

too often yells up the wrong rain-spout. It labors under the delusion that the worst rogues are those who break laws. Why was the Ku Klux a public nuisance? Because it broke a few good laws? Hardly. It was a nuisance because it tried to enforce a multitude of bad laws. And behind it, both in the South and the Middle West, stood the body of evangelical clergy—law enforcers to a man, and public nuisances to a man. I think it might be very plausibly maintained that the crimes of the late Secretary Fall, as grave as they seemed, were vastly less dangerous to the common weal than any one of a dozen decisions of the Supreme Court of the United States, upholding law enforcement and mauling the Bill of Rights. Fall and his friends got very little,

and what they missed will be wasted anyhow. But the single decision in the wiretapping case will be a burden and an affront to every decent American citizen for half a century.

So I propose a moratorium on acknowledged rascals for a while, and a more scientific examination of the virtuous. The United States is not materially damaged by its Falls and Sinclairs; they are mainly comic characters, with touches of pathos. But what is to be said of a Senator who pauses in his denunciation of their banal rogueries to swallow the infinitely worse corruptions of the Anti-Saloon League, with its pious condonings of blackmail, burglary, assault, and murder, and its frenzied war upon every right that men have fought for for a thousand years?

Have We Recognized Soviet Russia?

By MAURICE FONTAINE

RECOGNITION of the Soviet Government was not discussed by either of the major parties in the recent campaign. It was ignored in the party platforms and by the party orators. Even Senator Borah, in his forensic enthusiasm for Mr. Hoover, forgot to revive a question to which he had previously attached great importance. Governor Smith, by silence at least, lent consent to the policy of non-recognition. Both candidates remained uncommitted up to election day. Presumably, therefore, the President-elect is free to continue or to reverse this refusal to recognize a government which has existed in Moscow for eleven years. At least, this would be the presumption were it not for certain events which recently transpired, unnoticed by the American press, preoccupied with the excitements of World's Series and the Presidential campaign. At this calmer moment these events deserve belated consideration.

On August 31 the Soviet Government handed to the French Ambassador in Moscow, M. Herbette, a document signifying its adherence to the Pact of Paris, known in America as the Kellogg Treaty. In due course this document was delivered by the French Embassy in Washington to the Department of State. Acknowledgment of its receipt was made by Secretary of State Kellogg in a statement to the press on October 3.

On October 15 M. Herbette called at the Foreign Office in Moscow and delivered to the Acting Commissar of Foreign Affairs, Litvinov, two official copies of the Pact of Paris, in English and French, bearing the signature of Secretary of State Kellogg. In discharging this mission, according to the official *Izvestia* of October 16, "M. Herbette declared that the delivery of these copies signifies the acceptance of the Soviet act of adherence. *The obligation of the Government of the United States, provided in Article III of the pact, has been fulfilled.*"

What obligation had the Government of the United States undertaken which had to be fulfilled by the visit of M. Herbette to the Soviet Foreign Office? M. Herbette refers us to Article III of the pact. This article establishes Washington as the depository of the treaty and of subsequent instruments of ratification and adherence. It is as the guardian of the treaty that certain obligations devolve upon the Government of the United States. One of these is set forth in the following clause of Article III:

It shall be the duty of the Government of the United States to furnish each government named in the preamble and every government subsequently adhering to this treaty with a certified copy of the treaty and of every instrument of ratification or adherence.

For some time to come, it appears, M. Herbette will be busy running to the Foreign Office in Moscow as messenger boy for Mr. Kellogg; because the United States must likewise furnish the Soviet Government with certified copies of every instrument of ratification or adherence—and Mr. Kellogg expects all the world to ratify and adhere.

What is the significance of this transmission of official documents from Moscow to Washington through French diplomatic pouches? Simply this: The Government of the United States, having received the adherence of the Soviet Government, found itself constrained, under the terms of the treaty, to call in the French Government and say:

"We have received an instrument of adherence from a government at Moscow. According to Article III of the treaty, it is our duty to furnish certified copies of the treaty to every adhering government. We have no embassy in Moscow. Will you be so good, therefore, as to deliver on our behalf to the government in Moscow these copies of the treaty, duly signed and certified by the Secretary of State."

This is an imaginary colloquy. But some such request must have been made by the State Department; otherwise the actions and remarks of M. Herbette are unaccountable. Paraphrased in any imaginable terms, the State Department must have requested the French Government to deliver a document to a government at Moscow. This is the irreducible essence of the matter. Perhaps the State Department could not bring its lips to form the unaccustomed syllables of the complete official designation of the Government of the Union of Socialist Soviet Republics; but at least it must have referred to a government, a government existing in Moscow, whence it had received an instrument of adherence and to which it must deliver a copy of the treaty, an actual government coming within the definition of that word as it appears in Article III of the treaty. This is the significance of M. Herbette's explanatory remark on October 15. The American Government had incurred an obligation toward the Soviet Government, and had fulfilled that obligation. If that be recognition—make the most of it.

Perhaps it was not recognition—either *de facto* or *de*

jure. But at least it was unprecedented for the State Department, even in its most secret thoughts, to envisage the existence of a government at Moscow. And how much more significant for it to send messages to that government through M. Herbette. Secretary Kellogg, no doubt, would contend that this does not constitute recognition, which, as we understand Mr. Kellogg's theory, is a matter of intent. By this theory, you cannot stumble into recognition of a government merely by thinking of its existence; not even by the accident that you and it become parties to the same treaty. It all depends upon intent. And certainly no one will say that the State Department intended to recognize the Soviet Government when it sent M. Herbette, bearing treaties, to the Moscow Foreign Office. That was a pure formality, a technicality involved in Article III of the Pact of Paris, a duty which the United States has to perform with respect to "every government subsequently adhering"—any and every government whether recognized or not.

It is rumored that certain American Senators, fearing lest the ratification of a treaty between the United States and the Soviet Union might be construed as recognition, will urge a reservation expressly disclaiming that intent. But the Senators' fears arise from another section of Article III, which says:

Every instrument evidencing the adherence of a power shall be deposited at Washington and the treaty shall immediately upon such deposit become effective as between the power thus adhering and the other parties hereto.

From which it appears that the Senate, by ratifying the treaty, approves the establishment of treaty relations between the U. S. A. and the USSR. The Soviet Government has already completed its part in these formalities. The instrument of adherence transmitted from Moscow to Washington was ratified on August 29 by a resolution of the Presidium of the Central Executive Committee of the Union, fulfilling the requirements of the Soviet Constitution with respect to treaty-making. In this the Soviet Government was the first Power to give constitutional ratification to the treaty, a necessary formality which has not yet been completed by any of the original contracting parties.

It is the anomaly of seeming to ratify a treaty with an unrecognized government which may compel some Senators to demand a reservation announcing that the treaty does not mean what it says it means with respect to the Soviet Government. This may ease the conscience of the Senate, but it will not affect the events of the past few months—the deposit of Soviet documents in Washington and the errand of M. Herbette to the Moscow Foreign Office. The Senate may ratify the treaty with its fingers crossed in the direction of Moscow. But the act of recognition, unlike treaty-making, is not a prerogative of the Senate, and does not require Senate approval. The State Department bestows recognition as it pleases, and in its own fashion, without benefit of Senate. If there is any significance in the visit of M. Herbette to the Soviet Foreign Office on October 15, and in his remarks on that occasion, it will not be affected by Senate reservations. This thing actually happened, albeit obscured by the smoke and noise of a Presidential campaign which did not consider the question of Soviet recognition worth discussing.

The incident might be ignored as unimportant were it not for what happened in the recognition of the Chinese Nationalist Government. On July 25, 1928, the American Minister in Peking signed a tariff treaty with representa-

tives of the Nationalist Government. Up to that date the United States had not recognized the Government at Nanking; nor was it understood that signature of the tariff treaty constituted full recognition. *De facto* recognition had been accorded, but nothing more. Complete *de jure* recognition, Mr. Kellogg explained, was a matter of intent. On September 27, however, two months later, the State Department announced that its legal experts, after mature deliberation, had decided that the signature of the tariff treaty on July 25 had in fact constituted complete *de jure* recognition as of that date, and that no further formal declaration would be necessary. The United States had been fully recognizing the new Chinese Government for two months and no one knew it. According to the State Department, the recognition of the Chinese Government was discovered by the legal experts to have occurred on July 25, although Mr. Kellogg apparently did not know of it until two months later. The discovery of an intent two months after the act would be the function of a psychoanalyst rather than a lawyer. But let this pass. The Nanking Government was recognized, and the Nationalist flag burgeoned on the Chinese legation in Washington. Evidently recognition, whether by intent or by the interpretation of legal experts, can happen almost imperceptibly. It can happen and pass unobserved for two months. On October 9, President Coolidge signaled the new state of affairs by sending a cable to the Minister for Foreign Affairs at Nanking, felicitating the Chinese people upon the anniversary of the establishment of the Republic.

This brings us back to the President-elect. In the matter of relations with the Soviet Union he is uncommitted either by platform pledges or by campaign promises. Whether M. Herbette's visit to the Foreign office in Moscow has in any way committed him may be left to the future deliberations of the State Department's legal experts. It is probably entirely a matter of intent. And yet the silent and almost invisible manner in which Chinese recognition came about invites interesting speculation. If the new President, for any reason, desires the establishment of diplomatic relations with Moscow, he may conveniently discover that the matter has already been attended to and requires no further formality. It may be that the United States has in fact fully recognized the Government of the USSR ever since October 15. In which case, it will be quite in order for the President of the United States to send a cable next November 7 to the Commissar of Foreign Affairs, felicitating the citizens of the Soviet Union upon the anniversary of their Revolution.

In the Driftway

WHILE the United States has been in a state of political eruption, spouting up finally in a lava of votes a man by the name of Hoover and dropping him through the roof of the White House, another upheaval has been taking place in Italy with processes as spectacular and difficult to understand. In Italy old Etna has been having one of its periodic coughing spells, and inhabitants of the mountainside have seen their homes and vineyards buried under a stream of molten stone, moving with agonizing deliberation but relentless power. Those in the path of this stream of lava have had to abandon their homes and

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