not only they but all connected with them, words as well as men and things, disappeared silently into the past, and left no trace behind. In such continuity on the one hand, and such lack of it on the other, is one of the characteristic differences between the Old England and the New; and its cause, as it will be seen, is not in the unlikeness of the people, but in that of their circumstances.[1]

Richard Grant White.

UNFORESEEN RESULTS OF THE ALABAMA DISPUTE.

It is now some sixteen years since the American public was startled by the announcement that a rebel cruiser, built in an English port, by English builders, and of English timber, fitted out with English material, and manned with an English crew, was busily engaged in the destruction of our commerce on the high seas. After a career of what at the time to most Americans seemed piracy, in the course of which the greater part of our commerce was destroyed, while the remainder sought protection under the flag of the nation which was responsible for the peril that had made protection necessary, the Alabama was finally sunk by the guns of the Kearsarge, leaving behind her a legacy of ill-will between the two foremost maritime powers of modern times which is even yet far from extinguished.

We need not go over the long history of the negotiations which followed the close of the war, and which often seemed merely to tend to keep alive the rankling feeling of injury on this side of the Atlantic; they finally ended, seven years ago, in the ratification of the Treaty of Washington, by which England and the United States agreed to leave all the differences between the two countries, known as the Alabama claims, to a court of arbitration. This agreement between the two nations was hailed with great delight on both sides of the water, as a peaceful solution of a grave quarrel, and a substitution, in the most formidable international dispute of modern times, of a legal decision for that of the sword. From the parliamentary and congressional debates of the day page after page of eloquence might be cited, to show the satisfaction with which men of both political parties regarded the treaty; and even if here and there a voice or two was raised in dissent or criticism, it was speedily drowned in the general applause. Here at last was a treaty which destroyed a serious *casus belli*, and removed forever all cause of dispute between this country and England; which, by the adoption of new rules of neutrality between sovereign nations, made the escape of future Alabamas impossible, and strengthened the bonds of peace throughout the world. Again, it was a harbinger of the general introduction of arbitration between nations as a substitute for war. As is usual in case of political prophecy on a large scale, some of these results have been produced, others have not, and still others which were not at all expected have made their appearance. Seven years have now elapsed since the treaty was ratified, and it is not, perhaps, too early to try to point out some of the actual consequences.

In the first place, it should be noticed that the idea of the submission of such disputes as that relating to the Alabama claims to an international court, being something novel and unprecedented, was unfounded. The practice with our government of referring such matters to arbitration has been very common; and indeed it may be said to be, in the case of

[1] I beg the favor of further communications from my anonymous Edinburgh correspondent.

a country separated from Europe by the ocean, and one with which no European nation wishes to fight, a more natural mode of settling disputes than war. Our position is one which gives us great advantages, and these advantages have increased with each advance in the science of war, until to-day, though without a navy or anything more than the skeleton of an army, we have earned a reputation for warlike qualities which no European power cares to put to the test. It is therefore not unfair to say that, instead of the Geneva arbitration under the Treaty of Washington being a magnanimous and Christian substitution of a legal for a warlike *arbitrium*, it was on our part nothing more nor less than the application of our usual method to a new case; while with regard to England it was a lucky escape from an awkward dilemma. Either she must arbitrate, or she must look forward to the chances of our letting loose a fleet of Alabamas on the occasion of the first war in which she should engage. We should never have gone to war with her about the claims, for the simple reason that they were better as a grievance than a casus belli; she would certainly never have gone to war with us. However much, therefore, we may be disposed to look upon the treaty as in itself a gain to the cause of humanity and progress, we can hardly feel that the very strong language that was used at the time of its adoption in Congress and Parliament was justified by the actual facts of the case.

But it was not only the substitution of arbitration for war that was supposed to be the distinguishing mark of the treaty. It also defined with great distinctness, the duties of neutral nations in time of war; and it must be admitted that we are here brought face to face with a real innovation. The Treaty of Washington expressly provided that the Geneva arbitrators, in estimating the extent of England's liability for the escape of the Alabama and the other cruisers, should be governed by the following three rules:

"A neutral government is bound, —

"First, To use due diligence to prevent the fitting out, arming, or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or to carry on war against a power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war, as above, such vessel having been specially adapted in whole or in part, within such jurisdiction, to warlike use."

"Secondly, Not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, To exercise due diligence in its own ports and waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

The two governments also agreed to invite other powers to accede to these rules, and to adopt them as between themselves for the future.

Now, at the first blush, it may seem as if these rules were a mere declaration of admitted principles of the law of nations. But it will be remembered that England seriously objected to them, and while agreeing to be bound by them in future, and to bring them to the notice of other governments with a view to their general adoption, steadily refused to admit that they had ever been in force before. That the rules are not mere international platitudes may be inferred from the fact that, though it is now seven years since the Treaty of Washington, no other nation has shown the slightest inclination to adopt them; and though they have been made the subject of much diplomatic correspondence between the English government and our own, so much difficulty has arisen in agreeing exactly what they mean that it can hardly be considered likely that any great progress will be made at present in their general adoption. Indeed, we believe the matter has recently been altogether dropped as a subject of diplomatic correspondence. On March 21, 1873, on the occa-

sion of an address to the crown, in the British Parliament, praying the queen, when the rules should be brought before other governments, to declare her dissent from the principles laid down by the Geneva tribunal as the basis of their award, the English feeling on the subject was made very plain. "Here," as Dr. Woolsey says in his well-known treatise on International Law, "we have two governments, differing in their interpretation of the rules, yet bound to observe them, and procure, if possible, the adhesion to them of other powers."

In one quarter, and that an unexpected quarter, we have had an opportunity of seeing an application of the rules. At the time of the adoption of the Treaty of Washington, there was a nation with whom we were on perfectly friendly terms, yet against whom we had permitted, on numerous occasions, the fitting out of hostile expeditions from our own ports, in vessels of American build and equipment, manned with American crews, and officered by American adventurers. With regard to Spain, our assistance to the Cuban rebels was very much like that afforded by England to the Confederates. In fact, almost the only difference was that while the Confederate States were recognized as belligerents, the Cuban insurrection had never acquired the dignity of such recognition in any quarter; in other words, there was no such thing as a "war," in the sense in which it is known to the laws of nations, going on between Cuba and Spain; and our duty was consequently of more stringent obligation than that of a neutral between two belligerents. Notwithstanding this, however, our government had been in the habit, for a generation, of winking at the fitting out of hostile expeditions from our ports to carry men and arms to Cuba; and thus a description of our proceedings as furnishing the real base of military operations for "free Cuba" would be more accurate than a similar description of England's relations to the Confederate States, — for the latter, if they had no navy of their own, at least had an army.

To many people it undoubtedly seemed that the close of our war would be the signal for a rapid extension of what we are pleased to call "free institutions," both in a northerly and in a southerly direction; on the one hand toward Canada, and on the other toward the Antilles. There was a good deal of talk about the foreclosure of a "mortgage" which we were supposed to hold on the British possessions in America, and there was a strong hope among those in whom the old annexation feeling had survived the war that the success of the North was to be followed by a general evacuation of America by the "tyrants of the Old World," and that we, as good republicans, were to succeed to the inheritance. It is unnecessary to recall in proof of this the attempt of General Grant to secure the annexation of San Domingo, or the negotiations for the purchase of Cuba, or the frequent references in presidential messages and in congressional speeches to the manifest destiny of that island. But strange to say, one fine morning, while the Cuban refugees and conspirators in New York are plotting, and while their agents are trying to raise money by the sale of the "bonds of the Cuban republic," it is announced that the Cuban rebellion is at an end; that the insurrectionary government is dispersed; and that the insurgent forces are coming into the Spanish lines by dozens and hundreds to surrender themselves, and to accept the terms of a very liberal amnesty granted by General Martinez Campos. If we ask what is the reason of this sudden collapse, — why a rebellion carried on for eight or ten years by means of a guerrilla warfare, plunder, and devastation has suddenly come to an end, — the only explanation at hand is the Treaty of Washington. Not, of course, that the treaty itself is of any binding force as between Spain and this country; but it is to be remembered that the position taken by our government has been from the first that the Treaty of Washington was merely declaratory of the rules which this country had always regarded as of binding force; that the three rules were not new rules, but had always been acted upon by us.

This view, as will presently appear, is entirely erroneous; but at any rate it was the view taken by our government; and the glaring inconsistency between these professions and our countenancing filibustering expeditions against a friendly nation in a time of profound peace became, after the Geneva arbitration, very apparent. Could we recover heavy damages of England for permitting Alabamas to escape, and let loose vessels much more piratical than the Alabama was to assist in making war upon a friendly state? From the Treaty of Washington unquestionably dates the active enforcement of our obligations towards Spain; and actively to enforce these obligations was to take away the last hope of the Cuban rebels. The alert agents of the Spanish government kept our government constantly informed of the movements of all suspicious vessels, and the seizure of the Estelle seems to have deprived the rebels of their last ray of hope. The seizure (made under circumstances which twenty years ago would have insured her escape) was at any rate closely followed by the general surrender of the insurgents, and the announcement of peace by the Spanish government. It can hardly be disputed that this is closely connected with the strict obligations towards friendly nations observed since and produced by the Alabama dispute; and it will therefore not be wrong to set down the reëstablishment of peace in Cuba as one of the unforeseen results of the treaty.

It has been already stated that the view of the three rules taken by our government at the time — that they embodied the traditional American theory of neutrality — is far from correct. In order to make this clear, it is necessary to say a few words on the subject of neutral duties and rights in general.

In the Middle Ages, and down to comparatively recent times, the doctrines of the law of nations relating to a state of war (and these doctrines, it must be remembered, were generally little more than a statement of the practice prevailing among nations) were all, or almost all, conceived in the interest of belligerents. Nations went to war on slight pretexts and with great frequency, and did not enjoy the spectacle of their neighbors remaining at peace and reaping the benefit of their peaceful pursuits while war was raging around them. War was the rule, and peace the exception; and hence neutral rights were sacrificed to those of belligerents. The consequence of this was that nations preferred offensive and defensive alliances to the position of neutrals, — which had, of course, the effect of still further strengthening the prevailing tendency. As commercial interests have grown up and been extended in the modern world, belligerent rights have sunk into the background, and the position of a neutral has become one favored and protected by the law as much as was formerly that of belligerents. Any one who will take the trouble to compare the small space devoted by Grotius to questions connected with neutral rights with the importance given it in modern books on international law will have a tolerably accurate gauge of the advance made in recent times by the cause of peace and commerce. In this progress the United States has always taken a leading part. Itself one of the leading commercial and neutral nations of our century, its interests have led it to take a stand at the head of the movement; nowhere have the rights of neutrals been so ably advocated as in the dispatches of American secretaries of state; and it is no doubt in part due to the fact of our earlier diplomacy being so much taken up with questions of this sort that the great modern treatise on the law of nations is the work of an American. The development of neutral rights, at the expense, of course, of belligerent rights, went on to the time of the Treaty of Paris, in 1856, when at the close of the Crimean war the great powers of Europe drew up a formal declaration of principles, mainly relating to neutral rights, recognized by the signatories of the treaty. The first of these was the abolition of privateering; the second, the principle that a neutral flag protects belligerent property, with the exception of

contraband of war; third, that neutral goods, with the same exception, are not liable to capture under an enemy's flag; fourth, that blockades, in order to be binding, must be effective, that is, must be maintained by a force really sufficient to close the ports and harbors blockaded. These declarations, it should be observed, were not mere paper announcements by peaceful neutrals, but were solemn ratifications of neutral rights by belligerents at the close of an important war, in which they had respected them, contrary to their own interest. At the outbreak of the Crimean war, both Great Britain and France gave notice that the commerce of neutrals would not be subjected to the rights of war, strictly understood; and in a proclamation, made in 1854, took the ground afterwards reaffirmed at Paris on its victorious close. The declaration therefore marks a great epoch in the advancement of commerce and peace. The "right of search" claimed by England, and over which we went to war in 1812, had long since been practically abandoned by the country which had asserted it; the barbarous right of predatory private warfare known as privateering was now formally surrendered, and the new principles of "free ships, free goods," and "effective blockades" were incorporated into the law of nations. It only needed the ratification of the great transatlantic neutral power to make the declaration a law practically universal in its operation; and when the United States was asked for its assent, Mr. Marcy, then secretary of state, replied by asking Europe to go one step further, and agree that even private property of the belligerents on the high seas should be exempt from seizure.

The Declaration of Paris may be regarded as the most advanced record of the progress made by Europe since the Middle Ages in the development of neutral rights and the interests of commerce. In the forty years of peace which intervened between the battle of Waterloo and the Crimean war, the world seemed rapidly approaching a state of feeling in which war would be looked upon as a temporary misfortune or disease, to be "localized" as far as possible, so that its effects should not spread and involve countries having the good sense and good fortune to remain at peace. Sanguine persons even looked beyond this to a day when war would cease altogether. But for some reason, which philosophers have not yet fathomed, the world does not move on in a path of uninterrupted progress toward the millennium. What is won to-day is lost to-morrow, and the advance in one country often seems more than made up by a retrogression in another. Since the year 1856 the movement of opinion in Europe has been tending in quite another direction from that which it had then taken, and international law shows signs already of adapting itself to the change. These twenty years, instead of witnessing an advance in the direction of peace, have seen Europe converted into an armed camp: numerous bloody wars have been waged on a scale unknown in former times, — wars involving great losses of territory, population, and money, the temporary reduction of one power to a condition almost of impotence in European councils, and the absolute annihilation of another; ending with the revival of a question supposed to have been disposed of by the Treaty of Paris, — a question so fruitful of misunderstandings and wars that its mere discussion is to every European government an omen of terrible trials and disasters.

Since 1856, in other words, not only has the progress made by the European countries in the protection of peaceful and commercial nations from the dangers of war carried on by their neighbors been brought to a stop, but a long stride seems to have been made backwards. The United States, however, it might be imagined, true to its ancient character of a defender of neutral rights, has been holding the balance even. On the contrary, the United States too has been for four years a belligerent on a gigantic scale, and for eight more years has been engaged in a struggle to vindicate its rights at the expense of a neutral power; the latest American ideas on the subject

are to be found in the three rules of the Treaty of Washington. Now these three rules, taken in connection with the explanation of their meaning presented in the American "case" at Geneva, are likely to have some far-reaching consequences not at all anticipated by those who drew them up. Down to the time of the treaty, the government of the United States had always, in its intercourse with foreign nations, steadily insisted on the necessity of their taking notice of the dual nature of our system; of the fact that the federal constitution is a grant of powers only so far as expressly appears in the instrument itself, and that otherwise the States are sovereign; that the general government having thus only a limited jurisdiction, foreign nations could only demand of it an execution of its international obligations to them so far as its powers went; that in case of some international duty imposed upon the United States by the law of nations, it was always a sufficient reply if the United States could show that it had no power under the constitution to discharge the duty. But in our anxiety to secure a round sum in damages from England we overlooked this traditional and accepted view of our position, and adopted the three rules as our code for the future. Without going into the details of the Alabama case, it may be said that these rules, as explained by the argument of our representatives at Geneva, and by the opinions of the arbitrators who formed the majority of the court, completely destroy the whole value of this position, and will in the future render it impossible to set up any such defenses in our dealing with belligerent nations. The theory advanced by us under the three rules at Geneva — and advanced for the first time in our history — was that in the eye of international law there exist only sovereignties, bound to one another by ties of absolute obligation. The duty of neutrality is of such supreme obligation that it overrides all laws, constitutions, and municipal regulations, of whatever nature. If the Alabama escaped from an English port in violation of this obligation, England was responsible; if it was in consequence of her laws, her laws ought to have been amended so as to make such an escape impossible. Applying this view to the United States, the first consequence is that, in the eye of international law, neither the constitution of the United States, nor the laws of Congress, nor of the several States, can be put forward as excuses for non-performance of international obligations. International law knows nothing of our complicated system of government: it asks only whether one of its own laws has been violated; if it has, the punishment must follow. It is easy to see that this position is radically different from any which we have ever been willing to assume before. Suppose, for instance, that in some war between two naval powers, in which the United States is a neutral, some contemplated breach of neutrality cannot be prevented because the government has not the power under the constitution to prevent it, and the State which has the power will not exercise it; the government must, under its new view of the duties of neutrals, get an amendment to the constitution passed, giving it the power, or suffer the consequences. That an amendment to the constitution would be impossible in nine cases out of ten is evident; hence, in any future complication of the sort, it is probable that the government will strain every nerve to find a power under which it can enforce its neutral obligations upon its citizens, — or, in other words, that the tendency of the government, in the case of such complications, will be towards centralization. We have, therefore, two more unforeseen results of the Geneva arbitration: that in the future the neutral obligations of the government will tend to urge it forward on the road to centralization; and that in the future the government of the chief neutral nation of modern times will be forced into becoming the champion of belligerent at the expense of neutral rights.

Some of the most curious results of the Treaty of Washington and the Geneva arbitration have been connected with proceedings, still going on, to distribute

the money received from England in satisfaction of the Alabama claims. By the terms of the treaty it was agreed that all claims "generically" known as Alabama claims should be referred to the court of arbitration. Unfortunately, this phrase had been very loosely used in this country during the war, and had been made to cover many claims having no immediate connection with the Alabama or the other cruisers sent out from Great Britain. The United States, determined to make up as large a bill against England as possible, cast about them to see what damages could be made to come under the general head embraced by the treaty, and with a great deal of ingenuity, if not discretion, made out a tremendous list of what were known as "indirect claims." These were included chiefly under two heads: first, the damage to this country which the prolongation and increased expense of the war, caused by the escape of the Alabama and other cruisers, had produced; second, the damage to American commerce, caused by the enhanced rates of insurance during the war (war premiums). Exactly what these two items would have amounted to was probably never known by anybody; but it would certainly have been such a sum that any nation would have gone to war rather than pay it. The appearance of these claims was the signal for a renewal of the bitter dispute between Great Britain and this country, it being maintained, on one side, that it was never intended that such claims should be considered under the treaty; on the other, that the tribunal had complete jurisdiction of all claims which might be submitted to it, and that the arbitrators alone must decide upon the merits of the claims. To this it was said in reply (and the analogy between the reply and some of the objections to the fishery award is worth noticing) that the treaty must be construed with some regard to common sense; and that no nation could ever consent to submitting to arbitration claims preposterous and vague in character and incalculable in amount. There was, too, this peculiarity about the "war-premium" claims: that they had never been heard of before, even in this country. We had heard of the "hasty recognition of belligerency" claim, and the "prolongation of the war" claim, and the claims of the direct losers had been a matter of common notoriety during the war. Whenever a ship-owner or an insurance company made a claim for a loss during the war, they sent a statement of their claim to Washington; this was forwarded at once to Mr. Adams, at London, and by him presented to the British government. So far as is known, however, the payers of war premiums during the war never made out any claim against Great Britain, never forwarded any to Washington, nor had any presented by our minister. The origin of the war-premium claims appears to have been simply this: the representatives of our government, in making up their case against Great Britain, as an *illustration* of the damages caused by Confederate cruisers to our commerce, bethought themselves of the war premiums that our commerce had been taxed to protect itself. This, originally intended as an illustration, soon hardened itself into a claim; and the merchants, on hearing that the government was putting forward war premiums as the foundation of claims against England, then for the first time reflected that if any money was to be recovered from any quarter on this account it must belong to them. Such was the source of the now well-known war-premium claims; and there was never a better instance of poetical justice than the constant return of these claims to plague the government which invented them. That they had no foundation in law or justice was speedily settled by the arbitrators, who, cutting the Gordian knot presented by the question of jurisdiction, unanimously decided that the so-called "indirect claims" had no foundation. Their decision was that "these claims did not constitute, on the principles of international law applicable to such cases, foundation for an award of compensation or computation of damages between nations, and hence should be wholly excluded from the consideration

of the tribunal in making its award." So pleased were the United States with this solution of the dilemma that they immediately made a formal declaration, accepting the decision of the tribunal as final, and withdrawing the claims from its consideration. The indirect claims being thus out of the way, the arbitrators went on to perform the next duty required of them by the terms of the treaty, which was to decide as to "each vessel separately" (that is, as to each of the cruisers which had escaped from England, and as to which evidence might be presented) whether England had violated her neutral duties in permitting the escape. They accordingly decided that her neutral duties had been violated as to the Alabama, the Florida, and the Shenandoah, and their tenders; and further decided that as to all the other vessels (for example, the Georgia and the Sumter) England had violated no duty. Then, still acting under the treaty, they ascertained the damages, and rendered an award to the United States for the sum of $15,500,000. Now, this would seem to have been the natural end of the indirect claims, but, strange to say (and it is certainly one of the least expected results of the treaty or of the arbitration), the war-premium claimants ruled out at Geneva have made their appearance at Washington, where they have been insisting, ever since the money was received from England, that it should be distributed among them. Together with these we have another singular group of persons, who, from the nondescript character of their claims, at first had no name, but have gradually become known as the "exculpated-cruiser" claimants; not that they are claimants who have been exculpated from any imputed fault, but that their claims are made on account of acts of vessels exculpated at Geneva, or, in other words, of cruisers other than the Alabama, Florida, and Shenandoah, — vessels, that is, as to which England had been expressly exculpated. It will be seen from this that the war-premium and exculpated-cruiser claims are absolutely without a shadow of foundation. It is unnecessary here to go into the merits of the other claims on the fund now in the hands of Congress, but the standing of these is sufficiently clear. The curious part of the matter is that Congress, for some reason, has evinced an inclination to recognize these claims; and it is the consequences of such a recognition that might be embarrassing. A recognition of them by Congress, in a bill signed by the president, would be tantamount to a declaration by both the executive and legislative departments of the government that, in the first place, it regarded the decision of the arbitrators under the treaty of no importance whatever; that, in the second place, instead of the arbitration settling the question of England's liability as to particular cruisers, the whole question was unsettled, and could be reopened by our government; and that our government could decide that England had been liable for the depredations of vessels the arbitrators had expressly declared her not liable for, and although there is no evidence to show that she is liable for them. Again, as to the war-premium claims, a recognition of them by Congress would be tantamount to a reversal of the decision of the tribunal and our own ratification of that reversal at the time, and a declaration that whatever the arbitrators may have thought, or even have said, we recognize that a neutral is bound to pay damages which arise from her acts, however remote. In the next war in which we are involved as a neutral, and in which a claim is made on us for violation of our neutral duties, it is easy to see how such a recognition of the war-premium and exculpated-cruiser claimants would be used against us. We should, of course, disclaim all responsibility for indirect damages, or for the escape of any cruisers whose cases resembled those exculpated at Geneva. To this our antagonist would at once reply: "You cannot take any advantage of the decisions of the Geneva arbitrators, for you have, by an act of Congress, repudiated the whole arbitration. It is true that the tribunal held England responsible only for the damage done by the Alabama, Florida, and Shenandoah; but

you have directed the money received on account of the devastations of these vessels to be paid to persons whose losses were caused by the Georgia and the Sumter. It is true that the tribunal excluded the indirect claims; but you afterwards, by distributing the money received for direct claims among indirect claimants, showed that you regarded the decisions of the arbitrators as of no binding validity." This reply would be of great force; and it is obvious that if by our manner of dealing with the Geneva award we assume such a position, it is highly probable that in the next war in which we take the part of a neutral, if we are unlucky enough, by want of that "due diligence" the extent of which has never been accurately ascertained, to violate our neutral obligation, we shall have presented to us a bill for damages which will closely resemble that filed by us at Geneva, the excessive extent and ridiculous character of which very nearly upset the Treaty of Washington.

One curious and unforeseen result of the Treaty of Washington, which will press itself upon our attention as soon as a war breaks out in Europe in which England is one of the belligerents, is that we shall apparently have two neutral codes to enforce. In case, for instance, of a war between England and Russia, as far as our duties to the former power are concerned we should be governed by the Treaty of Washington; with Russia, however, we have no such agreement. As has been pointed out above, no matter how much we may insist that there is no difference between the rules of neutrality as generally recognized among nations and the three rules of the treaty, we should, if the matter were brought to a test, speedily discover a radical difference. We should then be placed in the curious position of a neutral who, as a neutral, is bound to be absolutely impartial, yet by his treaty obligations is under bonds to exercise a more vigilant care with regard to a violation of the rights of one belligerent than those of the other. Such a case has never arisen before. There have been cases of what writers on international law call *qualified* neutrality, in which the neutral is bound to one of the belligerents by an anterior engagement; but hitherto other engagements have been stipulations in the nature of alliances, as for instance to furnish a certain number of troops or ships. In such cases as these, the neutral has always been held free to decide whether he would consider the neutrality real or only pretended; and in deciding he has generally been governed by expediency. If we viewed the supposed case as of this sort of qualified neutrality, it would be a necessary consequence that Russia would be entitled to regard our neutrality under the Treaty of Washington as a cloak to hostility, and to treat us as an ally of Great Britain. This is of course absurd; but the complaints which would follow upon any attempts to enforce different rules of neutrality as to the two belligerents would probably have the effect of producing in our government a stronger insistence than ever upon its view that the rules laid down in the treaty are not innovations, but merely new declarations of the old law. This would avoid the difficulty of different degrees of neutrality, but it would also bind the government to as strict an observance of its neutral duties towards Russia as towards England; would lead to an observance of our neutrality laws probably hitherto undreamt of; and since Russia has most to expect from us, and English commerce has most to fear, the result would be that the action of our government would in such a war be of most positive assistance to that country to which, to judge by the tone of the press, the popular desire is that most harm should be done. This would of itself be a curious result of our new character as champion of belligerent rights.

The Treaty of Washington, besides the Alabama claims, covered two other subjects of dispute between England and the United States, — the boundary line on the Pacific, and the fishery question. Of these the first was settled by the decision of the emperor of Germany, whose award was in favor of our claim, that the line ran through the De

Haro channel, giving us the San Juan Islands. The second has been the cause of a dispute, conducted in a manner not very creditable to the United States, and threatening to produce, like the Geneva arbitration, some curious and not altogether satisfactory results. Without going into the provisions of the treaty with regard to the Canadian fisheries in detail, the citizens of both countries are given the right of fishing in each other's coast waters (a right, of course, chiefly valuable to the United States), while fish and fish-oil are to be admitted to both countries free of duty, and commissioners were to be appointed to determine what compensation, if any, should be paid by the United States for the excess of advantage derived from the treaty. The treaty was to remain in force twelve years, and the reciprocal privileges went into effect at once on its ratification. For various reasons, considerable difficulty was found in selecting the commissioners to settle the question of the compensation. Their number was by the terms of the treaty to be three, our government appointing one, the English government appointing one, and the two governments jointly appointing the third. In case they failed to agree, the appointment was to go to the Austrian minister at London. The English government chose Sir A. T. Galt, and ours Mr. Ensign H. Kellogg; but a long correspondence ensued as to the third, both governments trying to obtain a friendly umpire. This correspondence has all been printed, but it has no bearing on the questions since raised, inasmuch as the third commissioner was finally named in strict accord with the terms of the treaty. The two governments failed to agree upon an umpire, but after the failure both Mr. Fish and Sir Edward Thornton united in a request to Austria that M. Defosse, a Belgian, who had been the Belgian minister at Washington, might be appointed. M. Defosse, accordingly, was appointed, and as he was appointed strictly within the terms of the treaty, and at the request of our own secretary of state, it is evident that no fair objection can be raised on this ground. The arbitrators met at Halifax, and after many sessions, at which a great deal of evidence was taken and the case ably argued on both sides, the commissioners, by a majority vote, determined that the excess of advantage under the treaty lay with the United States, and accordingly awarded the sum of $5,500,000 to England, as compensation. Mr. Kellogg refused to sign the award, on the ground that it was excessive.

As to whether it was excessive or not no one can say save those who have made a study of the case. The precise value of the right to fish in Canadian waters, and to import fish and fish-oil into our ports free of duty, is a question which a board specially selected for the work is alone competent to determine; and as to this point the board specially selected for the work has disagreed. But it is clear, too, that the right to refuse to abide by the decision of arbitrators in such a case is always reserved to every government. If the award were clearly excessive, no one would dispute this; and whether it is clearly excessive can be decided only by the government which objects to the amount. If the commissioners at Halifax had awarded $100,000,000, or $50,000,000, there can be no question that the award would have been treated as a nullity by our government. Whether $5,500,000 is so large a sum as to justify such an extreme measure may well be doubted. At the time of the Geneva arbitration, the award of $15,500,000 to the United States was regarded, as will be remembered, by a large party in England as excessive; and there is little question that the defeat of the liberals, who carried the treaty and the arbitration, was due in great measure to the strong feeling of discontent produced by the award. Indeed, it might almost be laid down as a fact of universal observation that awards, whether under treaties, or common awards under municipal statutes, are generally considered excessive by those who have to pay them.

The best proof, however, that the Halifax award is not so excessive as to justify

us in refusing to stand by it is afforded by the fact that the objectors, though having this obvious ground of objection, have felt some other to be necessary; they have invented a reason for their objections, the very absurdity of which goes far to discredit everything they may say on the subject. This is that the treaty, in providing for the arbitration, omitted to provide for the case of a disagreement by the umpire; and that therefore the intention must have been that the award should be unanimous, or null and void. The ground for this extraordinary argument is found in the curious rule of the common law that an award of arbitrators, to be binding, must be unanimous. Such is undoubtedly the rule of the common law; and the origin of it carries us back to the time when substantial rights still depended on arbitrary forms of action, to a period of legal barbarism and ignorance of the crassest kind. The rule was founded, unquestionably, on the fact that in common law, when an action was brought based upon a right which could arise only upon the happening of a particular event, the event must be shown to have happened exactly as the condition required. Hence if A and B agreed to refer a matter to the arbitration of three persons, A could not sue B upon their award unless he could also show that it was an award of the three persons; in other words, that it was unanimous. This rule, however, was long ago felt to be so technical and unjust that it was swept away by statutes making an award binding, providing it was agreed to by a majority of the referees. Since the enactment of these statutes, such a thing as a common-law arbitration has been practically unknown in this country; and to contend that the parties to the Treaty of Washington had in view a common-law arbitration as described by Blackstone is to contend that they had in view a process with which they were utterly unfamiliar, which could not possibly serve any end except to make the whole proceeding nugatory, and which was practically obsolete. But besides this, the arbitration could be by no possible stretch of imagination made to come under common-law rules. International arbitrations have nothing to do with the common law, for the very obvious reason that they are not proceedings within its jurisdiction. They are governed, of course, by the principles of international law, which in this respect follow the dictates of common sense, and require only a majority of the arbitrators to bind.

Whether Congress will direct the award to be paid or not seems to be uncertain; but a discussion of the grounds on which, in case of a refusal, it ought to be placed is by no means profitless or barren. If we decline to abide by the award, as excessive, we shall no doubt lay ourselves open to the charge of sharp practice (particularly as we have enjoyed the benefits of the treaty for some seven years.) But we shall at least take a position which involves no international consequences, save that imputation of bad faith to which we are now tolerably well accustomed. But if we place our refusal on the ground that awards must be unanimous to be binding, we make ourselves ridiculous. It is always possible for any arbitrator to prevent an award from being unanimous; and an arbitration which can be rendered nugatory in this way must always be a solemn farce.

To sum up what has already been said, the position of the United States in the international forum under the Treaty of Washington, as explained by its acts and the interpretation of the Geneva tribunal, seems likely to be very different from what twenty years ago any one would have deemed possible, and to involve a total change in our attitude to the world at large. That it has put a complete stop to our practice of allowing foreign adventurers to make use of our ports as a base for piratical descents upon the coast of countries with whom we are at peace must be regarded as an unmixed blessing; that it has forced the chief neutral nation of modern times into the position of a championship of belligerent rights is a fact which cannot be regarded with so much equanimity; that in order to play this new

part it will have to be still further centralized is not an agreeable result. That the attempt should be made to upset the fisheries award on such a shallow pretext as the absence of unanimity among the arbitrators cannot be considered simply as an evidence of bad faith, but of singular incompetence as well, on the part of representatives of a nation which has always resorted to arbitration as a means of settling disputes. That the question of the indirect claims should still be kept open by Congress in the face of our obvious exposure to such claims in the future can hardly be regarded as an evidence of statesmanship. Finally, the attitude of the United States in submitting only to the favorable result of the arbitration under the treaty, and refusing in each case in which the decision has gone against them to accept the result without bluster or threats, hardly shows that the cause of arbitration has been advanced, as its advocates hoped, seven years ago, it would be by our example.

Arthur G. Sedgwick.

OPEN LETTERS FROM NEW YORK.

V.

To cover one of the prominent superficial aspects of the collision of our two art associations the dispatch might be framed, "They have met the enemy and are mutually each other's." The new society exhibited at the Kurtz Gallery during the month of March. The Academy of Design followed within a few days of its close, and is still in session. A line of demarkation between two antagonistic forces was not as sharply drawn as may have been anticipated. Academicians in regular standing, Colman, Inness, LaFarge, Wyant, Hunt of Boston, and others, formed a considerable and very attractive part of the Kurtz Gallery display. The peculiar constituency of the latter, on the other hand, made up, as has been explained, of the younger men, who have lately completed or are actually engaged in their studies abroad, musters in sufficient force at the Academy to give there also a very fair taste of its quality, and to make the regular exhibition as representative as usual of the various branches. The disclaimer, therefore, on the part of the new movement of any hostility, or of a desire to do more than furnish additional exhibition facilities, seems quite sustained. I think there can be no doubt that the reasonableness of its existence has been sustained too. It has been a useful opportunity to have our attention very distinctly called to the most powerful influences at work upon our art, and to the precise manner in which they take hold of the native element sent directly into their midst. There must have been a good deal of latent curiosity on this point. Perhaps we thought it stoutly defied them. Perhaps we thought at any rate that it opposed to them something of an inherent vital Americanism that might be more or less deflected, of course, but would appear as a resultant in a triangle of forces.

If one had thought so he would have been disappointed at the Kurtz Gallery. He would have found an unconditional surrender to Paris and Munich. He would have seen Bonnat, Breton, Duran, Feyer-Perrin, Gerome, Diez, Piloty, taking as complete possession of young Americans from Connecticut as if they were of LeMans or Coblentz. Perhaps more, since the Americans are credited with a quickness at seizing the idea and a facility in adjusting themselves to circumstances which their neighbors do not