of the United States."¹

On the 21st of August the army of Balmaceda was routed at Viña del Mar; and the excitement and confusion which that event occasioned in Santiago culminated after the dispersion of his forces at Placillas on the 28th. His resignation on the 29th was followed by the demoralization of the military and police forces, and the houses of some of his prominent partisans were attacked. Towards evening, however, order was restored and all danger of further trouble seemed to vanish. Meanwhile many persons had sought refuge in the houses of the foreign ministers. The American legation received eighty and the Spanish legation about the same number. The Brazilian legation received eight; the French, five; the Uruguayan, several; the German, two; the English, one, perhaps involuntarily.² Balmaceda took refuge in the Argentine legation. On the subsidence of the first excitement, many of the refugees left the legations, some seeking concealment elsewhere and others giving bond to appear before the tribunals. Such was the course pursued by the refugees in the Brazilian and French legations. The refugee in the English legation went out immediately to his own house, promising to remain there. Balmaceda committed suicide in the Argentine legation on the 19th of September. One refugee, General Velasquez, ex-minister of war, remained in the German legation, but, encouraged by the German minister, he proposed to give himself up as soon as he had sufficiently recovered from the effects of an accident from which he was suffering. In no instance was safe conduct granted.

¹ House Ex. Doc. 91, 52d Cong. 1 sess. p. 64.

² In a despatch of August 31, Mr. Egan says that "the only legation which closed its doors and denied asylum was that of England, which refused to admit a single person." In a telegram of September 27 he states that two persons entered the British legation. In a despatch of September 29, he states that "one or two" got in "across the roof" of a neighboring house that was being searched. Subsequently he states that there was one. But the original statement is doubtless correct, in so far as it represents the policy of the British legation.

No trouble occurred till the 22d of September, when the government, alleging that the refugees and their friends were abusing the privilege of asylum, began to police the American and the Spanish legation. At that time there were nineteen refugees in the former and five in the latter; and on the first three days of the surveillance many persons were interfered with in entering or in leaving the buildings. Mr. Egan protested against the course of the government, contending that its action was without precedent and violative of the rights of the legation, while Señor Matta, the minister for foreign affairs, replied in a manner not calculated to allay irritation. In view of what has been shown to have been the practice in cases of asylum, to say nothing of the opinions of publicists on the subject, the policing of a minister's domicile, when it is used as a shelter for refugees, does not present a ground for complaint. On the other hand, any excesses that may be committed in the enforcement of such a measure, may form a subject for representation with a view to their correction. Mr. Egan not only protested against particular acts which he regarded as unwarrantable, but also against the surveillance itself. Señor Matta declined to consider the protests even against particular acts as a subject for discussion. Nevertheless, after September 25 the strictness of the surveillance was relaxed, though for several days in the latter part of December it was again closely enforced, especially about the Spanish legation.

On September 29 the number of refugees in the American legation had been reduced to fifteen, one of whom not long afterward went out on bond. On January 9, 1892, Mr. Egan escorted two refugees to Valparaiso and put them on board the United States man-of-war *Yorktown*. On the 13th he and the Spanish and Italian ministers disposed of seven refugees in the same manner — five from the American and two from the Spanish legation. These were all that remained. What had become of the rest does not appear, though the correspondent of the *Herald*, in a despatch from Valparaiso of January 13, stated that one of the nine who were apparently in the American legation at the opening of the year had determined to stay in Chili "and

fight his case out in the courts." The refugees were transported on the *Yorktown* to Callao, Señor Pereira, who had succeeded Señor Matta in the foreign office, refusing to guarantee their security on private vessels calling at Chilian ports; and he expressed displeasure at the minister's accompanying them, apparently being averse to the display of any sign of diplomatic authority in the matter. With the departure of the refugees, the police were removed from about the diplomatic residences.

In discussing the question of safe-conducts, Mr. Egan and Señor Matta set forth their views as to the legal foundations and limitations of asylum. They both accepted the extraterritoriality of a minister's domicile, but while Señor Matta deduced from that notion merely the right to grant asylum, Mr. Egan pushed it further. Señor Matta argued that safe-conducts might have been and might be given, not in virtue of any right on the part of a legation to demand them, but "of the courtesy, convenience and will" of the government, and with due consideration for its own laws and interests; and he maintained that safe-conducts could not be granted for men who, as was the case with the refugees in question, had been submitted to the tribunals. Mr. Egan replied that his house was "an integral part of the United States," and that "without the will and permission" of that government, Chili "could not consider" as subject to her "judicial action" persons "who, from every point of view," were "beyond its jurisdiction"; and he added that as Señor Matta had recognized that safe-conducts had been and might be given "as acts of courtesy and at the spontaneous will of the government," he could not be surprised if the United States should "interpret as an act of but slight courtesy and consideration" the refusal of the Chilian government now to grant them "in accordance with the respect due to the invariable practice and international policy of Chili."

Mr. Egan's assertion of the privilege of extraterritoriality was obviously too broad. If the refugees had actually been within the territory of the United States, they would still have been subject to the judicial action of Chili, for the escape of an offender to a foreign country does not affect the right to make

charges, issue warrants and formulate complaints against him ; and he may be tried *par contumace* without let or hindrance from any quarter. The trial and conviction of General Boulanger by the Senate of France while he was a fugitive in England are still fresh in the public mind.

Moreover, the precedents cited by Mr. Egan to show the "invariable practice and international policy" of Chili were not fortunate. The first was the instructions given to the Chilean minister at Lima on July 9, 1866, to the effect that the legation might "concede asylum to political refugees for the time necessary for them to leave the country," and that "the diplomatic agent should put himself in accord with the minister of foreign affairs . . . in order to send the refugees to a foreign country under the necessary guarantees." While this is far from saying that safe-conducts may be demanded as of right, Mr. Egan was in error as to the circumstances under which the instructions were given and employed, since he states that as the "result of the negotiations on that occasion, the refugees in the several legations were permitted to go out of the country." The instructions were given in reference to the discussion which was to take place at Lima, in consequence of the concession of asylum by the French legation to certain refugees, in 1865. As has been seen, the discussion took place in January, 1867, and the denunciation of the practice of asylum by the Peruvian government, the acquiescent attitude of the diplomatic corps and the express repudiation of the practice by the United States, render the occasion conspicuous for the denial of any legal right to protect political offenders.¹ The only other case cited by Mr. Egan as a precedent was the vote cast by the Chilean delegate in the Montevideo conference of 1888 in favor of a resolution to include in a proposed treaty of international penal law a clause establishing the right to grant asylum to political offenders, as well as the right to require safe-conducts. The proceedings of the conference show that the resolution was based on the assumption of the extraterritoriality of a minister's domicile, and for that reason followed the analogies of extradition ; that it was

¹ Cf. this QUARTERLY of March, 1892, pp. 28-37

not adopted as a declaration of subsisting law, but that it was recommended as a means of avoiding difficulties, by making that a matter of duty which had formerly been a matter of courtesy.¹ The treaty was subsequently brought before the International American Conference in Washington, and the committee to which it was referred recommended that it be adopted by the Latin American nations. Mr. Alfonso, delegate from Chili, opposed the recommendation on the ground that his government had rejected the treaty, and he voted against the recommendation subsequently adopted that the Latin American nations "study" it.

The historical aspects of diplomatic asylum having been disclosed, I shall conclude this review with an exposition of legal principles and of the opinions of publicists, and with a brief examination of the subject of asylum in vessels.

JOHN BASSETT MOORE.

¹ *Actas de las Sesiones*, Buenos Ayres, 1889, pp. 164-166.

THE PRESENT STATE OF THE IMMIGRATION QUESTION.

THE disorder which occurred at New Orleans in March, 1891, was like an alarm-bell, rousing every one to the danger of the possible growth of a large foreign class in this country, and since then the press has teemed with discussions of the social problem thus thrust into prominence. The numerous views that have appeared have differed widely, and it seems that public opinion on the subject is still very unsettled. This is unfortunate. Legislation is probably imminent, since public sentiment demands it; but from a government whose characteristic is to follow public opinion rather than lead it, legislation is likely to be unsatisfactory so long as public opinion remains ill-defined. Under these circumstances it is interesting to review the results of all this discussion, and to see the present state of the immigration question.¹

The danger which threatens is the growth of a large foreign element in our population whose habits of thought and behavior are radically different from those which the founders of the nation hoped to establish here. And in this sense "foreign" does not mean simply "born out of the United States," though the class referred to is mainly kept up by immigration. Among the immigrants are many persons who come here with a temporary object; for these our country is only a resting-place or a field to be harvested. There are others who come without a definite object of any sort. Untrained in our law and custom and often without occupation, such persons are unfit to be adopted by the community and unprepared to contribute to its welfare. The foreign class thus created is active

¹In Professor Mayo-Smith's work, *Emigration and Immigration* (1890), many of the following points are treated far more fully than it is possible to treat them in this essay. But he discusses causes rather than remedies, and some changes have taken place in the two years that have elapsed since the book was published.