what is, and what he thinks ought to be law, theory and fact, law and so-called rules of nature and of right, are mixed up in a way at once confusing and misleading.

One distinguished English writer indeed, the late Sir Henry Maine, thought that he had discovered a fundamental difference between English and American jurists as to the view taken of the obligation of international law.

His opinion was based on the judgments of the English judges in the celebrated Franconia case, in which it was held that the English courts had no jurisdiction to try a foreigner for a crime committed on the high seas although within a marine league from the British coast. The case was decided in 1876 and is reported in 2d vol. of the Law Reports, Exchequer Division, p. 63. The facts were these: The defendant was Captain Keyn, a German subject, in charge as captain, of the German steamship, Franconia. When off Dover the Franconia, at a point within two and a half miles of the beach, ran into and sank a British steamer, Strathclyde, thereby causing loss of life. The facts were such as to constitute, according to English law, the crime of manslaughter, of which the defendant was found guilty by the jury, but the learned judge who tried the case at the Central Criminal Court reserved, for further consideration by the court for crown cases reserved, the question whether the Central Criminal Court had jurisdiction over the defendant, a foreigner, in respect of an offence committed by him on the high seas, but within a marine league of the shore. All the members of the court were of opinion that the chief criminal courts, that is to say, the Courts of Assize and the Central Criminal Court, were clothed with jurisdiction to administer justice in the bodies of counties, or, in other words, in English territory; and that from the time of Henry the VIII a court of special commissioners, and, later the Central Criminal Court (in which the defendant had been tried) had been invested by statute with the jurisdiction previously exercised by the Lord High Admiral on the high seas. But the majority held that the marine league belt was not part of the territory of England, and therefore not within the bodies of counties, and also that the admiral had had no jurisdiction over foreigners on the high seas. The minority, on the other hand, held that the marine belt was part of the territory of England and that the admiral had had jurisdiction over foreigners within those limits.

While I do not say that I should have arrived at the conclusions of historical fact of the majority, I am by no means clear that the judges of the United States, accepting the same data as did the majority of the English judges, would not have decided in the same way. But however this may be, the views of the majority do not seem to me to warrant the assumption of Sir Henry Maine that the case fundamentally affects the view taken of the authority of international law.

What it does incidentally reveal is a constitutional difference between the United States and Great Britain as to the methods by which the municipal courts acquire, at least in certain cases, jurisdiction to try and to punish offences against international law.