

ABOVE THE LAW.

BY FRITZ CUNLIFFE-OWEN.

THE EXTRAORDINARY CONSEQUENCES THAT HAVE RESULTED FROM THE INTERNATIONAL USAGE WHICH EXEMPTS DIPLOMATS AND TRAVELING ROYALTIES FROM THE LAWS OF THE COUNTRIES THEY VISIT.

INTERNATIONAL law is to such an extent based on mere comity, custom, and theory, that it is difficult to know exactly where the extraterritorial prerogatives of foreign diplomats begin or end. The Massachusetts magistrate who took upon himself to fine a member of the British embassy who was summering at Lenox, and the Connecticut sheriff who attempted to molest a Russian naval attaché on behalf of a dissatisfied negro laundress, may well be excused for the ignorance which led to their mistakes. While the Federal legislation of America deals far more liberally than that of most European nations with the question of diplomatic immunity, the State laws, which justices and sheriffs are called upon to administer, make no mention of it.

In this respect they resemble the Code Napoléon, now in use in France. When that celebrated table of statutes was compiled under the supervision of the great emperor, just a hundred years ago, the suggestion to include a clause exempting foreign diplomats from the jurisdiction of French tribunals was rejected on the ground that "whatever regarded the prerogatives of ambassadors belonged to the law of nations," and had no place in the domestic code.

In England, there is a statute exempting foreign diplomats from civil process. It was enacted about two hundred years ago, in consequence of an imbroglio arising from the seizure of a Russian envoy's effects for debt. There is no British law granting immunity from criminal jurisdiction, and a secretary of the Portuguese Legation was once hanged for murder, having killed a man in the Royal Exchange, in London. Nowadays, however, exemption from the criminal courts is granted to foreign diplomats, as a matter of international usage and out of regard for the law of nations.

The international laws governing the question of diplomatic prerogatives are so ill-defined that we hear of such mis-

takes as those which took place last summer at Lenox and Black Rock. There have not been many similar cases in the United States, but in Europe petty judges and magistrates are continually being called to account for disregarding some foreign diplomat's immunity from local jurisdiction. True, such affairs are usually of a trivial character, arising, for instance, from an attaché's refusal to pay an exorbitant bill. Tradespeople, landlords, and even cabmen have found to their cost that they cannot compel a diplomat to settle. If the distinguished foreigner complies with the municipal ordinances on the subject of sidewalks, of the disposal of garbage, and so on, or contributes to the local rates, he does so as a matter of favor and condescension, rather than of obligation.

In London, for instance, the members of the Chinese Embassy have successfully defied all the health authorities' attempts to prevent them from keeping live poultry in their house in Portland Place in such quantities as to become a public nuisance. Nor have they ever permitted any inquest to be held upon the remains of attachés and servants who have succumbed to sudden and unaccountable death.

Only one case can I recall, however, during the last quarter of a century, in which diplomatic immunity was invoked in order to escape the consequences of a crime. The perpetrator held high diplomatic rank at the court of St. James'. Not until brought before the police magistrate, and placed in the prisoners' dock, did he reveal his identity and claim exemption from British jurisdiction as a member of a foreign embassy. His plea was allowed, and the police turned him over to his ambassador, who declared him insane, and despatched him, under the care of two keepers, to an insane asylum in his own country. After a few months' detention there he was semi-officially reported dead, and his name was eliminated from the "Almanach de Gotha." In reality he was released, and

went to live under an alias in the south of Europe, where he survives to this day.

AN AMBASSADOR'S POWER TO PUNISH.

Although the ambassador adopted the most sensible course in dealing with the scandal, it is open to question whether he acted in conformity with diplomatic usage and with the law of nations. According to these, he should either have caused the offender to be sent home under arrest, to be tried and punished according to the laws of his own country, or he should have dismissed the man from the diplomatic service, and delivered him up for trial under the laws of the state where the offense was perpetrated.

In former times, the principle of the extraterritoriality of foreign embassies was regarded as investing the ambassador himself with civil and criminal jurisdiction over the members of his mission, to be exercised according to the laws and usages of his own country. When Venice was still a republic, the Spanish ambassador, having caught one of his Spanish servants in the act of thieving, proceeded to try, convict, and sentence the man to death within the precincts of the embassy, and hanged him from one of the windows of his palace. A French ambassador in London once did the same thing with a member of his suite who had been guilty of murder. M. de Thou, a French envoy to Holland, kept one of his secretaries imprisoned for four years in the cellars of the legation building at The Hague, for some breach of French law.

Even as recently as about ten years ago, London was startled by the announcement that Dr. Sun, a political refugee from the Flowery Kingdom, a man who had been graduated as a physician from one of the American universities, and who had been prominently identified with the reform movement in China, had been arrested by the Chinese ambassador to Great Britain. It appeared that the unfortunate man was being kept in durance vile at the embassy, and that arrangements had been made for shipping him back to China on board one of the steamships belonging to a company subsidized by the Peking government. Had Dr. Sun ever reached China, he would probably have been sliced to pieces as one of the chief organizers of the reform agitation. The British law officers, when consulted, were most decided in their opinions that according to both international and Eng-

lish jurisprudence nothing whatsoever could be done to force the ambassador to release his captive, or to prevent the latter from being returned to China. Fortunately, by bribing one of the English servants of the embassy, the doctor managed to inform his friends how he had been made a prisoner. He had not been arrested in the embassy, but had been deliberately seized by native attachés of the mission while passing along the public street in front of the building. It was on this ground alone—that he had been kidnapped while beyond the precincts of the embassy—that the late Lord Salisbury was able to insist upon his liberation.

THE KIDNAPPING OF RUSSIAN CONSPIRATORS.

It is notorious that the case of Dr. Sun is by no means an isolated one, and that scores, probably hundreds, of Russian conspirators have been kidnapped in Paris and London. They have been imprisoned at the embassy until an opportunity arose to ship them down the river on board a steam launch to some Muscovite vessel and send them back to Russia. There is but little likelihood of their being rescued, since the ambassador's threshold is barred to the local authorities. Sardou, when he wrote "Fedora," was severely criticized for presenting such an abduction as a possibility. But could the police officials be induced to speak, they would admit that there are many similar cases in Paris and London, perhaps even in New York. The local authorities hear of them, but close their eyes to them in order to avoid international complications.

To such an extent is a foreign embassy inviolable that any malefactor, no matter what his nationality, who seeks refuge within its precincts, is safe from arrest and punishment as long as the ambassador consents to shelter him. Some years ago, when the Sultan Abdul Hamid was about to arrest and punish a former grand vizier, little Said Pasha, for treason, the accused man sought refuge in the British embassy at Constantinople. When the Turkish police officials requested his surrender, Lord Currie informed them that no Ottoman warrant of arrest "could run on British territory." Subsequently, when the Armenian riots were in progress in the Turkish capital, the late Sir Michael Herbert, then chargé d'affaires, landed a detachment of British sailors and marines. To the protests of the Ottoman authorities he replied that the embassy

was British soil, and that as such he had no need to ask their permission to occupy it with British troops.

In much the same way the Brazilian embassy in Paris was officially regarded as constituting Brazilian territory when the Crown Princess of Brazil was prematurely confined of her third son in the French metropolis. As the constitution of the empire—not then supplanted by the existing republic—stipulated that all princes in the line of succession to the throne should be born in Brazil, she had hoped to return to Rio in time for her accouchement. But as this proved impossible, she was conveyed at the last moment from the residence of her father-in-law, the late Duc de Nemours, to the Brazilian embassy, where she gave birth to that Prince Anthony of Orleans-Braganza who, with his elder brother, Prince Louis, spent part of last year in the United States.

THE RIGHTS OF TRAVELING ROYALTIES.

Though few Americans are aware of the fact, foreign sovereigns, and the princes and princesses of their families, enjoy the same diplomatic immunities and extraterritorial privileges as their ambassadors. There might be some question as to the status of Prince Louis and Prince Anthony of Orleans-Braganza, scions of a fallen dynasty; but the two young royal princes of Bavaria, who spent all last summer and autumn in the United States, were undoubtedly exempt from the jurisdiction of Federal, State, and municipal law. Fortunately, they were orderly and well-behaved young men; but had they incurred heavy liabilities, their creditors would have no redress; and if they had broken the laws, however flagrantly, there would have been no means of holding them to account.

It does not matter whether they were traveling under their royal title, or incognito. This was shown in the case of the late Sultan of Johore, who, under the name of Alfred Baker, wooed and then deserted, during his stay in England, a lady of the English middle class. When she brought suit against him for breach of promise, her case was thrown out of court on the ground that, owing to the extraterritorial immunities of the Sultan, as a foreign sovereign, the English tribunals had no jurisdiction.

It is in France that these extraterritorial prerogatives are most frequently exercised, owing to the fact that whenever royal and imperial personages take

a holiday they generally make for Paris. The late Prince of Orange repeatedly escaped the consequences of his serious offenses against the French laws upon the plea of extraterritoriality. The husband of the Russian Grand Duchess Marie, who killed his wife's hair-dresser by hurling him through a second-story window at Nice, went scot free for the same reason.

Sometimes foreign royalties, when traveling abroad, go so far as to demand the right of jurisdiction over the members of their own suite. When the late Shah of Persia visited Europe, the governments of the countries that he honored with his presence were in a state of perpetual apprehension lest the king of kings should take it into his head to punish any of his retainers with those frightful tortures that are so common in his dominions. According to the laws of nations, it would have been impossible to interfere officially; and yet public opinion in England, France, Germany, or Austria would never have tolerated such cruelty on the part of the Persian ruler, no matter what the political consequences might have been.

The danger was no imaginary one. During the Shah's state visit to the Duke of Sutherland's country seat at Trentham, King Edward—then Prince of Wales—had much difficulty in persuading his Persian majesty to refrain from putting into execution a peculiarly Oriental form of punishment to which he had condemned one of his native secretaries for a somewhat glaring breach of etiquette. The Shah reluctantly yielded to the British heir apparent's entreaties; but he told the prince—who has often repeated the story—that the punishment was merely deferred until he got back to Persia.

THE EXECUTION OF MONALDESCHI.

Every one who has read Browning's poems will remember a perfectly authentic story of Christina, Queen of Sweden. In 1656, while visiting the French court, she caused her principal chamberlain, the Marquis Monaldeschi, to be put to death in her presence in the palace of Fontainebleau, which had been placed at her disposal by the French king, Louis XIV. Monaldeschi's offense was not merely that he had preferred a more youthful southern beauty to the northern queen, but that in his letters to his innamorata he had referred slightly to the mature charms of his royal mistress. After taxing him with his treason, and

confronting him with the incriminating documents, Christina caused him to be shriven then and there by a priest whom she had summoned for the purpose; whereupon three of her Swedish attendants drew their swords and killed him before her eyes. The marquis lies buried in the old church at Avon, at the eastern end of the Forest of Fontainebleau.

At first the French king manifested a disposition to resent this high-handed action on the part of his royal visitor from Sweden. But after consulting the law officers of the crown, Louis came to the conclusion that the queen had not exceeded her extraterritorial rights, and

that it was best to take no notice of the matter.

These extraterritorial prerogatives of foreign sovereigns, and the immunities enjoyed by royal princes when traveling abroad, are based exclusively on international law—perhaps only on international usage. They are not to be found in any national code, either in America or in Europe. Yet it is worth while to know that they do actually exist, in view of the increasing number of Old World princes of the blood who cross the Atlantic or the Pacific for the purpose of finishing their education and broadening their minds by a visit to the western hemisphere.

THE SILENCE OF JUDITH YEARWOOD.

BY GRACE MAC GOWAN COOKE.

I.

"IF Aspel Gentry is not back from Garyville, you-all can plow the field on the bench, below Foeman's Bluff," wrote Judith Yearwood on her small, square slate, penciling the words carefully in a round, plain hand; for the man who was to read them was, as he would have told you himself, "no scholar."

There was silence in the big log kitchen for so long that the woman glanced up. But the tall, lank mountaineer was not looking at her slate; he was not, as usual, laboriously spelling over the written sentences. His eyes were fixed on something outside the window, his hand hiding the twitching of his thin, brown-stained lips; yet his employer guessed at a humorous preoccupation. She rapped upon the slate impatiently, and pushed it toward her farmer across the kitchen table.

Vowel's eyes came reluctantly down to the matter in hand.

"I aimed to tell ye," he drawled, "when I fust come in—an' then I clean forgot hit. Gentry, he come back from Garyville afoot, an' he was packin' the saddle; so I reckon the sorrel nag must 'a' happened to a accident."

His employer got suddenly to her feet. She was the owner of a matched team of chestnut sorrels, mountain horses, of bottomless wind and endurance, bred on her own farm and broken by her own hand. One of these Aspel Gentry had ridden down to Garyville.

Before she could take a step, a man's figure appeared in the doorway, a slender form with a suggestion of boyishness about it, in spite of the silver which was beginning to show among the brown curls at the temples. The newcomer stood swaying gently from side to side, smiling benevolently at space. It was Aspel Gentry, and Aspel Gentry was drunk.

Before his time, to drink at all would have been to be debarred from work on the Yearwood farm. For fifteen years its maiden proprietor had owned and managed this mountain holding, doubling its value during her tenure; it had harbored no drunkards, no shirks, and she herself was the ablest farmer in the Big or Little Turkey Tracks.

Judith Yearwood came of a distinguished family, as rank is held in mountain communities. Some of the men of her race had been sent to colleges; a few had followed the law, and gone into politics. She was the daughter of old Judge Boaz Yearwood, and the family, root and branch, were thinkers. They did not develop sufficient ferment to leave the narrow life into which they were born, but within its constricting mold they put forth an individuality which amounted to eccentricity. Proud owners of the single brick house in their vicinity, and of nearly a thousand acres of mountain land beside, they shut their doors upon family quarrels which were yet notorious, and in which the community came to have a sort of local pride.