

**ON FOREIGN
JURISDICTION AND
THE EXTRADITION OF
CRIMINALS**

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On Foreign Jurisdiction and the Extradition of Criminals by Sir George Cornewall Lewis

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BY THE

RIGHT HON. SIR GEORGE CORNEWALL LEWIS,
BART. M.P.

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PREFACE.

THE Author thinks it right to state, in laying the following pages before the Public, that the collection of materials for this inquiry was commenced by him some months ago ; that the manuscript was in the Printer's hands before the recent change of Administration ; and that he is exclusively responsible for the contents of this Publication, both as to facts and opinions.

June, 1859.

ON

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ALTHOUGH man is a social animal, and although by a metaphor all men are said to be brothers, yet the entire human race never has formed, and never can form, one political community. Men are divided into numerous societies, in each of which some person, or body of persons, is sovereign, and each of which has its own peculiar territory. Now, the essence of political sovereignty is, that it is legally omnipotent within its own territory, but that it is legally powerless within the territory of another State. Within the one, its action is subject to no legal question; within the other, its action is armed with no legal authority.

Such are the strict limits of national sovereignty, equally recognised by the peculiar legal system of every State, and by the principles of international jurisprudence. In contemplation of law, each State is a little world of its own; it claims no legal power upon foreign territory; it acknowledges no legal right of any other State upon its own territory. But since man is a social as well as a political animal; and since he is impelled by various wants, desires, and sympathies, to communicate with the citizens of other States, and to establish relations with foreigners resident out of his own national territory, the strict rule of exclusive sovereignty has, from an early period of civilization, been infringed in different ways;

arrangements have been devised by which the law of one State has, to a certain extent, recognised the laws of other States; and attempts have been made, by different contrivances, to mitigate the inconveniences arising from the strict observance of the rule of exclusive national sovereignty, without abandoning it as a paramount theoretical principle.

It is unnecessary to enter upon a formal enumeration of the causes which give rise to intercourse between the citizens of different States, and which induce them to establish relations of interest or friendship, more or less permanent, with one another. The variety in the products, natural and artificial, of different countries, and the consequent operations of trade; the desire of information and amusement; the connexions of literature and science, and other cognate motives, prevent the legal isolation of nations from bearing all its practical fruits, and break down the barriers which the doctrine of political sovereignty might, if literally interpreted, establish between independent communities.

From the early time when the Latin word *hostis* signified both an alien and an enemy, there has been a constant tendency, in the progress of civilization, to soften the distinction between natives and foreigners, to mitigate the harsh consequences flowing from the strict doctrine of exclusive territorial sovereignty, to treat with respect the interests, the institutions, and the customs of foreign States, and to consider aliens as sharing, for practical purposes, in the attributes of a common humanity. All the principal civilized States are reciprocally bound by treaty engagements, regulating many important interests of their subjects; and they all agree in the theoretical recognition of a body of rules of international law, laid down by modern text-writers of authority, to which they show a considerable, though irregular, deference, in their practical conduct.

The inconveniences springing from a rigorous adherence

to the doctrine of exclusive national sovereignty, have however been aggravated, in a remarkable degree, by the concurrence of several phenomena of our modern civilization. In the first place, we cannot fail to observe that, of late years, the spread of education, the increased habit of learning foreign languages, and the diffusion of literature, have generalized and strengthened the desire of foreign travel. The almost uninterrupted continuance of peace in Europe and North America since the settlement of 1815, has likewise promoted industry and manufactures, and has given a vast impulse to the commercial intercourse of different nations. Now, whether the desire of foreign travel be for curiosity and amusement, for intellectual improvement, or for mercantile business, its satisfaction is enormously promoted by the economical arrangements and mechanical inventions for facilitating communication which have recently arisen, as well as by the excellent police and internal security of modern States. The improvement of roads and bridges, the multiplication of commodious inns, but, above all, the general introduction of steam navigation and of steam railways, have produced a complete revolution in travelling—so greatly have they diminished its difficulty, fatigue, expense, delays, and uncertainty. The convenience of obtaining money through foreign bankers in every part of the civilized world, and the universal establishment of a cheap letter post and of the electric telegraph, which enables a person at a distance to keep up frequent communications with his home, have added to the facilities of foreign travel. / The operation of these, and of other subsidiary causes, which will occur to the mind of the reader, and which need not therefore be pursued in detail, annually increases the intercourse between the citizens of different States, and renders their relations less dependent upon the arbitrary boundaries of territorial sovereignty. The Great Exhibition of 1851 for the Industry of all Nations, and the striking success which attended that vast and original

enterprise, may be taken at once as an example and a result of the ideas which have grown up under this new state of things.

When every day exhibits more clearly this conflict between law and fact, between theory and practice; when the strict doctrine of jurisprudence teaches that between the resident citizens of two independent States there are no more legal relations than between the inhabitants of two different planets; and when, notwithstanding this theoretical consequence of the principle of sovereignty, thousands of Europeans belonging to different States are constantly acting as if they were, for purposes of jurisdiction, members of the same political community; it is natural that attempts should be made to systematize the practice which has grown up under the recognised exceptions to the pure territorial principle, and to extend, by fixed international agreements, the cosmopolitan arrangements which circumstances have so largely favoured. The extent to which the law of one country recognises the law of another country in the jurisdiction of its civil tribunals, has been of late years treated by Burge in his *Commentaries on Colonial and Foreign Laws*; by Story, the American jurist, in his celebrated work on the *Conflict of Laws*; and by subsequent writers, both Continental and English, as a separate department of the law of nations, under the denomination of 'Private International Law.* This is a purely legal subject, and therefore requires a professional treatment; but the principles upon which the criminal law shall be withdrawn from the strict operation

* The best work is that of Fœlix, *Traité du Droit International Privé*, Paris, 1847, ed. 2. The treatise of Mr. Westlake, *On Private International Law* (London, 1858), contains a useful collection and classification of the decisions of the English courts. The subject has likewise been treated by Mr. Reddie, in his *Inquiries on International Law, Public and Private* (Edinburgh, 1851). A fourth volume of Dr. Phillimore's *Commentaries*, on the same subject, is promised, but has not yet appeared.