

terms of the treaty a *tertium quid*, *i. e.*, rapid and violent erosion, something unknown both to the treaty and to the common law, had again departed from the terms of the submission. The American Commissioner draws attention to the fact that during the course of the argument the Presiding Commissioner intimated to counsel for the United States that it was scarcely desirable to pursue the argument upon this point further since both parties seemed agreed that the convention of 1884 embraced but two classes of changes. Finally, the American Commissioner was of the opinion that it would be totally impossible to locate the channel of 1864 and that the award was, therefore, "vague, indeterminate and uncertain in its terms and impossible of execution."

He concludes his opinion by saying:

The present decision terminates nothing, settles nothing. It is simply an invitation for international litigation. It breathes the spirit of unconscious but nevertheless unauthorized compromise rather than of judicial determination.¹⁴

The agent of the United States upon his own motion, subject to the consideration and action of his government, filed a protest¹⁵ against the decision and award on the ground that it amounted in various respects set forth by him to a "departure from the terms of submission;" because it was "impossible of application;" because it fails in certain respects to state the reasons upon which it is based as required by the terms of submission, and, finally, because of "essential error of law and fact."

DIAZ AND MEXICO.

The recent events in Mexico, culminating in a civil war and the overthrow of President Diaz and the massing of an American army corps on the confines of Mexico, are too important to be dismissed in an editorial comment. A leading article will be devoted to the subject in a future number; but it may not be inappropriate at this time, and in this way, to call attention to the fundamental mistake of the unfortunate ex-president, which resulted in the fall of his government and in his exile from the country for which he had labored so long and successfully and launched upon the path to greatness. The mistake in question was his continuance in power, to obtain which he consented to the amendment of the Constitution so as to enable him to retain the presidency.

¹⁴ *Id.*, p. 826.

¹⁵ *Id.*, p. 832.

General Diaz seems at one time to have been in favor of the non-eligibility of a retiring president, and in 1878 he secured an amendment forbidding the re-election of the president or of the governors of the States for the next succeeding term. At the expiration of his first presidency in 1880 he quietly withdrew from office. In 1884 he was re-elected president, as the amendment only forbade two continuous terms. The prosperity of the country was so great under his second term, and President Diaz was considered so indispensable to the nation, that the amendment was repealed in order to enable him to succeed himself, and from 1884 until May 25, 1911, the veteran president remained in power. Yet, keen observers, familiar with local conditions, regarded this action on the part of Diaz, while freely admitting his patriotism and the great services which he rendered to his country, as a great mistake. Thus, in 1909, General John W. Foster, who had been American Minister to Mexico during the seven eventful years of General Diaz's rise to power, and who was as familiar with Mexican conditions as he was with President Diaz's hopes and ambitions, expressed the following measured judgment in his *Diplomatic Memoirs*.

During the twenty-six years of Diaz's presidency, General Foster said that:

The country has enjoyed unparalleled prosperity, and it was natural that the inhabitants who had been so greatly benefited by his administration should wish to continue him in power. But I regard it as mistaken statesmanship to have so long yielded to their desire. In reviewing the history of Mexico and the other independent Spanish-American States, we have seen that the chief cause of their frequent revolutions has been the effort to change their presidents. The transfer of the administration by the peaceful and constitutional methods has proved in many instances a failure. This has been the case particularly in Mexico.

It would have been a wise and patriotic act for General Diaz to have retired from the Presidency at the end of his second term, leaving the prohibitive clause of the Constitution in force. He would then have been in a position to guarantee a peaceful election of a successor and a continuance of the good order and prosperity which he had established. The people also might have had an opportunity to test their ability to conduct the government by means of a free and untrammelled exercise of the electoral franchise, a condition as yet unknown in Mexico. The benevolent autoeracy under his administration has resulted in great prosperity for the country, but it has done little to educate the masses of the people in their duties under a republican government.

The biographer of Pericles, the greatest of the republican rulers of Athens, in describing the disorders which followed his death, makes this comment: "In his determination to be the foremost man in the city, he left no room for a second. * * * Under his shadow no fresh shoots sprang. He taught the

people to follow him as leader, and left no one behind to lead them; he destroyed their independence — or at least the mutual play of opposite forces — and when he died came 'the deluge.' There was no one who could succeed him. A democracy without great men is a dangerous democracy."

Let us hope this will not be the experience of Mexico following the death of President Diaz.¹

In his exile, the unfortunate ex-president may well recall with bitterness the maxim: "Count no man happy until he is dead."

[REDACTED]

GEORG JELLINEK.

In the recent death, January 13, 1911, of Professor Georg Jellinek, of the University of Heidelberg, the students of political science have sustained an irreparable loss. This eminent publicist was not only one of the leading authorities of the world on political science, but he was also the recognized head of the juristic school of political thought in Germany.

Georg Jellinek was born in Leipzig in 1851. He was the son of Adolp Jellinek, an Austrian Jewish rabbi, who was at once a famous preacher and one of the most important theologians of his day.

After extensive studies in history, literature, philosophy, political economy, and jurisprudence at Leipzig, Vienna, and Heidelberg, the young student Jellinek accepted a position in the Austrian administrative service in 1874. But he soon left the employ of the Austrian Government in order to devote himself wholly to scientific study and production. Having qualified as a member of the Faculty of Law at the University of Vienna in 1879, he was appointed Professor of Political Science (*Staatsrecht*) at Vienna in 1883. In 1889 he accepted a similar position at Basel, but was called to Heidelberg in 1891, where he proved himself a worthy successor of the great Bluntschli.

The following are the most important of Professor Jellinek's works in the order of their publication:

Die sozial-ethische Bedeutung von Recht, Unrecht und Strafe (1878); *Die rechtliche Natur der Staatenverträge* (1880); *Die Lehre von den Staatenverbindungen* (1882); *Gesetz und Verordnung* (1887); *System der subjektiven öffentlichen Rechte* (1892); *Adam in der Staatslehre* (1893); *Die Erklärung der Menschen und Bürgerrechte* (1895); *Das*

¹ Diplomatic Memoirs, 1909, Vol. I, pp. 106, 107.