

## THE STATE OF THE CITY OF THE VATICAN

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## I. SOVEREIGNTY

A composite picture of the status of the Papacy in international law as described by the text-book writers down to 1929 has notably clear outlines. From the 8th century until 1870, the Pope, in addition to his spiritual authority as supreme head of the Roman Catholic Church, had, except for brief intervals, the rights of temporal sovereignty as head of a state. In that year Rome was occupied on September 20 by an Italian army, the occupation was ratified by popular vote, and the city made the capital of the Kingdom of Italy by the Italian Parliament on October 2; on October 9 it was annexed by royal decree, which was confirmed by law of December 31; in consequence of which the Papal States disappeared and the temporal power of the Pope was ended. On May 13, 1871, the Italian Parliament enacted the Law of Guarantees<sup>1</sup> which regulated the status of the Pope, so far as Italy was concerned, and purported to extend to him all necessary safeguards for the free exercise throughout the world of his spiritual authority. This law secured to him personal inviolability and exemption from criminal liability, though he remained subject to the civil courts of Italy, and it bestowed or recognized his enjoyment of certain rights and privileges belonging in other cases to temporal sovereigns, such as maintaining an armed force, freedom of correspondence and sending and receiving representatives to and from states beyond Italy. As a municipal statute, the Law of Guarantees could confer no international status upon the Pope, and although it might have been made the basis of treaty agreement between Italy and any Catholic or other Power, it was, so far as known, never so treated, and therefore remained legally always capable of change by Italy alone. The Popes never formally accepted the provisions of this law nor the endowment<sup>2</sup> granted by it, and in

<sup>1</sup> Law No. 214, Title I, Arts. 1-13, Prerogatives of the Sovereign Pontiff and of the Holy See; Title II, Arts. 14-19, Relations of the State with the Church. 31 *Racc. Uff.* 1014. Halleck, *International Law* (4th ed.), Vol. 1, p. 153; Bompard, Raoul, *Le Pape et le Droit des Gens* (1888), p. 191; Bonfils, *Manuel de Droit International Public* (8th ed. Fauchille), t. 1, p. 735; Le Fur, Louis, *Le Saint Siège et le Droit de Gens* (Paris, 1930), p. 216. Correspondence respecting the Affairs of Rome, 1870-71, *British State Papers*, 1871, Vol. 72; 62 Br. & For. St. Papers, 352; 65 *ib.*, 638.

<sup>2</sup> Annual grant of 3,225,000 lire. The right to arrears of this endowment was cut off by limitation in five years, and was not transmissible. So the heirs of Pope Pius IX, who brought suit in the civil tribunal of Rome against the Italian Treasury for the seven or eight

protest against the events of 1870 they objected to any Catholic sovereign visiting the King of Italy,<sup>3</sup> and remained after their election perpetually within the Vatican without emerging onto other Italian soil.<sup>4</sup> The Pope retained the right to make with sovereign states concordats concerning ecclesiastical affairs, as before his loss of temporal power; and continued to exercise the rights of active and passive legation as assured by the Law of Guarantees. The Papal household subsisted on food and water whose deprivation would have threatened life itself had Italy joined for a month in the policy of non-intercourse adopted for the Pope personally. The status of the Pope in international law was abnormal and unique.

On February 11, 1929, there were signed at the Lateran Palace in Rome by Cardinal Pietro Gasparri, Papal Secretary of State, on behalf of the Pope, and Cavaliere Benito Mussolini, Prime Minister and Leader of the Government, for the King of Italy, a treaty of 27 articles with 4 annexes—I, II and III (Plans) and IV (Financial Convention), which purports to settle "definitively" the "Roman Question," and a concordat of 45 articles planned to regulate the status of religion and of the church in Italy.<sup>5</sup> A bill to make operative the treaty (with the financial convention) and the concordat passed the Italian Chamber of Deputies on May 14, the Italian Senate on May 25, and was signed by King Victor Emmanuel III on May 27, thus becoming (Italian) law.<sup>6</sup> It does not appear on what date Pope Pius XI gave his formal approval, but ratifications were exchanged and the cash payment

years' income he had refused to touch, lost in the first instance and on two appeals. *Mastai-Ferretti c. Finanze, Corte d'Appello di Roma*, 16 giugno, 1883, 17 *Ann. Giur. Ital.* III, 461; 35 *Giur. Ital.* II, 556, with note; 9 *Foro Ital.* I, 43, with note by C. F. Gabba; 14 *Circ. Giur.* II, 309. *Del Drago c. Finanze, Corte di Cassazione di Roma*, 5 marzo, 1885, 19 *Ann. Giur. Ital.* II, 30; 37 *Giur. Ital.* I, §3, 81; 10 *Foro Ital.* I, 130, with note by C. F. Gabba; 16 *Circ. Giur.* II, 173; 10 *Filangieri*, II, 187. Bompard, *op. cit.*, 211, 223.

<sup>3</sup> Various diplomatic difficulties arose on the occasions of the visits of the German Emperor Wilhelm II to Pope Leo XIII on Oct. 12, 1888 (21 *Rev. Dr. Int.* 83), and of President Loubet of France to King Victor Emmanuel III in 1904 (32 *Martens, Nouv. Rec. Gén. de Traités*, 2<sup>e</sup> Sér. 243). The visit made by King Victor Emmanuel II to Emperor Francis Joseph of Austria in 1873 could be returned only in Venice, in 1875. After the World War, the Holy See found it expedient to withdraw the *Non Expedit* and to allow foreign Catholic sovereigns to visit Rome. Encyclical, *Pacem, Dei munus*, May 23, 1920. 12 *Acta Apost. Sedis*, 209. Bagnani, Gilbert, *Rome and the Papacy* (London, 1929), p. 247. Pope Pius XI was visited by King Albert and Queen Elizabeth of the Belgians on March 28, 1922, and by King George V and Queen Mary of England on May 9, 1923.

<sup>4</sup> Early in the morning of Dec. 20, 1929, Pope Pius XI went to celebrate mass at the Basilica of St. John Lateran, the first time a Pope had been outside the Vatican since Sept. 20, 1870. The King and Queen of Italy were received by the Pope in the Vatican on Dec. 2, 1929, Mussolini on Feb. 11, 1932, and the Governor of Rome on June 15, 1932.

<sup>5</sup> *Racc. Uff.* 1929, II, 1862; 21 *Acta Apost. Sedis* (No. 6, June 7, 1929), 209; 2 *Apollinaris*, 233; 21 *Martens, Traités de Dr. Int.*, 3<sup>e</sup> Sér. 18; 15 *Zeitschrift für Völkerrecht*, 123; 24 *Rev. Dr. Int. Privé*, 551; this *JOURNAL*, Vol. 23 (1929), Supp. p. 187.

<sup>6</sup> Law No. 810 and Royal Decree No. 851 of May 27, 1929. *Racc. Uff.* 1929, II, 1861, 1874.

made on June 7, 1929, and thereupon the agreement came into effect.<sup>7</sup> The Law of Guarantees is expressly abrogated, basic laws and laws to protect Italian institutions have been decreed by the Pope for the new state,<sup>8</sup> and Italy has enacted laws to carry out her part of the agreement.<sup>9</sup>

By the cession of a small amount of territory, Italy has thus created a new temporal sovereign in the world; and the internal and external nature of that sovereignty and its effects as to the United States are the subject of the present discussion. The effects as to Latin-America of the creation of the new state may well be the subject of further consideration. Some of the common attributes of a sovereign state are as to internal affairs (1) territory, (2) population, (3) flag, (4) coinage, (5) communication, (6) police, (7) taxation, (8) legislation and (9) civil and (10) criminal jurisdiction, and as to external affairs, international (1) representation and (2) action. We may examine the status of the Vatican<sup>10</sup> as to each of these.

## II. INTERNAL AFFAIRS

1. *Territory.* The actual area recognized by Italy as the new independent state consists of the site of the Vatican Palace within the existing walls, the gardens to the west and north and the piazza in front of St. Peter's, a total of 44 hectares (about 0.17 sq. mile), about one-fiftieth the size of Monaco, hitherto the smallest independent state. The piazza is to continue ordinarily open to the public and subject to Italian police jurisdiction, but may be closed temporarily in connection with special functions, so that it may be said to be subject to a servitude of use and enjoyment for Italy; but as to the rest of the territory of the state, Italy is to see to it that it is made free

<sup>7</sup> *Racc. Uff.* 1929, II, 1883; 21 *Acta Apost. Sedis*, 295. Negotiations began Aug. 6, 1926, between Prof. Francesco Paelli, for the Vatican, and Domenico Barone, for Italy.

<sup>8</sup> (i) Fundamental Law, (ii) Law as to the Sources of the Law, (iii) Law as to Nationality and Sojourn, (iv) Law of Administrative Organization, (v) Law of Economic, Commercial and Professional Organization, (vi) Law of Public Safety, all of June 7, 1929. 21 *Acta Apost. Sedis*, Supp. June 8, 1929; 3 *Apollinaris*, 64, 66, 73, 78, 81, 83; 21 *Martens, Traités*, 40, 43, 51; *Le Fur, op. cit.*, 250, 254, 264, 272, 277, 281; Mirkine-Guetzevitch, B., *Las Nuevas Constituciones del Mundo* (Madrid, 1931), 543, 547, 556, 564, 568; 24 *Rev. Dr. Int. Privé*, 565, 568. (vii) Religious Administration, May 30, 1929, 3 *Apollinaris*, 30, and Mirkine-Guetzevitch, *op. cit.*, 572. (viii) Health Service, Sept. 28, 1929, Telegraph and Telephone Service, Nov. 23, 1929, Circulation of Vehicles, Jan. 31, 1930, Monopolies, May 31, 1930, Salt and Tobacco, June 2, 1930, 3 *Apollinaris*, 499, for which see list.

<sup>9</sup> Law No. 847 of May 27, 1929, Concerning Marriage (to carry out Art. 34 of the Concordat), *Racc. Uff.* 1929, II, 1883; 21 *Acta Apost. Sedis* (No. 8, July 8, 1929), 364. Law No. 848 of May 27, 1929, Religious Patrimony, *Racc. Uff.* 1929, II, 1886. And, also as to marriage, *cf.* Law No. 916 of June 7, 1929, *Racc. Uff.* 1929, II, 1900; Law No. 1159 of June 24, 1929, *Racc. Uff.* 1929, III, 2723; Royal Decree No. 1355, Oct. 15, 1931, *Racc. Uff.* 1931, VI, 5881. See, also, "Catholic Action Dispute in Italy," 34 *Current History* (1931), 775; 35 *ib.*, 29-40, 137; "La nouvelle législation italienne sur le mariage," Jules Valéry, 57 *J. Dr. Int.* (1910), 289-318.

<sup>10</sup> "The Vatican" is used hereafter throughout to mean "The State of the City of the Vatican."

from all liens and closed to any and all (non-Vatican) tenants. The Vatican is to close or systematize all approaches, except the piazza. Italy pledges itself not to allow new buildings to be built and to demolish partially existing ones that overlook the city, a somewhat novel application of a border servitude better known to international law in agreements not to fortify frontiers.

In addition to this parcel over which full sovereignty is ceded, Italy yields specified rights over certain other parcels, in two groups. In fourteen pieces (Group II) in the City of Rome, including the basilicas of San Giovanni in Laterano, Santa Maria Maggiore and San Paolo, the palaces of the Dataria, Cancelleria, Propaganda Fide and Sant' Offizio, the properties on the Janiculum Hill, the palace of Castel Gandolfo (100 acres),<sup>11</sup> and the Villa Barberini (35 acres, to be ceded by Italy) in the Alban Hills 17 miles southeast of Rome, Italy recognizes full ownership by the Holy See, apparently as by any civil entity, and grants that they, although forming a part of the territory of the Italian state, shall enjoy the immunity guaranteed by international law to the embassies of foreign nations. The same immunity is to apply to other churches even outside Rome during the time that sacred functions are being celebrated in them at which the Sovereign Pontiff is present. These specified parcels, with ten others (Group III) in the City of Rome, including the Gregorian University, the Biblical, Oriental and Archaeological Institutes, the Russian Seminary and the Lombard College, comprising in all about 170 acres, are never to be subjected to liens or to appropriation for the sake of public utility without a previous agreement with the Holy See, and are to be exempt from all taxes, whether ordinary or extraordinary, whether levied by the state or by any other entity. The Holy See may make whatever changes it sees fit in any of these properties without obtaining authorization or consent from any Italian authority.

Ownership by one state of real property within the boundaries of another state is not unknown to international law (*e.g.*, embassies, exposition buildings, cemeteries), but is subject to the same domestic law control as real property owned by private individuals, including the liability to taxation. This was evidently the understanding as to the situation here, for an express further provision is made to exempt from all taxes these owned parcels, together with those of the former group. Among the privileges granted by international law to foreign embassies is generally accepted to be the right of asylum; but by further provisions in the treaty, hereinafter discussed, this privilege is expressly relinquished for persons who have fled to Vatican City charged with acts committed on Italian territory which are considered criminal by the laws of both states. The privilege persists, apparently, for fugitives from Italy whose acts would not be considered criminal by the law of the Vatican; but it involves distinctly novel possible applications to extend such right to a dozen palaces and churches, many of them open to the public

<sup>11</sup> Castel Gandolfo was constructed by Pope Urban VIII in 1629 as a summer residence for the Popes, but of course has not been used as such since 1870.

the greater part of the time, scattered throughout a large city. We are reminded of the historical connections of such immunities with the mediaeval right of sanctuary; and it will be interesting to learn the attitude of both parties when the issue arises over persons charged with some political offense. Refugees could not long be retained in some of the possible shelters, but the awkwardness of their removal to the Vatican, escorted by protectors through the territory of the state desiring them, would be hardly greater than similar safe removal from the Vatican itself of *personae non gratae* to Italy. The Vatican and San Marino, also within Italy, appear to be the only states presenting just this problem, of being wholly enclosed except so far as the air may be used, without access even to the sea, in the lands of a single other state.

2. *Population.* Subjection to the sovereignty of the Holy See is imposed upon all persons having a fixed residence in the Vatican, which residence will not be lost by temporary domicile elsewhere, and all cardinals resident in Rome are "to all intents and purposes" citizens of the Vatican. The residents, while subject to the sovereignty of the Holy See, are in Italian territory subject to Italian legislation or to that of the "other country" to which they belong; and when any of them cease to be subject to the sovereignty of the Holy See, if according to Italian law they have no citizenship elsewhere, they are in Italy to be "considered as Italian citizens without further investigation." These provisions seem to contemplate a certain temporariness in the character of citizenship in the Vatican: established by "fixed residence," in itself an unusual method notwithstanding the preliminary declaration of the treaty article that it is "in conformity with the provision of international law," it will be lost by removal of the person's residence from the Vatican, or, in the case of an extramural cardinal, by removal from the City of Rome or by loss of his cardinalate. Former Italians will then become again Italian citizens, but the status of former citizens of other countries is more troublesome. Will states which reject dual nationality and do not recognize the loss of citizenship by their nationals even by formal naturalization, permit it by mere change of residence; and will states which recognize naturalization according to the law of the country to which their national transfers, allow him to regain his former citizenship by removal outside of the Vatican? In Italy, a person born in the Vatican and residing in Italy will presumably be considered an Italian citizen, and may be so treated by other nations when he leaves Italy; but will a person so born and residing anywhere else than in Italy be considered an Italian citizen in Italy or in the country of his residence, and under what nationality will he travel? It seems probable that countries owing spiritual allegiance to the Holy See will adopt whatever solution the authorities of the Vatican indicate they prefer when the case arises, while the other countries may, despite the stipulations in this treaty between the Vatican and Italy, apply their own interpretations of the law as to national status, and hold the Vatican-born non-resident as still a citizen of the Vatican,

or, secondarily perhaps, of Italy. These problems may not be long in presenting themselves, for already a dozen countries have contributed residents to the Vatican, and there have been several births within the city. Use of the titles and decorations of the Papal nobility is again permitted in Italy, under new regulations and taxes.

3. *Flag.* The Fundamental Law adopts, describes and illustrates an official flag, coat of arms and seal for the new state, with the Popes' traditional emblems and colors. In France in 1894, during one of the times of stress between church and state, several of the prefectures passed local decrees forbidding the public display of any flag except French or foreign national flags and those of authorized or approved societies. During the celebration of the beatification of Joan of Arc, July 4, 1909, a number of French citizens displayed publicly the Papal flag and were arrested, tried and fined one franc each for violation of the prefectural decrees. The Court of Cassation, in supporting the convictions,<sup>12</sup> remarked that the Pontifical flag of yellow and white was no longer a foreign national flag, since the sovereignty of which it was formerly the symbol had ceased to exist, and that the Pope, whether or not still an international person, did not represent any society within the meaning of the decree. Such a decision is rendered impossible by the new state of affairs, and perhaps was one of those to which it was expressly hoped to put an end. The international declaration that the states represented "recognize the flag flown by the vessels of any state having no sea-coast which are registered at some one specified place situated in its territory; such place shall serve as the port of registry of such vessels,"<sup>13</sup> signed originally, among others, by Great Britain, France and Italy, would appear to make it possible for ships registered in and flying the national flag of the Vatican to appear on the seas. This may hereafter offer a solution of the problem that might have arisen during the World War<sup>14</sup> when, in 1916, the Pope sent on a Spanish ship his representatives to Belgium, Colombia and Argentina, and, to minimize the submarine danger, caused his flag to be raised over the vessel. It has not been reported whether any enemy saw the Papal flag on the neutral Spaniard, but in the actual event the voyage was completed without hostile incident.

In October, 1919, the Italian Government took Cardinal Giustini to the

<sup>12</sup> La Sarthe decree, Feb. 16, 1894; No. 235, May 5, 1911; 116 *Bull. de Cass. (Crim.)*, 453; 1912 *Crim. Dall. P. I.*, 330. Yonne decree, Feb. 17, 1894, No. 280, June 12, 1913; 118 *Bull. de Cass. (Crim.)*, 557; 1916 *Crim. Dall. P. I.*, 169. 37 *J. Dr. Int. Privé* (1910), 374-389; 38 *ib.* (1911), 1212-1262. 18 *Rev. Gén. de Dr. Int. Pub.* (1911), 589-620; 21 *ib.* (1914), 339-379; this *JOURNAL*, Vol. 8 (1914), p. 864. Cf. *Acta Apost. Sedis* (1909), 390; 2 *ib.* (1910), 167.

<sup>13</sup> Declaration of Barcelona, April 20, 1921. 7 League of Nations, Treaty Ser., 73. Later ratified by Great Britain, 11 *ib.*, 410, and accepted by France, 11 *ib.*, 410, and by Italy, 92 *ib.*, 363, as binding without ratification.

<sup>14</sup> Bonfils (Fauchille) *op. cit.*, t. 1, pt. 1, p. 751; 43 *J. Dr. Int.* (1916), 1373; 23 *Rev. Gén. de Dr. Int. Pub.*, 606; 44 *J. Dr. Int.* (1917), 1198.

Orient on a war vessel on which there were displayed side by side the Italian and the Papal flags, but of course to the world the ship remained entirely Italian.

4. *Coinage.* By a special convention,<sup>15</sup> to last for ten years if not previously denounced, the Vatican and Italy each agrees to allow within its territory circulation and free acceptance of the currency of the other. Italy lends the services of the royal mint for the manufacture of eight denominations of Vatican coins, which are to be identical with the Italian as to metal, composition, face value, dimensions and intrinsic value; and the Vatican agrees that, though gold 100 lire pieces may be coined without limit, silver 1, 5 and 10 lire shall not exceed L750,000, nickel 20 cent. and 50 cent. shall not exceed L236,000, and bronze 5 cent. and 10 cent. shall not exceed L14,000 for an annual total of L1,000,000 for the first five years, and 20% less, or an annual total of L800,000, for the second five years. Minting was resumed in December, 1930, but the amount of gold put in circulation does not appear to have been announced. Up to 10,000 special sets of coins with the commemorative date 1929 might be issued by the Vatican; and if Vatican money accumulates in the Italian Treasury, either state may ask its exchange for Italian. Each state agrees to suppress and punish in its own territory falsification of the money of the other. On December 30, 1931, the Vatican signed with the Republic of San Marino a convention for the free circulation and redemption of each other's currency.

5. *Communications.* By the treaty, Italy agreed to provide, at its own expense within one year, for the linking up, directly with other states also, of the postal telegraph, telephone, radiotelegraph and radiotelephone services within the Vatican. In execution of this agreement, there were signed a convention of July 29, 1929, as to the postal service<sup>16</sup> for exchange of mail matter of the usual classes, special delivery, parcel post and money orders with Italy and, in sealed bags, directly with other countries; and a convention of November 18, 1929, as to telegraph and telephone service<sup>17</sup> for exchange of messages between a station established by Italy within the Vatican and the Italian State lines and across them to other states. Correspondence from and to the Pope is to pass in Italy under frank, the Vatican is to issue its own stamps<sup>18</sup> for the public, and matters not covered by the postal convention are to be governed by the international postal agreements concluded at Stockholm August 28, 1924.<sup>19</sup> On June 28, 1929, the Vatican, with 88

<sup>15</sup> Monetary Convention of Aug. 2, 1930, Arts. 1-10. Royal Decree-Law No. 25, Jan. 13, 1931, *Racc. Uff.* 1931, I, 441, converted into Law, No. 510, April 9, 1931, *Racc. Uff.* 1931, III, 2404; 33 *Current History*, 140.

<sup>16</sup> Royal Decree No. 1182, June 9, 1930, *Racc. Uff.* 1930, V, 5061, 5062. *Le Fur, op. cit.*, 286. Rates: 3 *Apollinaris*, 498.

<sup>17</sup> Royal Decree No. 1182, June 9, 1930, *Racc. Uff.* 1930, V, 5061, 5070.

<sup>18</sup> Stamps of the former Roman States were in use from 1852 to 1870, when they were superseded by those of Italy.

<sup>19</sup> 40 *L. N. Tr. Ser.*, p. 19.

other states, signed<sup>20</sup> at London the latest Universal Postal Convention<sup>21</sup> and thereby became a member of the Universal Postal Union. This convention provides that in case of disagreement between two or more members of the union, the question in dispute is to be decided by arbitration, by two or, in case of disagreement, three members of the union not directly interested in the matter. The telegraph and telephone agreement contemplates local, long distance and radio messages; telegrams to and from the Pope or his Secretary of State are to be free of tax within Italy; and the Vatican, as promised in the convention with Italy, had already adhered to the International Telegraph Convention.<sup>22</sup> The first telegram from the Vatican station was sent by the Pope on June 7, 1929, to the King of Italy, with felicitations concerning the exchange that day of ratifications of the Lateran Treaty, and the King replied by telegraph on the same date. In accordance with its agreement, Italy constructed an autonomous radiotelegraphic and radiotelephonic station in the Vatican, and the Pope has already two or three times broadcast addresses over the world. The Vatican acceded on January 3, 1931, to the International Radiotelegraph Convention,<sup>23</sup> which provides that, in case of disagreement between two contracting governments, the question in dispute must, at the request of one of them, be submitted to arbitration by two or, in case of disagreement, three other contracting governments not concerned in the dispute.

Italy is to provide for communication with the Italian State Railways by constructing a railroad station and 600 feet of track (completed September 15, 1932) within the Vatican and to move the Vatican's coaches on the Italian railroads. A train similar to that used by the Italian royal family was presented by the Italian Government to the Pope, and in it he may travel from the Vatican over any line (of suitable gauge) in Europe. The treaty calls for an agreement to be made for the circulation in Italy of aircraft of the Vatican. Italy agreed, in the treaty, that "in conformity with the regulations of international law," aircraft of any kind are prohibited from flying over Vatican territory; so there will presumably be no repetition of the incident<sup>24</sup> which occurred in February, 1922, when Italian machines flew over so low as to disturb the conclave of the College of Cardinals, met to elect

<sup>20</sup> The signatory for the Vatican was William Albert Samuel Hewins, the London economist.

<sup>21</sup> 102 L. N. Tr. Ser., p. 245. Ratified by the Vatican June 26, 1930; by Italy, Sept. 10, 1930. Art. 10, Arbitration.

<sup>22</sup> Signed at St. Petersburg, July 10/22, 1875. 57 L. N. Tr. Ser., p. 212; 66 Br. & For. St. Papers, 19. Paris Regulations, Oct. 29, 1925, 57 L. N. Tr. Ser., p. 220; 73 *ib.*, 489; 88 *ib.*, 347. The Vatican became a party of the sixth class on June 1, 1929.

<sup>23</sup> Signed at Washington, Nov. 25, 1927, in effect from Jan. 1, 1929; Art. 20, Arbitration. 84 L. N. Tr. Ser., p. 97; this JOURNAL Vol. 23 (1929), Supp., p. 40. Letter of Jan. 4, 1932, from League of Nations Secretariat. The conference at Prague in 1929 allotted wave lengths between the European States.

<sup>24</sup> Bonfils (Fauchille), *op. cit.*, t. 1, pt. 2, p. 631.



a new Pope. As time goes on, it may be expected that the benefits to be received from joining with the other states, especially in Europe, for improved convenience of intercourse will incline the Vatican to adhere to more of the international conventions dealing with passengers and goods. As a regulation to control the local circulation of automobiles, the Vatican signed with Italy on November 28, 1929, a convention<sup>25</sup> by which the licenses and documents of each (with specified limitation as to number and persons, for the Vatican) shall be recognized by the other. Italy undertakes to furnish through agreement with interested organizations an adequate water supply within the Vatican territory, and to provide besides for the "coördination of other public utilities."<sup>26</sup>

6. *Police.* The ceremonial and actual maintenance of order in the Vatican is under the charge of four uniformed and more or less armed groups. The Noble Guards, made up of the Papal aristocracy, number about 69 men, and are in attendance upon the Pope on certain state occasions and special religious functions. The Swiss Guards, organized in 1500, now composed of a commanding officer, five other officers and about ninety men, are the last survival of the mediaeval mercenary body-guards of sovereigns. The Pontifical Gendarmes, organized by Pope Pius VII in 1816, composed of five officers and about 100 men, do the real work of keeping order and fulfil the daily routine of usual police functions. The Palatine Guard of Honor, the palace troops created by Pope Pius IX in 1850, comprising a colonel, five other officers and about 300 men, are artisans who serve without pay and are called out specially from time to time when some unusual event brings an unwonted crowd to the Vatican or a need for extra discipline. It was the Palatine Guards who marched to the Piazza di Spagna on December 8, 1929, in the first display since 1870 of Papal arms in the streets of Rome. The beginning of police jurisdiction by the new state on June 7, 1929, was made particularly impressive. Exactly at noon the great bronze doors of the Vatican Palace, which had been closed since 1870, were rolled back by the Swiss guard; detachments marched out and took over various posts from the Italian Royal Carabinieri and established guards at the various temporary entrances to the Vatican, while members of the Pontifical gendarmerie relieved on post and patrol men of the Italian police.<sup>27</sup>

Before the establishment of the new state, two instances of police activity within the Vatican came to public notice. On April 16, 1899, while the Pope was celebrating a mass in St. Peter's, Aniello Esposito, a pickpocket, was caught by a witness in the theft of a pocketbook from one of the crowd, turned over to the Palatine guard and escorted to a door of the church, where he was

<sup>25</sup> Royal Decree No. 1182, June 9, 1930, *Racc. Uff.* 1930, V, 5061, 5076.

<sup>26</sup> The Vatican system evidently connects with the sewers of Rome. Royal Decree-Law No. 1356, Aug. 22, 1930, *Racc. Uff.* 1930, V, 5374. Law No. 428, April 9, 1931, *Racc. Uff.* 1931, II, 2126.

<sup>27</sup> Williamson, Benedict, *The Treaty of the Lateran* (London, 1929), p. 100.

arrested by Italian carabinieri. He was subsequently tried, convicted and sentenced by an Italian criminal court, after the decision as to jurisdiction hereinafter discussed.<sup>28</sup> In the night of April 22-23, 1909, three robbers entered the Vatican gardens to steal some Italian money they knew to be stored in the Papal treasury; they were surprised by Pontifical gendarmes, taken to the bronze doors and there turned over to the Italian authorities. Later the Pope authorized the Italian commissary of police to enter the gardens to make the necessary "authentications" in accord with the Pontifical authorities.<sup>29</sup>

To be contrasted with these cases are the proceedings since the creation of the new state. In December, 1929, in St. Peter's, Miss Marguerite Ramstead, a young Swedish woman, tried to fire a shot at the Bishop of Oslo (Norway), but another prelate saw her movements and struck her arm so that she dropped the revolver. She was immediately arrested and detained in a room near the court of Saint Damase, where she was kept under strict surveillance. Some days later the investigation was closed by a sentence of acquittal on account of her mental state, which was found to be psychopathic with religious mania so that she was completely irresponsible, and she was set at liberty. A few weeks later one Depaolis was caught in St. Peter's stealing seven lire from an alms box. He appeared on January 29, 1930, before the Tribunal of the City of the Vatican and was condemned to three months' imprisonment.<sup>30</sup> What was announced as the fourth arrest in the new state was made on March 21, 1932, when Ernesto Nardoni, a painter, was arrested in St. Peter's by the Papal gendarmes and locked up in their barracks for uttering obscene phrases and throwing his hat and then a handful of coins against the statue of St. Peter.<sup>31</sup> The press story said that the three previous arrests, all for theft, resulted in one acquittal by the court, one sentence of a few weeks' imprisonment, which the Pope pardoned, and one sentence of three months in prison, which was served, but where, was not stated. On Easter Sunday, March 27, 1932, during solemn High Mass in one of the side chapels of St. Peter's, an elderly woman who advanced toward the altar and attempted to address the congregation was promptly arrested by the Papal gendarmes on duty at the church, and handed over to Italian police at the border of the Vatican.<sup>32</sup>

7. *Taxation.* The Financial Convention (Treaty Annex IV) provides that in final settlement of the Vatican's financial relations with Italy resulting from the events of 1870, Italy will pay the Holy See L750,000,000 and deliver Italian State 5% negotiable bonds to the nominal value of L1,000,000,000; which is stated to be "much less than what the state would have to pay to the Holy See today if it were merely carrying out the obligation assumed by the law of May 13, 1871." The annual grant of L3,225,000, stipulated

<sup>28</sup> 15 *Dr. e Giur.* (1899-1900), II, 546; 2 *Riv. Dir. Int.* (1899), 551; 31 *J. Dr. Int. Privé* (1904), 213.

<sup>29</sup> 16 *Rev. Gén. de Dr. Int. Pub.* (1909), 378.

<sup>30</sup> 38 *ib.* (1931), 345.

<sup>31</sup> Public press, Mar. 22, 1932.

<sup>32</sup> *ib.*

by that law would, without interest, amount for 59 years to L190,275,000; and by Italian law the right to recover any unpaid instalment would be cut off by limitation in five years. It has not been the custom of the Holy See in modern times to make public any budget or to announce the amount of contributions expected or received from any country or the items or total of appropriations or expenses, and there is no suggestion of any change of policy by the Vatican in this respect. It may be that a civil tax will be laid upon the citizens and temporary residents of the new state, or that all the expenses of its maintenance will be met, as in the case of Monaco at least until very recently, by the income from funds received by the state otherwise than by direct taxation. By the concordat Italy is to continue to pay fixed subsidies for various parishes and services, but these and the property tax exemptions granted are in the nature of state aid to the established church rather than tax levying by the ecclesiastical authorities.

8. *Legislation.* Exercise of the legislative function, with power to enforce enactments on persons within given boundaries, is one of the preëminent characteristics of a sovereign state. In the earlier Roman States the government was in the form of an absolute monarchy, approaching at times despotism, with the College of Cardinals occasionally acting as a kind of limited parliament, and for a brief period in 1848-49 there was a constitution providing for a bicameral legislature. As early as 1859 the citizens Romagna, in a protest against what they deemed abuses, expressly drew a distinction between the Pope's temporal and spiritual government, averring their complete loyalty and obedience to the latter;<sup>33</sup> and there is now general secular acceptance of the theory that temporal power was accidental and not essential to the Papacy.<sup>34</sup> The Pope, having supreme legislative, administrative and judicial power over the whole church, is the absolute head of the new state, with the right to make and presumably freely to revoke such delegation of powers and functions of government as may from time to time seem to him suitable. The Governor of the Vatican now exercises executive powers, and is directly and exclusively responsible to the Pope. The enacting clause of legislation for the Vatican<sup>35</sup> runs:

Pius XI, Pope. Of our own motion and certain knowledge, in the plenitude of our sovereign authority, we have ordained and we do ordain that there be observed as the law of the state the following.

During a vacancy in the Holy See the executive and administrative spiritual power is vested in the entire College of Cardinals, with the heads of

<sup>33</sup> Halleck, *International Law* (4th ed.), Vol. 1, pp. 95n. 2, 302n. 2.

<sup>34</sup> Bonfils (Fauchille), *op. cit.*, t. 1, p. 730. Halleck, *op. cit.*, Vol. 1, p. 311. Phillimore, *Commentaries upon International Law* (3d ed.), Vol. 2, p. 358. There have been more than 150 usurpations of the Pope's temporal power, latterly in 1798-1800, 1809-1814, 1848-1849; and 52 expulsions of Popes from Rome.

<sup>35</sup> See *supra*, note 8.

certain specified institutions as a smaller operating committee; and it may be that the headship of the temporal state will follow the same course. Sentences of the *Romana Rota*<sup>36</sup> issued in the name of the Pope "feliciter regnante" before the establishment of the new state; but as the matters determined are of a spiritual nature, the phrase evidently should be taken to refer to the reign as head of the Catholic Church. The *Rota* is continuous, and may function even when the Holy See is vacant.<sup>37</sup>

9. *Civil jurisdiction.* The Law of Guarantees granted the Pope free enjoyment of the Vatican and Lateran Palaces and Castel Gandolfo, with exemption from all taxes and from expropriation, thereby implying jurisdiction in Italy over those areas, but expressly further provided that:

no public officer or agent of the public force shall be permitted, in the discharge of his functions, to penetrate into the palaces or places the habitual residence or temporary sojourn of the Supreme Pontiff, or in which a Conclave or Ecumenical Council may be assembled, without the authorization of the Supreme Pontiff, or of the said Conclave or Council.<sup>38</sup>

Never since 1871 did any act of Italy assert sovereignty over the Vatican; but functionaries of the Italian Government have been expressly invited to give assistance within the Vatican. On the night of November 1-2, 1903, a fire broke out in the Vatican Library; the attendants were unable to handle it, Italian firemen who had been summoned and were waiting outside were asked to come in and help, and they finally put the fire out.<sup>39</sup> Similar assistance has been asked and given since the creation of the new state. When the roof and two floors of one of the wings of the Vatican Library collapsed on December 22, 1931, killing a student lawyer and three Vatican workmen in the wreckage, firemen of the City of Rome were called in and, aided by the Vatican workmen, cut wires to prevent fire and took charge of the search and removal of the debris. The Vatican architect was suspended, but what compensation or adjustment for the deaths was made has not been announced, nor has the bringing of any suits. While the Law of Guarantees was in force, the Italian courts did not hesitate to assert jurisdiction over officials of the Holy See lower than the Pope himself. An architect who had been engaged in professional work for the Vatican and in training the firemen was dissatisfied with the pay he had received and brought an action against the Cardinal Secretary of State and the Prefect of the Palace for a further amount. The Court of Appeal of Rome declared itself competent to hear

<sup>36</sup> *E.g.*, Pius X, 1 *Acta Apost. Sedis* (1909), 294, 7 *ib.* (1914), 73; Benedict XV, 7 *ib.* (1914), 131, 14 *ib.* (1921), 512; Pius XI, 14 *ib.* (1922), 600, 19 *ib.* (1927), 217. Since 1927, except citations, only the disposing part of the sentences have been published, annually. In business of the Secretary of State, "feliciter regnante" seems to have been first employed by the present Pope.

<sup>37</sup> *E.g.*, 14 *Acta Apost. Sedis* (1922), 395.

<sup>38</sup> Art. 7. *Cf.*, *supra*, note 1.

<sup>39</sup> Halleck, *op. cit.*, Vol. 1, p. 128 n. 2. 11 *Rev. Gén. de Dr. Int. Pub.* (1904), 220.

the case against the defendants, as the Vatican was not foreign territory, but decided the demand was ill-founded.<sup>40</sup>

The tribunals provided for by canon law, as reorganized since the loss of temporal power, may furnish the basis for the court system of the new state.<sup>41</sup> Every bishop must appoint (and may remove at will) a priest at least 30 years of age, with the degree of Doctor of Canon Law, to be *Officialis*, or diocesan judge, and he constitutes the ordinary tribunal of first instance. An appeal from his court goes in second instance to the court of the archbishop; and further appeal is to the *Sacra Rota Romana*, a collegiate tribunal of dean and auditors, composed of three or more priests, doctors of civil and canon law, and having also certain original jurisdiction. The ancient *Signatura Apostolica*, consisting of several cardinals, of whom one acts as prefect, with jurisdiction to hear various pleas and petitions against the *Rota Romana*, which in the 19th century gradually ceased to function, was, with the *Rota*, then also dormant, reorganized and reinstated by Pope Pius X in 1908.<sup>42</sup> Any case, civil or criminal, may be appealed at any stage of the proceedings to the Holy See, who is the supreme judge for the entire Catholic world and whose sentence is final. "The Pope has no superior, wherefore no court has power to subject him to judicial trial,"<sup>43</sup> and he can be brought to trial or be judged by no one. He has the exclusive right to judge the cases of (1) those who hold the highest governmental rank in a nation, their sons and daughters and those who have the immediate right of succession, (2) cardinals, and (3) legates of the Apostolic See and, in criminal cases, bishops.<sup>44</sup> The Pope may take legacies of personal property or immovables in Catholic countries.<sup>45</sup>

10. *Criminal jurisdiction.* The defense in the case of the pickpocket

<sup>40</sup> Martinucci c. Theodoli, *Corte d'Appello*, Rome, Nov. 9, 1882, 16 *Ann. Giur. Ital.* 505, 1883 *Foro Ital.* I, 664; Orlando, V. E., *I Tribunali Vaticani* (1883), 14 *Circ. Giur.* 247; 31 *J. Dr. Int. Privé* (1904), 220.

Italian courts will receive in proof, copies of documents in the Vatican or Dataria authenticated by the signatures and seals of the usual Papal officers Ordine Mauriziano c. Garroni, *Corte d'Appello*, Rome, July 14, 1899, 41 *Monit. dei Trib.* (1900), 998; 29 *J. Dr. Int. Privé* (1902), 174.

<sup>41</sup> Bompard, *op. cit.*, p. 194; Brusa, E., *La Jurisdiction du Vatican* 15 *Rev. de Droit Int.* (1883), 113; Leroy-Beaulieu, Anatole, "Le Pape Léon XIII et l'Italie sous le Régime de la Loi des Garanties" 59 *Rev. des Deux Mondes* (1883), 752. Woywod, Stanislaus, A Practical Commentary on the Code of Canon Law (New York, 1925), Vol. I, p. 101, Vol. II, pp. 203-214.

<sup>42</sup> *Lex Propia*, June 29, 1908, 41 *Acta Sanctae Sedis*, 440; 1 *Acta Apost. Sedis*, 20.

<sup>43</sup> Woywod, *op. cit.*, Vol. II, p. 199.

<sup>44</sup> Canon 1557, sec. 1.

<sup>45</sup> *Heritiers de Plessis-Bellièrre c. Léon XIII, pape, et als. Trib. civ. de Montdidier*, Feb. 4, 1892, *Jur. Gén.* (Dalloz), 1895, II, 462; 19 *J. Dr. Int. Privé* (1892), 447. *Cour d'appel d'Amiens (1<sup>re</sup> Ch.)*, Feb. 21, 1893, *Jur. Gén.* (Dalloz) 1895, II, 457. *Cass. Req.*, March 16, 1894, *Pand. Fr.* 1893, I, 17; 20 *J. Dr. Int. Privé* (1893), 384, 21 *ib.* (1894), 835. Calvo, *Le Droit International* (5<sup>e</sup> éd.), t. 6, sec. 29, pp. 25-28; Lainé, A., "Des personnes morales en droit international privé," 20 *J. Dr. Int. Privé* (1893), 273; Moreau, Félix, "De la capacité des États étrangers pour recevoir par testament en France," 19 *J. Dr. Int. Privé* (1892), 337; Pillet, A., Note, *Rec. Gén.* (Sirey) 1895. II, 57; Austria, 22 *J. Dr. Int. Privé* (1895), 226.

Esposito, mentioned above, urged that the Law of Guarantees granted such privilege of extraterritoriality as made St. Peter's, where the act was committed, foreign territory, and accordingly under the Italian Penal Code, Article 5, there could be no prosecution except on request or authorization of the government of that foreign place. Rejecting the plea, the court said:

Above all, the Sovereign Pontiff can never be considered outside of his territory either in Italy or in any part of the Catholic world, because, although he has no temporal power or sovereignty here or elsewhere, in every place in which he remains or through which he passes he is always in the midst of the communion of the faithful subject to his supreme ecclesiastical power and in a place dependent upon his jurisdiction with the effects and under the spiritual sanctions which that requires. That is why it may be convenient to assimilate, as has been done, to extraterritoriality the sovereign prerogatives which he enjoys with regard to the territorial law; but his situation is higher and it is even independent of every hypothesis of courtesy and of international treaties. . . . The whole Law of Guarantees and its complementary acts have no other end and express no other intention than solemnly to recognize and guarantee the greatest liberty and the absolute independence of the person of the Sovereign Pontiff and of his supreme priestly dignity in the sphere of permanent or temporary exercise of his quality and his power as head of the Catholic Church. Our jurisprudence has several times had occasion to interpret and apply the law in this sense, refusing extraterritoriality to places devoted to the residence of the Pope or to offices of the Holy See while maintaining integrally the necessary prerogatives to assure the religious supremacy of the Sovereign Pontiff and the Holy See.<sup>46</sup>

The act complained of was, then, committed on Italian territory, and the accused might be tried and punished in an Italian court without previous request from any other authority. The Lateran Treaty provides that:

At the request of the Holy See and on delegation of power, which may be given by the Holy See either in single cases or permanently, Italy will provide within her own territory for the punishment of crimes committed in Vatican City. When, however, an individual who has committed a crime in Vatican City absconds, taking refuge in Italian territory, he shall be dealt with forthwith according to the provisions of Italian law.

The Holy See will hand over to the Italian State individuals who have fled to Vatican City charged with acts committed on Italian territory which are considered criminal by the laws of both states. A like procedure will be followed in the case of individuals charged with crime who may have fled to one or the other of the (Group II) properties, unless those in charge of such property prefer to ask the Italian police to enter and arrest the culprit.

The action of the Vatican in disposing of both the Ramstead and Depaolis cases described above in its own tribunals seems to indicate an intention to exercise its own criminal jurisdiction, and not to let Italy act for it, as it

<sup>46</sup> *Corte d'Appello, Rome, Aug. 30, 1899; supra, note 27.*

is left optional with the Holy See to request. It strengthens this impression that in the latter case the Vatican court held that previous convictions of similar thefts in Italy did not make Depaolis a recidivist when convicted of the instant charge, for the reason that as to the Vatican the Italian were foreign tribunals. By the provisions just quoted the Holy See yields to Italy the right to try according to Italian law persons found in Italian territory for crimes committed in the Vatican, upon the theory of personal jurisdiction universally championed by Italy, at least as to Italian subjects; and the Holy See waives any extradition procedure by Italy for fugitives from Italy found in the Vatican or in any of the immune properties who have committed on Italian territory acts which the Vatican considers criminal. This agreement to abstain from exercising the usual rights of a sovereign is not expressly limited in its application to Italian nationals, so that the Vatican might be bound to waive such rights even over its own citizens; and possibly some day may be asked to explain to a third state its failure to accord her citizens within its borders that jurisdictional protection considered usual in the society of nations.

### III. EXTERNAL AFFAIRS

1. *International representation.* The Law of Guarantees provided that:

The envoys of foreign governments to His Holiness shall enjoy, in the Kingdom, all the rights and immunities which belong to diplomatic agents, in accordance with international law. Such offenses as may be committed against the said envoys shall be punished with the same penalties as are established for offenses committed against foreign envoys to the Italian Government.

The rights and immunities established in accordance with international law are hereby ensured, in the territories of the Kingdom, to the envoys of His Holiness to foreign governments, both in going to or returning from the place of their mission.

Italy thus appeared careful not to say that the envoys to the Holy See were diplomatic agents, but agreed only to accord them the same rights; and their peculiar status, arising from the exceptional position of the Pope, was generally recognized in theory by other nations.<sup>47</sup> The governments, Catholic only, with which the Holy See had concordats from 1870 to 1929 were those with which representatives were exchanged; and at capitals where there was a papal nuncio or legate he was recognized, regardless of the date of his commission, as dean by the local diplomatic body.<sup>48</sup>

In church theory the Pope, independently of any civil Power, has the right to send legates to any part of the world, either with or without ecclesiastical jurisdiction. A legate with the title of delegate apostolic has only one or-

<sup>47</sup> Buell, Raymond Leslie, "The Vatican and the New World," 16 *Current History* (1922), 977; Ryan, James H., "The Vatican's World Policy," 17 *ib.*, 429.

<sup>48</sup> Moore, I *Int. Law Dig.*, 63; 4 *ib.*, 734.

dinary duty, that of watching over the condition of the church and informing the Holy See; he has no official relations with the civil government of the territory. Legates with the title of *nuntius* or *internuntius* have the right and duty (1) to foster, according to the usual rules of the Holy See, the relations with the civil government of the country where they act as permanent legates, and (2) in the territory assigned to them to watch over the condition of the church and report to the Holy See; and the faculty, among others, of dispensing for a just cause from every oath, provided the rights of third parties are not injured thereby.<sup>49</sup> But even when the Pope had no temporal authority, his nuncios were held to the obligation of ambassadors not to intervene in the political or internal affairs of the country to which they were accredited.<sup>50</sup> States which received papal representatives before 1929 and allowed them diplomatic rank as representing the head of the Catholic Church did not thereby recognize the Pope as a sovereign.<sup>51</sup> The First Peace Conference at The Hague in 1899 refused to admit to membership the envoy of Leo XIII;<sup>52</sup> the Second Peace Conference at The Hague in 1907 refused to admit the envoy of Pius X; and the peace delegates at Paris in 1919 declined to permit any representative of the Pope to sit with them.

After the outbreak of the World War in 1914 the prefect of the Vatican Library, a Bavarian, retired. When Italy entered the war, in May, 1915, she gave permission to the representatives of the Central Powers at the Vatican to remain, but to avoid embarrassment Pope Benedict XV asked them to depart. The ambassadors of Austria, Bavaria and Prussia accordingly moved their legations four miles beyond the Italian border, to Lugano, in the south corner of Switzerland; and thereafter communication between the Vatican and the countries with which Italy was at war was maintained by special couriers to the Swiss frontier and thence by telegraph.<sup>53</sup> Spain in 1914 offered the Escorial Palace to the Pope for a temporary residence for as long as the war should last, but no move was made. The Venetian Palace in Rome, which had been occupied by the then absent Austrian ambassador to the Holy See and for offices and lodgings of Austrian civilians, was "re-

<sup>49</sup> Canons 265, 267. Woywod, *op. cit.*, I, 102, II, 639. Cf. White, Andrew, 95 *Atl. Monthly*, 107; this *JOURNAL*, Vol. 5 (1911), p. 925.

<sup>50</sup> Action of France in 1894, Hungary in 1895. Wheaton, *Elements of International Law* (6th ed.), Vol. 1, p. 135; Despagnet, Frantz, *Cours de Droit International Public* (1910, 4<sup>e</sup> ed.), 206; Bonfils (Fauchille), *op. cit.*, t. 1, pt. 1, p. 745. Circular of the Nuncio to the French Clergy, 1 *Rev. Gén. Dr. Int. Pub.* (1894), 487.

<sup>51</sup> Westlake, *International Law* (2d ed.), Pt. I, p. 39. Italian representation at the Vatican: Decree-Law No. 1882, Oct. 3, 1929, *Racc. Uff.* (1929), IV, 3426; converted into Law No. 2328, Dec. 30, 1929, *Racc. Uff.* (1930), I, 351.

<sup>52</sup> On the veto of Italy, supported by Great Britain. Le Fur, *op. cit.*, 75.

<sup>53</sup> Birkenhead, *International Law* (1927, 6<sup>th</sup> ed.), 53; Bonfils (Fauchille), *op. cit.*, t. 1, pt. 1, p. 743; Lawrence, *The Principles of International Law* (7<sup>th</sup> ed.), 77; Oppenheim, *International Law* (4<sup>th</sup> ed.), Vol. 1, sec. 106a; Wheaton, *op. cit.*, 136. Notes of official character, 42 *J. Dr. Int.* (1915), 304.



taken" by the Italian Government in August, 1916, in reprisal for the bombardment of Venice by Austrian aviators; and, despite the protests of the Papal Secretary of State, was incorporated in the patrimony of Italy.<sup>54</sup>

2. *International action.* The Lateran Treaty declares that:

With regard to the sovereignty pertaining to it even in the field of international relations, the Holy See declares that it wishes to remain and will remain extraneous to all temporal disputes between nations and to international congresses convoked for the settlement of such disputes, unless the contending parties make a concordant appeal to its mission of peace; nevertheless it reserves the right in every case to exercise its moral and spiritual power. In consequence of this declaration, Vatican City will always and in every case be considered neutral and inviolable territory.

Down to the middle of the 13th century, the Popes had great influence upon the destinies of thrones and nations, and frequently acted as arbiters between states; but in modern times their activities as arbitrators have been less frequently required. In 1885 a dispute arose between Spain and Germany over the Caroline and Pelew Islands, and after the signature of a protocol naming the Pope as arbitrator, Leo XIII made certain propositions which were accepted by the disputants, and were embodied in a further protocol which settled the matter.<sup>55</sup> In 1895 Pope Pius X was named as arbitrator in the frontier dispute between Haiti and the Dominican Republic.<sup>56</sup> In the long drawn out Acre controversy the earlier negotiations provided for the designation of the Papal Nuncio to Brazil as third arbitrator;<sup>57</sup> finally Pope Pius X was, in 1909, made sole arbitrator, and his suggestions resulted in treaties disposing of the principal questions.<sup>58</sup> In 1928 Spain and Peru signed a treaty which named the Pope as arbitrator of any difference which might arise between the signatories, but it had not been ratified by either country when the Spanish revolution occurred, and in view of the new republic's attitude toward the church it seems unlikely that the treaty will be ratified by Spain in its present form.

The Pope has made peace proposals in both of the last two wars in which the United States has been engaged. In April, 1898, Leo XIII offered his services as mediator between Spain and the United States, but his efforts

<sup>54</sup> Decree of the Lieutenancy, No. 203, Aug. 25, 1916, *Racc. Uff.* (1916), III, 2183; this *JOURNAL*, Vol. 12 (1918), p. 769; Georges Scelle, Communication, 24 *Rev. Gén. de Dr. Int. Pub.* (1917), 244.

<sup>55</sup> Protocols of Mar. 17, 1885, and Dec. 17, 1885, Moore, 7 *Int. Law Dig.*, 6; Moore, *International Arbitrations* (1898), V, 4825, 5043; 76 *Br. & For. St. Papers*, 293; *Anales Dip. y Cons. de Colombia*, Tomo 4 (1914), Apen. p. 894.

<sup>56</sup> Convention of July 3, 1895. Moore, *Int. Arb.*, V, 5018; Poujol, A., "*Le Différend entre Haiti et Saint-Domingue*" 7 *Rev. Gén. de Dr. Int. Pub.* (1900), 437.

<sup>57</sup> Treaty between Brazil and Bolivia, Nov. 17, 1903. Moore, 1 *Int. Law Dig.*, 646; 6 *ib.* 440; 96 *Br. & For. St. Papers*, 333.

<sup>58</sup> Treaty between Brazil and Peru, Sept. 8, 1909, 102 *Br. & For. St. Papers*, 199; treaty between Brazil and Bolivia, Aug. 12, 1910, *Tratados Vigentes* (Bolivia, 1925), Tomo I, p. 180.

had no effect except to delay for a few days the submission of President McKinley's message to Congress. In August, 1917, Benedict XV directed to the warring Powers a note which had a courteous response but no other apparent effect. It will be interesting to see if in time, without itself being likely to have justiciable questions, the Vatican lends its moral support to arbitration by adhering to the international agreements; and eventually to learn what the Vatican policy may be as to joining the League of Nations.

For the regulation of the affairs of the Catholic Church and the relations of church and state within any nation, the Holy See ordinarily issues bulls of circumscription for Protestant countries and signs concordats with Catholic Powers. A concordat differs from an international treaty in being, not a contract between equal parties, but a permissive agreement by a sovereign with the head of a spiritual and, to some extent, juridical entity allowed to exist within the sovereign's territory; an agreement which may be abrogated by unilateral act upon a change of government or whenever the sovereign considers it undesirable for the interests of the state to allow the arrangement to continue longer.<sup>69</sup> It is the Pope or Holy See as absolute ruler of the church within the country, and not the temporal state or its head, who makes concordats, after as well as before the Lateran accords.

Does this survey of the sovereign status of the Vatican lead to any conclusions that may be useful hereafter? We find a state, much smaller in size and population than any other modern state; nominally sovereign and independent, with many of the powers and privileges of sovereignty and a few of the obligations, in reality wholly dependent for its existence on the good will of the established nation whose territory surrounds it on all sides; governed by an absolute irresponsible monarch who rules temporally by virtue of being at the same time the head of a far larger ancient and powerful church organization, deeply interested and in some degree influential in the internal law and policies, such as the marriage status and education, of the surrounding nation. This state has entered as an equal into bilateral and multipartite treaties, some of which require possible submission to judgments of other sovereigns or tribunals, while in his spiritual capacity the sovereign head acknowledges neither superior nor equal.

The United States is hardly likely to have problems of actual intercourse, in land or maritime commerce, alliance, claims of nationals or injuries to pride or honor with the temporal state; but has in the population of its continent and possessions a very large group of persons who yield primary and absolute spiritual allegiance to the head of the ecclesiastical organization. If temporal questions arose, the United States could address the Papal Secretary of State, as in the case of any other foreign country with

<sup>69</sup> This JOURNAL, Vol. 9 (1915), p. 869; Birkenhead, *op. cit.*, 53; Bompard, *op. cit.*, 70; Dalloz, 8 *Rep. Prat.* (1920), 668. A review of Italian jurisprudence as to the juridical personality of religious associations is incorporated in the Instructions of the Sacred Congregation to all Superiors of Orders, Feb. 6, 1930, 22 *Acta Apost. Sedis*, 138.

which it exchanges no diplomatic representatives; while in church matters neither the United States nor any one of the States has any official interest and would not intervene except, as in the case of any citizen or resident, so far as municipal law should be involved. Under the Constitution, with past tradition and existing public policy, it is highly important in the United States, as it might not be in European countries or other American Republics where the Roman Catholic faith is the established official religion of the state, when considering the desirability of entering into new relations,<sup>60</sup> or contemplating the probable nature and effect of such relations, to distinguish clearly between the acts, interests and purposes of the small temporal entity which is the State of the City of the Vatican and those of the great spiritual hierarchy which is the Holy See.

<sup>60</sup> Diplomatic relations of the U. S. with the Papal States, 1848-1870, Moore, *Int. Law Dig.*, 130; Fuller, Ch. J., in *Ponce v. R. C. Church* (1908), 210 U. S. 296 at 318; Wignore, John H., "Should a Papal State be recognized internationally by the United States?" 22 *Ill. Law Rev.* (1928), 881.