SOME THOUGHTS ON THE MEXICAN OIL QUESTION

It is impossible in a brief editorial to go into all the minutiæ of this perplexing and complicated question. Nevertheless it may be of value to lay before the reader some of the considerations involved and the general rules growing out of the intercourse of sovereign states which relate to such problems.

For certain purposes, mineral oil has replaced coal as a desirable fuel. The oil measures thus far uncovered in Mexico involve vast pools quickly drained, so that their regulation is of immediate importance. Mexican oil is not locally used but is exported. That country is potentially rich in many products but actually poor and torn by years of factional conflict.

It is natural and legitimate therefore that any government in Mexico should desire to realize as much as possible from its mineral assets. Some two hundred million dollars of American money are estimated to have sought investment in Mexican oil. There has thus arisen a conflict of interest between the foreign capitalist who desires to mine and export oil as cheaply as possible and the sovereign which wishes to make as much as possible out of its product before it is taken out of its jurisdiction. This is attempted in two ways, by taxation and by a duty on exports.

Under Mexican law aliens may not hold land. This is the law in many other countries also and in some of the states of the American Union. To exploit Mexican oil territory, therefore, local companies were organized under local law but employing foreign capital. The possession of the surface carried with it the sub-soil minerals, including petroleum. If disputes arose the foreign lessors or owners relied upon the help of their governments when the protection of the courts seemed to fail them. Their suspicions were roused by a demand of the Mexican Government that interests in such companies owned by alien capital must renounce this right to protection from their governments. There also appeared a tendency on the part of the Mexican Government to separate surface and sub-soil interests, nationalizing the latter. But in the main oil rights acquired by aliens were undisturbed until 1917, when the new Constitution appeared. This had been adopted under Carranza's influence. The Pershing invasion of Mexico and the Mexican intrigue with Germany aimed at the United States, prior to this, naturally led to distrust of Carranza's good faith. The new Constitution made a radical change in the oil situation, though explicitly providing that it and the legislation growing out of it should not be retroactive.

It separated surface from sub-soil property, nationalizing the latter. It required payment for oil taken out in the shape of rentals and royalties to the government.

On failure to comply with various rules and regulations, it threw lands open to new entries.

It held that "foreign capital shall submit to the new laws by waiving its nationality and organizing as Mexican corporations."

And it attempted to condition drilling permits upon compliance with recent decrees. Moreover it conditioned continued operation of oil lands upon government regulations yet to be issued.

There was further a disposition shown, in spite of the non-retroactive clause of the new Constitution, to apply these new conditions to oil leases previously acquired. Such leases were protected by the court if work had been done on them, but not if sub-soil rights existed only in "expectancy," the Supreme Court granting the owner merely "the faculty of exploring and exploiting" and recognizing acquired rights only when this faculty had been "translated into positive acts" before May 1, 1917, the date of the new Constitution. I quote from a discussion of the Texas Company's *Amparo* case in the November journal of the American Bar Association by Edward Schuster of New York.

The Supreme Court also declared the export duties upon oil to be constitutional.

Enough has been said to describe the nature and variety of the attacks upon foreign oil property in Mexico. Each step in restriction was met by diplomatic argument and remonstrance. This brings us to the main point at issue. How far may a government go in protecting the property rights of its citizens against attack, executive, legislative and judicial, in a state with which that government is at peace?

Fundamentally beyond question, a state may do what it likes within its own jurisdiction. If unduly restrictive its acts shut out foreign capital. If it invites foreign capital, such policy implies protection. But in no case does foreign capital enjoy rights superior to the native.

There is a passage in one of Webster's papers as Secretary of State in 1851 which states clearly, and correctly as the writer thinks, the status of the nationals of one country resident in another, of a less advanced civilization:

> They have chosen to settle themselves in a country where jury trials are not known; where representative government does not exist; where the privilege of the writ of *habeas corpus* is unheard of; and where judicial proceedings in criminal cases are brief and summary.
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> Having made this election, they must necessarily abide its consequences. No man can carry the ægis of his national American liberty into a foreign country and expect to hold it up for his exemption from the dominion and authority of the laws and the sovereign power of that country, unless he be authorized to do so by virtue of treaty stipulations.

If true of alien persons, it is still more true of alien property.

Such is the general principle involved. But there are two contingencies when protection to property rights thus situated and thus jeopardized is due. First in case of discrimination; second in case of confiscation.

If a country learns that its subjects are placed in a foreign state in an inferior position to the subjects of other foreign states there resident, then a remedy for this inequitable inferior position is due him.

It is I believe but justice to say that there is no claim and no evidence that Mexico has thus discriminated between aliens. But as the interests of our nationals are large, those interests have suffered largely.

Nor is there direct evidence of confiscation pure and simple. Heavy burdens have been placed by the policy and the legislation of Mexico upon foreign capital which may prove too grievous to be borne. Whether such burdens are tantamount to confiscation, while judicial protection is wanting, whether therefore protection from our own government is due, is a difficult question, which must be determined by the circumstances of each case and the animus shown by local authority.

That Mexico should drive out foreign capital and hinder her own development by burdens of many kinds too heavy to be borne is unjust and foolish, but it is not illegal in the eye of international law. For we must always remember that Mexico is a sovereign State. We must either respect her sovereignty or deny it, placing her in the category of countries which are so devoid of political organization and civilized status that they can be dealt with only by force. We cannot mix the two.

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LANDING AND OPERATION OF SUBMARINE CABLES IN THE UNITED STATES

By an Act of Congress, approved May 27, 1921,[1] license from the President of the United States is required for landing and operating submarine cables connecting the United States with a foreign country, and in general, such submarine cables are placed under administrative control.

This is consistent with the established policy of the United States, particularly since 1869, though occasionally there have been official rulings which were not in complete accord with this policy.

The landing of submarine cables was particularly brought to the attention of the authorities of the United States through the attempt, by the Western Union Telegraph Company, to land at Miami Beach, Florida, without full governmental authorization, a cable connecting with British lines. There is much material upon this matter, such as official correspondence, hearings before the Senate, and court proceedings. Such correspondence as the following shows something of the situation:

[1] Printed in the Supplement to this JOURNAL, p. 35.