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Harboring Conspiracy

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HARBORING CONSPIRACY.

THAT the American people should naturally sympathize with Ireland in its demand for home rule is to be expected from the very nature of our institutions and theory of government. We in this country are of the opinion that Ireland, in demanding from England the right to regulate its domestic affairs in its own way and by its own laws, presents an honorable and a just cause, which appeals to our sympathy and sense of right. But it makes no difference how honorable and legitimate a cause may be in itself, if it be supported by means which are not honorable, but barbarous and inhuman. The moment that constitutional agitation for legislative independence in Ireland degenerates into such outrages as the Phœnix Park assassinations and the dynamite explosions the cause of Ireland is in danger of irreparable injury.

It is evident that an organization of Irish desperadoes exists with the intent to carry on a dynamite campaign against England. The attempts to destroy by dynamite the Victoria, Charing Cross, and Paddington Railway Stations, as well as the explosions in the offices of the Local Government Board in London, leave no room to doubt the diabolical purposes which these men have in mind. Whether men professing only the good of the Irish people can afford thus to bring infamy on the Irish name is a question which they must decide for themselves. The

question which concerns us is of another character. It is claimed that evidence exists which proves that these conspirators against the lives and property of the people of England have their base of operations in the United States. If this be so, the important question for us is whether the United States is thereby placed under any obligation to interfere in the matter.

It is not strange that when this question is presented Americans instinctively recall the attitude of the British Government toward the North in our conflict with the South. It is not unnatural for our people to remember that the English Government allowed the Alabama and other Southern cruisers to be built in England, manned in England, and to steam out of English ports, "with the applause of three-fourths of the representative men of England," as a representative Englishman has admitted. Neither can one help remarking upon the position which England took in 1858 in the matter of the Orsini bombs. As will be remembered, Orsini was an Italian refugee, opposed to Austrian rule in Italy. In January of the year named Orsini and his co-conspirators threw three bombs into the carriage of the Emperor of the French as he was driving through the streets of Paris. Ten persons were killed, and one hundred and fifty-six were wounded. It appeared that the arrangements for the plot were made in London, that the bombs were manufactured in Birmingham, and were ordered for Orsini by an Englishman. The French people were indignant that the English nation should tolerate such a gang of assassins, and make no effort to prevent such atrocious crimes. Count Walewski, the Minister of Foreign Affairs at Paris, complained in a letter to Count Persigny, the French Ambassador at London, because England sheltered the assassins. He said:

"It is no longer the hostility of misguided parties manifesting itself by all the excesses of the press and every violence of language; it is no longer even the labor of factions seeking to agitate opinion and to provoke disorder; it is assassination reduced to a doctrine, preached openly, practiced in repeated attempts, the most recent of which has struck Europe with stupefaction. Ought, then, the right of asylum to protect such a state of things? Is hospitality due to assassins? Shall English legislation serve to favor their designs and their maneuvers? And can it continue to protect persons who place themselves by flagrant acts without the pale of the common law?"

This being the state of feeling in France in respect to the matter, Lord Palmerston brought in the Conspiracy-to-Murder

bill, the object of which was to make conspiracy to murder a felony, instead of a misdemeanor, as at common law, and to render those guilty of it liable to penal servitude for any period varying from five years to a whole life. The measure was regarded as an unworthy concession to France. The bill was defeated, and the Palmerston administration thrown out of office. It is worth noticing that Mr. Gladstone himself voted against the bill. The United States have always taken an advanced and liberal position on all questions which relate to the intercourse of nations; and in the consideration of the questions raised by the plottings of dynamite conspirators it is not probable that we shall allow ourselves to be prejudiced by any narrow views growing out of the attitude of England in respect to similar matters. That London has always been the head-quarters of revolutionary plots against other states cannot be denied; but that fact affords no reason why New York should be permitted to become "a store-house for the political incendiarism" of foreign states. It does not concern us to know that the English Government has at one time and another allowed political associations to exist in London for the purpose of supplying men and money to aid the cause of Greece against Turkey, to help Don Carlos or Queen Isabella in Spain, or Garibaldi in Italy. These instances were as gross violations of international law as was the fitting out of the Alabama. The only question to determine is, What do the principles of justice and sound public policy require of the United States in the present emergency?

Where private persons who are members of one nation offend and ill-treat the citizens of another, the law of nations, subject to certain restrictions, will impute to the state itself the injury committed by its citizens. The principle of the law of nations is that whoever uses a citizen ill indirectly offends the state of which that citizen is a member, and for that reason the state is bound to protect its citizens by redressing their wrongs, punishing their aggressors, and procuring full reparations. Says Vattel:

"The nation or the sovereign ought not to suffer the citizens to do an injury to the subjects of another state, much less to offend that state itself; and this not only because no sovereign ought to permit those who are under his command to violate the principles of nature, which forbid all injuries, but also because nations ought mutually to respect each other, to abstain from all offense, from all injury, from all wrong — in a word, from every-

thing which may be of prejudice to others. If a sovereign, who might keep his subjects within the rules of justice and peace, suffers them to injure a foreign nation, either in its body or its members, he does no less injury to that nation than if he injured it himself. In short, the safety of the state, and that of human society, require this attention from every sovereign. If you let loose the reins to your subjects against foreign nations, these will behave in the same manner to you: instead of that friendly intercourse which nature has established between all men, we shall see nothing but one vast and dreadful scene of plunder between nation and nation." (Law of Nations, book 2, chap. VI., sec. 72.)

Inasmuch as all publicists agree, and have agreed from the time of Grotius, that when a member of one state has done an injury to a member of another, the former state may sometimes be responsible for such injury, to the extent even that war may be declared against it on that account, we may inquire as to what are the conditions upon which it becomes responsible. The conditions are two—those of knowledge and of sufferance. If a state knows that its members are conspiring to commit a crime against the members of another state, and can prevent it, but does not, it is held to have consented to the offense.

There can be no question but that writers on international law are agreed in the proposition that a state has a right to demand that rebellious subjects shall not be allowed to plot against it in the territory of another state. In a memorable discussion in the English House of Peers years ago Lord Lyndhurst declared, without contradiction then or since, that "the offense of endeavoring to excite revolt against a neighboring state is an offense against the law of nations. No writer on the law of nations states otherwise."

In 1799 one John Parry published an article in a London newspaper which seriously reflected upon the Emperor of Russia. The British Government at once took the matter up, the Attorney-General, Sir John Scott, afterward Lord Eldon, filing an information against Parry for libel, on the ground that he had defamed the character of a foreign prince in amity with England, "contrary to the laws and usual practice of nations." The prisoner was defended by Erskine, who was unable to prevent his conviction and punishment. The prosecution proceeded upon the theory, as Lord Chief-Justice Kenyon told the jury, that it was necessary for the Government to prosecute, on the ground that any other course "might be fatal to ourselves; as it might be reasonably concluded that if Government winked

at or slumbered over such a publication, it was disposed to adopt it. . . . It might tend to his calling for satisfaction, as for a national affront, if it passed unreprobated by our Government and in our courts of justice." (27 Howell's State Trials, p. 627.)

A similar case occurred in 1803, when the British Government prosecuted Jean Peltier for a libel published in England on Napoleon Bonaparte, then First Consul of the French Republic. He was defended by the brilliant Mackintosh in a speech which has been described as one of unparalleled eloquence, but which did not avert a verdict of guilty. The Attorney-General stated that he filed the information for the reason that the publication was one which tended to excite the subjects of France to rebel against their Government, and to excite them to the assassination and murder of their chief magistrate, as well as to disturb and interrupt that peace which existed between the two countries. The case was tried before Lord Ellenborough, who instructed the jury that a publication which had a direct tendency to interrupt and destroy the peace and amity between England and a country with which it was at peace was, in point of law, a libel. The Attorney-General, Spencer Perceval, afterward Chancellor of the Exchequer, in his address to the jury, said:

"If defamation be the sole object of the publication, and if the publication has the necessary and direct tendency of exciting that degree of jealousy and hatred in the country to which the publication is directed against the country from which it issues, and to alienate the dispositions of that country from our own, and consequently to interrupt the intercourse of peace which subsisted between them, I think it is not likely any lawyer will stand up and say such a publication is not a libel, and that the author of it ought not to be punished. But even that is not this offense; the offense here charged to have been committed by the defendant is this: that his publication is a direct incitement and exhortation to the people of the French Republic to rise up in arms against their First Consul and Chief Magistrate, to wrest the power from the hands in which, *de facto*, it is placed, and to take away the life of the man who presides over them. Is it possible we can have any difficulty in supporting the proposition that such a publication is an offense against the law of this country?" (23 Howell's State Trials, p. 529.)

Another case is that of Lord George Gordon, against whom the British Government, through its law officers, caused an information to be filed in 1787, charging him with a libel on the Queen of France. The information goes on to state that great

friendship, amity, peace, and concord existed between the two countries, yet the defendant, "wrongfully and unjustly, and wickedly intending to asperse, defame, traduce, and vilify her said most Christian Majesty, and to cause it to believed that her said most Christian Majesty had been guilty of great injustice, oppression, cruelty and persecution toward the subjects of his most Christian Majesty, and thereby to alienate their affections from his said most Christian Majesty's Government; and to create, stir up, and excite animosities, hatred, jealousy, and discord between our said lord the King and his subjects, and his said most Christian Majesty and his subjects," had published the matter complained of. The information in this case, as in the others, was filed under the common law, and the prisoner in this case, as in the preceding, was convicted and punished. (22 Howell's State Trials, p. 175.)

As recently as in May, 1881, a German by the name of Most was tried and convicted in England for publishing an article in a newspaper, which was found by the jury to be intended to incite those reading it to assassinate sovereigns, as the Emperor Alexander II. of Russia was assassinated, and also to contain libels upon foreign princes. In the year following Schwelm and Merteus were convicted of similar offenses. Again, there was the case of Dr. Simon Bernard, a French refugee, who was supposed to have plotted with Orsini in England against the life of Napoleon III., in the conspiracy of 1859, already alluded to. He was arrested in England, charged with the common-law offense of having conspired in England to commit murder in France. He was acquitted only because the jury found the evidence insufficient to warrant his conviction. There was also the case of Dr. Blackburn, who was arrested in Canada during our war with the South, charged with the like common-law offense of having conspired in Canada to commit murder by sending infected clothing into the United States. He was discharged because of lack of evidence, and not because any one doubted that his offense was a crime at common law, and such as the British Government felt bound to punish.

From these cases it appears that the British Government has punished its own citizens for the attempt to incite the citizens of a foreign nation to revolt against their Government and laws, and that in so doing it justified its action upon the theory that international law required it not to allow such offenses to go un-

punished. It also appears that where a conspiracy has been entered into within British dominions, to commit murder within a foreign state, it has been regarded as an offense against the British nation, and treated as such by its courts. It further appears that such offenses were punishable upon the principles of the common law.

Moreover our own diplomatic correspondence will show that we have ourselves complained to the British Government of offenses very similar to those which the dynamiters are now charged with conspiring to commit, and that the justice of our complaint was at once recognized and provided for. Our Government claimed during the war with the South that refugees and deserters from the rebel Confederacy were engaged in Canada in the manufacture of "Greek fire," which was to be used for the destruction of Buffalo, Cleveland, and Detroit. The matter was brought to the attention of Mr. Seward in an official communication from General Townsend, and our diplomatic correspondence shows that on December 13, 1864, Mr. Seward transmitted to Mr. Adams, then Minister at the court of St. James, General Townsend's communication in relation "to the alleged manufacture of 'Greek fire' at Windsor, Canada, to be used by rebel emissaries in attempts to burn certain cities in the United States," with the request that he "lay a copy of the paper before Earl Russell, with a view to the adoption of such preventive measures as may be practicable." Earl Russell thereupon assured Mr. Adams "that her Majesty's Government would adopt such measures as may be required and may be effective for the maintenance of her Majesty's declared neutrality." The British authorities at once directed the attention of Viscount Monck, the Governor-General of Canada, to the matter, who replied as follows:

> "I have the honor to state that I will take immediate measures to have the truth of this allegation investigated, and should it prove well founded, I will adopt such measures as may be within my power to defeat the objects of those engaged in the manufacture."

The Canadian authorities at once adopted measures to prevent the manufacture of Greek fire, and on December 28, 1864, Mr. Seward, in a communication to Mr. Burnley, assures him that the spirit which had been manifested by the British authorities in the matter "is cordially appreciated by this Government."

It will be remembered that in 1865 great excitement was created throughout the North by the rumor that a plot was on

foot to introduce yellow fever into the cities of the Union by means of infected clothing, to be sent in trunks from Bermuda to New York city. Our Government at once called upon the British authorities to interfere. On June 2, 1865, Mr. Hunter, the acting Secretary of State, in a letter to Sir F. Bruce, calls attention to the matter, and says:

"The proceedings already adopted in Bermuda for the punishment of some of the parties implicated in this diabolical scheme, and the requirements of common humanity so fully recognized by all British communities, render it hardly necessary for me to point out to you the expediency of your communicating with the authorities of Bermuda on the subject, with a view to their adoption of such measures as will subject all the guilty parties to the severest punishment which can be lawfully applied to them."

On the very next day Sir F. Bruce replied to Mr. Hunter as follows:

"I will lose no time in bringing your communication to the knowledge of the authorities of Bermuda, and you may rest assured that they will not fail to adopt every legal means in their power for the arrest and punishment of the persons implicated in this most atrocious scheme."

The British authorities went actively to work in the matter, and Dr. Blackburn was arrested in Montreal and brought to Toronto, charged with having conspired with others to send infected clothing into the United States. Toronto was the place where the conspiracy was alleged to have been entered into, and there, on May 25, 1865, the case came before the police magistrate for examination. As the evidence available was not sufficient to enable the Crown to prosecute Blackburn with any chance of success, and as there was no prospect of obtaining any further evidence, he was admitted to bail on his own recogizance to appear whenever called upon.

It appears, therefore, that our Government complained to the Government of Great Britain that certain parties, subject to their jurisdiction, because within their dominions, were conspiring for the destruction of life and property within the United States by manufacturing "Greek fire" to be used in burning Northern cities, as well as by sending infected clothing into the city of New York; and if we were justified in making the complaint we did, it seems to be difficult to discover any reason why Great Britain is not equally justified in directing our attention to any conspiracy existing in this country for the destruction of

life and property in the British Dominions by the use of dynamite. Inasmuch as the British Government, when its attention was called to the matter, at once took active measures to repress the evils complained of, eliciting from our State Department the highest commendation therefor, there would seem to be reasonable ground for complaint upon the part of that Government for any failure on the part of this Government to respond in a similar manner — *mutatis mutandis.*

We submit that it is impossible to create a distinction advantageous to ourselves based on the fact that we were, at the time of our complaints, engaged in a life-and-death struggle for national existence. We fail to perceive how that fact materially strengthened our position in the matter. Suppose we had been at peace with all the world, would that fact have afforded a justification to persons outside our dominions to engage in a conspiracy against the lives and property of our citizens? We think not. In time of war conspirators may plead in defense of their action a public motive, but in time of peace their acts do not rise above the level of murder and assassination. Another fact not to be overlooked is that we cannot justify ourselves in the eyes of the English people by saying that the laws of the United States do not enable us to interfere. The Alabama case settled the principle that a nation cannot relieve itself from its responsibility by pleading that its laws do not permit it to interfere in the given case. For that fact no one is responsible but itself. In the case which the United States presented to the Tribunal of Arbitration at Geneva we declared that the "local law, indeed, may justly be regarded as evidence, as far as it goes, of the nation's estimate of its international duties; but it is not to be taken as the limit of those obligations in the eye of the law of nations." If our laws are not sufficient for the emergency, then laws must be enacted that will enable us to answer all just demands which may be made upon us.

Let us direct our attention to the power which the United States possess under existing laws and treaties in respect to the matter we are considering. We find, first of all, that while the machinations of the dynamite conspirators constitute an offense at common law, yet the courts of the United States have no power to inflict punishment therefor. Those courts do not exercise a common-law jurisdiction in criminal cases. The United States, as such, have no common law. The courts of the

United States can recognize as offenses only those acts which have been made criminal, and their punishment provided for by Acts of Congress. The Government of the United States, says Mr. Chief-Justice Cooley, "derives its powers from the grant of the people made by the constitution, and they are all to be found in the written law, and not elsewhere. It must, therefore, find its power to punish crimes in laws of Congress passed in pursuance of the constitution, defining the offenses and prescribing what courts shall have jurisdiction over them. No act can be a crime against the United States which is not made or recognized as such by federal constitution, law, or treaty."

Certain it is that the Constitution of the United States does not so much as refer to the offenses of which the dynamite conspirators are guilty. Our neutrality laws prohibit the following offenses:

1. Every citizen of the United States who is within its territories or jurisdiction is prohibited from accepting a foreign commission.

2. Every person, whether a citizen or not, who is within our territories or jurisdiction, is prohibited from enlisting in, or aiding others in enlisting in, a foreign service.

3. To arm or fit out vessels against a people at peace with the United States is prohibited.

4. Also to augment the force of foreign vessels of war within the territory of the United States is prohibited.

5. Every person who, within the jurisdiction or territory of the United States, begins or sets on foot, or prepares, or provides the means for, any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district or people with whom the United States are at peace, is liable to the punishment named in the statute.

It is manifest that the plots of the dynamiters do not fall within the provisions of the Neutrality Act.

The only provision anywhere to be found in the statutes of the United States which seems to affect in the least the dynamiters is to be found in a law which was passed to protect life and property on vessels or other vehicles used for purposes of transportation. That act provides that:

"Any person who knowingly transports or delivers, or causes to be delivered, nitro-glycerine, nitroleum or blasting-oil, or nitrated oil, or powder mixed with any such oil, or fiber saturated with any such substance or article, on board any vessel or vehicle whatever employed in conveying passengers by land or water between any place in a foreign country and any place within the United States, . . . shall be punished with a fine of not less than $1000 nor more than $10,000, one-half to the use of the informer."

While the original purpose of this act was the protection of life and property in the course of transportation, it is not confined in its operation to that purpose, but the shipment of these explosives, no matter what the purpose may be, or any complicity in their shipment, would clearly fall within the prohibition of the law. This act, therefore, partially meets the necessities of the case; and, by direction of the President, the attention of all the district attorneys and marshals of the United States has been directed to the matter by means of a circular issued from the Department of Justice on March 12, 1884. It instructs the officers named to be diligent in their efforts to prevent the offenses described in the act, and to detect and prosecute those who have committed or may commit them. It declares that the honor of the nation requires that it should not be open to the imputation, unfounded though it be, of the slightest appearance of tolerating such crimes.

The extradition treaty now in force between the United States and Great Britain provides for the delivery up to justice of all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either nation, shall seek an asylum, or shall be found within the territories of the other. It does not provide for the extradition of persons who have entered into a conspiracy to murder. There are, however, not wanting precedents for the surrender of criminals charged with crimes not included within the provisions of extradition treaties. Such a precedent is to be found in the surrender by our own Government of Jose Agustin Arguelles, who was given up to Spain in the year 1864, as well as in the surrender to our Government in 1876 of William M. Tweed, who was sent back to this country by the Spanish authorities. Arguelles was a slave-dealer who sold in Cuba three hundred negroes stolen from Africa. He fled to the city of New York, where he was arrested, and, by the direction of Mr. Seward, was turned over to the Spanish authorities, although there was no extradition treaty between the two countries, and no law which authorized or required his surrender. The Senate passed a resolution of inquiry, in answer to which Mr. Seward said:

"There being no treaty of extradition between the United States and Spain, nor any act of Congress directing how fugitives from justice in Spanish dominions shall be delivered up, the extradition in the case referred to in the

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

Mr. Lincoln, too, in his annual message to Congress in the same year, referred to the matter in the following words:

"There can be no doubt of the power and duty of the Executive to exclude enemies of the human race from an asylum in the United States."

It must be conceded that the language of Mr. Seward, as well as of Mr. Lincoln, is strong and sweeping, and that it bears directly on the present discussion. The crimes of which the dynamiters are guilty are crimes of which no civilized people is guilty even in a state of war. The rules of warfare require invading armies to respect the lives and property of non-combatants. When General Ross, in the war of 1812, burned the public buildings belonging to the Government at Washington, the act was denounced in England as well as in the United States as an outrage inconsistent with civilized warfare; and it was pointed out that a thing had been done which even the Goths had refused to do at Rome. The dynamite criminals, who conspire to blow up railway stations, are not plotting against the British Government, nor waging war on England; they are committing crimes against unoffending men, women, and children, who may be no more responsible for the conduct of the Gladstone administration than so many foreigners. Their crime is not political, but a crime against humanity. Assuming that Mr. Lincoln did not blunder, and that the Executive can exclude enemies of the human race from an asylum in the United States, we should say it would be a praiseworthy act for our Government to hand over to the Government of England any British subject found within our territory who had been guilty of such crimes; but as matter of fact, Mr. Lincoln was probably mistaken in his opinion, and no department of our Government has any authority to deliver up criminals except in the cases for

which provision has been made by treaty. The action of the Executive in the case referred to is now generally regarded as having been an enormous usurpation of power.

But the treaty does provide for the extradition of persons who have committed murder or an assault to commit murder. In this treaty political offenses are not expressly excluded, although such offenses have been expressly excluded in nineteen out of the twenty-five treaties which this country has with foreign powers. But it is not believed that such crimes as the blowing up of railway stations and the murder of defenseless women and children can be regarded as political in their character, although they may have been accompanied with some ulterior political design. The term "political offense" is not defined in any of our treaties; but to constitute a political offense it ought to amount to treason or sedition. The extradition treaty between the United States and Belgium, signed in June, 1882, expressly excludes political offenses, and then goes on to state that "An attempt against the life of a head of a foreign government, or against that of any member of his family, when such an attempt comprises the act either of murder, or assassination, or of poisoning, shall not be considered a political offense, or an act connected with such an offense." The assassination of Mr. Gladstone or of the Queen of England could not properly be regarded as a political offense, and any person guilty of such a crime could be extradited under the treaty; and the same thing is true as to those who commit wholesale murder by the use of explosives. As we have seen, the English Government did not regard it as a political offense for one even in time of war to conspire to send infected clothing into the cities of the North, but treated it as an ordinary crime.

Justice to foreign nations as well as to our own seems to require that we should so amend our neutrality laws as to make it an offense against the Government of the United States for persons within our jurisdiction to conspire against the lives and property of the citizens of a foreign state with which we are at peace. It also seems desirable that our extradition treaties should include among extraditable offenses that of conspiracy to murder. These offenses we do not consider to be strictly political in their character. As to offenses which may properly be called political, there can be no doubt that a nation may properly harbor persons who, having committed them within a foreign state, seek an asylum in another. But we say, with

President Woolsey, that such persons having sought such an asylum "may not, consistently with the obligations of friendship between states, be allowed to plot against the person of the sovereign or against the institutions of their native country. Such acts are crimes, for the trial and punishment of which the laws of the land ought to provide." It becomes us to remember how expedient it is for the peace of the world that states should take a liberal view of their duties to each other, and should perform them with unhesitating fidelity. The dangers of the future to the nations of the earth lie in the conspiracies of dynamiters, of communists, and nihilists. Those engaged therein must be made to feel the severity of law, the majesty of which they have forgotten to respect.

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