



TOPICS OF THE TIME

The Possibilities of Permanent Arbitration.

FOR centuries philosophers and statesmen who could look beyond the rivalries and contentions of the moment have hoped for the coming of a time when reason should be substituted for force in the settlement of international differences. As a means to this end, they have suggested the establishment of an international tribunal, to which all disputes that could not otherwise be adjusted should be referred. But to the fulfilment of this aspiration there have been various obstacles, not the least of which were the distrust of new experiments and the various notions comprehended by the term «national honor.»

Nations have felt precisely the same objections to submitting disputes to arbitration that were formerly felt by individuals to submitting their differences to judicial tribunals. In the dawn of civilization we often find, even in judicial processes, an admixture of forcible contention, indicative of the transition from a period when rights were regulated by the strong hand. So, among the early writers on the law of nations we find various measures of force, now practically fallen into desuetude, enumerated among the peaceful methods of redress. While these things show that changes in the conduct of men proceed from changes in their ideas and dispositions, and that changes in their ideas and dispositions for the most part progress slowly, yet they demonstrate the fact that some advance has been made toward the perception of the principle that human reason is capable of solving differences as well as of creating them, and that it is not a mere adjunct to the «fighting and quarreling» propensity. Although the present century was ushered in in the midst of a period of destructive wars, and its history will contain the record of many bloody conflicts, nevertheless it has also witnessed the growth of the practice of international arbitration, and its application to disputes for the adjustment of which it would formerly have been considered entirely inadequate. The method has been shown to be efficacious as well as comprehensive. While in a few instances an award has been voluntarily set aside or left unenforced, in no case have two nations, after having agreed to arbitrate a difference, gone to war about it; and among the controversies submitted to judgment there have been many questions of the greatest delicacy and importance. The possibilities of international arbitration, as well as its beneficent results, have been most conspicuously illustrated in the relations between the United States and Great Britain. In the treaty of 1794, commonly called the «Jay treaty,» which was concluded under the administration of Washington, provision was made for three distinct arbitrations. Of these two related to differences growing out of the treaty of peace of 1783. The third related to claims involving important questions of law, including that of contraband, the rights of neutrals, and the finality of the decisions of prize courts. Since that time

all disputes between the United States and England, except those that, springing from the Napoleonic wars, led to the War of 1812, have been adjusted either by direct negotiation or by arbitration. In all there have been between these two great English-speaking nations nearly or quite twenty distinct arbitrations, of which that concerning the Bering Sea dispute is the latest example. It can hardly be considered impracticable to agree to do in the next fifty years what, without agreement, we have uniformly done in the last fifty, and yet it is in this very point of agreement in advance that the highest efficacy of arbitration lies.

Of all the Anglo-American arbitrations that of Geneva in respect to the *Alabama* claims most signally demonstrates the possibilities of the method. Not only were the questions at issue grave and momentous, but they were held to involve the honor of both countries. Yet by persistent, temperate, courteous discussion they were brought at last to a peaceful international judgment, in which, as has justly been said, «two great and powerful nations, gaining in wisdom and self-control, and losing nothing in patriotism or self-respect, taught the world that the magnitude of a controversy need not be a bar to its peaceful solution.»

The real obstacle in the way of international arbitration is not so much a lack of efficacy in the method, as the lack of a disposition to try it. The system of arbitration necessarily presupposes that nations desire an amicable adjustment of their differences. Such an adjustment may be prevented either by a wilful opposition to it, or by the adoption of a style of controversy that renders argument impracticable. Against such obstacles it is difficult to contend, since their direct tendency and effect is to bring about a collision before an arbitrator can intervene. It is obvious that arbitration can no more afford an absolute safeguard against such contingencies than can a system of municipal law absolutely prevent men from attempting to settle their differences by fighting in the street, if they desire thus to revert to primal conditions. Yet severe penalties, strictly enforced, may reduce such chances to a minimum; and it is conceivable that a scheme of international action might be devised so comprehensive as to render a resort to war exceedingly difficult and hazardous.

History affords many examples, now happily becoming less frequent, of aggressive wars or wars of ambition. Against such wars a remedy was suggested in the unratified treaty of arbitration adopted in 1890 by the International American Conference. By this treaty it was proposed to adopt arbitration as a principle of international law, and to make it obligatory not only in controversies concerning diplomatic and consular privileges, boundaries, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties, but also in all other cases, whatever might be their origin, nature, or object, with the single exception

of cases in which, in the judgment of one of the parties, its independence was imperiled. In such cases, for the latter nation arbitration was to be optional, but it was to be obligatory on the adversary power. The object of this provision was to leave to each nation the right of self-defense, while forbidding any to commit aggression. It is sometimes lightly observed that all questions could be settled by arbitration if we could only find a perfect arbitrator. This observation would apply with equal cogency to all judicial proceedings. The question is not whether our judges render perfect judgments, but whether we should obtain better results by abolishing the courts and leaving it to each individual to seek his rights by force. No sane man would advocate the affirmative of such a proposition. Arbitration between nations signifies the same thing as the existence of the ordinary judicial courts. It means the substitution of reason for force as a means of decision. That its possibilities are great has already been demonstrated; that they will grow with the development of a disposition to peace is unquestionable. An indication of this tendency may be found in the abhorrence of war by great commanders. The sentiment of Wellington, «Nothing except a battle lost can be half so melancholy as a battle won,» was expressed more bluntly by General Sherman: «Do you know what war is? War is hell!» while General Grant, speaking with direct pertinence to the subject of arbitration, said: «Though I have been trained as a soldier, and have participated in many battles, there never was a time when, in my opinion, some way could not have been found of preventing the drawing of the sword. I look forward to an epoch when a court, recognized by all nations, will settle international differences, instead of keeping large standing armies, as they do in Europe.»

Patriotism that Costs.

It was the Rev. Dr. John W. Chadwick, we believe, who said that our modern politicians had improved upon Dr. Johnson; for while he made patriotism the *last* refuge of a scoundrel, they had made it the *first*. Pushing this idea a little further, we think it can be said that many persons far removed from either politicians or scoundrels have found in patriotism an easy and ample refuge both first and last from the arduous duties of citizenship. It is so much easier to denounce foreigners than to work earnestly and persistently for better municipal government, so much easier to get into a furor of patriotism over some alleged insult by a foreign country than to drive bossism from State and national politics and secure for the people wise and beneficent laws, that statesmen and journalists and ambitious politicians choose that as the swiftest and easiest road to popularity. Nobody ever heard of a boss or a spoils politician who was not intensely patriotic. An amusing illustration on this point was furnished by the haste and fury with which Tammany declared war against England at the outbreak of the Venezuelan controversy. This was not interpreted as meaning that Tammany's leaders would enlist and go to the front, but that they saw in the excitement which war would engender an opportunity to slip back into possession of the government of the city of New York. They seized upon patriotism as a shield for their political depravity, in the same way that good citizens have too often seized upon it as a shield for

their negligence in not extirpating that depravity. In this way patriotism covers a great multitude of sins which are committed in its name against the country's welfare and honor. The patriots of whom the country stands most in need to-day are those who are willing to take trouble—tedious, patient, unwearying trouble—to give us better government. We need to realize as a people that the way to make our country great and to win for it the respect of mankind is not to shout constantly that we are the greatest nation in the world, but to show that we are capable of self-government. It is folly to brag of our greatness and then have to confess that popular government in our cities is a disgraceful failure, that our State legislatures are growing steadily less competent, and that our Congresses are becoming year by year more of a menace to the well-being of the country. We must awake to the fact that our enemies are not without, but within, our borders. No foreign power is doing us a hundredth part of the harm that our bosses are doing; for they, by their control of nominating conventions and legislative bodies, are, in Lowell's phrase, «slowly but surely filching from us the whole of our country—all, at least, that made it the best to live in and the easiest to die for.» We cannot shake off our responsibility for this condition of affairs; for, as Lowell adds in the same address from which we have quoted, «we are certainly responsible if the door to distinction be made so narrow and so low as to admit only petty and crouching men.»

Why is it that as a nation we are so quick to resent an insult to our flag abroad, and yet are willing to bear without serious remonstrance the disgrace of having ignorant and corrupt bosses as our despots, they having really deprived us of popular government by taking power into their own hands? Is there not something the matter with our patriotism when such a condition of mind as this exists? We are not merely indifferent to our political state, but we are able to treat it as a matter for joking, and are scarcely shocked at all by the daily revelations of our abject subserviency. Indeed, an alarmingly large number of people look upon boss rule as the necessary outcome of our form of government, and say that with universal suffrage nothing better can be hoped for.

Here is a field for true patriotism the like of which can be found nowhere else. The amount of work to be done is sufficient to command the energies of all intelligent Americans. To overthrow the bosses and their methods, to establish in place of the low and narrow door to political distinction a high and broad one, all men who love their country must go into politics, into the primaries and nominating conventions, and insist upon their right to select the candidates. It is said by some, in excuse of the present indifferent character of candidates for legislative and other offices, that first-rate men will not consent to accept nominations; but experience has shown that this is a mistake. It is very seldom that much trouble is found in inducing men of character to stand for public office, provided they can be assured that they will be faithfully supported, and will have to make no compromising pledges in return for the nomination. Politics can be purified if the people will insist upon the purification. The trouble is that while the politicians work every day in the year to keep politics down to their