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State." This right of passage has been well called by Grotius, "a right interwoven with the very frame of human society;" and, if more need be added to confirm the argument, let his declaration be cited, that "a free passage through countries, *rivers*, or over any part of the sea, which belong to some particular people, ought to be allowed to those who require it for the necessary occasions of life, whether those occasions be in quest of settlements, after being driven from their own country, or to trade with a remote nation."—Book 2, ch. 2, sec. 13.

Further, can any objection be drawn from the practice and opinions of the world, as exhibited in its international treaties? Here it is to be remarked, that the concession of *new* rights must not be confounded with the recognition of *old* ones. Treaties sometimes create rights, and sometimes merely acknowledge those already existing, which, though questioned to some extent, are, upon examination, found to have a just existence in nature, and independently of treaties. They are, therefore, formally asserted by one party, and acknowledged by the other, so as effectually to remove all grounds for future question or difference. Thus the thirteenth article of the treaty of Utrecht, (1713,) by which France ceded to England Newfoundland, continued to the subjects of France the use of certain fisheries upon the coasts of that island. This same right to the fisheries was recognised as belonging to France by the fifth article of the treaty of Paris, (1763,) which renewed and confirmed so much of the 13th article of the treaty of Utrecht as relates to this subject. At the treaty of Versailles (1783) these fisheries were again the subject of negotiation, and Great Britain and France readjusted the terms upon which they should be enjoyed by the respective parties. The French right of fishery was again the subject of adjustment between the parties at the treaty of Paris in 1814. From this series of negotiations it may well be argued, that the treaty of Utrecht did not create the right of fishery for France, but recognised it as one already existing, and the subsequent treaty stipulations upon the subject concerned chiefly the principles and limitations by which it should be exercised.

The third article of our treaty of 1783 with England may also be cited as in point, as it stipulated for the *continued* right on our part to enjoy the fisheries in the Gulf of St. Lawrence and on the coast and banks of Newfoundland, "and at all other places in the sea, where the inhabitants of both countries used at any time heretofore to fish." Was it not obviously the intention of the parties to this stipulation not to *create*, but to *acknowledge*, for and as against each other, rights already existing, and which had existed and been enjoyed in common at least since the acquisition of Canada? These rights to the fisheries were thus admitted to belong to the United States, notwithstanding their separation from the mother country. The language of the article is, "that the people of the United States shall *continue* to enjoy" the fisheries, and thus *continues* without *creating* a right. This continuance was evidently based not upon an idea of concession on the part of England, but upon principles of natural justice and right, having their origin in the fact, that it was partly American enterprise that had discovered, explored, and occupied these fisheries.

The United States contended for such principles as these in settling the terms of the convention of 1818. England sought to maintain that the war of 1812 had abrogated the American right to the fisheries, whilst Mr. Rush, who conducted the negotiations on our part, insisted upon that

important.