

be appointed to that grade and not appointed to a specific post. If the rank of Minister were added to and made the superior grade of those now established in the Foreign Service, the Foreign Service officers who had reached what is at present the highest class would, in cases of exceptional merit, be promoted to this superior grade of Minister. They would not, as is now the case when appointed as Minister, hold that rank only while detailed to a specific post upon appointment by the President with the consent of the Senate. This provision would not in any way prevent the President from submitting the name of an appropriate individual to the Senate for appointment to a particular post. If it should happen in consequence of such appointments that there were not enough posts available for Foreign Service officers who had reached the rank of Minister, they could still be held available, as is now the case in many other services, to lend their assistance in an embassy or in one of the important divisions of the Department of State. They might also be detailed to serve as Consuls General in certain important posts. It would not be disadvantageous to have one or two members of the Foreign Service of ministerial rank available for whatever emergency might arise in the Foreign Service. The adoption of this provision above all would have the effect of reducing the spoils in the Foreign Service to a minimum.

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**PROTECTION OF NATIONALS CHARGED WITH CRIME ABROAD—CASE OF  
LAWRENCE SIMPSON**

The case of Lawrence Simpson, an American seaman, charged with high crimes in Germany, aroused wide public interest in the United States because of the profound changes introduced in the administration of criminal justice in totalitarian states. Telegrams received from the International Labor Defense and the American Civil Liberties Union in July, 1935, induced the State Department to telegraph to the American Consul General in Hamburg requesting him to ascertain the facts regarding Simpson's arrest on board the United States Line steamship *Manhattan* upon its arrival at Hamburg on June 28, 1935. The Consul General replied that Simpson had been apprehended because of possession of communistic propaganda-material; that the police authorities asserted that he was involved with seventy other persons in communistic work and that he was detained pending trial. Further investigation on the part of the American Consul at Hamburg disclosed that Simpson had been placed in a concentration camp; that the consul had visited him at the camp and had inquired into the treatment accorded to the prisoner. It seems that he had first been placed in solitary confinement; with the exception of this circumstance, he made no complaint and it was understood that Simpson could communicate in writing with the Consul General and might be visited by representatives of the Consulate if necessary.<sup>1</sup>

<sup>1</sup> The facts of the case are taken from a brief of files in the Department of State dated Sept. 22, 1936.

The prompt interest exhibited in the case by the State Department may have been the means of obtaining for Simpson fair treatment while undergoing detention. On the other hand, notwithstanding the fact that the hope had been repeatedly expressed to the German authorities that Simpson might be given an early trial, he was held in prison without bail pending his trial for fifteen months under the assertion that he was being held in connection with proceedings against other persons charged with high treason. The trial was taken out of the hands of the ordinary courts and transferred to the *Volksgericht*, or People's Court, at Berlin, before which only especially approved attorneys are allowed to practice. The trial took place September 28, 1936, the court having been constituted by the presence of a presiding judge, an assessor, a police officer and several lay members of the National Socialist Party. Simpson was found guilty of disseminating propaganda-material, but not of conspiracy or treason against the state, and was sentenced to three years' imprisonment, with commutation for part of the time served awaiting trial.<sup>2</sup>

In commenting upon the change in German judicial procedure under the Third Reich, Prince Hubertus Lowenstein, of the former Catholic Center Party, points out: "The National Socialist Party has changed the entire construction of German law and legislation. It was not enough to make the judges trustees not of the law but of the National Socialist Party, but now special courts have been established which have to try their cases without any legal consideration, considering only the daily changing interests of the National Socialist Party."<sup>3</sup> In reality, even though ancient nomenclature be retained, such bodies are not judicial courts but arms of the political administration.

Under established practice of the State Department it may demand the assurance that an American citizen may have adequate protection at trial "if the Department of State believes that from the nature of the offense charged or from the proceedings already instituted, the prisoner is exposed to improper treatment."<sup>4</sup> During the past half century or more, the Department has had occasion to make diplomatic representations in order that these rights may be protected, chiefly to some of the newer and more unsettled countries of the Americas, less frequently to European countries. Thus, in the case of Gaskill and Ward, two American citizens imprisoned in Mexico for eleven months awaiting trial, Secretary Bayard instructed the American Minister to direct that the prosecution "be brought at once to trial and that the proceeding should be conducted in such a way as to give the accused in advance a state-

<sup>2</sup> New York Times, Sept. 29, 1936. A further commutation has since been granted and Simpson has been released and returned to the United States.

<sup>3</sup> Address before the American Academy of Political and Social Science, April, 1935, The Annals, Vol. 180, p. 30.

<sup>4</sup> C. C. Hyde, International Law Chiefly as Interpreted and Applied by the United States, Vol. 1, pp. 504-505.

ment of the witnesses to be produced against them and the opportunity of cross-examining these witnesses face to face on trial, and of producing witnesses on their behalf in defense."<sup>5</sup> In the same year similar representations were made in the well-known Cutting case. Although best known for the question raised as to the jurisdiction of a state to punish for crime committed outside its territory, the representations made at the time related also to the treatment accorded to the prisoner and the delay in bringing him to trial. Secretary Bayard requested the American Minister to draw to the attention of the Mexican Government "that by the law of nations, no punishment can be inflicted by a sovereign on citizens of other countries unless in conformity with those sanctions of justice which all civilized nations hold in common."<sup>6</sup> Among these rights must be included the opportunity for a speedy trial.<sup>7</sup>

Señor Guerrero, in his report on the Responsibility of States made to the Preparatory Committee of the League of Nations, failed to recognize that there is a minimum international standard accepted by civilized states in the exercise of police power and the administration of justice where aliens are concerned. Following the well-known doctrines of Calvo, he maintained that a state owes nothing more than treatment similar to that accorded to its own nationals.<sup>8</sup> The United States Government, in its letter of May 22, 1929, to the Preparatory Committee cited a large number of authorities against this view, among others that of Secretary Bayard in his representations to Mexico in the Cutting case. "If a government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but a shadow of a name and would afford no protection either to States or to individuals."<sup>9</sup>

The principle of a minimum international standard has been recognized by recent German writers dealing with the subject. Professor Erich Kaufmann of Berlin points out that the defense offered by governmental or administrative agents or by courts that their action is in conformity with national law and that there has been no discriminatory treatment of aliens is not an acceptable excuse. He supports his statement by reference to Judgment No. 17 of the Permanent Court of International Justice in the matter of certain German interests in Upper Silesia. Indeed the German Government seems to have taken a similar stand in its representations to the Soviet Government upon the arrest and detention of a number of German nationals in November, 1936, where indefinite charges of espionage and treason were asserted.<sup>10</sup>

<sup>5</sup> Moore, *Digest of International Law*, Vol. 6, p. 281.      <sup>6</sup> *Ibid.*, Vol. 2, pp. 229-230.

<sup>7</sup> Secretary Blaine to Mr. Lowell, June 2, 1881; 2 Wharton's *Digest of the International Law of The United States*, 627.

<sup>8</sup> Special Supplement to this *JOURNAL*, Vol. 20 (1926), p. 182.

<sup>9</sup> Secretary Bayard to Mr. Connery, Chargé to Mexico, Nov. 1, 1887. Moore, *Digest of International Law*, Vol. 2, p. 235. See also comment to Art. 5 of the Draft Convention upon the Responsibility of States, Harvard Research in International Law, Drafts of Conventions, 1929, p. 148; F. S. Dunn, *Protection of Nationals* (1932), p. 56.

<sup>10</sup> See New York Herald Tribune, Nov. 17, 1936, p. 17. Cf. E. Kaufmann, *Règles Générales du Droit de la Paix*, 1936, p. 120, published in *Recueil de l'Académie*, Vol. 54, p. 428.

Violations of this kind may be considered a denial of justice within the larger definition of the term. Vattel refers to the ways in which justice is denied . . . "(2) by pretended delays, for which no good reason can be given, delays equivalent to a refusal or even more ruinous than one."<sup>11</sup>

Unwarranted delays in the administration of justice are frequently a concomitant of the lack of an independent judiciary, the method and tempo of procedure being under the control of political officers. The importance of the Simpson case lies in its having pointed out the greater peril to the rights of aliens where the ordinary safeguards are lacking against arbitrary trial and punishment. The dangers are magnified by the fact that it is precisely in such countries that crimes such as the dissemination of propaganda material, sabotage, violation of monetary restrictions, are subject to extreme penalties. The protection of nationals if limited in such cases to the presentation of a claim becomes wholly inadequate. Westlake pointed out that where there was flagrant injustice in the methods either of the judicial or of the administrative departments, or in the law applied, the state to which a foreigner belongs has a claim to step in for his protection, which often has this in common with political claims, that the justice which the foreign Power demands for its subjects is not measurable by definite rules.<sup>12</sup>

Where summary methods of criminal procedure are provided for, diplomatic interposition in behalf of the nationals of foreign states must be prompt and energetic in order to be effective. A probable development will be the organization of groups of citizens in democratic states to bring the weight and influence of numbers to bear upon Foreign Offices in order that the vital interests of nationals may not be sacrificed because of the disappearance of individual rights under local law in the particular state.

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#### THE ECUADOR-PERU BOUNDARY CONTROVERSY

The official delegations of Ecuador and Peru are now negotiating in Washington under the friendly auspices of the President, a settlement of their century-old boundary dispute. By this convincing example their governments are showing loyal adherence to the enlightened practice of maintaining international peace. The high purpose of the delegations is to carry out the Quito Protocol of June 21, 1924, outlining a method of settling the boundary controversy between the two countries. Pursuant to that protocol, the two parties in February, 1934, requested the United States Government to give its consent to the sending of delegations to Washington to discuss the adjustment of their common frontier, and the President promptly gave his cordial approval of the suggestion and consented to serve as arbitrator. On July 6, 1936, the two countries signed a further protocol provid-

<sup>11</sup> The Law of Nations, Book II, § 350 (Classics of International Law, Fenwick's translation).

<sup>12</sup> Westlake, International Law, Part I: Peace (1910), p. 327.