THE TREATY RIGHTS OF ALIENS

By WILLIAM HOWARD TAFT

We are fighting this war to make the world safe for Democracies. The issue is now between the Democracies of the world and its Autocracies. The end must be, as we all hope, the promotion of the rule of the people in all the important nations. In that case, war as between countries will not be begun without the wish of the majority of their respective peoples. It will become, therefore, even more important than heretofore in the maintenance of peace that each government representing its people in its foreign relations, and being answerable for them to another people, should be able to perform its promises promptly, and should certainly not keep them only to the ear and break them to the hope. When one nation has made an agreement with another to receive the citizens of that other hospitably and secure them in peaceful residence and the pursuit of a livelihood, and such citizens are not protected, but are killed or injured, the breach of promise may easily grow into a cause of war. A people naturally resents injustice and cruelty to their kith and kin in another country.

In one of my visits to Japan as Secretary of War, I had the pleasure of meeting and talking with Count Hayashi, one of the great statesmen and diplomats of that wonderful empire, and recently deceased. We were discussing very freely the relations between Japan and the United States, and he said that he felt...
confident that I was right in saying that the United States had no desire for a war with Japan but, on the contrary, wished to avoid it by every honorable means. He expressed the hope that I credited his statement that the empire of Japan and those responsible for its government were equally anxious to make the peace between the two countries permanent and abiding. "But," said he, "my people have grown much in international stature. They have won successes, civil and military. They have a deep love of their country and of their fellow countrymen, and perhaps they have what you call 'patriotic self-conceit.' However this may be, their sensitiveness as a nation has increased, and it makes them deeply resent an injustice or an invidious discrimination against them in a foreign country by foreign people. The only possible danger of a breach between our two nations that I can imagine would be one growing out of the mistreatment of our people, living under the promised protection of the United States, through the lawless violence of a mob directed against them as Japanese."

Now what is true of the relations between the United States and Japan is true of our relations with most nations. We are party to treaties with them in which it is stipulated that the nationals of one contracting nation may reside within the jurisdiction of the other and, complying with the other's laws, may legally pursue their vocations or business and enjoy the same protection to life, liberty, and property that its own citizens enjoy.

Since 1811 we have had many cases of mob violence against aliens in which they have been killed or grievously injured. While in all of these cases we have denied liability, Congress has generally made pay-
ments to those who were injured and to the families of those who were killed. In some cases the amount paid was recited in the act of appropriation to be a gratuity without admission of liability. In other cases the amount was paid without such reservation. In no case have the perpetrators of these outrages been punished. In most cases the local authorities have evidently sympathized with the mob spirit or have been so terrorized by it that they have made no real investigation of the facts. The sequence has been: first, the mob; second, the felonious assault, or murder, and destruction of property; third, the farce of a State investigation; fourth, the indemnity to the injured and the family of the dead; and fifth, the complete immunity of the guilty. Such a list of outrages reaching clear from 1811 to 1910 without punishment is not a record in which we can take pride.

How can we remedy this state of affairs? We can do it by valid Federal legislation conferring on the Federal Government and Federal courts executive and judicial power to prevent and punish such crimes against aliens in violation of their treaty rights. This will have two results. One will be that prosecutions in the Federal Court directed from Washington will be uninfluenced by local feeling and will be often effective in bringing the guilty to punishment. The second will be that whether they are so effective or not, the fact that they can be directed from Washington by the Chief Executive of the nation will have a satisfying effect upon the feelings of the outraged country, which is now altogether wanting and which it is impossible to secure.

Our Secretaries of State, in answer to complaints of foreign governments in such cases, have called atten-
tion to the fact that our general government has no jurisdiction to direct the prosecution under Federal law of the perpetrators of these outrages. They have been content to point out that the persons killed or injured have had the same protection that citizens of this country have had under state laws. This, I may add, in all instances under examination when race hatred has been involved, has been no protection at all. In such cases the jury are generally drawn from the immediate neighborhood of the country and town in which the outrage is committed, and the result is that the grand jury and the petit jury are composed of the relatives and neighbors of the criminals and the prosecution is a farce. The situation is this, then: We make a promise and then we let somebody else attempt to perform it, and when it is not performed, as it never is, or at least, never has been, we say, “We are not responsible for this. It is somebody else’s failure. Of course we promised that your citizens would be treated properly, but you ought to have known that this promise was not to be performed by our government, but by a state government independent of us. However, say no more about it. We’ll salve your feeling by a little money, the amount of which we’ll fix.” It does not soothe one’s pride of country to note the number of lynchings of our own citizens that go unwhipped of justice, and that are properly held up to us with scorn whenever we assume, as we too frequently do, a morality higher than, and a government better than, those of other people. To avoid responsibilities for lynchings of our own citizens, however, we can live in a state in which they do not occur. But when aliens are lynched anywhere in our country and our national honor is at stake, we can not escape hu-
miliation. Congressional legislation putting the protection of aliens and the prosecution of the invaders of their rights in the Federal jurisdiction should find a strong reason in our pride of country and our desire to be considered in the first rank of civilized nations observant of treaty obligations. Another reason is the danger of war that may be thrust on us by the lawless, cruel, prejudiced action of the people of a town, city, or a county in dealing with subjects or citizens of other countries. The selfishness of communities controlled by the labor unions or by farming groups on our West Coast makes them willing to involve us in an utterly needless quarrel with Japan by action likely to arouse in the Japanese at home an intense feeling of hostility to this country. Of course, every one recognizes that the Government of the United States can not guarantee the detection and arrest of the guilty in outrages upon aliens, or contract that when they are caught and tried, conviction will necessarily follow. In no civilized country can this be assured. But that necessary uncertainty does not prevent promptness and energy on the part of the executive agents of the government in its effort to identify and arrest the offenders and to find the evidence against them, or courage and efficiency on the part of the prosecuting officers in properly preparing the case for the grand and petit juries. It is the utter absence of any sincere effort of the local authorities in such cases to bring the criminals to justice that naturally angers foreign peoples when they are asking reparation for the awful results of mob violence.

We can all remember the deep feeling aroused in our whole people over the massacre of Jews in parts of Russia, and the intense indignation that manifested
itself among their co-religionists in this country, and how skeptical our people properly were concerning official denials of governmental responsibility for such outrages. Let us try to look at lynchings of aliens in this country from the standpoint of their fellow countrymen at home. In the utter absence of protection or attempted punishment of the murderers, can we wonder that there should be a deep-seated suspicion on the part of the home people that the bloody riots have been with either the connivance or acquiescence of our authorities?

The American Bar Association has proposed Congressional legislation which would work a change in the present unsatisfactory state of affairs. It would provide that any act committed in any state or territory of the United States, in violation of the rights of a citizen or subject of a foreign country secured to such citizen or subject by treaty between the United States and such foreign country, which act constitutes a crime under the laws of such state or territory, shall constitute a like crime against the peace and dignity of the United States, punishable in like manner as in the courts of said state or territory, and within the period limited by the laws of such state or territory, and may be prosecuted in the courts of the United States and, upon conviction, the sentence executed in like manner as sentences upon convictions for crimes under the laws of the United States.

There is no doubt about the validity of such legislation under the Constitution. It has been expressly recognized by the Supreme Court of the United States in the case of Baldwin vs. Franks, 120 U. S. 678. That case involved the punishment of a man for using lawless violence against Chinese aliens resident in Cali-
fornia by driving them from their residences and de-
priving them of their legitimate business, contrary to
a treaty made between the United States and China
in 1881. The Supreme Court said that the treaty-
making power had been surrendered by the States and
given to the United States, and that treaties made by
the United States and in force were part of the supreme
law of the land; and that the United States had power
under the Constitution to provide for the punishment
of those guilty of depriving Chinese subjects of any of
the rights, privileges, immunities, or exemptions guar-
anteed to them by the treaty. Upon examination of
the statute under which the indictment had been
found, however, they held that it was not so worded as
to denounce as a Federal crime such a violation of
alien rights. New legislation on the subject has been
vigorously recommended by President Harrison, by
President McKinley, by President Roosevelt, and by
myself. President Roosevelt, in his annual message
of December, 1906, spoke as follows:

One of the great embarrassments attending the performance of
our international obligations is the fact that the statutes of the
United States are entirely inadequate. They fail to give to the
national government sufficiently ample power, through United
States courts and by the use of the Army and Navy, to protect
aliens in the rights secured to them under solemn treaties which
are the law of the land. I, therefore, earnestly recommend that
the criminal and civil statutes of the United States be so amended
and added to as to enable the President, acting for the United
States Government, which is responsible in our international re-
relations, to enforce the rights of aliens under treaties. There
should be no particle of doubt as to the power of the national
government completely to perform and enforce its own obliga-
tions to other nations. The mob of a single city may at any time
perform acts of lawless violence against some class of foreigners
which would plunge us into war. That city by itself would be

[II]
powerless to make defense against the foreign power thus assaulted, and if independent of this government it would never venture to perform or permit the performance of the acts complained of. The entire power and the whole duty to protect the offending city or the offending community lies in the hands of the United States Government. It is unthinkable that we should continue a policy under which a given locality may be allowed to commit a crime against a friendly nation, and the United States Government limited not to preventing the commission of the crime, but, in the last resort, to defending the people who have committed it against the consequences of their own wrong-doing.

In my Inaugural Address of March 4, 1909, I brought the subject to the attention of Congress as strongly as I could, as follows:

By proper legislation we may, and ought to, place in the hands of the Federal executive the means of enforcing the treaty rights of such aliens in the courts of the Federal Government. It puts our Government in a pusillanimous position to make definite engagements to protect aliens and then to excuse the failure to perform those engagements by an explanation that the duty to keep them is in States or cities, not within our control. If we would promise we must put ourselves in a position to perform our promise. We can not permit the possible failure of justice due to local prejudice in any State or municipal government, to expose us to the risk of a war which might be avoided if Federal jurisdiction was asserted by suitable legislation by Congress and carried out by proper proceedings instituted by the executive in the courts of the national government.

This action by the four Chief Executives indicates that those having the greatest official responsibility for our foreign relations feel the crying need for such legislation.