

ARE WE SOVEREIGN WITHIN OUR OWN LAND?

Unless the United States Renounces Its Fundamental Rights as a Nation It Cannot Submit to Subtle Secret Agents' Campaigns by Foreign Powers Against Its Laws and Its Integrity, Writes Frederic R. Coudert.

Former U. S. District Attorney Wise Comments on the Latest Phase of German Activity in America--Declares Obstruction or Destruction of American Commerce Is Interference with Interstate Trade and So Punishable.



Frederic R. Coudert, Expert on International Law.

"Should a foreign nation employ its agents to carry on a campaign of crime in the United States designed in some way to aid its own military operations, I am unable to see how this could, in principle, differ from a direct attack upon us. It would be an attempt to flaunt our sovereignty, to insult our national dignity and to affect our vital interests."

Are we too complaisant as a nation? Time after time within the last few months our Federal Secret Service has uncovered propaganda subversive of our domestic commerce, yet we have not reacted with a sudden swift wrath. Because this situation is unique in the annals of history, we have asked Mr. Coudert, from the international point of view, and Mr. Wise, from the standpoint of Federal statute, to tell Tribune readers what are the rights of the United States, and just when a foreign nation becomes criminally liable for militant tactics against their enemies, carried on within the borders of the United States, and interfering with the latter's peaceful conduct of its affairs.

By Frederic R. Coudert.

YOU query whether the actions of the various self-confessed criminals, who have come here to carry on a scientific spy-destroying business may involve our relations with the country from which they came and give rise to serious international complications.

I do not know whether, aside from their own statements, there exists sufficient evidence to indicate that they came here at the mandate of their government or with its connivance and aid. Assuming, however, their statements in this regard to be true, and that they are in fact agents of a foreign power coming here for the purpose of engaging in criminal conspiracies and other crimes against life and property, the situation presented is indeed a grave one.

Naturally, the ordinary criminal law of the country applies to the individuals directly concerned, and will take care of them. The situation, however, as regards our relations with any country employing or countenancing such agents gives rise to an entirely different question.

IN PRINCIPLE A DIRECT ATTACK.

The family of nations and, consequently, international law, is based upon the fundamental proposition that all nations are sovereign within their own domain. Any attack by one upon the sovereignty of another under whatever guise conducted thus gives rise to the most serious situation known to international law, and may, unless suitable amends or reparation be made, constitute a casus belli. In case of direct invasion or attack, the matter is plain enough, but a very real infraction of sovereignty may take a far more subtle form. Should a foreign nation employ its agents to carry on a campaign of crime in the United States, designed in some way to aid its own military operations, or to cripple those of their enemies, I am unable to see how this could, in principle, differ from a direct attack upon us. It would be an attempt to flaunt our sovereignty, to insult our national dignity and to affect our vital interests.

No nation, without renouncing its fundamental rights as a member of the family of nations, could submit to such a campaign against its laws, its integrity and its statehood. It would be difficult to imagine a situation in which a government could more flagrantly disregard the fundamental dictates of public law than by employing agents to carry on a series of criminal acts in a foreign land to serve its military purposes against others. This would in effect be tantamount to war; that is to say, a resort to violence in the country of a friendly power attacking its sovereign rights, its municipal law and endangering the lives and property of its citizens. Such action would in effect constitute the creation of a base for secret warlike operations in neutral territory, operations which would be largely directed against property and lives under the protection of our flag and our laws. If such should turn out to be the fact, it is manifest that no government at Washington for a moment would tolerate so impossible a situation or submit to such an egregious insult.

Complicity in an attempt of a much milder character to interfere with American law and industry led to the prompt returning of Ambassador Dumba to the land whence he came. It is scarcely credible that any nation with whom we are not at war should connect itself with such a course of action, and in any event the difficulties of detection are very great, but if once detected no means can be too prompt or too effective to vindicate our fundamental right to be an independent nation.

By Henry A. Wise.

EVERY citizen of the United States with any red blood in his veins should boil with righteous indignation if the disclosures surrounding the arrest of Robert Fay and others said to be in conspiracy with him result in their conviction of the nefarious schemes to destroy manufacturing establishments in this country and also to sink vessels laden with wares and merchandise bound to foreign ports. Fortunately the plans of these persons were discovered before the harm was done, and while we may congratulate ourselves in this respect—for after all an ounce of prevention is worth a pound of cure—it is unfortunate that there are no penal laws under which adequate punishment may be dealt out to men who were bent upon such a fiendish scheme.

In reading the newspapers I have noted that Washington correspondents report that Department of Justice officials in Washington express doubt as to whether the government can make out any case against these conspirators. If this doubt is entertained by any official it must be because he is not in possession of adequate facts. If the government has proof of the facts appearing in the newspaper accounts there seems to me to be no warrant for any doubt upon the law. Unfortunately, however, the laws which appear to have been violated do not carry adequate punishment. But knowing the United States Attorney for the Southern Division of New York to be a man and an American who will be justly indignant at the conduct of these men, I am confident that he will invoke every statute that may have any possible application to the facts in his effort to see that the fullest possible punishment is meted out to them.

It appears that Fay and his cohorts have been engaged in a scheme which had for its purpose the prevention of not only the shipments but the manufacture of war munitions. To accomplish this purpose they designed to dynamite one of our largest manufacturing plants at which an acid used by other manufacturers is made. This is will be seen that in scheming to destroy this plant their purpose was to prevent this plant from distributing its product to other plants.

There is no large manufacturing establishment in the United States to-day that is not essentially engaged in commerce. In fact, our factories are agencies of our commerce. Their entire course of business is commerce. The raw materials they consume flow through our

channels of commerce as do the finished products they produce—and upon the products of a large chemical factory other manufacturers are dependent. These facts are recognized by these conspirators when they seek to destroy the plant that furnishes other plants

with its product. So without further elaboration it would seem to be quite clear that if Fay and his cohorts contemplated the destruction of such a plant they were plainly conspiring to unlawfully restrain a part of our interstate trade and commerce. Obstruction is restraint, and destruction is obstruction.

But not content with the destruction of our factories, it seems that these men also contemplated the destruction of merchant ships laden with munitions of war. Recently we have heard much maudlin talk about the wrong we do in permitting war munitions to be shipped from this country to some of the belligerents in the European war. Most of this talk comes from hyphenated Americans, and some of it possibly from people who might not be willing to tell what compensation they receive or from whom they receive it.

I am at a loss to understand why a citizen of the United States may not sell arms and ammunition to a nation which to-day is a belligerent, just as he sold it to the same nation before the European war commenced; and why he may not now sell it to one belligerent as he did to both before the war.

WOULD SELL TO GERMANY IF WE COULD.

It would seem that just at present Germany wants copper badly. We sold copper to Germany before the war. We would sell it now if we could get it to her. In the same way Germany wants cotton. We have sold it to her before and would now if we could. So also with horses, meat, foodstuffs and one thousand other commodities, if we could, all of which Germany wants and needs to munition, cloth and feed her army. Yet because we can't get these things to Germany we are told that we must not sell them to her enemies. Did Germany exercise any such restraint during the Russo-Japanese War? Was she not engaged in selling war munitions in Mexico at the time of the Vera Cruz incident? Of course she was, and properly so. That was her commerce.

So our dealings with all European nations to-day constitute part of our commerce—and any man or men who by any means seeks to

obstruct that commerce must and should be punished.

Under our Constitution Congress is given power to regulate commerce among the states and with foreign nations. Under this power Congress has provided that any one who shall conspire to restrain our trade and commerce with foreign nations is guilty of a crime. Fay and his accomplices in scheming to destroy ships laden with American wares and merchandise, bound or about to sail for European ports, offended against this statute.

In 1894 the employes of the Pullman Company went on a strike. In the course of that strike some of the men obstructed the free movement of some of our interstate railroads. This was held to be an illegal restraint of interstate trade and commerce. See *In re Debs* (158 U. S. 564). In that case the Supreme Court of the United States said: "It is within the competency of Congress to prescribe by legislation that any interference with these matters shall be offenses against the United States, and prosecuted and punished by indictment in the proper courts."

PUNISHABLE UNDER OUR STATUTES.

What more serious obstruction and interference with our foreign commerce can be conceived than that contemplated by Fay and his accomplices. In order that they shall be punished it is not necessary that they should have accomplished their plan. The arrangement or plan itself constituted the conspiracy denounced by the statute.

I might cite abundant precedents in support of this proposition. It seems, however, so self-evident that I make no reference to the numerous cases upon the subject.

Under Section 235 of the Penal Code of the United States any person who shall carry upon any vessel engaged in foreign commerce any dangerous explosive without informing the agent of the carrier as to the true character thereof is guilty of an offense against the United States; and under Section 37 of the same code if two or more persons conspire to commit such an offense they may, upon conviction, be sentenced to imprisonment for two years and to pay a fine of \$10,000.

The placing of an explosive bomb upon a vessel laden with explosives might and would naturally and reasonably be expected to destroy the ship and its cargo and also to cause the death of the crew. Every man is presumed to intend the reasonable consequences of his acts. Therefore if these men placed any such bomb upon such a ship while she was in a port of the United States it would seem quite clear that they were guilty of an attempt to commit murder as defined in Section 277 of the United States Penal Code. If they did not place the bomb upon the ship, but that was their plan, they are guilty of a conspiracy to commit murder. The fact that they intended the explosion to occur after the ship was upon the high seas will not relieve them. If they put the force into operation within the jurisdiction of the United States they may be punished here, regardless of where the consequences of that force resulted. Hence if they conspired to commit this dastardly act and any one of them did any act looking to its accomplishment all of them may at least be convicted of a conspiracy to commit murder.

There may be other applicable statutes. I sincerely trust there are and that the ingenuity of the entire legal establishment of the United States will concentrate in the effort to obtain for these men the maximum possible punishment, which, unfortunately, does not seem to be death, which, in my opinion, is the only possible deterrent against a recurrence of any such vicious conspiracy.



Henry A. Wise, Former United States District Attorney.

"What more serious obstruction and interference with our foreign commerce can be conceived of than that contemplated by Fay and his accomplices?"

Victor Murdock Sees New York

The once-fiebrand of Congress, who has since retired to the peacefulness of an editorship in Kansas, for a while at least, comes to New York for political conferences, but looks about him incidentally. And of the scenic investitures of this city Victor Murdock consented to write for The Sunday Tribune "on the back of hotel stationery," he promised. And these are the colorful paragraphs.

By Victor Murdock

NEAR Chatham Square at night: drink, disease, distress and decay, all drab enough save for an occasional face made hideous by a heart long hot with hate. A little journey and the idle rich, sniffing the lotus-flower of indolence. Both sucking away the substance and vitality of the democracy. Bull Moose yet? You bet.

INTRODUCING the Back-bone of the Nation. Roof midnightalia. Oriental curtain, gold on black. Dancing floor in front, rimmed with tables. Crowd of noisy college boys at a prominent table clamoring for 12 o'clock and the opening of the show. One named Bobby, the noisiest of all, aflame with expectancy, his rosy cheeks a riot of wintry risibles, his voice girlishly treble. Much has been promised him, and he is here

to exact all that has been nominated in the lithograph. A glare from a negro orchestra, parted curtains, and a cataract of dancers pouring faith. Gauze, talcum and the crimson of youth glowing through. The dancers are hideously young with rouge and part of their attire are toy balloons. As they dance the men at the tables explode these balloons by touching lighted cigarettes to them. Much noise. Much music. And in the midst of it Bobby, expectancy gone, flames dead, cheeks chalky, risibles faded, Bobby, moved by a vast inward condemnation, in eye, lineament and posture, glory be, disapproves.

THE highest work-a-day intellectual product in the world is the daily editorial output of the newspapers of the city of New York. Its chief charm is its currency. It strikes when the event is hot. It is pro and con, centrifugal and centripetal, a grand whirlpool of affirmation and negation. Whenever I get as near as Poughkeepsie, or Elizabeth or Bridgeport and buy an armful, I feel myself slipping and grab mentally for a rail.

THE greatest unsolved waste in town is elevator time. All elevators make trips that seem useless. The larger the battery of elevators, the greater proportionally the waste of time and power. Jones

is jabbing the button on the ninth floor. The elevator starts for him, reaches him, loads him on and starts downward. Then Smith on the tenth floor jabs the button. The elevator wins the bottom and then travels back for Smith, and when it is downward bound again, Brown on the eleventh floor gets busy, necessitating three trips, where if Jones, Smith and Brown had jabbed simultaneously one trip would have answered. When there are many elevators this difficulty is multiplied infinitely. In some of the larger buildings an attempt is made to correct waste by bulking the load at the bottom. It works fairly well, but only fairly. The upper floor problem remains obdurate. This thing fascinates me. I should like to solve it. I never will. I was born poor in arithmetic. In the common graded schools I used to get sixty. When I reached high school and took up algebra I dropped to forty; and if I had continued my education, if I had ever reached that magnificent study geometry, there is no doubt about it I should have gone below zero. I shall never solve this elevator problem. But some fiend for figures will. And I have an idea that he will use differential calculus to do it.

SUNDAY morning the hotel clerk said to me: "Notice the deserted lobby? Crowd has gone to church. Subway cave-in last night scared them." It wasn't true. I lit out

for church—one on Fifth Avenue. The choir outnumbered the congregation.

THE sermon was about the plains of Shinar and what happened thereon. It was a splendid development which humanity had reached, immature of course, but splendid. They put no limit upon their imaginations. They started Babel. They were penalized and confounded. The tower never reached the sky as they planned. But it was a gorgeous conception, just the same. And it must have been some tower. No one in this age attempts to build to the sky. At the Grand Central Station the railroads have brought the sky down and roofed it over. But as a conception it is so smeary a job that it has escaped notice.

WE were talking shrapnel. Everybody talks shrapnel. The nation must have copper and brass and all that sort of thing. Waiter butted in with the most valuable contribution. His mother lives in Vienna; she had a chandelier. It was bronze—an heirloom, came down in the family for 150 years—the most priceless thing in the household. A month ago the authorities came along and appropriated it. His mother is distraught. War is entirely beyond the descriptive powers of General Sherman or anybody else.

FRENCH restaurant, over near the Pennsylvania Station. About nine past meridian. Anchovies come and gone. Soup ditto. Entrees approaching. Enter a pup, a lop-eared, slobbery, water-eyed pup. Sensation. Dinner suspended. Pup fondled, petted, touselled, upsided, passed from table to table. I have never cared for pups myself, but following the custom of the place I examined this one myself. He was just plain pup.

SATURDAY morning on the East Side. Innumerable children. An atmosphere redolent of garlic. The scream of heavy wheels on Belgian block. On a discolored quilt in the midst of the traffic—a sick dog, safe. A little shop, with nondescript wares principally pendant, and in the midst of it a third-hand Victrola, sunk from high estate, battered, banged, busted, and, presiding over it, Shylock, come to life. With a scant and crinkly beard, and scant and crinkly hair under a skull cap. And before his machine and his ministrations a circle of children, puer and puella, Jew and Gentile, gold Scand, and swart Slav, Greek, Latin, Hun and Hittite, listening with eager faces. A worn disk and a blunt needle and the tone-wraith of what once was the vibrant rhythm of the "Beautiful Blue Danube." Brotherhood here and no mistake,

impounded for the future and against all accident. New York's glory, America's miracle. The crucible!

THE ambulance passes and the crowd stops and stares. To me this is the most striking sight in New York. The fire-wagons plunge along without distracting the multitude. Motor-cars collide and the hustling hordes scarcely hesitate. The Seventh Avenue carv-didn't collect as large a crowd as would gather at a freight-train wreck in Pueblo or in Sioux Falls. Disaster in itself is not so hypnotizing as the van with the single form within it who is disaster's victim. Nameless, invisible, the nature of his misfortune unknown, his passing is an instant challenge to the crowd. Each stops in his tracks and follows, in a moment's concentration, the hurrying wagon. Sympathy? Perhaps. Curiosity? Not much. Rather a sudden realization of the gray business of living and the mighty significance of death.

THE loudest applause at Cohan's play is on a derial of the value of advertising. Yet there isn't a theatre in New York that wouldn't go dark as Africa in a week without advertising. A New York audience will applaud quicker than any other audience in America a mere rising infection.