Science of Columbia University. In 1921, he gave the Harris course of lectures at Northwestern University. He was one of the group who started the Institute of Politics at Williamstown on its successful way in 1921. Brown University conferred upon him the degree of LL.D. in 1922. During the same year, he was elected an Associate of the Institute of International Law. He was a lecturer at the Academy of International Law at The Hague in 1923.

The foregoing record of achievement and of international recognition of it wholly fails to indicate the philosophy of the man or the place which he occupied in the hearts and minds of all who knew him. Baron Korff inspired students of public law in the United States with fresh zeal for inquiry into the political and legal problems of Europe, and especially those of Russia. The influence of his contribution to American thought and to the fields in which he sought to direct it was due not merely to his intellectual power but also to his personal charm and enthusiasm. He rejoiced to see the country in which he made his home and to which, through his marriage to the daughter of a distinguished officer of the United States Navy, Admiral Van Reypen, he was bound by strongest ties, making sympathetic and vigorous effort to fathom problems with which he himself was thoroughly familiar. To Americans he was not an alien, except in name. The universities of the United States claimed him as their own. At its last meeting, the American Political Science Association requisitioned him as a vice-president. To those who were blessed with his acquaintance or honored with his friendship he bequeathed something imperishable.

CHARLES CHENEY HYDE.

THE LIQUOR TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN

On January 23, His Excellency Sir Auckland Campbell Geddes, then British Ambassador to the United States, and the Honorable Charles Evans Hughes, Secretary of State of the United States, concluded a treaty on behalf of their respective governments, to prevent the smuggling of intoxicating liquors into the United States or the waters subject to their jurisdiction. Its ratification was advised and consented to by the Senate on March 31, 1924, without amendment or suggested modification.

This was as it should be, for the requirement of a two-thirds vote of the Senators present, meant nothing more nor less than a desire, indeed an intent, on the part of the framers of the Constitution to have the policy of the United States, in so far as it depends upon agreement with foreign nations, removed from partisan politics. In retaining the exercise of those sovereign rights which they did not expressly or impliedly delegate to the Government of the Union, or the exercise of which they did not themselves renounce, the States did not invest the Government of the Union with the exclusive right of concluding treaties, or international agreements, of any

and every kind, by which these United States were to be bound. As sovereign, free, and independent States—to use the language of the Articles of Confederation—they could individually or collectively have entered into treaties with foreign governments. They disentitled themselves from so doing by their own will; and what a State could have done before, a State could approve or disapprove afterward. Unanimous consent was too much to ask; a simple majority was too small a restraint. Therefore, the Senate, representing the States, was to advise either in advance or consent after the conclusion of an international obligation by the Executive Department of the Union. And that there should be no delay in awaiting unanimity, or no abuse of power on the part of an administration possessing a mere majority, the vote of an international agreement was made to depend upon the vote of two-thirds of the Senators who might be present.

Yet foreseeing that two-thirds of the Senators might be carried away by excitement or prejudice, and amend a treaty in such a way as to impair its usefulness or defeat the purpose for which it was drafted, the President of the United States is not required to exchange ratifications of a treaty which has been, in his opinion, disfigured. The action of the Senate is permissive, it is not mandatory. Hence it is, that an administration is wise to take the Senate into its confidence in advance of a treaty, in order that consent may be forthcoming ungrudgingly and without conditions after the conclusion of the treaty or convention.

Only a word or two need be said in order to make clear the purpose of the treaty. On January 29, 1919—approximately five years before the signing of the treaty—the eighteenth amendment to the Constitution of the United States was proclaimed as ratified by three-fourths of the forty-eight States of the American Union. Vesting Congress and the States with power to enforce it by appropriate legislation, the first section of the amendment provided that "the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purpose" was to be prohibited within a year after the adoption of the amendment. To enforce the provisions of the article, the Volstead Act —named after the member of Congress proposing it—was passed on October 28, 1919.

There is no doubt that strictly construed and rigidly enforced, the amendment and the act would apply to foreign as well as domestic vessels—domestic, upon the high seas; foreign, upon entering American waters. American ships may be eliminated from consideration. But what of foreign vessels? If we go upon the theory that justice be done though the heavens fall, they may be submitted when within our jurisdiction, to our laws as if they were domestic craft. There is, to be sure, a tendency to exempt a merchantman touching at our ports from jurisdiction even to the extent of allowing the officers of the vessel or consular officer of the country to which

it belongs, to punish offenses committed aboard the vessel, provided that they are not so serious as to disturb the peace and order of the community. This is an admitted concession, due to custom or to treaty—in the United States, solely to treaty. The concession is in many quarters claimed as an exemption under the practise of nations. It is better, however, to say, in the absence of treaty, that it falls rather within the rubric of comity, rapidly hardening into usage and custom—the very life and breath, as well as source of international law.

If it were international law, the constitutional amendment and the act of Congress to enforce it would nevertheless have to be obeyed within American jurisdiction. But the act of no country, however powerful, in derogation of international law—a law by the consent, expressed or implied, of all—cannot deprive a nation of its right under the law universally sought to be impaired by local statute. The officials of the government and the courts of the country, sworn to obey and to apply the laws, will do so, with the result that the foreign Power cannot secure redress in the courts for the violation of the principle of international law. The channels of diplomacy, however, remain untouched, and through them, protest is presented, and in the long run redress accorded. It has been so in this case. The right of British vessels to enter American jurisdiction with liquor aboard "listed as sea stores or cargo destined for a port foreign to the United States, its territories, or possessions on board British vessels voyaging to or from ports of the United States" is raised to the rank of an international obligation, so far as the contracting parties are concerned, "provided that such liquors shall be kept under seal continuously while the vessel on which they are carried remains within said territorial waters and that no part of such liquors shall at any time or place be unladen within the United States, its territories, or possessions."

The question naturally arises, where the jurisdiction of the United States ends, as far as foreign vessels are concerned, because beyond that line, the foreign vessel cannot be touched without the consent of its government by any vessel deriving its authority from an amendment to the Constitution or a statute of the United States made in pursuance of the Constitution. It was frequently stated in the arbitration of the North Atlantic Fisheries dispute at The Hague in 1910, that this limit was not determined. American counsel contested this point; but it is no longer open to argument or doubt, for the high contracting parties declare "that it is their firm intention to uphold [not to create] the principle that three marine miles extending from the coastline outwards and measured from low-water mark constitute [not will constitute] the proper limits of territorial waters."

In times past, nations sought to extend their jurisdiction beyond this line indefinitely. The Government of the United States is desirous of apprehending British vessels hovering beyond this line, with the intent, it is believed, of surreptitiously crossing it and discharging their cargo illicitly

within American jurisdiction. The jurisdiction of the United States cannot be extended beyond the three-mile limit, and the right of visit and search cannot be exercised in pursuance of American sovereignty; consent can only come from the Power possessing the right. By Article II of the treaty of January 24, 1924, Great Britain, in the exercise of its sovereignty consents, in this wise:

> (1) His Britannic Majesty agrees that he will raise no objection to the boarding of private vessels under the British flag outside the limits of territorial waters by the authorities of the United States, its territories, or possessions in order that enquiries may be addressed to those on board and an examination be made of the ship's papers for the purpose of ascertaining whether the vessel or those on board are endeavoring to import or have imported alcoholic beverages into the United States, its territories, or possessions in violation of the laws there in force. When such enquiries and examination show a reasonable ground for suspicion, a search of the vessel may be initiated.
>
> (2) If there is reasonable cause for belief that the vessel has committed or is committing or attempting to commit an offense against the laws of the United States, its territories, or possessions prohibiting the importation of alcoholic beverages, the vessel may be seized and taken into a port of the United States, its territories, or possessions for adjudication in accordance with such laws.
>
> (3) The rights conferred by this article shall not be exercised at a greater distance from the coast of the United States, its territories, or possessions than can be traversed in one hour by the vessel suspected of endeavoring to commit the offense. In cases, however, in which the liquor is intended to be conveyed to the United States, its territories, or possessions by a vessel other than the one boarded and searched, it shall be the speed of such other vessel and not the speed of the vessel boarded which shall determine the distance from the coast at which the right under this article can be exercised.

It is foreseen by the contracting parties that mistakes might occur. The American vessel might be in doubt as to the invisible line separating American waters from the high seas; the clocks might differ, and other causes of error cause visit, search and seizure to result in injury and loss. This contingency is provided for in Article IV, in the following language:

> Any claim by a British vessel for compensation on the grounds that it has suffered loss or injury through the improper or unreasonable exercise of the rights conferred by Article 2 of this treaty or on the ground that it has not been given the benefit of Article 3 shall be referred for the joint consideration of two persons, one of whom shall be nominated by each of the high contracting parties.
>
> Effect shall be given to the recommendations contained in any such joint report. If no joint report can be agreed upon, the claim shall be referred to the claims commission established under the provisions of the agreement for the settlement of outstanding pecuniary claims signed at Washington the 18th of August, 1910, but the claim shall not, before submission to the tribunal, require to be included in a schedule of claims confirmed in the manner therein provided.

The tribunal referred to, created under the treaty of August 18, 1910, is still in being; therefore, the high contracting parties did not need to create one for the purpose. It is composed at present of three members—one a subject of Great Britain, the Honorable Edward A. Mitchell Innes, one a citizen of the United States, the Honorable Robert Edwin Olds, and an umpire, M. Henri Fromageot, of France. Under the treaty, the claims to be submitted were included in a schedule attached to and forming part of the treaty. This provision, it is observed, is to be inoperative. The treaty is an experiment; it is limited to one year, with power on behalf of either party to propose amendments three months before its expiration, and the treaty itself is to expire with the year unless the amendments proposed have been agreed upon. In the absence of this eventuality, and in the absence of a notice to terminate it made three months before the end of the year in question, the treaty continues, saving the right to make amendments or to abrogate the treaty by notice given in any future year three months in advance of the year in question.

The rights of the two countries are safeguarded with the caution which becomes nations taking their treaties and obligations seriously, as appears from Article VI:

> In the event that either of the high contracting parties shall be prevented either by judicial decision or legislative action from giving full effect to the provisions of the present treaty the said treaty shall automatically lapse, and, on such lapse or whenever this treaty shall cease to be in force, each high contracting party shall enjoy all the rights which it would have possessed had this treaty not been concluded.

As long as the treaty is in force and is executed in good faith by both of the contracting parties, the rights secured by the treaty are vested in the United States; but upon its abrogation, the jurisdiction of the United States, so far as British vessels are concerned, stops at a line three miles seaward from low-water mark of these United States and their possessions. The treaty, in effect, incorporates the views of Mr. Justice Sutherland, thus expressed in his dissenting opinion in The Cunard Steamship Company, (Ltd.) et al. *v.* Andrew W. Mellon, Secretary of the Treasury, et al., 262 United States, 100, 132–133 (1923), this JOURNAL, Vol. 17, p. 563, at p. 571:

> I agree with the judgment of the court in so far as it affects domestic ships, but I am unable to accept the view that the Eighteenth Amendment applies to foreign ships coming into our ports under the circumstances here disclosed.
>
> It would serve no useful purpose to give my reasons at any length for this conclusion. I therefore state them very generally and briefly.
>
> The general rule of international law is that a foreign ship is so far identified with the country to which it belongs that its internal affairs, whose effect is confined to the ship, ordinarily are not subjected to interference at the hands of another State in whose ports it is tempora-

rily present 2 Moore, *Int. Law Dig.*, p. 292; United States *v.* Rodgers, 150 U. S. 249, 260; Wildenhus's Case, 120 U. S. 1, 12; and, as said by Chief Justice Marshall, in Murray *v.* Schooner Charming Betsy, 2 Cranch, 64, 118:

". . . an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains. . . ."

That the Government has full power under the Volstead Act to prevent the landing or transshipment of any such liquors or their use in our ports is not doubted, and therefore it may provide for such assurances and safeguards as it may deem necessary to those ends. Nor do I doubt the power of Congress to do all that the court now holds has been done by that Act, but such power exists not under the Eighteenth Amendment, to whose provisions the Act is confined, but by virtue of other provisions of the Constitution, which Congress here has not attempted to exercise. With great deference to the contrary conclusion of the court, due regard for the principles of international comity, which exist between friendly nations, in my opinion, forbids the construction of the Eighteenth Amendment and of the Act which the present decision advances.

JAMES BROWN SCOTT.

STATUS OF THE INHABITANTS OF MANDATED TERRITORY

Precedents are gradually establishing the precise position of the mandated territories in the system of international law. Recent decisions seem to make it clear (1) that the mandated territories are not under the sovereignty of the mandatories, and (2) that the inhabitants of these territories are not nationals of the mandatories.

I

The first of these questions has arisen in connection with the claim of mandatories to enforce treason laws, to appropriate vacant lands and to apply treaties in mandated areas. During the summer of 1922 South Africa was confronted by a serious rebellion of the Bondelzwarts in its mandated territory of Southwest Africa. After suppression of the rebellion,[1] one of its leaders, Jacobus Christian, was convicted of high treason and sentenced to five years' imprisonment by the local circuit court.[2] Upon appeal to the Supreme Court of the Union of South Africa the indictment was sustained.[3]

[1] The methods employed gave rise to severe criticism in the Assembly (Levermore, *League of Nations Year Book*, 1923, Vol. 3, p. 276), and to a lengthy investigation by the Permanent Mandates Commission, as a result of which the commission drew attention to the failure of the mandatory itself to make a "complete and authoritative inquiry" (Permanent Mandates Commission, Minutes, 3rd sess., 1923, p. 291) and to the harshness of the methods of suppression and the insufficiency of the remedial measures. (*Ibid.*, p. 294.) The commission likewise deplored the unfortunate relations which the report disclosed between the white population and a large proportion of the natives of the mandated territory. (*Ibid.*, p. 325.)

[2] Permanent Mandates Commission, Minutes, 3rd sess., 1923, p. 295.

[3] Christian *v.* Rex, Supreme Court of South Africa, *Cape Times*, Dec. 1, 1923.