

and many other moderns being against that of Gentilis, Grotius, Puppendorf, Heffter, Fiore and Wheaton.

All these discuss the practical historical instances as well as the reason of the thing, but their very want of uniformity in arriving at conclusions forces the inquirer to pursue his own course along the path they have already trod.

What is the custom of modern times, what is the tendency of enlightened nations? Toward a declaration of war, undoubtedly. There are numerous instances during the age of Gustavus Adolphus and Louis XIV. of war commenced without formal declaration, as note the case of Frederick the Great's invasion of Silesia in 1740; or the case of Great Britain in many instances. But against these it is well to mark the fact that both the recent Franco-Prussian and Russo-Turkish wars were initiated by proper and formal declarations. Also that there has been a growing tendency from the period of the war of the Spanish Succession, and the Seven Years War, to the Crimean War, to do away with the principles upon which the usually logical Phillimore insists, even while noticing the growth in sentiment toward a declaration.

International law is by no means a fixed quantity. It is constantly active, modifying and changing old rules here, and again adding to and completing others; precedents are valuable, but, as in private law, the latter in time, if equally well put, carry more weight. So in the field of the law of nations the course of a nationality of the present day in regard to the preliminaries of war are certain to carry more weight than the usage of a country which, in opposition to the views of its contemporary thinkers, may have opened hostilities without a declaration. The science which has to do with the question of war is new in its development. Indeed, its strides have been great since the Treaty of Paris, from which date Calvo marks a new understanding of this formal notice which bears some resemblance to a deputy's summons.

There is a long distance between the period when Bynkershoek wrote, when war was generally commenced without the declaration called for by Grotius, Vattel, and Wheaton, and the nineteenth century—one age was crude and bloody, the other is approximately humane. Yet, strangely enough, the great English scholar before alluded to sides with the Dutch master in his argument adverse to a formal announcement of war declared, while impatiently impugning his sentiment regarding unnecessary