EX-TERRITORIAL JURISDICTION OF CRIME

The right of a state to punish those who, within its domain, offend against its laws, is conceded to be an attribute of sovereignty. But when the act complained of is committed outside the confines of its territory, whether by or against its citizens or itself, the question arises as to whether the offended state can, upon obtaining personal jurisdiction over the offender, inflict punishment on him.

The United States in 1884 took the position that to punish one for an act committed in another jurisdiction, amounted to a violation of the sovereignty of the foreign state. As Mr. Calhoun, the then Secretary of State, said: "We hold that the criminal jurisdiction of a nation is limited to its own dominions and to vessels under its flag on the high seas, and that it cannot extend to acts committed within the dominion of another without violating its sovereignty 'and independence."[1]

In accordance with the principle above enunciated, the House of Representatives in 1868 adopted a resolution[2] requesting the President to take proper steps to secure the release of persons convicted in England of acts, the animus of which was proven by certain declarations made in America. In 1886 an American citizen named Cutting[3] was arrested and convicted in Mexico for a libel published by him in Texas. The American government immediately demanded and obtained his release. The utterances of Secretary Calhoun and the incidents which followed thereafter clearly indicate the American attitude on prosecutions by foreign governments for crimes committed in the United States.

American control over citizens who have committed crimes abroad is authorized by statute. The statute (R. S. U. S. s5335), provides that any citizen of the United States who does any act,—with the intent to influence the officers of a foreign government in relation to any dispute or controversy with the United States, or to defeat the measures of the American Government, shall be punished by fine and imprisonment. This law applies only to American citi-

[1]Mr. Calhoun, Sec. of State, to Mr. Everett, 1844 M. S. Inst. Great Britain XV, 211.

[2]Dip. Cor. 1868, 1, 21, 49, 50, 309. Mr. Seward, Sec. of State, to Mr. Moran, Charge at London, Jan. 22, 1868.

[3]Mr. Bayard, Sec. of State, to Mr. Jackson, Min. to Mexico, July 20, 1886. Mr Bayard, Sec. of State, report to President, Aug. 2, 1886. See also For. Rel 1886, VII; 1887, 751; 1888, 1114, 1189.

zens, and the same is true of the laws passed by Congress as a result of treaties with Oriental and non-Christian countries in whose territories the United States has established courts for the trial of its citizens.

The Federal statutes (R. S. U. S. s1705) confer upon diplomatic and consular representatives the power to administer oaths, take depositions, and act as notaries. It is further provided that anyone who commits perjury in the proceedings carried on under this authority, or is guilty of any other similar offense, shall be tried and dealt with in the same manner as if the offense had been committed in America. This applies to foreigners as well as Americans, but its international validity is readily justified when one considers that the domicil of a diplomatic or consular representative is "a part of the territory which he represents."

It is conceded that the authority of American law extends to crimes committed upon its vessels on the high seas, and to pirates —as recognized by international law—they being subject to the courts of the country whose ships effect their capture.

As to criminal acts set in motion in one state and producing the effect in another, Justice Story, taking the view that the crime was committed where the effect was produced, denied the jurisdiction of the former of the states[4] The right of the United States to extend its authority to its citizens committing crimes abroad is admitted, but this extension is merely a question of expediency and the right has been exercised in but few instances. By statute (1790) the United States can punish a citizen who commits treason abroad.

The doctrines above discussed differ from those held by many other members of the family of nations. On certain grounds they all agree:—that the domicil of a diplomat or consul is part of the territory which he represents, that they are there by the consent of the sovereign in whose territory they are situated, and that he who comes under the purview of the ambassadorial court submits to its jurisdiction. Another subject of common agreement is that the authority of a government follows its ships on the high seas and takes jurisdiction of offenses committed thereon. This doctrine goes further and applies to criminal acts done upon its own ships in foreign ports where the government of the port has not acted. In the case of a crime beginning in one state and completed in another the first state may punish the actor or surrender him to the second state, or refuse to do either. The inability of the state to obtain

[4]U. S. v. Daues, 2 Sumner C. C. 482.

jurisdiction of the offender is not a test of the state's jurisdiction of the offense. Again, it is agreed in the case of pirates, who are considered the enemies of all mankind, that they are subject to the laws of their captors, who may bring them into their territorial jurisdiction for trial and punishment. To be classed as pirates, however, they must come within the definition of international piracy, and not merely that of some system of municipal law. Many nations extend their jurisdiction to their subjects in Oriental and non-Christian countries (excepting Japan), because of the absence of municipal law or because the legal systems of these countries differ so greatly from those of the West.

The United States takes the most decided stand in its insistence on the non-jurisdiction of states to punish foreigners for offenses committed outside their domains. Other governments—Great Britain, Denmark, and Portugal—do not generally exercise this class of jurisdiction, but their position on this point is not so well defined as that of the United States. The greater part of the European countries, except the three mentioned above, do punish for offenses against the safety of the state, or for counterfeiting money, state papers, or seals, although the acts are done by foreigners on foreign soil. Greece and Russia claim general jurisdiction of all crimes committed against their subjects, regardless of the "locus in quo." The same is true of Norway and Sweden, but is conditional on the will of the King. Austria punishes for such crimes, but only after an offer to surrender to the government of the place of commission has been made, and the same government has refused to act. Offenses committed abroad are punishable in Hungary at the will of the minister of justice if the act is punishable where done, and provided the competent authorities elsewhere have not undertaken the prosecution. Italy punishes after an offer to surrender and a refusal to prosecute by the foreign government—unless the crime was committed within three miles of the frontier, or stolen property has been brought into the kingdom. Brazil punishes for non-bailable offenses if the government authorizes the prosecution and the laws of the criminal's country punish for crimes in similar cases. Mexico claims general jurisdiction in the above class of cases, but the opposite is true of France, Germany, Belgium, Denmark, Great Britain, Holland, Portugal, Spain, and Switzerland.

From this brief survey it appears that the question of ex-territorial jurisdiction of crime is a subjective one, depending on the will of each government in so far as it does not clash with the claims of

another state, and if such claims clash the stronger nation will prevail, as in the Cutting case referred to above. The tenets of our sovereignty are that "the jurisdiction of one nation is limited to its own dominions . . . and that it cannot extend it to acts committed within the dominions of another without violating its sovereignty and independence."[5] On the other hand, some nations claim general jurisdiction of all crimes committed against its citizens by foreigners in foreign countries. Between these extremes is found the compromise view allowing prosecutions at the will of the sovereign on refusal of the foreign state to act. And, lastly, there is the class of states who claim jurisdiction in certain classes of cases, as offenses against the state, and ignore offenses against citizens.

L. C.

[5]Mr. Calhoun, Sec. of State, to Mr. Everett, Sep., 1844.