

Some of the authorities differ as regards this latter view. It is pointed out that the international common law is not like the positive law established by treaties and accepted usage. Therefore, beyond these two sources, no definite standards could be established covering the duties incumbent upon the States. It might be well also to remember the indefinite line between national and international rights. At the present time, the States construe and apply these rights in many different ways. This is clearly shown by their action in connection with monopolies, government control of business, immigration, deportation of aliens, tariffs, and emergency laws regarding price fixing and other forms of restriction imposed upon commercial freedom. This means that the juridical status of these matters, which are considered to be of national incumbency, does not permit the establishment of international standards. It is doubted, therefore, whether international rules should be enforced in preference to the municipal law as regards the protection of aliens.

These comments refer to certain specific measures which are undergoing a stage of evolution in modern jurisprudence, and none of which are inconsistent with the principles of natural justice that prevent the State sovereignty from ruling without limitations of any sort, or making its will preponderant in every sense, without giving due consideration to the fundamental necessities of government generally accepted by the civilized world. There is a minimum juridical standard imposed by human civilization, without which neither the existence of the State as a sovereign entity nor that of the international community could be conceived. Even those various measures to which we have referred are not altogether at variance in principle. Underlying these measures there are certain leading precepts that no State could afford to ignore without drawing protests from the others. One of these principles might be, for instance, the one of due compensation for the confiscation of property for public use.

This debate, however, has no longer any theoretical importance or practical significance. A scientific fact of paramount importance has been elicited, which has altogether altered the situation. It is now conceived that the rights of man are not a matter exclusively dependent upon the will of the State. It has been mentioned elsewhere that at its New York session the Institute of International Law has invested the rights of man with international character. This means, in other words, that the rights of man are thereby placed under the patronage of the international community. "The juridical mind of the civilized world"—states the pronouncement of the Institute—"demands the recognition of the rights of man free from all attempts on the part of the State." The leading exponent of this doctrine, President James Brown Scott, thus comments upon it: