

EDITORIAL COMMENT

SIR THOMAS ERSKINE HOLLAND

It is the custom of the American Society of International Law to honor itself by inviting to membership outstanding publicists who deserve well of the international world, and whose connection with the Society would not only show its appreciation of foreign internationalists but encourage its own members to renewed and continuous efforts for justice between and among the nations. The first publicist to be elected an honorary member of the Society was Sir Thomas Erskine Holland. He was born on July 17, 1835, and died on the 24th of May, 1926, full of honors at home and abroad and dean of our profession. The Society was founded January 12, 1906, in the rooms of the Bar Association of the City of New York. At its first annual session, held in Washington in April, 1907, under the presidency of the Honorable Elihu Root, then Secretary of State of the United States, Sir Erskine Holland, then Chichele Professor of International Law at the University of Oxford, was elected an honorary member.

The Constitution of the Society provides for two classes of members: ordinary members and life members, on the one hand, and honorary members on the other, the first class to be elected upon their request, the second chosen by the Society upon its own initiative. The Constitution of the Society says of the second class: "A limited number of persons not citizens of the United States and not exceeding one in any year, who shall have rendered distinguished service to the cause which this Society is formed to promote, may be elected to honorary membership at any meeting of the Society on the recommendation of the Executive Council." The Society in electing Sir Erskine Holland its first honorary member, sought to express in this way its judgment of the services which he had rendered to international law, and Sir Erskine appreciated his membership in the Society, always giving it an honored place among the foreign bodies to which he had been chosen.

Sir Erskine Holland was an Oxford man by education and by occupation. He was a Balliol man, entering that college in 1854. A year later he migrated to Magdalen, and died in Oxford, at Poynings House. He was a lawyer by profession and practiced at the Bar, and his conception of law was that of the lawyer who looked for the statute making a principle law, the court in which it was discussed and applied, and the sanction by which it was to be enforced. He was, however, a broad lawyer in the sense that he considered not merely the law of his country but also the law of other countries, private international law, which he always insisted was in fact and should therefore be called conflict of laws, and international public law, which it would seem should be, in his conception, more properly called the law of nations, as only

binding the nation which had adopted and given it the force of law within its jurisdiction. He was deeply interested in Roman law, which widened his outlook when young and was of infinite service to him later in the law international. As far back as 1873 he published an edition of *The Institutes of Justinian* as a recension of the *Institutes of Gaius*, and that little volume was largely, if not wholly, responsible for his election in 1874 as the second holder of the Chichele chair of international law created at Oxford in 1852, of which Montague Bernard was the first incumbent, as against the candidacy of another young man, likewise of Scotch ancestry, William Edward Hall, who had just made his first venture in international law by his essay on, *The Rights and Duties of Neutrals*. Either candidate was vastly fitted for the chair, to which Professor Holland added distinction as Mr. Hall, beyond the chair, added what is considered by many, if not by most publicists, as the greatest single-volume treatise on the law of nations.

In the field of jurisprudence, or rather in the matter of the origin, nature and extent of law in general, Professor Holland made a name for himself by *The Elements of Jurisprudence*, which, published for the first time in 1880, reached a thirteenth edition forty-four years later. In diplomacy, as distinct from international law as such, he added to his growing reputation by the publication in 1885 of *The European Concert in the Eastern Question*, an historical development of that important subject, with material portions of the treatise and correspondence required for its understanding. In international law as contradistinguished from jurisprudence and diplomacy, Professor Holland has many titles to remember. On taking possession of the chair of international law at Oxford, he performed an act of justice to the memory of Alberico Gentili, Regius Professor of Civil Law in Oxford in the days before the appearance of Grotius' treatise on the *Law of War and of Peace* had made of international law a branch of jurisprudence. Gentili, better known in the learned world as Gentilis, was an international lawyer as well as a civilian, and on two separate occasions he discoursed before the University upon certain phases of international law, first, on embassies, in 1585, and on the law of war, 1588–89. In expanded form the disquisition on embassies forms the first general treatise on the subject; in revised form the disquisitions on war form the three books of war, and the two taken together make of Gentilis a founder of the law of nations. The splendor of Grotius' treatise had obscured the value of Gentilis' performances, but since Professor Holland's inaugural discourse of 1874, the place of Gentilis is secure, the only difference of opinion among the learned being whether he is to be regarded as the founder of international law instead of Grotius, or to be assigned the lesser but honorable post of one who prepared the way for the master.

On this question, as indeed in every department of international law, Professor Holland thought for himself and expressed those views to which he had come as the result of study and reflection on his part without fear or favor, as in the case of the *Studies in International Law* (1898).

In the eighties the British Government availed itself of his demonstrated competence by commissioning him to prepare the Admiralty *Manual of Naval Prize Law*, which appeared in 1888, and which was not only of service then but was found to be of great service to the Joint Naval and Neutrality Board of the United States in the days of their neutrality. The War Department of Great Britain later availed itself of Professor Holland's attainments by having him prepare the War Office *Handbook of the Laws and Customs of War on Land*, published in 1904. The next year he delivered an address before the British Academy, of which he was a member, on *Neutral Duties in a Maritime War*. Professor Holland had made the subject of prize law peculiarly his own during a long course of years. He had specialized to an equal degree in the law of land warfare, and his country availed itself of his knowledge by appointing him delegate plenipotentiary to the Geneva Conference of 1906. The year following the Second Hague Peace Conference of 1907, he issued in his own behalf and in the form of a code, *The Laws of War on Land*. In 1911, after the London Naval Conference of the year previous to agree upon the law to be applied by the proposed International Court of Prize, Professor Holland expressed his views, unfavorable to the Declaration of London, in *Proposed Changes in Naval Prize Law*, a paper before the British Academy.

Professor Holland has shown his interest in international law in other ways than in the performance of his professional duties as such, or upon the request of his government on various occasions. The inaugural address on Gentilis led to an edition of the Latin text of that author's three books on the law of war, published in 1877, to which Professor Holland appropriately prefixed an introduction in Latin, a worthy monument to one deserving well at the hands of Oxford. Many years later he edited in the series of the Classics of International Law, then in course of publication by the Carnegie Institution for the Advancement of Science, *Iuris et Iudicii Fecialis, sive, Iuris Inter Gentes, et Quaestionum de Eodem Explicatio*, a work published in 1650 by Richard Zouche, a distinguished successor of Gentilis in the chair of civil law at Oxford, and like his three books on war, a milestone in the development of the positive law of nations. A few years later Professor Holland returned to Italy, and as he had edited the work on war by Gentilis, an Italian by birth although an English subject by naturalization, he edited the *De Bello, De Repraesaliis et De Duello* of one Legnano, an early predecessor of Gentilis in the law of war, and therefore a still earlier one of Professor Holland himself in the same field. The treatise of Legnano was edited by Professor Holland from a manuscript of circa 1390, and the translation, as in the case of Zouche, was made by Mr. J. L. Brierly, now Chichele Professor of International Law at Oxford.

Professor Holland's interest in international affairs was not merely historical, professorial, or indeed governmental. He felt that he owed a duty to the larger public to keep its members abreast of international events. There-

fore he had constant recourse to the *Times*, whose columns were frequently enriched by letters upon war and neutrality during a period of forty years, from 1881 to 1920, "with," as he himself says, "some commentary."

In addition to these many and varied activities, Professor Holland was an active member of the Institute of International Law, an associate in 1875, member in 1878, and President of that distinguished body at its Oxford meeting of 1913. In its labors he actively participated. For many years he was a regular attendant at its gatherings, and at its last session held in The Hague in 1925, in commemoration of the third centenary of the publication of Grotius' *War and Peace*, Professor Holland was appropriately elected an honorary member of the Institute.

Fortunately, students of international law are not obliged to rely upon inadequate statements of the services which Professor Holland rendered in his chosen science. He has himself dealt with a large, and the most important, part of his professional activity during the period from 1874 to 1910, in which he held the Chichele professorship at the University of Oxford, in a valedictory retrospect and lecture delivered at All Souls College on June 7, 1910, renouncing the chair he had held with advantage to the science and with great personal distinction during the long and not uneventful period of thirty-six years.

"The recently formed 'American Society of International Law,'" the retiring Professor said in his farewell address, after speaking in high terms of the Institute of International Law, "by its *personnel* and its objects, stands apart from most of these" societies of one kind or another in other countries, "and may well take rank next to the Institute."

JAMES BROWN SCOTT.

MEXICAN LAND LAWS

The turbulent state of affairs existing in Mexico from the overthrow of President Porfirio Diaz in May, 1911, until the accession of President Obregon in May, 1920, has been painfully reflected in the diplomatic relations between Mexico and the United States. Among various incidents vitally affecting these relations will be recalled the refusal of the United States to recognize the government of General Huerta in 1912; the landing of American troops at Vera Cruz in 1914; the punitive expedition under General Pershing in 1916; and the repeated use of embargoes on munitions of war by the United States as a means of affecting the fortunes of revolutionary leaders. The novel, and as it subsequently appeared, the untenable policy enunciated by President Wilson that no governments founded on violence would be recognized by the United States will also be recalled. The course pursued by the American Government during this period can hardly be said to have exerted a steadying influence on the internal affairs of Mexico.

Some of the points of international law involved in the relations between