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Representation on the Council of the League of Nations

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REPRESENTATION ON THE COUNCIL OF THE LEAGUE OF NATIONS.

WITH the cessation of fighting in Europe came a renewal of the political struggle at home. The war had appealed to the conscience of the people and awakened a deeper national consciousness.[1] The novelty of an international issue lent zest to the fray. The traditional policy of the United States was challenged; its isolation was at stake.[2] For better or for worse the United States has become a world power and she is now called upon to take her part in the establishment of a new world order.[3] The project for a league of nations is in truth the great fruition of the war. The public generally realize the need for such an organization,[4] yet such is the strength of tradition that they cannot fail to look upon it with certain misgivings.

The course of the negotiations at Paris has accentuated the suspicion of the public. Rumors came floating over the water of political intrigues and imperialistic designs of some of the allied powers. A portion of the nation has become alarmed; the honor and independence of the United States are apparently in danger. Criticism of the League has sprung up from every conceivable quarter. The opposition is made up of the most heterogeneous elements, constituting a veritable cave of the Adullamites.[5] Radicals and reactionaries, socialists and imperialists, nationalists and internationalists, have all joined in the general hue and cry. To the socialist the League in a capitalistic plot; to the nationalist a surrender of American sovereignty; to the imperialist, an improper interference in Pan-American affairs; to the internationalist, a violation of the fourteen articles of faith.

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[1] McLaughlin, America and Britain, p. 53.

[2] Latané, From Isolation to Leadership.

[3] Beer, The English-speaking Peoples, Ch. VIII.

[4] The overwhelming majority in the Senate in favor of some form of a league of nations is the best evidence on this point.

[5] It is interesting to see Senators Penrose, Sherman and Reed in the same political camp with La Follette, Berger and Debs. It is equally interesting to find the New York Sun, the Hearst papers and the Nation supporting the same cause. It is doubtful if these irreconcilable elements could agree on any other issue.

The much abused pro-Germans have been suddenly transformed into the most vigorous exponents of pure Americanism. The staunchest "Little Americans" have come forward as the ardent champions of Chinese rights.[6] To cap the climax, the friends of Irish freedom, by a splendid tour de force, have succeeded in combining an imperious demand for American intervention in Ireland with an equally emphatic protest against European interference in American affairs.

The covenant, it must be admitted, is peculiarly open to criticism as well as praise. It is a very human document. It is neither entirely bad nor good; and in that very fact lies both its weakness and its strength. It reflects alike the pettiness and the nobility, the selfishness and the aspirations of the society of nations. In short, it represents a compromise between the nations' fear and jealousy of one another and their faith in humanity.

In the Senate, the critics of the League are split into three factions. The "mild reservationists" support the general principles of the League most heartily, but desire to place a few saving or qualifying reservations upon certain obscure or objectionable clauses. The so-called revisionists or "strong reservationists" likewise accept the League in theory but they demand material modifications of its terms in fact. If these reservations or amendments are not made, they are seemingly prepared to defeat the whole plan of a concert of nations.[7] And, lastly, there are "the bitter enders," a small group of ultra-nationalists who cling to the old Washingtonian principles of non-intervention in European affairs[8] and denounce the whole conception of an international organization as inimical to American interests and independence. The opposition, it will be observed, has little in common. Upon one matter only are they agreed, namely, that the rights and privileges of the United States must be adequately protected. In the popular catch-word of the day, the covenant must be Americanized.

The covenant has been subjected to a whole series of attacks on the ground of its un-American character, but probably none of these attacks has stirred up the same intensity of feeling as

[6] Senators Johnson and Poindexter, for example, have been most conspicuous in their advocacy of China's case.

[7] Senate Report, No. 176, 66th Congress, First Session. Congressional Record, 66th Congress, First Session, Vol. 58, p. 5426.

[8] Washington's Farewell Address. Messages and Papers of the Presidents, vol. I, p. 222.

the question of the basis of representation. The British colonies have been granted separate representation in the League. The principle of voting equality has apparently been violated in the interests of one nation. The majority of the opposition are firmly resolved that the British Empire shall not possess a greater voting power in the League than the United States; and this sentiment is strongly reflected out of doors. The privileged position of the British Empire rankles in the minds of the general public. It violates alike the sense of national pride and of international justice. The United States has not been accustomed to taking a secondary place to any other nation, and least of all to Great Britain. Here, then, is a splendid fighting issue, and the opposition has not failed to take full advantage of it.

The supporters of the League have been greatly embarrassed by this issue. It has taken them at a serious disadvantage. They had hoped to debate the general principles of the League, but instead of that the discussion has gone off almost entirely upon a few doubtful clauses. It is always exceedingly difficult to appeal to idealism in the face of national prejudice and in this case the appeal was made all the more difficult by reason of the apparent attempt on the part of the president to belittle his opponents and dodge the specific issues by glowing generalities. It was only natural that he should seek to divert the attack to more favorable fighting ground, but the attempt at diversion turned out to be a poor piece of political tactics. It served only to arouse the suspicion of the public. The president seemingly had something to conceal. Had he been outplayed by Lloyd George at the Peace Conference? Had he sacrificed, as was charged, the interests of the United States in order to secure English support for his own pet project? When the president awoke at last to the seriousness of these questions, he again made the mistake of failing to take the public fully into his confidence by meeting the objections of the opposition fairly and squarely. The public demanded a complete statement of the facts, but they succeeded only in obtaining an ex parte interpretation of the treaty. The United States, according to the Democratic spokesmen, had nothing to fear.[9] The opposition had stirred up a mare's nest. The one vote of the United States was equal to the six votes of the British Empire. The real power of the League was lodged in the

[9] See speeches of the President on his western tour. Congressional Record, 66th Congress, First Session, Volume 58, page 6320.

Council, of which the United States was a permanent member. In this body the votes of all the states were equal. The assembly, on the other hand, was a mere debating society, a plenary conference of the nations with no substantial functions. The British Empire was welcome to its six votes in the assembly inasmuch as no decisive action could be taken in any case without the consent of the United States. In other words, the United States always had an effective veto in reserve.

The public has been much perplexed by this confusion of tongues. The views of the various factions are apparently irreconcilable. The nation has sought for an authoritative interpretation of the treaty, yet none was to be found. The secrets of the inner council at Paris have been well kept. The constitution of the League was manifestly a compromise, yet the occasion for many of these concessions was known only to a small circle of men, and the latter for good diplomatic reasons, sometimes refused to furnish the necessary information upon which alone an intelligent public opinion could be formed. Among these compromises was the question of British representation in the League. The British colonies, it was known, had claimed separate representation and the British government had strongly supported their contention. The American delegates had demurred at first, but at last gave way.[10] The public at home now demanded some explanation of this change of front.

To quiet these demands, the president held an open conference with the Foreign Relations Committee of the Senate in which he freely discussed some of the more controversial sections of the treaty.[11] But the president's explanations, as might have been expected, were not entirely satisfactory to the opposition. They did not and could not meet all the actual and problematical objections to the League. Some of these explanations, moreover, were obviously faulty, if not strained. He was a special pleader and as such his views were open to suspicion. Some of his opponents did not hesitate to challenge the correctness of his interpretations and to compare them with the corresponding declarations of foreign statesmen, ofttimes to the disadvantage of the president's frankness and diplomatic skill.[12] Notwithstanding these criti-

[10] Speech of Sir Robert Borden quoted in Congressional Record, p. 7793.

[11] Ibid, 4271.

[12] Senators Lodge, Borah, Johnson and Reed have been especially unsparing in their criticisms.

cisms, the net results of the conference were favorable to the treaty. The president did not succeed in winning his opponents over to his views, but he did manage to remove some of their objections. The political situation, moreover, was clarified and what was more important, the public were afforded a more comprehensive survey of the working operations and achievements of the peace conference. A final and complete interpretation of the League of Nations was still lacking. But time alone could furnish an authoritative interpretation. The true meaning of the covenant could not be derived solely and exclusively from a minute discussion of its terms. It is safe to predict that its true construction will be found only in the future working operations of the League.

The constitution of the League[13] provides for the creation of a council and a general assembly. Unfortunately the draftsmanship of the covenant upon this matter is far from satisfactory. The method of organizing these two bodies is fairly distinct, but strange to say no clear cut distinction is drawn between the powers of the council and of the assembly. The express powers of the council are more specifically enumerated than those of the assembly, but both organs of the League are given a general roving authorization to deal "with any matter within the sphere of action of the League or affecting the peace of the world. By article 4,

"The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

"With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

"The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

[13] Copies of the covenant of the League of Nations may be found in convenient form in International Conciliation, September, 1919, No. 142; Duggan, The League of Nations, p. 328; Morrow, The Society of Free States, p. 198; Congressional Record, Ibid, pp. 3359-3562.

"The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

"Any Member of the League not represented in the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

"At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative."

This organization was doubtless based upon the experience of the Peace Conference. There is every reason to believe that the five greater powers expected that the Council would play the same part in the League that it did in the Peace Conference. The general open sessions of the conference at Paris proved a sorry failure from the very outset. The conference threatened to develop into a discordant debating society. It was only when the greater powers formed themselves into a small select council that the peace negotiations made satisfactory progress. And even this greater council of ten proved too unwieldy in operation and it was soon found necessary to hand over its more difficult tasks to a small inner council of five consisting of the chief representatives of the five great powers. In short, the legal theory of the natural equality of states had to give way to the actual political hegemony of the more powerful nations. From time to time the general body of delegates were called together but the conference had ceased to be an independent deliberative assembly. It had lost all power of initiative and had become a mere ratifying body. The delegates of the smaller states realized their weakness and were fain to kick against the pricks, but their protests were useless. The conference was as helpless as the former German Reichstag in the presence of the Bundesrath. It could criticize but could not control the policy of the small group of "elder statesmen."

The constitution of the League is well calculated to maintain this ascendency. The five greater powers have generously reserved for themselves five of the nine places on the council and the permanent seats at that. The remaining states must needs rest content with the position of representatives of the minority shareholders on the international board of directors. They have not even been allowed a free hand in the selection of their own representatives but have been obliged to share that right with the greater states. In other words, "the big five" not only choose

their own delegates, but participate in the selection of their colleagues on the council. By this device they hoped to exercise a powerful if not determinant influence over the policy of that body, since there was little doubt but that they could control the votes of some of the weaker or dependent states in the assembly. The United States and Great Britain are in a particularly favorable position in this respect by reason of their intimate economic and political relations with the sister states of Latin America and of the self-governing dominions respectively.

The original selection of the minority members of the council furnishes an excellent illustration of the influence of the greater powers. The latter have had more than a sentimental interest in the provisional appointments of Belgium and Greece. They knew that they could count with reasonable certainty upon the general support of these two states. The war had brought about a close identification of the interests of the two smaller nations with the policy of their political allies and more particularly of France and Great Britain. Belgium and Greece had indeed deserved well of the Allies by reason of their splendid sacrifices during the war. But if military service or sacrifice was to be the main reason for selection, then Serbia rather than Greece should have been rewarded with a seat in the council. Unfortunately for Serbia, however, her policy and geographical situation brought her into conflict with her more powerful neighbor across the Adriatic. She was naturally a high-spirited state and she had independent aims of her own. The greater powers feared that she might turn out to be an obstreperous youngster at the council table and they accordingly preferred the claims of a rival Balkan state. The same political influences may also be seen in the choice of Brazil to represent the Latin American states. At a critical moment in the battle between German and American diplomacy in South America, she threw the whole of her influence on the side of the United States and the Allies. It was only natural in the circumstances that her claims to representation should have been favored over those of her neutral neighbors, Argentine and Chile. In short, it must be admitted that the choice of the minor representatives was governed by the political interests of the larger states rather than by a desire to reflect the diversified views of the smaller nations themselves.

A lively controversy has arisen over the eligibility of the British colonies to membership in the council. The names of

five of these colonies are to be found among the list of the original members of the League. Their independent status in the assembly is unquestioned. In the conference with the Foreign Relations Committee of the Senate, President Wilson declared,[14] however, that the colonies were not entitled to separate and distinct representation on the council. The unity of the British Empire was alone recognized in the organization of that body.

"In making up the constitution of the council, it was provided to speak with technical accuracy, that the five principal allied or associated governments should each have one representative in the League; and in the opening paragraph of the treaty itself, those powers are enumerated, and among others is the British empire. The empire of Great Britain I think is the technical term. Therefore their unity is established by their representation in the council."

But this interpretation of the covenant has been sharply challenged not only by the American opponents of the League but likewise by the British colonies and with good reason. The question had already been raised at the Paris conference. To avoid any possible misconception upon this point, Sir Robert Borden, the Canadian premier, had taken the precaution to secure from the three leading powers a formal written recognition of Canada's claim to equal rights of representation.

"The question having been raised as to the meaning of article 4 of the League of Nations covenant, we have been requested by Sir Robert Borden to state whether we concur in his view that upon the true construction of the first and second paragraphs of that article, representatives of the self-governed dominions of the British Empire may be selected or named as members of the council. We have no hesitancy in expressing our entire concurrence in this view. If there were any doubt, it would be entirely removed by the fact that the articles are not subject to a narrow or technical construction."

This document was signed by Clemenceau, Lloyd George and President Wilson.[15] With this assurance in his pocket, Sir Robert was able to return home in triumph. His mission was accomplished. He had merited well of his country, for he had captured the golden fleece. The independent status of the self-governing colonies was apparently assured. They had been admitted as full-fledged members into the League of Nations.

Not long after the whole question came under review in the

[14] Congressional Record, Ibid, p. 4285.
[15] Quoted from the Congressional Record, Ibid. p. 7793.

Canadian parliament. In laying the treaty of peace before the House of Commons for ratification, the Premier declared:[16]

"I hope the House will realize that the recognition and status accorded to the British dominions at the Peace conference were not won without constant effort and firm insistence. In all these efforts the dominions had the strong and unwavering support of the British prime minister and his colleagues. The constitutional structure of the British Empire is imperfectly understood by other nations, even by a nation so closely allied to us in kinship, in language and in the character of its institutions as the United States of America. Such lack of comprehension need excite no surprise, because the association between the mother country and the great self-governing dominions has been for years in a condition of development and that development is not yet complete.

"The future relationship of the nations of the empire must be determined in accordance with the will of the mother country and of each dominion at a constitutional conference to be summoned in the not distant future. Undoubtedly it will be based upon equality of nationhood. Each nation must preserve unimpaired its absolute autonomy but it must likewise have its voice as to those external relations which involve the issue of peace or of war. So that the Britannic commonwealth is in itself a community or league of nations which was founded in Paris on the 28th of last June.

"On behalf of my country, I stood firmly on this solid ground, that in this the greatest of all wars, in which the world's liberty, the world's justice, in short the world's future destiny was at stake, Canada had led the democracies of both the American continents; her resolve had given inspiration, her sacrifices had been conspicuous; her effort was unabated to the end. The same indomitable spirit which made her capable of that effort and sacrifice made her equally incapable of accepting at the Peace conference, in the League of Nations or elsewhere, a status inferior to that accorded to nations less advanced in their development, less amply endowed in wealth, resources and population, no more complete in their sovereignty and far less conspicuous in their sacrifice."

The Republicans in the Senate were quick to seize upon the conflicting views of the president and the Canadian premier. They rolled the Borden letter as a sweet morsel under the tongue. Needless to say, they became the vigorous protagonists of the Borden interpretation. It afforded an excellent ground of attack upon the ineptitude of the president's diplomacy. The covenant, they pointed out,[17] made no distinction between the status of the British Empire in the assembly and in the council. The British

[16] Ibid p. 7943.
[17] See speech of Senator Lodge, Ibid, p. 7944.

colonies were not admitted into the League as dependent territories, but on the basis of equality as high contracting parties and as such were entitled to claim all the rights and privileges of membership, including representation on the council. There was a manifest inconsistency in attempting to treat the British Empire as a unit in relation to the council but as a group of associated states in the assembly. If the independent status of the colonies was recognized as members of the assembly, it must needs be conceded in principle in the case of the council. The empire could not be unified and divided according to the pleasure of the president. The covenant did not provide for any system of contracting in and out for the British colonies. The Borden letter was conclusive upon that point. The president could not now withhold the right which he had so thoughtlessly conceded to the British delegation. The president's interpretation was in the nature of an afterthought but unfortunately it had come too late. He had sacrificed the prestige and interests of the United States by the liberality of his concessions. He must now pay the penalty for his own shortsightedness.

Senator Williams, one of the ablest champions of the League, took up the cudgels on behalf of the administration.[18] The only effect of the Borden letter, according to the Senator, was to authorize the appointment of a colonial delegate as the sole representative of the British empire on the council. In other words an implied right was converted into express authorization. It gratified the amour propre of the colonies without in any way enlarging their political rights. The British Empire still remained a unit.

"A South African would be eligible for a place upon the council, a Canadian would be eligible, but the agreement in the treaty says in so many words that the so-called empire of Great Britain should have one representative on the council and it says only one, and the naming of the whole includes its parts and therefore the parts of Great Britain all taken together can have but one vote on the council, but that one may come from any part of the British Empire."

But this construction is manifestly strained. It makes the "triple guaranty" absolutely meaningless. The colonial delegates were not raising a constitutional but an international issue. As British subjects they were legally qualified to act as imperial representatives and several of them had already served in that

[18] Ibid p. 6355.

capacity at the peace conference. The fifth member of the British delegation was usually selected from the various colonial representatives by a system of rotation. No international sanction was required to authorize the appointement of one or even of a solid delegation of colonials to represent the empire at large. The mode of choosing the imperial delegates did not concern any outside nation. It was a purely domestic matter to be determined by the mother country and the colonies themselves. The colonies had already secured an independent constitutional status. What they were now seeking, however, was an international recognition of that constitutional fact. The covenant, they believed, conceded their claim to a separate national status. The declarations of the three chief executives merely confirmed that right.

But there are still further difficulties with the Williams interpretation. The covenant recognizes a clear distinction between the British Empire and the self-governing colonies in the case of the assembly. The matter is not so clear in the case of the council. The British Empire is expressly named as one of the permanent members of that body, but nothing is said in respect to the status of the dominions. From the fact that the self-governing colonies have their own representatives in the assembly and participate in the selection of additional members of the council, one might naturally infer that they in turn would be entitled to seek the suffrage of their fellow members for a seat or seats in the council. In modern democracies the usual presumption is that the right of suffrage carries with it the right of election to public office save in the case of special age or residence qualifications for office holding. The presumption in this case is strengthened by the president's admission that "upon a true construction of paragraphs 1 and 2 of article 4 of the covenant the self-governing colonies may be selected or named as members of the council." By the second paragraph of the above article provision is made for the enlargement of the council, both by the naming of additional permanent members of the League and by an increase in the number of selected members. The word "additional" is especially significant in this connection. Additional to what? Why, additional to those states which are already expressly represented in the council, including of course the British Empire. The self-governing dominions were not advancing a claim to an alternate or substitute membership on the council as Senator Williams infers, but were demanding the right to

separate additional representation in their own names and on their own account. In other words according to the Borden letter the dominions are eligible to representation on the council irrespective of the question as to whether they are or are not already represented in that body as parts of the British Empire. From this standpoint the discussion of their relation to the British Empire is entirely beside the question. The mere fact, for example, that a Canadian rather than an Englishman is chosen as the British or imperial representative on the council will not preclude the Canadian government from seeking an independent seat on the council in its own right.

It will be observed, moreover, that the colonial right to representation is stated in the alternative, viz. "to be selected or named." The covenant makes a distinction between choosing the permanent and the elected or rotatory members of the council. The former are named, the latter are selected. The Borden letter recognizes the right of the colonies to gain admission to the council by either of these methods. According to this interpretation, therefore, Canada and the other self-governing colonies may become entitled to permanent representation in the council alongside of the five greater powers, though this eventuality seems most unlikely. And even though for the sake of argument it be admitted that the dominions are included in the British empire for purposes of representation as permanent members of the council, that would not debar them from seeking admittance into the council as selected members. It is very evident from the Borden letter that they were not considered part of the British Empire in respect to the selection of the representative members of the council. The empire in the all-inclusive sense of Senator Williams, certainly has no claim to independent representation as a selected or rotatory member. It could not be a permanent and selected member of the council at one and the same time without violating the provision of the covenant against plural representation. But this inhibition could not be applied to the British dominions without violating the express right of the colonies under the Borden letter "to be selected." As the dominions are granted the right to be selected, it must be a right in their own names since the British Empire is already represented as a permanent member. It stands to reason, therefore, that the self-governing colonies are intended to possess an independent status in respect to the council as to the assembly. In a word, they are in the

empire but not of the empire as members of the league. There is, moreover, no essential incompatibility in principle, however much there may be in effect, in the naming of the British Empire as an original member of the league on permanent appointment and the subsequent selection by the assembly of one of the self-governing dominions as a representative of the general body of states. To deny to the British colonies the right of representation on the council would not only reduce them to a position of legal inferiority in the league but would also correspondingly restrict the freedom of the states in choosing their representatives for the council. There is no evidence whatever in the covenant that the members of the League, whether states or self-governing dominions, intended to adopt any such discriminatory or self-denying ordinance.

Senator McCumber of North Dakota has worked out a different interpretation of this provision.[19] He would exclude the original members of the League from the right of nomination or election to the council, and would reserve that privilege exclusively for the states which are subsequently admitted into the League. "Additional" means, according to the honorable senator, in addition to the present members of the League. The following clause in respect to the increase in the number of members embodies the same idea:

"The purpose of providing that only additional members of the League could have a right to representation in the council, as is well known, was that Germany and Russia might in time become members of the League and be given a permanent representation upon the council. That was its purpose and by the very terms of the provision it excludes the present members of the League from selecting representatives to become either permanent or temporary members of the council; and that, therefore, excludes all these British dominions which are at present members of the League of Nations, from ever becoming members of the council, unless there is an amendment made to the very constitution of the League itself."

This interpretation, it is submitted, is open to many objections; it violates both the lettter and spirit of the covenant. The initial difficulty with the senator's interpretation is that he attempts to draw a hard and fast line between members of the League and members of the council. "The League members," he declares, "are not members of the council." This is undoubtedly true of the majority of the League members, but not of all.

[19] Ibid p. 7948.

All the states represented in the council, it should be remembered, are also original members of the League. There is no gulf fixed between these two bodies. A more serious objection arises from the fact that the honorable senator wrests the second paragraph entirely out of its context. Article 4 must be construed as a whole; it cannot be dissected clause by clause irrespective of the context or the subject matter. This article deals with the organization of the League; it is not concerned with the question of admitting new members into the League. The word "additional" must be construed in the light of the purpose of the whole paragraph and not as a separate proposition. The senator has likewise disregarded the qualifying clauses which refer directly back to the organization of the council. In the second clause, for example, the council is not authorized simply to increase the membership of the League but rather "to increase the number of members of the League to be selected by the assembly for representation on the council." In other words, the clause relates to the membership of the council and not to the membership in the League in general. But a more fundamental difficulty with this interpretation is that it defeats the very purpose of the League. The original members of the League are directly concerned in the organization of the council and the selection of representatives for that body. It is unreasonable to suppose that they deliberately intended to discriminate against themselves in favor of subsequent members of the League. The Paris conference can scarcely be accused of attempting to place Germany and her associates in a more favored position than the allied and neutral states; yet that is the inevitable result of the McCumber interpretation. Few of the so-called original states would consent to join the League in such circumstances. It would pay the neutral nations to hold off until a later time and then seek admission upon more favorable terms as states duly qualified for membership in the council. And lastly, it may be pointed out, the McCumber explanation fails to meet the colonial contention in respect to separate representation.

The British dominions have been keenly interested in the course of the controversy in the United States. The attitude of the president and of the Senate on the question of colonial representation has been a sorry disappointment to them. They had looked to the president for sympathy and support. He was the foremost champion of the rights of small nations. Were they

not also struggling for the right of self-determination? Was this principle to be applied only to the continent of Europe? The Canadians have been particularly sensitive about their newly acquired status. They were much perturbed over Mr. Taft's proposed revision of the covenant to exclude the colonials from representation on the council.[20] The Minister of Justice, Hon. C. J. Doherty, was most outspoken in his vindication of the rights of the dominions against American attacks.[21]

"If what Mr. Taft is said to suggest were adopted," he said, "it would absolutely exclude Canada from distinct representation on the council for all time, since the British Empire as a whole, as one of the principal allied and associated powers, is at all times represented.

"The right of Canada as a member of the League to be eligible for representation on the council under the provisions of the covenant was insisted upon by her representatives and that those provisions conferred upon her that right was clearly understood and unequivocally recognized by all concerned.

"A reservation in effect negativing that right would involve further change in the contract—after acceptance and signature by all parties,—in regard to a matter which from the Dominion's point of view is of its essence. As such it is clearly inadmissible and not distinguishable from a refusal to ratify."

The president's apparent change of front aroused even more resentment in certain quarters. He was accused of truckling to anti-British sentiment and was charged with a flagrant breach of faith. In Parliament the opposition attempted to turn the situation to their own political advantage. Some of the Liberal leaders did not hesitate to assert that the government had been buncoed and was trying to palm off on the House a spurious nationalism. The government was manifestly chagrined at the turn of affairs. Its fight for national recognition at Paris was ridiculed and what was even more humiliating, the evidence of its victory was called in question. The production of the Clémenceau, etc., letter failed to silence the opposition. The latter refused to accept that document at its full face value and appealed to American criticism in support of their contention. The government, however, stood fast upon its own interpretation of the covenant and refused to yield one iota of its nationalistic contentions. The self-governing colonies, Sir Robert Borden maintained, had become parties to the treaty and the terms of the

[20] Post p. 143.
[21] The Toronto Globe, September 9, 1919.

document made no distinction between them and the other signatory members. They were recognized at Paris as separate and distinct political entities, and as such were entitled to have their own representatives on the council. If this right were denied, he sadly admitted, Canada would have but a slight interest in the League of Nations. He felt certain, however, that the sacrifices of the self-governing dominions would not pass unrequited.

The Honorable A. L. Sifton, Minister of Customs and one of the Canadian delegates at Paris, expressed similar sentiments in respect to Canadian representation on the international labor conference.[22]

The Canadian delegates have felt the more confident of their position since they could count upon the support of Lloyd George and the other colonial representatives. Canada was not alone in her contention, as the other dominions were prepared to back her up. The evidence of this soon came to hand. The question of the status of the Dominions was also raised in the South African parliament, and met with a similar response.

"It was incorrect," General Smuts declared,[23] "to say that in the League the British Empire was a unit. The empire was a group but South Africa had exactly the same rights and voice as the United Kingdom. Though the United Kingdom was a permanent member of the central council, South Africa could be elected to that council."

It is clear, therefore, that in the minds of the colonial delegates the status of the Dominions was fixed at Paris for the purpose of the covenant, as that of sovereign and independent states

[22] "I found that so far as that convention was concerned the gentleman who drafted it thoroughly agreed with the leader of the opposition—they thought that the delegates of the British Government could better look after the labor interests of the Dominion of Canada than we could; and it contained a special clause to the effect that the self-governing dominions should only have certain representation upon that governing body, and under no circumstances could there be any other. So far as I was concerned, Mr. Speaker, although I would have been willing to sacrifice many things in connection with the matter, I said that that was not in the interests of the Dominion of Canada, and that the fight would be kept up until the last minute before I would ever consent to a document of that kind under which the labor men of Canada, who were so proud of their international union, would have to go to the city of Washington on a footing inferior to that of the negroes of Liberia. I kept up the fight, and Sir Robert Borden kept up the fight and made it stronger, perhaps, and finally, only the day before the peace treaty was signed, those clauses were struck out and the Dominion received exactly the same recognition in regard to that International Labor Convention that was accorded to any of the thirty-two allied and associated powers."

[23] Quoted from Congressional Record, p. 7794.

with all the rights and duties, the powers and obligations that appertain to full membership in the League.

But while the colonial contention upon this question is probably correct, it is safe to predict that the self-governing colonies will have little opportunity to assert their rights. There is a material difference in fact between the possession of a legal right and the actual exercise of the same. In this case the political factors of the problem cannot be left out of consideration. The self-governing dominions are in much the same position as the Latin American states in the matter of political recognition. They are all alike eligible to membership in the council, but their chances of being named or selected in the near future are extremely remote. The membership of the council, as we have seen, may be increased in two ways. First, the council with the approval of a majority of the assembly may name additional permanent members of the council. Thanks to this provision, the council will be able to retain a large measure of control over its own personnel. The position of the five greater powers is well safeguarded since no addition can be made to their number without their consent. For all practical purposes the council has been created a closed corporation and may continue to retain that character. As a co-öpted body there is always the danger that it may develop the exclusive spirit of a medieval guild. It has the greatest piece of political patronage in the world at its disposal; namely, nomination to a seat in the council. It has the power of reward and punishment; the lowly may be exalted and the mighty brought down from their high estate. In short, it holds the keys to the world's dominion. The council, we may be sure, will exercise its power of nomination with great moderation. The greater nations have a selfish interest in maintaining their special privileges since every addition to the permanent members will have a tendency to lower the prestige and impair the ascendancy of the original members. It is little wonder, in the circumstances, that the German delegates at Paris protested most strongly against their exclusion from the seats of the mighty. The door of admission had apparently been barred and bolted against them and their allies.

In brief, we may then conclude that the permanent members of the council constitute an oligarchy within the council itself. They not only determine their own membership but, as we shall see, exercise a determining influence over the selection of the

representative members of the council. The assembly plays but a minor role. It has the privilege of approving the nominations of the council. The initiative manifestly lies with the council. The latter decides upon its nominees in advance; the assembly merely acts as a ratifying convention. For this purpose a majority only of the assembly is necessary. The greater powers should not find it difficult to muster the required number of votes in the assembly to nominate their candidates.

The second method of enlarging the council is by an increase in the number of representative members. The combined action of the council and assembly is again necessary. The covenant provides that the council with the approval of a majority of the assembly "may increase the number of members of the League to be selected by the assembly for representation on the council." In other words, the council with the approval of the assembly, determines upon the number of states to be added to the council as representative members. The assembly then proceeds to select the designated number of new members. All members of the League, including the members of the council, are entitled to participate in the election. By article five "except where otherwise expressly provided in this covenant or by terms of the present treaty decisions at any meeting of the assembly or of the council shall require the agreement of all the members of the League represented at the meeting." The unanimous vote of the council is therefore required for any addition to the number of representative members of that body. Such additions, in all probability, will be few and far between, in view of the natural opposition of the big five to any policy which would increase the influence of the representative members of the council at their expense. In short, the permanent members dominate the council and the latter in turn control the policy of the assembly.

Several of the senators, Mr. Shields[24] in particular, have advanced the argument that in the election of the four representative members of the council, a unanimous vote of the assembly is not required. An election, it is contended, is not a decision within the terms of article five, but rather a matter of procedure for which a majority vote only is required. "I can hardly think," said the honorable senator from Tennessee, "that anyone would say that the election of a member of the council would be a 'decision.' A decision implies the passing upon a dispute where

[24] Ibid p. 7944.

there is a controverted point, such as courts decide. It implies that the council is then sitting as a judicial body, while the matter of an election is one of procedure. Therefore I think that a majority can elect."

The language of the covenant in this as in other instances unfortunately is not well chosen. The word "decision," it must be admitted, does not aptly describe the function of election, though the act of electing does involve a decision. It is evident from the context, however, that the word is not used in a narrow juristic sense but is intended to have a broad application to all matters of business on which a final determination is reached. The clause reads "Decisions at any meeting of the assembly or of the council shall require the agreement of all the members of the League represented at this meeting." This is not the technical language of the court room, but rather the common phraseology of a general assembly. Moreover, the proposed permanent court of international justice is expected to handle all questions of a strictly legal character. Its judgments will be decisions in the technical sense of the word, as interpreted by Senator Shields. The assembly, on the other hand, will deal with a great variety of subjects ranging all the way from the election of members of the council to the determination of any matter affecting the peace of the world. In dealing with these matters it will act in a political rather than in a judicial capacity. Only a comprehensive word would suffice to describe these varied functions. The qualifying phrase "at any meeting" further emphasizes the non-judicial character of these "decisions." If the council or assembly were in truth judicial bodies, it might be reasonable to assume that a majority vote would be sufficient to determine a matter in controversy. But as the questions at issue are almost exclusively of a political nature, involving the special rights and privileges of the several nations, the presumption, it is submitted, is the other way. Political questions are apt to touch closely upon national sovereignty. As a general rule states do not willingly surrender any of their sovereign powers. In the case of the North Atlantic fisheries arbitration, the court laid down that such surrender could not be assumed by mere implication. Express language is necessary to effect any change in the status of a nation or of its territory. The same rule of construction, it is submitted, must be applied in the present instance. The principle of unanimity is a corollary of the doctrine

of national sovereignty. The legal rights of the states in the League are unimpaired save in so far as they are expressly limited by the terms of the covenant. The rule of unanimity runs throughout the covenant: it is one of the characteristic features of that document. The fact that a few express exceptions have been made to the principle strengthens the presumption that the rule was not to be departed from in other instances. Expressio unius est exclusio alterius. And in the case of these exceptions it may be observed, a majority vote in the assembly is usually coupled with a provision for unanimity in the council.

But the question remains: Can the method of voting be properly described as a matter of procedure? This latter phrase has a distinct technical significance in most if not all legislative bodies. It relates to the various stages of the law-making process, or to the mode in which the business of Parliament is conducted. It has nothing whatever to do with the constitutional right of voting. It is reasonable to suppose that both the makers and drafsmen of the covenant intended to use the term in its ordinary parliamentary sense. In the United States, for example, the constitution expressly determines the size of the quorum for doing business.[25] The matter is not left to the free determination of the Houses according to their own rules of procedure. Similar provisions are to be found in the constitutions of most modern states.[26] It has likewise been held in the House of Representatives that the speaker could not be deprived of his right to vote by a standing rule of the House.[27] In truth, the right to vote in the council or assembly, as in other legislative bodies, is a substantive right, explicitly recognized in the covenant itself; it is not a mere stage in the process of legislation. A right which the covenant has expressly conferred cannot be withdrawn or modified under the guise of a rule of procedure.

The Shields interpretation, moreover, runs counter to the generally accepted construction of other clauses of the covenant. If the method of voting is a matter of procedure, the council is likewise free to make its nominations by a majority vote only. No senator, however, has yet ventured to lay down that principle in respect to the council. The rule of unanimity in the council is too clearly expressed in article 4 to afford an opportunity

[25] United States Constitution, Article 1, Section 5.
[26] Australia, Austria, Belgium, Germany, Hungary, etc.
[27] Constitutional Manual and Digest, Rules and Practice, House of Representatives, Section 59, p. 19.

for question upon that point. But if the principle of unanimity be conceded in the case of the council, it is difficult to see how it can be denied in the case of the assembly. The covenant makes no distinction between matters of procedure in the two bodies. The covenant, on the other hand, does recognize a distinction between the assembly and a majority of the assembly. For example, by paragraph one of article four, the four permanent members of the League are to be "selected by the assembly;" by paragraph two of the same article the council "with the approval of a *majority* of the assembly may name additional members of the League, whose representatives shall always be members of the council." In short, the covenant admits a few special exceptions to the rule of unanimity in the case of the assembly, but in the absence of such express limitations, the general rule prevails. It seems safe to conclude, therefore, that when the words "the assembly" are used without qualification, they mean, according to article four, "agreement of all members of the League represented at the meeting" and not simply a majority of that body.

As the states whose representatives are members of the council are also members of the assembly, they have an equal voice with their colleagues in the selection of representative members of the council. A unanimous vote of all members represented at the meeting is necessary for an election.[9] The members of the council, it will thus be seen, have a double veto, first in respect to the increase in the number of members of the council, and second, in the matter of the selection of representative members of that body. The doctrine of national sovereignty is here carried to the furthest extreme. The objection of a single member of the council can defeat an almost unanimous vote of the whole assembly. A more effective veto could scarcely be devised. This is indeed a tremendous power to lodge in the hands of a single state. Here is a mighty weapon of conservatism. The future safety and happiness of the world may be left to the mercy of a selfish or refractory state. The sad experience of the Polish diet immediately comes to mind. It is sincerely to be hoped that the new international veto may not prove as disastrous in practice as did the individual veto of that unfortunate state. But notwithstanding the danger of deadlock, it is extremely doubtful if the powers would consent at present to sacrifice any of their freedom of action in the interest of world union. The nations still hold fast to the theory of national sovereignty.

But while unanimity is the general rule of the council, there are a few exceptions to the general principle. By paragraph two of article five:

"All matters of procedure at meetings of the assembly or of the council including the appointment of committees to investigate particular matters, shall be regulated by the assembly or by the council and may be decided by a majority of the members of the League represented at the meeting."

The question of the appointment of investigating committees may prove of considerable significance in the history of the council. It is probable that the council may find it advisable to follow the precedent of the Peace Conference, namely of referring difficult questions to a small inner junta for examination. The reports of these committees cannot fail to have an important influence upon the decisions of the council as a whole. These reports will be in the nature of recommendations or provisional findings only which the members of the council will be free to accept or reject at their pleasure, but since the committees alone are in possession of the facts, the remaining members of the council must be largely dependent upon these reports for their decisions. As the selection of the committee is made by a majority vote, it might therefore be possible to promote or block the policy of a particular state by manipulating the personnel of the committee. This is a danger which is inevitable in any system of election. Combinations for political purposes are always possible, but there is no more reason to believe that the other powers would prefer to intrigue against the United States than against one another. As a matter of fact, the United States would seem to be in the most favorable position in this respect, inasmuch as she alone enjoys comparative freedom from the traditional rivalries of the European states. Her chance of election to one of these committees would be enhanced by the fact that she would be a neutral outsider with no national interest in the matter in controversy.

A more important exception to the rule arises in case of the failure of the council to bring about a settlement of a dispute between members of the League. By article 15:

"If there should arise between members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with article 13, the members of the League agree that they will submit the matter to the council. . . . The council shall endeavor to effect a settlement of the dispute, and if such efforts are successful, a statement shall be

made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the council may deem appropriate.

"If the dispute is not thus settled, the council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto."

The class of cases coming up under this provision will be almost exclusively of a political character. The council promises to be kept very busy indeed. All the ancient and modern controversies of Europe may now obtain a hearing. From their very nature, these cases cannot well be referred to a court of arbitration. The council as a political body must deal with them as best it can. Its proceedings, it is safe to predict, will be governed by diplomatic considerations rather than by the strict principles of arbitral justice. It would be almost hopeless to look for unanimity of action in all such cases and the covenant very wisely dispenses with this requirement. The primary purpose in such proceedings is to lay the facts of the controversy before the League and enable the world to form a more intelligent judgment on the merits of the case. Even a majority report could not fail to exert a powerful influence on public opinion throughout the world. The organization and actual workings of the council in such circumstances become a matter of great significance. It would be fatal for the council to fall under the undue influence of one or more great states. The very purpose of the League would be defeated if its sources of information were subject to political manipulation for national purposes. To offset this danger the covenant provides that "any member of the League represented on the council may make public a statement of the facts of the dispute and of its conclusions regarding the same." This provision should afford a sufficient guaranty of publicity and safeguard the rights of individual members. The minority cannot complain that they have not had a proper opportunity to lay their case before the League. The report of a majority of the council, it need scarcely be added, does not bind the minority in any way. The effect of the report is purely political and educational. The minority are still free to act as they see fit. The covenant expressly lays down,

"If the council fails to reach a report which is unanimously agreed to by the members thereof, other than the representatives of one or more of the parties to the dispute, the members of the League reserve to themselves the right to take such action

as they shall consider necessary for the maintenance of right and justice."

A different situation is presented when "a report by the council is unanimously agreed to by the members thereof other than the representatives of one or more of the parties to the dispute." In this case "the members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report." No positive action is demanded of members of the League in such cases, but a distinct limitation is placed upon their freedom of action. They are at liberty to come to the support of the successful plaintiff but not of the vanquished party. The purpose of the provision is of course to prevent an appeal to arms on the part of the defeated nation and its friends. The fact that all the members of the council save the interested party or parties concur in the decision, raises a strong presumption in favor of the fairness of the hearing and the justice of the conclusions.

The opponents of the League have been quick to detect possible dangers for the United States in article 15 when taken in conjunction with the provisions in respect to representation on the council. It is legally possible, as we have seen, though most improbable, that the British Empire may have six representatives on the council. But this danger, under ordinary circumstances, is more apparent than real, inasmuch as the action of the council must be unanimous to be binding. The veto power of the several states affords general protection to national rights and interests, but this safeguard does not extend to cases arising under article 15. In such cases unanimity is no longer required. The vote or votes of the parties to the dispute for the moment become immaterial. A decision may be reached without their assent; for all practical purposes they lose their right to veto. In other words, the principle of unanimity is set aside in favor of a modified application of the ancient common law rule that a man ought not to be judge in his own case. But however admirable this rule may be in theory, it is none the less true that it does involve the sacrifice of a measure of national sovereignty. A case may easily arise where the vital interests of a nation may be at stake and yet for all practical purposes that state would have to accept the judgment of its peers on pain of being read out of the League of Nations. True, it could protest, but in the face of article 15 it could scarcely hope to secure a reversal of the

decision. The situation, as has been indicated, would be rendered even more difficult by the presence of one or more representatives of the British dominions upon the council. The superior voting power of the British Empire might then prove decisive. Suppose, for example, that the United States should become involved in a controversy with Great Britain. The two interested nations would practically though not actually be excluded from the controversy, but the representatives of the British dominions would still continue to serve as judges on the case. A decision in such circumstances would seemingly work a positive injustice to this country.

"So disproportionate," says an able critic,[28] "is the weight of the British voting block in the aggregate that it is difficult to believe that with all the margin thus permitted for manipulating, bargaining and group dealing, that Britain will fail to elect for herself at least one more of the four assembly elected representatives upon the council. This contingency, left open rather too invitingly, would result in leaving America out-voted by Britain two to one on the council and six to one on the assembly."

To the ardent nationalist it looks as though England would always hold an extra card or two up her sleeve to be used in case of necessity against her opponents.

The friends of the administration have experienced much difficulty in meeting this attack. A loophole has apparently been found in their defense since the veto power is no longer effective. There is still, however, the pragmatic argument to fall back upon. No constitution, it is claimed, could guard against all possible contingencies. The covenant should be judged not as a model but as a working instrument of government. Foreign nations are not as entirely selfish or wicked as they are represented to be. Some credit at least should be given to the honor and good faith of the British dominions. The other nations are equally affected by the special British privileges, but they are not alarmed at the prospect of being outvoted or left out of the Council. They have as much to fear from British domination as the United States, yet they have raised no objection to the separate representation of the self-governing dominions. They believed that they were quite capable of looking after their own interest and that there was little danger of an abuse of power. In truth, the cry of British imperialism was a false alarm. The

[28] Wm. J. McNally in the Minneapolis Morning Tribune, October 13, 1919.

British dominions, in fact, would never find a seat in the council. The veto power could still be used to block the election of colonial delegates to that body. It was ridiculous to suppose that the United States would be a party to its own undoing by voting for British colonial representatives. If this government did such a foolish thing, it would have itself to blame for the results and not the covenant. And even if by some strange mischance a Canadian or Australian were elected to the council, this ought not to be regarded as a dire calamity since the colonials were the closest and most natural allies of this country in peace as in war. In any case it was bad politics to stir up enmity against friendly sister states.

The substantial truth of this argument will scarcely be gainsaid save by politicians of tail-twisting proclivities. Nevertheless, this defense is by no means satisfactory. It fails to meet the immediate points at issue. The American public have too much confidence in the strength and ability of this country to be alarmed at the specter of British domination. Actual political power, not voting strength, they know will be decisive in the end. But they do object to the principle of differential treatment and to do the bungling diplomacy which permitted such manifest ambiguities and inequalities to worm their way into the covenant. This sense of irritation has been admirably expressed by the above critic:[29]

"A survey of these inequalities and discrepancies—all real though varying somewhat from innocuousness to seriousness—leaves one primarily with a sense of irritation lodged against the ineptitude and incompetence of our diplomatic representation at Paris. Those affairs should have been straightened out in Paris, not in Washington. Adjustment at this late date, and under these peculiar circumstances, is peculiarly difficult. The general situation is now awkward. Reservations and interpretations that, had they been demanded in Paris, would have seemed only the part of common prudence and a detail of daily diplomatic routine, at present cannot be inserted by the Senate without a certain apparent ungraciousness and an appearance, even, of chauvinism.

"Ambiguity on so elementary a point, for example, as Britain's right to sit as a judge upon disputes to which she was a party, only thoughtlessness or carelessness too wanton for description would excuse. How Mr. Wilson ever could have been so naive as to have accepted the vote of India as the vote of a self-governing dominion, too, has excited much wonderment.

[29] Ibid.

Why, again, Mr. Wilson went out of his way to insist explicitly and in a written statement that Britain might, if she could persuade the assemly to elect them, have four more representatives on the council in addition to the one she has at present, is another of those mysteries that only a student who treats the international mind as the denationalized mind can comprehend. However, the situation does exist, and the question now is as to the best remedial method left open to the Senate."

Various amendments and reservations have been proposed to meet these criticisms. One of the most important of these reservations has been offered by ex-president Taft. The Taft reservation reads as follows:

"The Senate advises and consents to the treaty with the understanding and reservation as part of the instrument of ratification, that under Article 1 of the covenant of the League of Nations no self-governing dominion or colony of the British Empire, of France, of Italy, of Japan, of the United States or of any other nation whose representative is always a member of the council, can have a representative on the council, and with the further understanding and reservation that the exclusion of the parties to the dispute in Article 15 from the council or assembly, when hearing such dispute, includes both the mother country and her self-governing dominions or colonies, members of the league, when either such mother country or dominion or colony is a party to the dispute."

This reservation is intended to serve a double purpose. By the first clause the self-governing colonies are denied separate representation in the council. To this provision, as we have seen, the British dominions have entered a strong protest. The second clause would exclude both the mother country and the colonies from participating in any hearing in the council or assembly in which either one or the other was a party to the dispute. The inclusion of the council in this provision would seem to be an unnecessary precaution in case of the adoption of the first clause.

The debate in the Senate brought forth a number of more or less conflicting proposals. Of these suggested modifications the Johnson amendment recommended by the majority report of the Foreign Relations Committee is probably the best known. The amendment runs as follows:

"Provided that when any member of the League has or possesses self-governing dominions or colonies or parts of empire which are also members of the League, the United States shall have votes in the assembly or council of the League numerically equal to the aggregate vote of such member of the League and

its self-governing dominions and colonies and parts of the empire in the council or assembly in the League."

Although this provision expressly covers the case of the council as well as the assembly, the debate upon its adoption has gone off almost exclusively upon the question of plural representation of the British Empire in the assembly. For this reason it seems best to postpone the consideration of this amendment until the organization of the assembly comes under discussion. The general purpose of the amendment, it need only be stated, met with the approval of a majority of the Senate, but serious objections were raised both to the form of the provision and to the principle of an amendment. The mild reservationists accordingly joined forces with the administration Democrats in defeating the amendments on the ground that all modifications of the covenant should take the form of reservations rather than of amendments.[30] The Moses amendment likewise need not here concern us, inasmuch as it relates only to disputes which are referred to the assembly and not to the council, a rather surprising omission.[31]

Senator McCumber gave notice of certain reservations by way of compromise.[32] The first of these reservations deals with the vote of the dominions where neither the principal country nor a dominion is a party to the dispute.

"The United States reserves the right, upon the submission of any dispute to the council or the assembly, to object to any member and its self-governing dominions, dependencies, or possessions having in the aggregate more than one vote; and in case such objection is made the United States assumes no obligation to be bound by any election, finding, or decision in which

[30] This amendment was defeated October 27, 1919, by a vote of 38 to 40. Congressional Record, Ibid p. 8004.

[31] The Moses amendment reads: "Whenever the case referred to the assembly involves a dispute between one member of the League and another member whose self-governing dominions or colonies or parts of empire are also represented in the assembly, neither the disputant members nor any of their said dominions, colonies or parts of empire shall have a vote upon any phase of the question."

This was defeated by 36 to 47, Congressional Record, Ibid p. 8148.

Senator Shields proposed the following amendment to the amendment: Provided that when imperial and federal governments and their self-governing dominions, colonies or states are members of the League as originally organized or hereafter admitted, the empire or federal government and the dominions, colonies or states shall collectively have only one membership, one delegate and one vote in the council and only three delegates and one vote in the assembly."

This resolution was likewise voted down 32 to 49, Congressional Record, Ibid p. 8147.

[32] Ibid p. 7885.

such member and its said dominions, dependencies, and possessions have in the aggregate cast more than one vote."

The second covers the case where the mother country or dominion is a party to the disputes:

"That the United States understands and construes the words 'dispute between members' and the words 'dispute between parties' in article 15 to mean that a dispute with a self-governing dominion, colony, or dependency represented in the assembly is a dispute with the dominant or principal member represented therein, and that a dispute with such dominant or principal member is a dispute with all of its self-governing dominions, colonies, or dependencies; and that the exclusion of the parties to the dispute provided in the last paragraph of said article will cover not only the dominant or principal member, but also its dominions, colonies, and dependencies."

Neither of these provisions, it will be observed, raises the general question of the right of the colonies to separate representation on the council. Herein they differ from the Taft reservation. The first resolution seems to imply that they may be eligible to membership in the council. The objection is directed solely against the principle of plural voting. And even this objection is not absolute; it leaves the United States free to accept or reject any election, finding or decision in which the colonies participate along with the mother country. This resolution was doubtless intended to apply primarily to disputes before the assembly, but as the council might possibly be involved, it was included by way of precaution. The honorable member did not succeed, however, in getting this resolution formally before the Senate.

The second was subsequently re-drafted on presentation to the Senate to read as follows:[33]

"That the United States understands and so construes the provisions of the covenant of the League of Nations that when the case referred to the council or the assembly involves a dispute between one member of the league and another member whose self-governing dominions, colonies, or parts of empire are also represented in the body to which the case is referred, or involves a dispute between one member and any such dominion, colony, or part of empire, both the disputant members, including the dominion or principal country and all its said dominions, colonies, and parts of empire, are to be excluded from voting upon any phase of the dispute."

This reservation, it will be observed, covered both disputes with the mother country and with its self-governing dominions

[33] Ibid p. 9218.

and possessions. It did not deal, however, with disputes between states other than the British Empire. In such cases the empire was still free to cast its six votes.

Senator Johnson was quick to point out this vital defect and accordingly introduced a substitute reservation to put the United States upon an equality with Great Britain in voting strength:[34]

"The Senate of the United States advises and consents to the ratification of said treaty with the following reservations and conditions, anything in the covenant of the league of nations and the treaty to the contrary notwithstanding:

"When any member of the league has or possesses self-governing dominions or colonies or parts of empire which are also members of the league, the United States shall have representatives in the council and assembly and in any labor conference or organization under the league or treaty numerically equal to the aggregate number of representatives of such member of the league and its self-governing dominions and colonies and parts of empire in such council and assembly of the league and labor conference or organization under the league or treaty; and such representatives of the United States shall have the same powers and rights as the representatives of said member and its self-governing dominions or colonies or parts of empire; and upon all matters whatsoever, except where a party to a dispute, the United States shall have votes in the council and assembly and in any labor conference or organization under the league or treaty numerically equal to the aggregate vote to which any such member of the league and its self-governing dominions and colonies and parts of empire are entitled.

"Whenever a case referred to the council or assembly involves a dispute between the United States and another member of the league whose self-governing dominions or colonies or parts of empire are also represented in the council or assembly, or between the United States, and any dominion, colony, or part of any other member of the league, neither the disputant members nor any of their said dominions, colonies, or parts of empire shall have a vote upon any phase of the question.

"Whenever the United States is a party to a dispute which is referred to the council or assembly, and can not, because a party, vote upon such dispute, any other member of the council or assembly having self-governing dominions or colonies or parts of empire also members, upon such dispute to which the United States is a party or upon any phase of the question shall have and cast for itself and its self-governing dominions and colonies and parts of empire, all together, but one vote."

[34] Ibid p. 9219.

But a strange fatality pursued the efforts of the Senator from California. This reservation unfortunately was as badly drafted as his former amendment. In attempting to remedy one injustice, he merely succeeded in creating another. The United States was not only granted a preferential position in the League over France, Italy and the less favored nations, but also over the British Empire as well. By the last paragraph, as Senator Townsend pointed out,[35] "The United States would have a preference over the most favored nation in the league under certain circumstances, that is, where the United States is a party and Great Britain is not, Great Britain has but one vote, but reversing it, if Great Britain is a party and the United States is not, then the United States may have six votes." To obviate this difficulty Senator Johnson agreed to divide his resolution by omitting the last paragraph for the moment, in the hope that he might be able to secure a clearcut decision upon the general principle of the equality of the two branches of the Anglo-Saxon race. But this deletion did not satisfy the pro-leaguers. The resolution was still objectionable. It amounted in their judgment to a real amendment of the treaty, inasmuch as it laid down a new basis of representation which operated to the serious disadvantage of all the other nations save Great Britain. The adoption of the proposed system of voting, it was pointed out, did not remedy the existing injustice. On the contrary, it would merely offend the European states and would result in all probability in the defeat of the league of nations. This argument apparently carried conviction to a majority of the members, for the reservation was rejected by a close vote of 43 to 46. In view of this defeat Senator Johnson withdrew the last part of his reservation.

The way was now clear for the Lenroot amendment to the McCumber reservation. This amendment, which had the support of the mild reservationists, ran as follows:[36]

"The United States assumes no obligation to be bound by any election, decision, report or finding of the council or assembly in which any member of the league and its self-governing dominions, colonies or parts of empire, in the aggregate have cast more than one vote, and assumes no obligation to be bound by any decision, report, or finding of the council or assembly arising out of any dispute between the United States and any

[35] Ibid p. 9225.
[36] Ibid p. 9226.

member of the league if such member, or any self-governing dominion, colony, empire, or part of empire united with it politically has voted."

This reservation, it will be observed, does not call in question the right of the British dominions to separate representation on the council and assembly, nor does it seek to place the United States in the same position as the British Empire in the matter of voting power. The effect of the reservation according to the Wisconsin senator "is simply that if the British Empire desires to have the United States bound by any action taken, it will refrain from casting in a particular instance more than one vote." The empire would still be free to poll its full quota of votes if it saw fit, but in that case the United States would not be bound unless "it expressly assumed the obligation later on."

Although the resolution fell far short of the demands of the bitter-enders, it served nevertheless to protect the interests of the United States in all cases where the league had power to bind this country. The resolution, as Senator Hale clearly pointed out,[37] "applies to every act in the covenant where Great Britain and its colonies in the aggregate have cast more than one vote." It takes care of paragraph 2 of article 1 and makes void, as far as the United States is concerned, any election of new members where Great Britain and her colonies have in the aggregate more than one vote.

"In the same way it takes care of the procedure at the meetings of the assembly. It takes care of paragraph 6 of article 15 and of paragraph 10 of article 15 and not only of the case where we have a dispute with Great Britain, but of the two other cases above referred to under this article where we have a dispute with a country other than Great Britain or where a dispute arises in which neither we nor Great Britain are concerned. It renders void, so far as we are concerned, any action taken under the provisions of these paragraphs where Great Britain and her colonies have in the aggregate cast more than one vote."

This reservation, however, did not meet with the entire approval of Senator McCumber.[38]

"The objection and the only objection that I can urge to it is this: that it allows the United States to go into the conference, permit the matter to be tried out, take part in it and when it is finally decided, then the United States can say it will not be bound by it."

[37] Ibid p. 7885.
[38] Ibid p. 9228.

To meet this objection he proposed to add the following words to the Lenroot reservation:

"Unless upon the submission of the matter to the council or assembly for decision, report or finding the United States consents that the said dominions, colonies or parts of empire may each have the right to cast a separate vote upon the said election, decision, report or finding."

In other words, it would be incumbent on the United States when it submitted a matter to the council or assembly to state in advance whether it would or would not be bound by the determination. It must make that declaration at the time of submission and not wait until the matter had been decided. The sole purpose of the amendment was to place the United States in a more "honorable position" in its relations with the sister states in the league. The amendment, however, did not meet with favor from the members and was overwhelmingly defeated by 3 votes to 86.

The Senate thereupon proceeded to vote upon the Lenroot reservation, which was carried by a good majority, 55 to 38.[39] All the Republicans, with the exception of Senator McCumber, lined up in support of the reservation, together with a handful of the intransigent Democrats. The vote showed, however, that the administration Democrats could command more than one-third of the votes necessary to defeat the ratification of the covenant with the Lodge reservations. A deadlock in the Senate was already in sight unless one or the other party was ready to give way.

There are, we may then conclude, certain theoretical and practical objections to the organization of the council. It is legally possible for the United States to be placed at a serious disadvantage in case of a controversy with Great Britain or her colonies. Various proposals, as we have seen, have been submitted to meet this difficulty. Of these proposals it is submitted the Lenroot reservation is the one best calculated to serve the purpose. It would not involve the reopening of the negotiations as would be necessary in case of the adoption of the Johnson amendment nor need it offend the sensibilities of England and the British colonies. The legitimate aspirations of the latter to a distinct international status would be recognized, while the United States would be assured of complete freedom of action in case her interests were prejudicially affected by the multiple vote of the British Empire.

[39] Ibid p. 9229.

With this safeguard it is submitted the United States would have little to fear on the score of representation in entering the league. The adoption of this or a similar reservation would serve to safeguard the rights of this country both constitutionally and internationally. In truth, much of the criticism of the League has been based upon the rather illiberal assumption that foreign states cannot be trusted and that they are potentially, if not actually, banded together in a conspiracy against the liberty and independence of the United States. But this is rather a sweeping indictment to bring against not one nation only, but the world at large. Even though it be admitted that the British colonies will be naturally predisposed to favor the mother country in case of a controversy between Great Britain and the United States, there is no reason to believe that the other members of the Council will be governed by similar predilections or prejudices. The United States must indeed have a bad case to present if she cannot find at least one member of the council to uphold her contention. Other nations are as jealous of their sovereignty as is the United States, yet they have not feared to pledge themselves to submit their disputes to the judgment of their fellow members on the council. They have apparently much more faith in world democracy than has the Senate of the United States. But American fears and suspicions, it is submitted, are not justified by the experience of the United States in the great world war. They are largely a survival of the old spirit of provincialism.

The United States on the other hand, has much to gain by entering the League as a full-fledged member. She has come out of the war a dominant world power. Her political influence on the council cannot be measured in terms of a legal veto. That influence is as powerful as the nation itself. This country can be the determining factor in peace as it was in war. It can assume a natural and commanding leadership in the world's affairs. As one of the greater allied states, it has been granted a privileged position in the League. It holds a permanent place in the council with an effective veto over both the election and policies of the assembly. In truth, the interests of the larger states have been well preserved. It is the smaller states in the assembly who have cause for complaint. They had looked forward to the organization of an international conference in which they would play an equal part with the greater nations. Had not the war been fought to vindicate the principles of international law and

safeguard the rights and independence of smaller countries? There was no principle of the law of nations more clearly established by courts and publicists than that of the legal equality of states.[40] Yet the "big five" have not hesitated to cast aside that tenet and set up their own political ascendancy in place thereof. The covenant of the League gave legal sanction to that policy. It transformed a political fact into a legal principle, and from that fact the United States stands to gain more than any other nation save the British Empire.

By way of compensation the covenant promises to safeguard the political and territorial rights of the smaller states against the aggression of their more powerful neighbors. The war brought home to the little nations the precariousness of their position. Their independence lay at the mercy of any aggrandizing state. They were unable to protect themselves and could not count upon the assistance of the sister nations. No matter how careful they might be to preserve a strict impartiality, they were in danger of being drawn into the war against their will. They were the unfortunate victims of the retaliatory measures of all the belligerents. And even when they succeeded in maintaining strict neutrality, they found that neutrality was little better than war itself. They were caught in the war's monster tentacles and could not get free. Peace was their only hope of salvation, but peace, a permanent peace, could only be attained through the united action of all free states. The freedom and independence of all nations must needs be placed under the protection of a collective guaranty. This guaranty, however, could not be secured without a sacrifice. The smaller states were called upon to surrender the principle of equality in order to gain the greater boon of independence. They could not justly claim equal rights with the larger nations when they were not prepared to assume equal responsibilities. The price was a heavy one to pay, but it was worth the sacrifice.

The organization of the council has also proved disappointing to the democratic doctrinaires. They have long denounced the secret diplomacy and autocratic powers of the chancellories of Europe. They have clamored for a popular participation in world diplomacy but the Paris conference has given them instead a league of state executives. The "big five" in their judgment have set up a new oligarchy. The permanent council of world

[40] The Antelope, (1825) 10 Wheat. (U.S.) 66, 122, 6 L. Ed. 268.

powers has been substituted for the defunct concert of Europe. The aspirations of the people for popular control of international relations have not yet been fulfilled. The spirit of European diplomacy is unchanged; the old political leaders with the same old policies are still in control. The world has not profited by the terrible lessons of the war. The peace conference has repeated the mistakes of the Holy Alliance. The forces of imperialism have again triumphed over the principles of democracy and international justice. The council of the League has been their particular bête noire. In its organization they have seen combined all the worst features of international politics,—secrecy, autocracy and imperialism. The assembly which should have been the heart of the League, has been sacrificed to the interests of a few great states. The governments of the larger nations are adequately represented on the council but the League has provided no proper organ through which the wishes of the people at large can find proper expression.

Probably the simplest reply to these criticisms is that they are directed against the world at large rather than against the League. The statesmen at Paris did not set out to reorganize society on new political principles according to the demands of the international socialists and their radical friends. On the contrary, they were concerned with the problems only which arose immediately out of the war and the peace settlement. In general they accepted the world as they found it and proceeded to draft the future constitution of the League of nations upon the basis of the existing world order. The covenant in fact is a thoroughly democratic instrument inasmuch as it reflects the political ideals and institutions of the day. The council is endowed with more important functions than the assembly for good and sufficient reasons. By reason of its size and composition it is a stronger and more effective body. What the world most needed was an administrative organ endowed with sufficient power to settle international controversies. The council was created to serve that purpose. It is essentially an administrative body. In all modern states the executive has grown in power at the expense of the legislature. The council of the League merely reflects that tendency. The assembly, on the other hand, was designed to be primarily a deliberative body—an open forum for the world. "It furnishes a highly important opportunity for every member to bring its own grievances through its own spokesman and compel

a hearing by the other members."[41] It is doubtful however, if the assembly will ever develop into a real federal parliament. The world is not yet ready to set up a great super state with a parliamentary organization. The assembly is at best but an international congress or a body of instructed delegates without an inherent legislative authority of its own. The Hague conferences have already demonstrated the weakness of such international bodies. It was necessary to concentrate power in order to secure political and administrative results. The assembly received no substantial powers because the larger nations would not consent to enter into a league in which they might be outvoted by a combination of small and petty states. In conferring exceptional powers upon the council the covenant merely recognized the hegemony of the five great states. The hegemony was unquestionable in fact however objectionable it might be in theory or practice. In short, the constitution of the League was made to correspond to the existing political facts. Power and responsibility were concentrated in the hands of the five great states which won the war.

The same factor is equally in evidence in respect to the governmental character of the League. The council is made up of official delegates, not of popularly elected representatives, because it is the governments of the several states which are responsible for the direction of foreign affairs. That responsibility cannot be divided. Confusion if not disaster would inevitably result if the national executives were compelled to share their authority with an independent group of elected diplomats at Geneva. There cannot be two foreign offices or two foreign policies at the same time. The governments at Washington, Paris, London, etc., must control the whole foreign situation since they alone are responsible for the execution of the decisions of the League by their respective states. The fact that these governments owe their position to popular election furnishes the best proof of their true representative character. The electorate has the ultimate power in its own hands if it desires to use it. If the policy of the government or its representatives at Geneva is not approved by Parliament or the electorate at home, the government may be defeated and a new executive set up in its place with a new program and a different group of representatives.

[41] Article by Professor Albert Bushnell Hart. New York Times, Oct. 26, 1919.

In short, the democracy of the country can select its own agents and dictate its own foreign policies. The truth of the matter is that the ultra-radical opponents of the covenant are not so much opposed to the organization of the league abroad as to the actual operations of the government at home. They object to the constitution of the League for the same reasons that they object to the national constitution. In short, their opposition to the League is primarily of a constitutional rather than of an international character.

The objections to the privileged position of the British Empire in the League rest upon a different foundation. These objections are both national and international in character; they go to the very heart of the League's organization. The national status which has been accorded to the British dominions must be judged by the same test that has been applied to other provisions of the covenant, namely, Does it accord with the actual political facts? Up to the present we have been concerned primarily with the legal aspects of the question of colonial representation on the council. The way is now clear for the consideration of the more important question of the moral and political justification of the exceptional position of the British dominions. The discussion of this topic, however, must be reserved for future treatment in connection with the organization of the assembly.

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