THESIS

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THE CONSULAR SERVICE OF THE UNITED STATES.

Legislative History.

The consular service of the United States is the outgrowth of the necessities arising from the various conditions in which our government has been from time to time. In the early part of the Revolutionary War our foreign representatives had very diverse and comprehensive duties. They exercised fiscal, diplomatic, and consular functions in the countries to which they were sent. The fiscal agents were not needed after the close of the war, but the foreign agents still continued their consular functions.

The first appointment of men to exercise consular duties was in January, 1776, and Silas Deane, and F. T. Morris, were appointed and sent to France to purchase supplies. At first they exercised no consular duties, but later came to exercise them in the protection of American seamen. There was no efficient means of assigning consular functions, and in 1778 it was urged that the affairs of the United States be placed in the hands of a single responsible set of officers. It was in the treaty of commerce made with France in this year that the right to consular representation was granted. William Palfrey was chosen consul to France at a salary of fifteen hundred dollars per year, but his ship was lost and he never reached his destination. Thomas Barclay was then sent to
fill this position, first as vice-consul, and later as consul. From this time to the end of the war not much attention was given to the consular service. In 1780-82 Congress created and extended the powers of the "Secretary of Foreign Affairs", but still retained the chief authority in foreign matters.

Upon the close of the conflict, the foreign trade of our nation revived, and commercial treaties guaranteeing the right to consuls were made with many nations. Many merchants residing abroad sought these positions, but it was finally decided that none but American citizens should be permitted to hold them. This was largely due to the recommendation of John Jay, who was in Paris at the time of the agitation.

Congress did not try to outline the organization of the consular service till 1785. The beginning was of no importance, as the rules were not adhered to, and the consular service was without any legal basis or policy at the time of the adoption of the constitution.

Washington tried to improve, in a measure, the consular service, and during the first three years of his presidency appointed seventeen consuls, and five vice-consuls. They were to be remunerated from the fees collected by them. The weaknesses of the organization at this time were very apparent, but no one seemed to do anything to make the conditions better.

The first act of importance in regard to the or-
ganization of the consular service was passed in 1792, and in it the duties of the consular officers were established for the first time. Two of the now most important duties were not stated then. They are those of certification of invoices of exports to the United States, and the making of reports of a commercial character. The duties as stated in the act of 1792 are as follows:

1. To authenticate copies.
2. To take charge of the estates of United States citizens dying abroad without legal representative.
3. To take care of stranded vessels.
4. To receive protests of captains, masters, crews, passengers, merchants, or of any foreigners, or of any citizen of the United States, relative to the interest of any citizen of the United States.
5. To receive fees for:
   Authenticating under seal, protests, declarations, depositions, and the like—$2.00.
   Administrating estates as above—5 per cent.
6. To succor American seamen in distress at the expense of the United States, not to exceed twelve cents per diem.
7. To require American masters to carry such seaman home free of charge, with the provision that the seaman shall work during the pas-
sage. If masters shall refuse—-to fine them thirty dollars for each seaman so refused.

3. To require master, if ship is sold in port, to provide means for the return of seamen, (unless released by contract) the amount to be determined by the consul.

By the same act, consuls are required to give bond for the faithful performance of duty (A provision which has not, however, guaranteed responsibility) and the President is authorized to give salaries to the three consuls in the Barbary States.

Thus it is seen that the duties of the consuls were almost wholly the protection of the interests of American citizens, especially seamen, and had no connection with the extension of American commerce in general, or with protecting the customs revenue of the government against fraud. These are now functions of greatest and most vital importance.

All the consuls except the three in Tunis, Tripoli, and Morocco depended upon business and fees, but the ones mentioned could not be induced to accept the positions unless a sufficient salary was given them. They were given a salary of three thousand dollars per year. Two years later, 1797, Algiers was added to the list of salaried consulates, with a salary of four thousand dollars per year, and for over fifty years these were the only salaried consulates.
Acts supplementary to that of 1792 were passed in later years, but no important changes were made except in the rules relating to seamen. Consuls were given more authority to enforce regulations, and the papers of the various ships were to be left in charge of the consul at the port while they remained in port. This prevented the forgery of sea letters, than a common practice.

In 1818 an entirely new branch was added to the service. The consular department was brought to the aid of the customs authorities, and it was made the duty of the consul in a foreign port to give a certificate as to the value, etc., of the goods exported to the United States from that port. All invoices of goods sent to the United States had to be certified by the consul at the port from which they were shipped. The shipper was made to give oath as to the value of the goods that were subject to duty. At first this rule was not strictly obeyed, but later it was made compulsory, and goods were not permitted to enter the United States unless so certified, and severe penalties were imposed for neglecting to have them certified.

About this time other laws and restrictions were added to those regarding sailors, and the making of the lists for the ships. Also there were made rules regarding discharge and maltreatment of sailors.

A movement for reform of the service now began, and
it was not without result. The method of payment was looked into, and the consuls received more pay, and more allowance for office rent, etc. Many reports were made by the various officials in charge of the department, but nothing was done as yet. However, these reports were the foundations for all of the succeeding discussions on the evils of the fee system. In 1838 and 1844 more plans for reform were submitted, but without result. In 1846, the Consular Committee from the House reported that they "found the consular system very imperfect--- and by no means adequate to the present commerce of the United States". Meanwhile the agitations for reform were still being kept up, and emphasis was put on the need of familiarity with the language and common customs of the people of the countries to which they are sent. This tended to make the positions of the consuls more permanent. There also followed various discussions as to the interpretations of the consular laws, and much of this was left to the President, especially in the manner of the appointment to the different ranks.

As regards payment, the posts were divided into two classes or schedules, known as B and C. The consuls of the first class were to receive a salary and were to account to the government for all fees collected by them, but were not permitted to engage in business. Those of the second schedule had the same general regulations as to salary, but were, in addition, permitted to engage in
trade. The consuls not included in either of the above classes were to be paid from the fees collected at their respective consulates, as was originally the rule in regard to them. Allowances for expenses were now cut off from the salaried consuls, with the exception of an allowance of ten per cent of the respective salaries of the non-trading consuls, which was allowed for office rent. Their stationery, etc., was furnished by the United States Government.

Next came the law making the appointment of consular pupils, finally resulting in the establishment of a corps of thirteen pupils, who were to receive one thousand dollars per year for the first five years, and then were to receive an additional two hundred dollars for each succeeding year. The object of this corps was to secure men trained in consular affairs from whom to select the consuls.

Various acts were passed in regard to the salary question, and in most of them there was an increase of salary granted in some form or another. However, no definite or well defined policy was followed. The income at some of the posts was enormous. There was no fixed salary in any of the posts,—that is, it was based on the importance of the post. In many cases the salary is entirely inadequate, and much less than that of the consuls of other nations at the same place.

That much has been done to conform the service to
the demands made upon it is shown by the fact that in schedule B there were added two hundred and twenty consulates, either by promotion from the lower grades, or by the establishment of new posts. The salaries of one hundred and fifty consuls were increased, and in some cases posts that had served their time of usefulness were abandoned. Some of these have since been re-established. In schedule C there have been many additions. The salary granted to these consuls in addition to what they make by trade is generally about a thousand dollars per year.

In 1874 was made the first attempt to introduce method into the classification of consulates. In this year seven grades were made, with salaries ranging from one to four thousand dollars per year. In 1893 the salary of the first class was raised to five thousand dollars per year. The number of salaried consuls has been steadily increasing, and regulations regarding fees, etc., have been made in accordance. The arrangement by which salaries were to adjust themselves to the importance of the post proved a dismal failure. This failed also because of the lack of adaptability to the growth of commerce.

Unofficial fees are still allowed to all consuls. In some of the consulates the amount of these fees exceeds the salary of the office. The law of 1856 has remained unchanged except in a few details. The system
for collecting fees is far from satisfactory, as we have no way of collecting questionable foreign accounts. Official fees must be accounted for to the Government at Washington. Sometimes consular agents were appointed by the consuls to collect the fees, and the agent was paid as the consul saw fit in the division of the fees. These agents were formerly appointed without the ratification of the Secretary of State, but now he has a nominal power in their appointment. The consular agent also received his pay in such proportions of the fees collected "as the President may direct", and any that remained went to the principal officer. This rule proved unsatisfactory. The system of consular agents is at present a necessary evil, and cannot be abolished unless something is put in its place. At present these consular agents are the most numerous class in the service.

Now we come to one of the most important duties of the consul, and that is the certification of invoices. This practice was first begun on an important scale in 1818, and extended in 1823. The law of 1856 provided that no goods dutiable ad valorem should be admitted to the United States unless the invoice had been certified by the United States consul at the port from which they were shipped. The consuls were bound to report any frauds to the state Department. Later, the law mentioned above was extended to cover all imports, dutiable ad valorem, or not. The invoices were required to be made
in triplicate, one copy to be kept at the consulate, one
given to the shipper, and one sent to the custom house
officers. The invoices were further required to be pro-
duced to the consul in whose district the goods were ori-
originally produced. This was done to prevent frauds
as to valuation, one of the greatest questions with which
the consular officers and customs officers had to deal.
Such frauds were extremely difficult to detect, and were
to some extent remedied by the law requiring that the in-
voices be made at the point nearest the place of manufac-
ture, or of original shipment.

Many defects recognized half a century ago are still
to be found in the service. The present movement for re-
form is but a continuation of one started many years ago.
Measures adopted by Presidents Cleveland and Roosevelt,
although promising much, did not really aid much in the
general effect upon the system. The method of appoint-
ment has been one of the things held up for reform, and
as yet nothing of importance in this line has been ac-
complished. Agitation for reform by legislation has ex-
isted for the past fifteen years, the movement being fos-
tered by such men as Senator Lodge. The business men of
the country are especially interested in the movements
for reform, and the reform movements as at present ad-
vocated seek as follows:

1. To pay salaries to all posts with business large e-
nough to justify appointments, and to make these salaries large enough to secure efficient service.

2. To abolish the system of remuneration through fees altogether, returning all fees, official, and unofficial, to the treasury.

3. To abolish the office of consular agent, and commercial agent.

4. To require all applicants for a position to pass a practical examination to test the suitability of their preparation for the work.

5. To remove the offices from political influence, and give them permanency.

6. To provide for adequate inspection to check any abuse which may arise.

Consular Organization; Rights and Duties of Consuls.

At present there are thirteen grades of consular officers. The highest of these, that of consul-general, is composed of about sixty officers. Ordinarily there is but one consulate-general in any one country, but there are several exceptions to this rule. The consulates-general exercise general supervision over the consulates within their respective districts with the exception of Calcutta, Dresden, and Mexico. This supervision is more nominal than real, for it is all carried on by correspondence. This supervision pertains only to the enforcement of the consular regulations.

Those immediately below the consuls-general are
the consuls and commercial agents. The latter class are appointed directly by the President, and possess all the powers and privileges of consuls. There are three classes of subordinate consular officers, viz., those employed in countries where the United States has rights of extra-territoriality, and vice- and deputy consular officers. Vice-consular officers are merely substitutes who can act with full power only in the absence of the principal officer, and the deputy consular officers are those who act in the capacity of consul either in the presence or absence of the principal officer, but in his absence they cannot assume full charge of the office.

Consular agents are appointed by the local principal officer, his selection being approved by the Department of State. They act only as the representatives of their immediate superiors. There are also, as mentioned before, thirteen consular clerks, who are in reality pupils preparing for the service as they may be needed for vacancies in some of the consulates. In the Oriental countries there are interpreters and marshals, but they are not in any way connected with the official part of the consular service, their functions being merely those of interpreters.

Consular Rights and Powers.

Under international law, consular officers enjoy certain rights and privileges. They have the right to erect their national arms over the doors of their of-
fices and their residences; they are exempt from serving on juries; they have inviolability and exemption from seizure of their official records and furniture; and they are protected from the billeting of soldiers in their residences.

However, the consular officers are subject to the payment of taxes, municipal duties, and imposts, and are subject to the criminal and civil laws of the country in which they reside. Merchant consuls have more restricted rights. There are also granted to consuls by treaty with the nation to which they are sent, certain rights and privileges. Among them are the inviolability of the archives and consular dwellings, freedom from arrest, from appearing as witnesses, and from taxation. In some countries they may also apply to the government in the case of infraction of treaties, take depositions, settle disputes between masters and seamen, and adjust claims in case of wrecks and salvage.

There are certain duties imposed on the consul by the home country, among the most important of which are the following:

1. Commercial and other departmental duties as confined to the making of reports.
2. Protection of the customs revenue.
3. Duties as to shipping.
   (a) Care and inspection of ships, their condition and sale abroad, and custody of ships papers.
General supervision of seamen, including enlistment abroad, disputes, discharge, wages, desertions, and relief.

The principal duties of the consuls have not changed much in scope; only in a way corresponding to the development of commercial functions have their duties undergone great variations. Along with these came the importance of protection of American travelers abroad, and the aid to American seamen. This latter duty was the cause of some of the greatest frauds in the service. Dishonest consuls would present heavy claims for aid ostensibly administered to destitute sailors, when in reality no such aid had been given at all. The visits of the inspectors put an end to this for the time, but there has always been more or less abuse of this sort.

The consuls have often given valuable aid in watching the movements of the vessels of an enemy, and have aided in guarding the treaty rights of the United States from violations. For the first years of the service there were no regular instructions, except a circular, sent to each of the officers at irregular intervals. At present there are codes of instructions and directions which are revised from time to time as there is need for such revision.

Of the development within the department we need say little. At first there were no different bureaus.
in the Department of State, but as the affairs of the na-
tion took on greater importance, there came a reform in
the State Department headquarters, and the Diplomatic and
Consular Bureau was one of the results. Later, as the
affairs of the Consular Bureau became too voluminous to
be handled by the Bureau itself, part of the communi-
cations and correspondence with the consuls was turned
over to the Bureau of Foreign Commerce, an organization
of great usefulness. It is under the direction of this
head that the communications of the consuls, along com-
mercial lines, have been utilized and come to be of great
value.

Extraterritoriality.

The right of extraterritoriality is a limitation of
the sovereignty of the nation granting it. The nation
exercising this right has full control over her citizens
residing in the country in which the right is exercised,
and in case they are guilty of some crime they are tried
and are punished according to the laws of their own
country. The laws of their own nation do not apply to
the territory in which they live, but merely to its citi-
zens who reside in the nation in question.

Such rights are not at all exercised in civilized
countries. It is only exercised in uncivilized and bar-
barous nations. China, Turkey, and some other nations
fall into this class. In these countries the rights of
extraterritoriality are not uniform. Some privileges
are granted in one country that may not be allowed in other countries, and there are constant disputes arising in regard to the actual authority of both nations. In the case of our disputes with Turkey in this regard we have an excellent example. No rule can be held as absolute, even though it be assented to by both nations at the time it was made.

In China, and other countries, the system of mixed courts for the trial of Americans has proven satisfactory to a great extent, but even there there has been dispute in regard to some of the points of the agreement as to the courts. Many of the cases are sent over to the Circuit Court of California. Such cases are serious criminal cases, and cases involving large sums of money.

The Chinese seemed glad to have the trial take place without there being any Chinese Judges present, and in this regard there has been some dispute with the higher officials of China. To say the least, the system administered in China has important omissions, most of which are covered by no treaty, nor by common law. The establishment of an United states Circuit Court in the Orient has been proposed, but nothing has yet come of it. The plan has been strongly approved by the inspectors, but their efforts have thus far been in vain.

The consuls did not assume any important part as envoys of trade till about half a century ago; but about that time, the possibilities that were in store for Am-
merican trade were foreseen by some of our great men. At that time the American merchants did not seek the foreign markets except in times of local depression of prices. Many of our most prominent manufacturers to this day pay no attention to the foreign trade. It has been very recently that American products were introduced in foreign markets to any extent. Our principal exports were, and are to-day, raw materials and agricultural products.

The government sought to have the consuls seek openings for our trade in foreign countries, and set them to gathering statistics. The Department of Agriculture is the one that has profited most from the efforts of the consuls. Reports were early required of the consuls in regard to the shipping conditions, the amount of American trade, etc., at the various ports. Their reports were one of the things that caused our present system of consular publications to be organized. It was not till 1853 that the first general circular requesting information of any definite sort was sent out. It requested reports on "all that relates to scientific discoveries, to progress in the arts, to agricultural development, etc."

After the law of 1856 was passed, the publication on "Commercial Relations", by its comments on the commercial relations, etc., of the country, called the general attention of the people to the importance of the consular service.
The publication on Commercial Relations has been continued since 1856, the entire volume being taken up with consular reports. In 1871, an attempt was made to make the reports uniform by sending out blanks, instructions being given the consuls to add whatever they might deem useful. This at once proved to be an improvement over the old way of getting information. The ground covered consisted of reports on existing business conditions, exports and imports, and transportation facilities. Occasionally new openings for American trade were pointed out, and sometimes suggestions were made as to the peculiar requirements of the local markets. The present annual reports are of the same general character as the monthly reports, the only difference being in the fact that they are more comprehensive. They give complete accounts of the methods necessary in packing goods, the demands of local usage, and suggestions for the improvement of trade relations.

In 1877 the consuls in South America were instructed to look up the prospects of trade with the countries to which they were sent, as the markets at home were in a state of stagnation. Later, a similar circular instructed the consuls in Europe to seek means by which the trade of the nations of Europe with the United States could be fostered. The responses these circulars brought forth were highly satisfactory, and the consular service received much commendation. It was not till 1880, that
any direct request came from the manufacturers, asking for aid from the consuls. This request came from the cotton manufacturers, who asked for information regarding the market for cotton products abroad. The department now recommended that the consuls prepare explicit reports on all subjects which may be calculated to advance the commercial and industrial interests of the United States.

The consuls were also required to make reports on special subjects from time to time, and these reports were usually of an independent character. There were also some daily consular reports, of the same general character as the monthly reports, but were made daily so that they might be of more value to the trade. These reports, like the monthly reports, were distributed free to chambers of commerce, and firms interested in foreign trade. They gave warning of foreign decrees, which might seriously affect foreign trade, and perhaps prevent our merchants shipping at a loss. Sometimes cablegrams were used in important cases.

In 1880 the department made the first consistent effort to develop American trade abroad through the consular assistance. This effort was not of much avail in its first years. Sometimes, reports of a nature absolutely foreign to commerce, were received. In some cases the consuls actually failed to report trade conditions, but described business opportunities and fa-
cities not seen by the ordinary observer. However, the reports of more recent date show an increase of definiteness, and exactness of detail, the increase being more marked during the last decade. This, in a measure, is due to better editing in the department, improvement in the general character of the representatives, and to better acquaintance on the part of the consuls with the duties to be performed.

The reports of the consuls contained much information in regard to the rules governing the shipping of goods into other nations, pointing out that sometimes serious difficulties arise in case the goods are not properly packed and declared. Also, there were many rules governing the shipping of foodstuffs, and these are generally iron-clad. Among these are the laws of France and other nations prohibiting the importation of American fruits and meats. Most important of all were the abuses in foreign lands of the manufacture of articles patented in America. The reports of the consuls, and the difficulties arising over patents, led to the forming of the international protection of patents. Also, much valuable assistance has been rendered by the consuls in the protection of trademarks really registered abroad.

The reports on the demands of the local markets are of great importance in many of the countries with which we trade. Long-established usage gives rise to prejudices in favor of a particular style, or grade of goods, and