

suppose that circumstance is not sometimes in my thought? I know the American people have a heart that will beat just as strong for these millions in Mexico as it will beat for any other millions anywhere else in the world, and when they once know what is at stake in Mexico they will know what ought to be done in Mexico. You hear a great deal said about the property loss in Mexico, and I deplore it with all my heart. Upon the conclusion of the present disturbed condition in Mexico undoubtedly those who have lost properties ought to be compensated. Man's individual rights have met with many deplorable circumstances, but back of it all is a struggle of the people, and while we think of the one in the foreground let us not forget the other in the background.

#### THE PAPACY IN INTERNATIONAL LAW

Giuseppe Sarto, known as Pope Pius X, died at Rome on August 20, 1914. His successor, Giacomo della Chiesa, known as Benedict XV, was chosen at Rome on September 3, 1914. The death of Pius is said to have been hastened by the outbreak of war, which he tried to, but could not, prevent. Benedict is said to desire earnestly international peace and has, it is reported, made overtures to the Powers to end the war. Indeed, it is intimated that his election was due in no small measure to his attitude toward war.

It is not the function of a journal of international law to discourse at length upon the life and services of one whose kingdom is not of this world and whose influence is spiritual in the sense that it is not exercised through political channels. We must, however, admit the vast influence which the Pontiff has in the Catholic world and that, given the origin, history and international organization of the Papacy, it is the greatest single force for the world's good, if the Pope broaden his sympathies so as to embrace the world, instead of confining his activity solely to the Church of which he is the living head.

The late Pope was certainly not a politician, and it is doubtful if he could be considered a diplomat. He was deeply interested in the spiritual life of the Church, and his energy was primarily devoted to this phase of his work. He was, however, deeply and sincerely interested in peace, as is shown by the pontifical brief which he addressed in June, 1911, to Cardinal Falconio, then Apostolic Delegate to the Catholic Church in the United States. It is unnecessary to do more than to refer to this, as it was printed in the pages of the *JOURNAL* [Supplement (1911), Vol. 5, pp. 214-215] and was the subject of an editorial comment (Vol. 5, 1911, pp. 707-709). It is a source of regret to right-minded people, at least in the United States, that his influence failed when war and peace were in the balance. It is to be hoped that Benedict will be more

fortunate in his efforts to end a conflict which his generous and high-minded predecessor failed to prevent.

In the beginning of this comment the Pope's kingdom was declared to be spiritual, not temporal; and this statement is believed to be true, notwithstanding the fact that it is contrary to the claims of the Vatican and of churchmen in many parts of the world. There can be no doubt that the Pope was a temporal, as well as a spiritual, monarch before the annexation of the Papal States in 1870. Since then, it is believed that, while the Italian Government allows the Pontiff to live in the Vatican and accords to him the honors of a sovereign, he is not a sovereign in the sense in which that term is understood in international law. It is true that the Papal States were annexed by an act of force and that the Pope has not recognized the annexation. Conquest is, however, admitted in international law, and it matters little or nothing to the victor whether the victim accepts or questions the legality of the conquest, so long as he is powerless to change it. The Church does not recognize the legality of the action and reserves its rights in the premises; but it would seem that in international law the title of Italy to the Papal estates is clear, if conquest confers title, and that any rights or privileges which the Church exercises in the territory which it once possessed are in the nature of concessions from the present sovereign.

The position of the Pope according to international law has been passed upon from time to time by courts of justice, the most interesting of which is the series of decisions arising out of the beatification of Jeanne d'Arc in 1908. On July 4, 1909, certain persons displayed in their windows the pontifical flag. An ordinance of the Prefect of February 16, 1894, having the force of law, was issued in the following terms:

Art. 1. It is forbidden in the Department of the Sarthe to display or to carry flags, either on the public highway or in buildings, sites and localities freely opened to the public.

Art. 2. French or foreign flags and the emblems of authorized or approved societies are excepted from this prohibition.

Some eighteen persons displayed the papal colors in the city of Mans, were tried in the police court and were acquitted July 26, 1909, for the reason that the personal flag of a sovereign enjoys the same privilege as that of a state; that the Pope is a sovereign, and that display of the pontifical flag is permitted by Article 2 of the ordinance of February 16, 1894. On appeal to the Court of Cassation, the judgment of the inferior court of Mans was reversed on May 5, 1911, the court holding, in effect,

that "the pontifical flag is no longer a national foreign flag; that in fact the sovereignty of which it formerly was the symbol ceased to exist in consequence of the union of the Pontificate with the Kingdom of Italy; that the Pope does not represent a society in the sense of Article 2 of the above mentioned ordinance; that the flag can therefore not be considered as the emblem of an authorized or approved society."

In a later case the Criminal Court of Appeals of Sens delivered a judgment to the same effect, but set forth the reasons more in detail. The material portion is therefore quoted, as it appears to settle the question in so far as French courts are concerned:

Regarding the application of the decree of February 17, 1894, to the facts of the prevention:

Considering that strict interpretation is necessary in penal matters;

Considering that the decree of February 17, 1894, inhibits in a general way the display and bearing of flags; that no provision of this text aims especially, as asserted by the appellant, at the display of the red flag, nor that it indicates that it constitutes a transitory measure intended to terminate with the circumstances leading to its adoption;

Considering that the said decree does not except from the inhibition "French or foreign national flags, and those bearing the insignia of authorized or approved societies;"

Considering that the white and yellow flag, the national emblem of the former Pontifical States, cannot be included in this exception; that in fact these states have ceased to exist in consequence of their annexation to the Kingdom of Italy; that even admitting, contrarily to the principles of penal law, a liberal interpretation, placing the personal flag of a sovereign on the same plane with that of foreign countries, it would still be necessary, contrary to historic truth, to regard the white and yellow emblem as the personal flag of the Pope, and attribute to the latter the character of a sovereign;

Considering there is no doubt that since the disappearance of the Pontifical States in September, 1870, the Pope has lost the usual attributes of sovereignty, and that a Pontifical State no longer exists;

Considering that the Papacy does in fact no longer possess either territory, army or subjects; that it no longer possesses the right of civil jurisdiction, and that all matters pertaining to the civil status of the inhabitants of the Vatican are subject to the civil authorities of the Kingdom of Italy;

Considering that the law of guaranties has not conferred upon the Pope the sovereign right of international law, which alone confers upon those possessed of it the quality which this right confers upon real sovereigns;

Considering that by the terms of the decree of October 9, 1870, and of the law of guaranties of May 13, 1871, the Pope only has the usufruct of the pontifical residences, which, excepting certain restrictions relating to the "dignity, inviolability and personal prerogatives" of the Pope as head of the Catholic Church, remain subject to the Italian laws;

Considering that the law of guaranties does not even admit the extraterritoriality of the places occupied by the Pope;

Considering that if the internal legislation of the Italian State grants to the Pope certain personal privileges, which ordinarily form the appanages of sovereignty, such for instance as the right of active and passive legation which he exercises under very exceptional conditions, in view of the fact that his representatives are not real diplomatic agents, and that the Papal treaties (concordats) are not assimilable to the treaties between nations, it remains nevertheless true that from the international point of view the Pope must no longer be regarded as the head of a state;

Considering that under these conditions, the pontifical flag, in so far as it would be the symbol of a State, or the insignia of the head of a State, has ceased to exist, and that any element that might remove the said emblem from the interdiction formulated in the Prefectoral Decree, which alone might make either a national flag or the insignia of an authorized or recognized society, is totally lacking."

#### AN ANTECEDENT ALGECIRAS

When France, in 1901 and 1902, began actively to come to terms with Morocco regarding the Algero-Moroccan frontier, European observers of the moves in colonial politics realized with varying degrees of accuracy that another step in the cherished ambition of a consolidated French Africa was imminent. The Algerian frontier district was at that time occupied by tribesmen owning little allegiance to anyone and predisposed to trouble. Their comparative freedom from molestation had been due solely to the fact that they were actually living and raiding and fighting in a no-man's land, a territory belonging certainly neither to Algeria nor Morocco. A treaty of 1845 had defined a boundary which had been very imperfectly surveyed and had never existed for practical purposes. On July 20, 1901, a protocol was signed between France and Morocco looking to the policing and control of the frontier region and to the establishment of markets in it. It was supplemented by an agreement of April 20, 1902, and additional articles thereto of May 7, 1902. The three documents were ratified by Morocco seven months later, an important consideration in respect to the validity of any understanding with the Makhzen, or Moroccan government, which at that time was as elusive regarding obligations as it could be. The three treaties were not onerous; they made for obvious good order and development of commerce in the frontier region. Yet it was certain that they would have an important effect in extending French influence, for they provided that the finely-attuned French colonial instrument of the *bureau arabe* should enter the frontier region, and where it goes the people become French colonists through the sheer conviction of its ever-demonstrated efficiency.