

enough to present, inquire and indict, but not to act as a trial jury, that is, to give fair and adequate expression to the voice of the county as to the guilt or innocence of the accused. Accordingly, it was enlarged by including representatives of "the four vills" and the jury of another hundred, also, at times, by coroners, knights and others of representative character. The principle of representative government as a whole was cherished and preserved chiefly in the jury, and parliament itself arose in the form of a great, national, representative jury. It is entirely fitting, therefore, that the international grand jury, at least in the initial stages of its growth, shall be representative in the large sense of the nations concerned, and that the senate shall share with the executive the responsibility of its appointment. Indeed, since the national grand juries are summoned by courts of sufficient criminal jurisdiction, the supreme court of the United States may well claim its share in the appointment of the international grand jury—especially since the jury is to perform an essentially judicial function.

But the senate's claim to a share in this judicial function of the international grand jury can not be thus readily granted. It does not appear to be well founded on constitutional interpretation, and it is certainly most repugnant to the ideals of justice and fair play cherished by the old world members of the family of nations. At the second Hague conference, for example, the Austrian and other delegations persistently and almost tauntingly inquired of our American delegation how the United States government could possibly enter into any world treaty of genuine obligatory arbitration if the United States senate must exercise the right of approving, not only the general treaty itself, but also a special treaty determining the object, scope, etc., of the arbitration of every individual dispute. Although Great Britain and France have agreed that the senate shall ratify the compromise (that is, the agreement for the arbitration of each specific dispute), as well as the general treaty, it can not be expected that all other nations will be thus complacent, or that they or any other nations would make a general treaty submitting all justiciable cases to arbitration, and at the same time assigning to the United States senate the right of deciding on the justiciability of each case as it arose. Evidently, if such be the constitutional limitation of our government in international affairs, it, like the power of the national government over the state in such international matters as the treatment of resident aliens, is greatly in need of revision. In some way, by constitutional interpretation or constitutional amendment, the United States government must have the shackles stricken from its limbs, so that it may fulfill unhampered its duties toward the other members of the family of nations.

But in regard to the joint high commission's duty of determining the justiciability of specific disputes, it does not appear that the senate is vested by the constitution with any right or duty. This is clearly either an administrative or a judicial measure. If it is an administrative measure, it must be performed, not by the senate, but by a commission acting under the executive, even as tariff boards pass upon the dutiability of imports under a treaty of reciprocity. If it is a judicial function, it must a fortiori be performed, not by the senate, but by a commission vested with judicial powers, in the appointment of which the senate may concur, but in the performance of whose judicial duties neither the senate nor the executive may interfere. It is not to be tolerated, under the rules of fair play, that a government may act as the judge or the petit jury in its own case; and it is no more to be tolerated that a government shall act as its own grand jury, and insist on the control of inquest, indictment or presentment of only such cases as may suit its pleasure or convenience.

Of course, the ideal international grand jury would be one, not only composed of "good and lawful men," whose interest in any particular case does not transcend that common interest which every good member of society feels in the enforcement of law and justice, and who would therefore pass upon it with faithful impartiality, but it would be one also fairly representative, not of the governments interested in the particular case at issue, but of the family of nations as a whole. The senate's committee has criticized the proposed treaties on the ground that they "are not in the direction of an advance, but of a retreat from The Hague provisions, because they revive the idea of confining membership in the commission, if insisted upon by either

party, to nationals instead of to wholly disinterested outsiders." While this criticism is entirely just from the point of view of the ideal, it does not come with peculiar propriety from a branch of the legislative department of the government which demands for itself the right of withholding from arbitral adjudication cases in which it is vitally interested, especially since, immediately after this criticism of the treaties, it strenuously objects to vesting in an outside commission the power to decide on the justiciability of disputes. From the point of view of the practical, we can not expect to create immediately an ideal international grand jury; and it should be remembered that national grand juries grew slowly in representative character and in scope of jurisdiction, being summoned at first only to inquire for the body of the county, pro corpore comitatus, while down until 1548 (2 and 3 Edw. VI, c. 24) it was the rule that, when a man was wounded in one county and died in another, the offender was at common law indictable in neither county, because a complete act of felony had been committed in neither. It is evident from past history and present human nature alike that too rapid progress can not be hoped for in the development of the newly born grand jury of the nations; it is evident also, from the senate's vigorous opposition to the alleged radical character of the president's proposal, that this proposal marks a decided step toward the ideal.

The ideal international grand jury, also, would act for each member of the family of nations, large or small, just as surely and potently as it would for any of the others. The senate committee's warning that "if we enter into these treaties with Great Britain and France we must make like treaties on precisely the same terms with any other friendly power which calls upon us to do so," is a reflection of the ideal and of the senate's attitude toward it; while the president's frank acceptance of the alternative, his refusal to be terrified by the fear of the subjunctive, and his loyalty to justice, regardless of the side on which the weight of her scales may turn, is a splendid object lesson to the nations, and another great step toward the ideal which declared that, just as public wrongs are considered in every civilized nation to be committed, not primarily against the individual, but against the commonwealth, so international wrongs must be considered as committed, not primarily against the family of nations, to whom international rights and duties pre-eminently pertain. In practice, again, it should be remembered that for generations after the introduction of indictment by means of the national grand jury, the accused, if sufficiently powerful, would refuse "to put himself on the county," that is, to submit to jury trial, and that from 1275 A. D. to 1772 A. D. it was held necessary to punish such refusal by imprisonment and by the *peine forte et dure*. We can not anticipate that the "great powers," led on as at present by the will-o'-the-wisp of territorial aggrandizement, will submit immediately to be haled into court and compelled to make retribution for their high crimes and misdemeanors.

But we may be profoundly thankful that our president has thus lifted from the dust the standard of international justice; and we may be assured that, as the nations rally one by one to that standard, an international public opinion will be created, so enlightened, so just and so invincible, that no international delinquent, however great or obstinate, will refuse to bow to that sovereign power of our time, and to the indictment of the ideal international grand jury which will represent it!

Standing face to face today with the great "present crisis" in the development of international justice, holding within our grasp the immeasurable power for good possessed by the international grand jury which President Taft is offering to our own and other nations, we may well recall and ponder Lowell's heartfelt cry in another great crisis of our country's and the world's history:

"Once to every man and nation comes the moment to decide,
In the strife of Truth with Falsehood, for the good or evil side;

Hast thou chosen, O my people, on whose party thou shalt stand,
Ere the Doom from its worn sandals shakes the dust against our land?

Careless seems the great avenger; history's pages but record

One death-grapple in the darkness 'twixt old systems and the Word;
Truth forever on the scaffold, Wrong forever on the throne,—
Yet that scaffold sways the future, and, behind the dim unknown,
Standeth God within the shadow, keeping watch above his own.

New occasions teach new duties; Time makes ancient good uncouth;
They must upward still and onward who would keep abreast of Truth;
Lo, before us gleam her camp-fires, we ourselves must Pilgrims be,
Launch our Mayflower, and steer boldly through the desperate winter sea,
Nor attempt the Future's portal with the Past's blood-rusted Key."
Swarthmore, Pa.

THE UNFOLDING OF WOODROW WILSON

From an editorial in the Philadelphia North American, the following is taken:

"About a week ago the fine sensibilities of a large number of Americans were shocked by the publication of a letter which had been written five years since by Woodrow Wilson. It was not that the letter was in any way a reflection on the honor or the intellectual honesty of Doctor Wilson. For what he had written was but an expression of his private judgment, which, whether correct or otherwise, he had had a perfect right to make. But he had made it in confidence in a private letter, written to Adrain H. Joline, a man at that time his friend and an associate in the affairs of Princeton university. And five years afterward Mr. Joline had so far forgotten the tenets of good taste and of personal honor as to publish a letter written to him in the confidence of intimate friendship. The appearance of the letter in the newspapers caused something of a political sensation. For its principal feature was an opinion adverse to William Jennings Bryan, and rather forcibly and idiomatically expressed in Doctor Wilson's wish that Mr. Bryan might be "knocked into a cocked hat." The publication of this letter after five years, during which time Doctor Wilson had evidently changed much in his attitude toward political devices and leaders, though not at all toward principles, was plainly intended to cause an estrangement between Mr. Bryan and Governor Wilson, hurtful to the latter's chances as a presidential candidate. The bigness of Mr. Bryan's character is forcibly reflected in his refusal to make this letter an issue between himself and Governor Wilson. But this fact does not mitigate the meanness of the spirit that caused its publication. That was a return to the ancient politics, which consisted in personal abuse and betrayals and the trading on honor and confidences. Such was the politics that obtained in this country during a period when no vital principle commanded the attention of the people and when elections were only a fight for spoils. Those who were so fortunate as to have read William Bayard Hale's article in the January number of *The World's Work*—"Woodrow Wilson, a Biography," it is entitled—would hardly have noticed the incidental reference to a Mr. Joline. The article is an inspiring story of the translation of a great democratic mind from the narrow field of university life into the broad plain of national action."

The North American then describes Dr. Wilson's work at Princeton university, particularly his refusal to permit a donor of \$500,000 to dictate the policy of the college. Successful in this contest he was defeated in another one and the story is told by the North American in this way:

"After he had won the fight, another endowment—this one of more than \$3,000,000—was left to the graduate school. President Wilson was beaten by the mere weight of money. In the hour of his defeat, he scored one Fabian victory. Adrain H. Joline, who had run for alumni trustee as an anti-Wilson candidate, was overwhelmingly beaten. That accounts for the publication of the Joline letter. Woodrow Wilson was defeated in the battle for democracy in the little world of Princeton. But his fight had unfolded his mind. He had always been for democracy, but he had hoped to achieve it through the old governmental machinery. He stepped from the field of defeat in Princeton with a broader and deeper knowledge of the problems of democracy. Out of that defeat he was called to leadership in his state and nation."