

DEPARTMENT OF STATE,
WASHINGTON.

September 1, 1907.

Dear Mr. Loeb:

Please be so kind as to submit to the President this memorandum which he asked for and which I have hastened to prepare before starting this evening for the Yellowstone.

I hope it covers the points. Of course we have much material on this subject. I have tried, with only indifferent success, to make these notes brief.

May I ask you also to say to the President that I have submitted through Mr. Adee to the Secretary a draft telegraphic instruction designed to placate the Brazilians about the Hague Permanent Court matter; also that what the President said of Japan and Colombia will be ^{carefully} borne in mind.

Begging you also kindly to convey to the President and Mrs. Roosevelt my respects and thanks for the pleasure of lunching with them the other day, I remain with kind regards,

Yours sincerely,

Sgd: HW

William Loeb, jr., Esquire,

Secretary to the President.

To the President:-

In the paper which you allowed me to read on Wednesday there are five points upon which in obedience to your instruction I would make brief comment as follows:

(1) Pleasant references to Japan, and comparison of Japan and this country. In general, all Japanese excepting those of the broadest and best type, are already too "cocky"; the influential minority is satiated with the flattery of the West, and, I think, relishes a moderate and matter-of-course expression of good-will as indicating a feeling of nearer equality, rather than any expression which because flattering might be taken as patronizing.

(2) "Open door" in China. The policy of the "open door", or principle of equal opportunity in China, had its inception and has existed and been solemnly recognized by Japan and many other Powers primarily as binding foreign Powers not to create in China obstacles to the enjoyment of equal opportunities by all. To this China's obligation to deal equally with all has heretofore happened to be secondary. Therefore in alluding to the "open door" its first object would

would better not be unmentioned.

(3) The United States bound by morality and justice to give foreigners in this country exactly the same treatment as citizens. There are a number of rights enjoyed by Japanese in Japan, but not there enjoyed by foreigners. In this country too there are some rights withheld from foreigners (for example, the right to own land, in some States). Indeed, there is probably no country where there is absolutely no discrimination between natives and foreigners. It would therefore seem that exact equality of treatment of natives and foreigners should not be too broadly stated as a principle of international morality.

(4) The United States bound by treaty to give Japanese in this country exactly the same treatment as citizens. The comprehensive provisions granting to Japanese subjects national or favored nation treatment in entering, traveling, or residing in the territory of the United States, and in whatever relates to rights of residence and travel, etc., etc., which are set forth in Articles 1 and 2 of the treaty of 1894 are limited by the following short but very important closing paragraph of Article 2:

"It is, however, understood that the stipulations contained in this and the preceding Article do not in any way

way affect the laws, ordinances and regulations with regard to trade, the immigration of laborers, police and public security which are in force or which may hereafter be enacted in either of the two countries."

By this little provision is reserved absolutely the right of control in the territories of the respective Contracting Parties by law, ordinance or regulation, of matters regarding trade, immigration of laborers, police or public security within or relating to those territories.

This provision is so broad as to withhold as a treaty right not only national but also favored nation treatment in respect to ^{the} classes of rights specifically indicated.

It is interesting to note that the corresponding paragraph of the Russian treaty is narrowed by the addition of the words "et applicables a tous les etrangers en general." Thus Japan and Russia may deny to each other's subjects national treatment in the reserved matters, but must mutually grant favored nation treatment.

Assuming that the school question is settled, the two matters as to which there has been much loose talk of the invasion of treaty rights are the restriction of Japanese labor immigration and the denial of certain trade licenses in San Francisco.

The restriction or stoppage of labor immigration

is clearly contemplated by the closing paragraph of Article 2. Resting upon the same treaty provision one sees that the granting or denying of trade licenses is also a matter to be freely regulated by American authority. The text of the treaty, one of commerce and navigation, strongly supports this view that the word "trade" as used in the above quoted portion of the treaty is used expressly as covering petty trades such as those for which licenses have been withheld by the San Francisco Board of Police Commissioners, in contradistinction from those broader activities indicated by the word "commerce," as to which Article XIV extends conditional favored nation treatment. Hence I know of no present cause of the denial to any Japanese of any treaty right.

It is true that the San Francisco Board of Police Commissioners has been uniformly refusing to issue or to renew petty trade licenses applied for by Japanese subjects and this systematic discrimination in the exercise of a lawful discretion must be admitted to be unfriendly and irritating. It is hoped that Mayor Taylor's new Board of Police Commissioners can be quietly persuaded to grant a few Japanese licenses in order to remove the impression of unfriendliness.

(5) That discriminatory acts in San Francisco have made it difficult for the Government to reach an arrangement with

with Japan:- From the foregoing it will be seen that we need no arrangement with Japan, since we already have a right to do what we are doing or may wish to do. If we offer ^{ed} Japan a quid pro quo in a treaty providing for the exclusion of Japanese laborers and petty tradesmen, we should simply be giving them something as a price of their amiable acquiescence in our doing something we already have a perfect right to do, but in doing which we are now the recipients of their resentment. The idea was that any treaty with Japan would clear the atmosphere.

The Japanese are immensely sentimental, proud, and sensitive in character, with the superadded sensitiveness of the parvenu. The whole trouble is one of "face". We must get them to understand that the exclusion of their laborers is purely an economic question, due, perhaps, as Mr. Root suggested it might be, to a superiority in frugality and industry.

As a matter of "face" the thing they now most desire is naturalization, for they regard the lack of the right as an insinuation of inferiority, instead of regarding it only as a recognition of difference. Some of their publicists, however, reflect that for a Government to ask facilities for the expatriation of its people is exactly contrary to universal practice.

The present exigencies of domestic Japanese politics make it hard to do anything just now, but of course we must negotiate a fresh treaty for 1911.

Respectfully submitted:



September 1, 1907.