of diligence of the different forms of National Governments.

general principles of reason, and of the practice of nations, which are the foundations of international law, to have regard to the diversity in the forms and Constitutions of different Governments, and to the variety of the means of operation, for the performance of their public duties, resulting from those various forms and Constitutions. Thus, it is stated, at page 49 of the Argument of the United States, that "in the United States it was necessary to impart such executive powers" (as were given by the Acts of Congress of 1794, 1817, and 1818) "to the President; because, according to the tenor of our Constitution, it does not belong to the President to declare war, nor has he complete and final jurisdiction of foreign affairs. In all that he must act with the concurrence, as the case may be, of Congress or of the Senate." If the President has no executive power in the United States, except what is conferred upon him expressly by the law of that country, it is equally certain that the Sovereign of Great Britain, and the various Ministers of State and other officers by whom the executive Government in Great Britain is carried on under her authority, have also no executive power except what is conferred upon them by British law; and that (assuming the laws of both those countries to make just and reasonable provision for the fulfilment, within their respective jurisdictions, of their international obligations), the question whether the Government has, or has not, acted with "due diligence" in a particular case, is one which is incapable of being determined abstractedly, without reference to those laws. If the inquiry be, whether the provision which the national laws have made for the performance of international obligations is in fact just, and reasonably sufficient, it is impossible rationally to deny that principles of administration and rules of legal procedure which experience has proved to be just, and reasonably sufficient for all the great purposes of internal government (the primary objects for which all Governments exist), may be generally adhered to when the legal repression of acts injurious to foreign States becomes necessary, without exposing the national Government which relies on them to the imputation of a want of due diligence.

11. Objections to any theory of the diligence due from Neutral Governments, which involves a universal hypothesis of arbitrary power.

Any theory of diligence in the performance of international obligations which implies that foreign Governments, to whom such obligations are due, owe no respect whatever to the distinctive Constitutions of national Governments, or have a right to call for their violation in particular cases, or to dictate legislative changes at variance with them, would be fatal to national independence; and (as no great Power could tolerate or submit to it) would tend, not to establish, but to subvert the peace and amity of nations. In the words of the British Summary (page 9, sec. 30), "its tendency, if admitted, would be to introduce a universal hypothesis of absolute and arbitrary power as the rule of judgment for all such international controversies." The practical falsehood of such a hypothesis, as applied at the present time to the two nations engaged in the present controversy, to the three nations which furnish the judges of that controversy, and to most of the other civilized nations of the world,—its probably universal falsehood as to every European and American State in the not remote future,—is perhaps not the gravest objection to it. It is at variance with all the highest principles of progress, of advancing liberty, and of extended civilization, which distinguish modern society. If the dreams of some political philosophers could be accomplished, and if all the nations of the earth could be united in one great federation under the most perfect imaginable political constitution, the rights both of particular States, and of individual citizens, and all questions, whether as to the repression and prevention, or as to the punishment of unlawful acts by States or citizens, would certainly be determined, not by arbitrary power, but by fixed and known laws and settled rules of procedure. Is it conceivable that it should enter into the mind of man (nay, of citizens of one of the freest States in the world, whose whole history is a refutation of such a doctrine) that practical impossibilities, which (if they were possible) would be hostile to the highest interests and intelligence of mankind, can be demanded by one State of another, in the name of international law?

IV.—*On the preventive powers of the Laws of Great Britain.*

12. The Argument of the United States, as to the necessity of a reliance on Prerogative, for due diligence.

There are several passages, in the Argument of the United States, which appear (A) to contend that the Royal prerogative in Great Britain actually extends, under the British Constitution, to a power of summary and arbitrary control, without legal procedure, over the persons and property of its citizens, when there is any ground to suppose that such citizens may be about to act, or that such property may be about to be employed, in a manner hostile to a foreign belligerent Power, with which Her Majesty is at peace;—and (B) to assume that, if such a prerogative power does not actually exist under the British Constitution, the very fact of its absence is proof of a defect of British law, in itself amounting to an abnegation of the use of due diligence (or, what is the same thing, to a want of the means of due diligence) for the prevention of such acts.