

**AMERICAN  
CONSULAR  
SERVICE, PP. 387-455**

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## AMERICAN CONSULAR SERVICE.\*

By ELI T. SHEPPARD.

### ORIGIN, HISTORY, AND NATURE OF CONSULAR ESTABLISHMENTS.

The consular and diplomatic service of the United States, like that of other nations, stands apart and differs in a most important particular, in respect to its character, from all the other administrative agencies of the government.

From the very nature of their employment, and the character of their official duties, consular and diplomatic representatives come within the general notice and under the special protection of the law of nations. This fact alone, independent of the vital and delicate interests confided to their care, gives to such officers a peculiar standing and dignity in the eyes of their countrymen and of the world.

Consular and diplomatic officers are still further distinguished and marked out from those of every other branch of the national civil service by the fact that all their fundamental rights, privileges, and powers as public agents of the nation which they represent depend primarily upon the principles of international law and the usage and customs of nations. By long established practice common among civilized nations, these officers are everywhere recognized as coming within the purview of public law and as forming a definite factor in the economy of the world.

\* Lectures delivered before the students of the College of Commerce of the University of California in March, 1901.

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When the United States became a separate and independent power and entered the great circle or family of nations, it inherited, so to speak, the consular and diplomatic system of the old world, as a kind of birthright from the civilization of Europe.

Our government has always recognized this important fact, and has maintained from the beginning of its intercourse with foreign nations that our consuls especially have certain rights and privileges coming to them from the common law of nations; though subject, of course, to abridgement by Congress and to enlargement by treaties.

The Constitutional Convention at Philadelphia in framing the organic law of the Republic, recognized consuls as existing officers under the law of nations, and carefully provided that original jurisdiction over all cases affecting foreign ambassadors and consuls should be vested exclusively in the Supreme Court of the United States.

"Considering the importance of the consular functions," says Chancellor Kent, "and the activity required of them at all the important maritime ports, and the approach which consuls make to the dignity of diplomatic characters, it was a wise provision of the Constitution which took the jurisdiction over them out of the State courts, and vested it exclusively in the supreme tribunal of the nation."

When we consider the number of such officers, and the important and delicate functions which they perform, it is not too much to say that they constitute by far the most useful and important part of the machinery by which our intercourse with the world is maintained. Deputed to watch over the commercial interests of the nation, and entrusted with the duty of protecting and defending the individual rights of our citizens in foreign lands, our consular officers are preëminently the representatives of American character and manners.

Scattered throughout the whole world, and occupying an eminent social position in all the official and commercial circles of different countries, and performing duties which

bring them into close contact with all classes of the people among whom they reside, the influence and utility of our consular representatives are even more important than those of the higher class of foreign agents who are more strictly styled the Diplomatic Corps. To a nation essentially commercial, like the United States, there is no administrative agency of the government more useful or more important than the consular service, not only as a means of conducting our foreign affairs, but as an agency for the protection and promotion of foreign commerce. Consuls are the commissioned sentinels of the nation, stationed at every outpost of the world for the purposes of commercial observation as well as of civil authority.

In a country with a changing civil service like ours, it is of the highest importance for every young man to acquire a knowledge, not only of the fundamental principles of the commercial policy of the nation, but also to acquaint himself with the duties and functions of its consular and diplomatic representatives. A knowledge of the history, nature, and functions of this branch of the civil service is not only desirable as forming no small part of a liberal education, but is absolutely essential for anyone who expects to engage successfully in wide commercial operations, or who hopes to enter the foreign service of the country. Every young man, to be sure, may not enter or even desire to enter the consular or diplomatic service, but everyone can and should qualify himself, not only that he may exercise an intelligent influence as a citizen in shaping the foreign policy of the nation, but that he may be suitably equipped to discharge with credit to himself and to his country those positions of public trust which it may be his duty as a citizen to fulfil in after years.

It is generally considered, by those who have made the subject a special study, that a preparatory course of reading for students or members of the consular and diplomatic service should embrace, at least, an outline history of the origin and early development of consular institutions. The

student who would understand the modern consular systems of the world should know something of the early commercial institutions and maritime usages of Europe, because it was in the commercial and maritime institutions, laws and usages of Europe during the Middle Ages that all the fundamental rights, privileges, and functions of consuls in modern times had their origin. The germs of nearly all the principles of maritime and commercial law, and of many of the ideas which cluster around the modern system of international law, had their early development, if not their origin, in the customs and usages of the maritime and commercial states of mediaeval Europe.

The practice of maintaining consular agents at foreign ports and cities for the protection of commerce, navigation, and trade, dates back to the very beginning of modern civilization. Consular institutions closely resembling those of modern times were common throughout Europe centuries before the practice had become common of maintaining permanent diplomatic agents abroad.

From the eleventh until the fifteenth century, consular officers in Europe, in addition to their ordinary duties of a commercial character, performed many of the functions and enjoyed many of the rights, privileges, and immunities of modern diplomatic representatives.

The consular system, it may be said, was the beginning of the diplomatic service. International law—the code of diplomacy—was as yet in the formative stage of development, and the consul of that early age was like one crying in the wilderness,—the forerunner of the diplomatist who was to come after him.

While it would be exceedingly difficult, perhaps impossible, to trace the origin or give an accurate account of the development of consular jurisdiction as it existed in Europe in the Middle Ages, it seems certain that consular institutions in a rudimentary form have existed among commercial nations from the earliest times.

It is rather surprising that the public libraries of



Europe, where consular institutions had their origin and early development, contain but three or four books which profess to give even an outline of their history. This seems all the more surprising when we remember that the consular system is coeval with modern commerce, and that consular institutions have exercised a prodigious influence on the political and economic conditions of Europe for nearly ten centuries. Even so thorough and so thoughtful a writer as Gibbon passes over the subject, in his *Decline and Fall of the Roman Empire*, with a few brief paragraphs. It is not so surprising, however, that ancient writers should have overlooked the subject, especially when we remember that Cicero, the greatest orator and advocate of the Roman Empire, believed that the subject of commerce was unworthy the study and beneath the dignity of the conquerors of the world, and that Plato, the first philosopher and political writer of Greece, declared that commerce would work the ruin of Hellenic civilization.

The sneering remark of Napoleon that "the English were a nation of shopkeepers," was only a feeble echo of the barbarian maxim of the conquering Romans, who despised the occupation of a merchant.

The advantages of some kind of magistracy for the settlement of mercantile and marine disputes seem, nevertheless, to have been obvious to the ancient Greeks and Romans. Even in the most primitive ages the operations of foreign commerce, particularly in maritime cities and ports, were liable to involve national interests as well as the individual interests of merchants and traders. Not only the disputes of foreign merchants, but especially the presence of foreign vessels and seamen in the ports and harbors of marine cities must have rendered necessary the presence and authority of a magistrate of some sort, to settle their disputes and preserve public order.

History informs us that the ancient Egyptians, the Chinese of antiquity, permitted maritime and commercial disputes with foreign traders to be decided by a high priest

in a temple at Memphis and other cities, dedicated to their gods for that purpose. When the Greek or Phœnician merchant trader bought corn from an Egyptian, and either the corn was not up to sample, or the foreigner refused to pay the price agreed upon, the parties were summoned before the high priest in the temple of justice, who decided the case, and took a portion of the corn for his judicial services.

Eight hundred years later, at Athens and other Greek cities, officers were elected or appointed who were instructed by a decree of the people to entertain strangers and perform the functions of magistrates in the settlement of disputes with foreign merchants, and for keeping foreign sailors in order.

It was the custom of the Greek states from the earliest times to enter into treaties with one another, determining the principles of law which they would mutually observe and enforce in favor of one another, and the mode in which a citizen of either state might plead and obtain his rights in the courts of the other. For this purpose each state elected agents, called *proxeni*, a kind of consuls, who resided in the ports of the other.

From one of the orations of Demosthenes we learn that these officers held their court on board the foreign vessel in port, and "decided the disputes of sailors and merchants in a summary manner, according to their own confessions and the testimony of witnesses"; and also that another class of officers were the supreme judges of all mercantile and maritime disputes.

Like the consuls of modern times, the Greek *proxenus* at Athens and other towns was permitted to affix above the outer door of his official residence the coat of arms of the town or city in which he exercised the duties of his office.

Plutarch gives an interesting account of the manner in which Alcibiades, while acting in this capacity as the public host of the Lacedæmonians, and while he had charge of the prisoners taken at Sylos, availed himself of the privilege of his office to revenge himself upon the Athenians.

Herodotus, the father of history, in his account of Teos, the birthplace of Anacreon, gives a detailed account of the maritime magistracy of that place and of the jurisdiction which it exercised over foreign commerce four centuries before the Christian era.

Plutarch also mentions the existence of a species of magistrates in the Macedonian ports, on the Adriatic Gulf, five hundred years before the Christian era, named "*Polites*," who were entrusted with the regulation of the commerce of those cities with the Illyrians, a neighboring nation of traders.

From a number of facts recorded in history, the inference is plain that although many of the ancient maritime nations were ignorant of or hostile to the principles of maritime justice, there existed amongst some of them at least a well defined system of consular jurisdiction very similar to that of later times. In every instance, however, of which there is any authentic account, the officer exercising such authority was a native of the place or port where he resided, and not of the country of the foreign merchant.

The notable exceptions to the rule were the ancient Phœnicians and Carthaginians, who owed their supremacy and glory to maritime commerce, and who permitted no foreign vessels or traders to visit their ports, under penalty of death.

The Carthaginians were the corsairs or pirates of the Mediterranean from the beginning of their history, just as their descendants, the natives of Tunis and Tripoli, were when Commodore Decatur made his brilliant descent upon them in 1815, and put an end to their piratical depredations on American commerce.

The Republic of Rhodes was the first nation of antiquity to establish a humane and liberal code of maritime laws. The Republic or city of Rhodes is associated in the popular mind generally with the colossal bronze statue which was so long erroneously represented as bestriding the entrance to the harbor of that ancient seat of commerce