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THE WORLD COURT AND A WORLD OPPORTUNITY

By Wayne C. Williams of the Denver Bar

NO American can contemplate the World Court in its beginnings without thinking of the beginnings of our own Supreme Court in the early days of the republic.

Many analogies have been drawn between the two courts, just as many have been successfully drawn between the beginnings of the Federal union of states and the early years of the League of Nations.

While the historical and constitutional analogies, present fascinating studies the one to be drawn here is largely personal.

Is there a John Marshall on the bench of the World Court? Is a Marshall needed there and is the opportunity presented by that court, its origin, purposes and powers, sufficient to cause us to expect that such a man will emerge to mould the decrees of that Court into a new world order wherein all nations will come to a common forum for the judicial settlement of their disputes?

John Jay declined the Chief Justiceship of the United States Supreme Court saying, "I left the bench perfectly convinced that under a system so defective, it would not obtain the energy, weight and dignity, which is so essential to its affording due support to the National government, nor acquire public confidence and respect."

The task from which Jay shrank, appealed to John Marshall.

No weakling could have given permanent force to the decisions of the Supreme Court in *Marbury vs Madison* or *McCullough vs Maryland*. No inferior personality could ever have persuaded his colleagues on the Bench to arrive at

these monumental decisions. It was Marshall's personality and gifts that made his great work possible.

It is a mistake to think of Marshall as forcing any opinions on his colleagues for while he had a dominating personality and a disposition not easily swayed yet he united to these firm qualities a modesty, a deference to the views of others, a tender heart and a most convivial nature—all graced by a pleasing manner that charmed his bitterest opponents. There was no undue or frosty dignity about Marshall and precisely these qualities, noted by so many of his contemporaries, will be valuable equipment for any judge on any bench who must match minds with colleagues.

Given then a great mind, a peculiar union of dominating but pleasing personality, and given also a great opportunity, we shall find history being made, as Marshall made it, and we are quite prepared to believe Mr. Justice Story when he said—

“When may we again hope to see so much moderation with so much firmness; so much sagacity with so much modesty; so much learning with so much piety; so much wisdom with gentleness.”

Let us glance at the superb constitutional structure erected by the Marshall decisions:—

1. Supremacy of the Federal government, its constitution and laws. Emphasized in *Fletcher v Peck*, (6 Cranch 87), and in *McCullough vs. Maryland* (4 Wheaton 316).

2. Power of Federal Supreme Court to interpret the constitution and laws of the United States and to declare a law unconstitutional. (*Marbury vs. Madison*, 1 Cranch 137).

3. State legislatures may not annul judgments of the United States Courts. (*Fletcher vs. Peck*, 6 Cranch 87).

4. States may not tax instrumentalities of the Federal government. (*McCullough vs. Maryland*).

5. The Federal government possesses inherent power to function as a sovereign government and to do all things reasonable and necessary to function as such. (*McCullough vs. Maryland*.)

6. The inviolability of all contracts. (“Dartmouth College case”, 4 Wheaton 518).

7. Power of the Supreme Court of the nation to pass upon final judgments of state courts as to rights of all citizens under Federal laws and the constitution. (*Cohen vs Virginia*, 6 Wheaton 264; a case that raised and decided fundamental principles and formed the whole distinction between state and national legislatures and relative areas of power.)

8. The supreme power of the Federal government over interstate commerce. (*Gibbons vs Ogden*, 9 Wheaton 1).

There are other great decisions but these are enough. They clothed the nation with power and dignity and authority; they firmly established the nation's supremacy in its constitutional field and forever established the dignity and power of the great court from which the decisions came.

The World Court faces a situation not unlike that which faced Marshall on the American Supreme Bench. It is not moulding a new world state and does not seek to and this fact must ever be kept in mind as its decisions draw the nations into closer and yet closer cooperation.

But only states can be parties before it and only international questions and rights arising out of international conventions, treaties and compacts, can be construed or enforced by its decisions. It has separate nations, each sovereign in its own right, to reconcile and never were nationalistic sentiments or rights more strongly insisted upon than today. It is new and its real powers are comparatively untried. It faces hostility in many quarters of the world and in many nations (not excepting our own) it faces the bitter opposition of certain eminent statesmen.

Sound reason was conspicuously a part of Marshall's equipment and of his triumphs, and sound reason (always good common sense juridically declared) will make the World Court respected and adhered to.

The World Court does not directly touch the citizen, the national, in his individual rights and capacities except as he is an integral part of a greater whole—his nation.

The Court has yet to come into the consciousness of the average national; yet to make its way with him and appeal to his sense of justice and progress. But that is all coming.

Created on December 16th, 1920, under Article Fourteen

of the League of Nations Covenant, the Court began with these broad jurisdictional grants:—

“The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it.”

The court may also give advisory opinions upon any dispute or question referred to it by the Council or Assembly of the League.

The World Court has jurisdiction of all cases submitted to it by states, all cases under treaties or conventions, and a wide jurisdiction under a special jurisdictional clause for all nations accepting such jurisdiction and covering interpretation of treaties, questions of international law, existence of any fact which constitutes a breach of international law and the nature or extent of reparation to be made for any such breach, and the interpretation of any court judgment.

In adjudicating and deciding matters before it the Court may avail itself of, and apply international conventions and established usages of member states, international custom, general principles of law recognized by all nations, and judicial decisions and teaching of publicists.

Here is scope and power sufficient to mould the thoughts, purposes and habits of the peoples of the world to a new international order. The breadth of it takes away the breath and would be stimulating to any jurist, even without the vision of a Marshall.

Let us take one single instance of interpretation that may arise:—the preamble of the League covenant recites among other things that it is formed to

“promote international cooperation and to achieve international peace and security, by the acceptance of obligations not to resort to war.”

The Kellogg Peace Treaty provides that—

Art. 1. “The high contracting powers solemnly declare . . . that they condemn recourse to war and renounce it respectively as an instrument of their national policy towards each other.”

Here are two declarations renouncing war that must be read together and that bring even America into the sweep of the World movement for peace through a World Court, en-

forcing and giving effect to the preamble of the League of Nations.

Some Judge will be found who has courage and vision and those powers of profound logic which will enable him to chart the course of the nations, as he reads the charter of the League and Court and applies them to some concrete case before him.

We must not forget that Marshall was helped by other unifying forces making for national cohesion and a stronger central government, but he had neither the railroad nor telegraph and none of those marvelous mechanical inventions that have bound America into a unit.

The World Court starts with a physical and material equipment between the nations that is far more effective in moulding the peoples of the world together and clarifying misunderstanding than had Marshall in his day.

The decisions of the Court can be known throughout the civilized world in twenty-four hours after they are rendered. The airplane and radio have obliterated international boundary lines and the voice of the Court itself could be heard beyond the seas. There is, too, a new sense of international unity in the world that scarcely existed among the states when Marshall began his great career. There is a growing demand for peace among all peoples and to that deepest impulse of mankind the Court can, in future decisions, give form and force and effect.

Why may we not look with confidence to the World Court to forge the new links in the chain of brotherhood between peoples of the earth?

Perhaps the statesman, the soldier and executive (with all their commendable activity), may not solve this problem. Why may we not expect a Court with its calm atmosphere, its careful judicial process, its wise judgments, without heat or haste, not based on the whims and caprices of the moment or the wild notions of the mob-mind but sustained by judicially ascertained facts and ennobled by the highest reason and the real hopes of mankind, to interpret the conflicting rights of the nations so justly that even the hostile and defeated state will accept the judgment; to keep all nations in their proper

sphere and avoid all forces that seek to erect or maintain a super state, by adjusting in delicate balance the centripetal and centrifugal forces that are operating in the world today; to give small and weak states a forum into which they may come with confidence and safety; to soundly interpret the great charter of the League and Court and the solemn covenants of the nations to renounce war.

Here are tasks for many a Marshall.

Upon its decisions will rest the success not only of the Court itself but the validity and value of the covenants that have arisen since the world war.

When the nations and the peoples of the world are once convinced that they have a forum that is more than a forum—a Court—deciding with impartiality, with sound reasoning and breathing a spirit of judicial integrity, then they will feel about the World Court as Americans came to feel about the court presided over by John Marshall.

This will then be a world of law—orderly, united; and the process of civilization will have advanced a far step.

NOTE: At the request of various members of the Association, President John H. Denison has appointed a committee to investigate the question of adhesion by the United States to the World Court, which matter comes up soon before the United States Senate for action. The committee consists of L. Ward Bannister, Chairman, Will Shafroth, J. H. Pershing, George F. Dunklee and Roger H. Wolcott. At the next meeting, Monday, January 13, Mr. Bannister will present the report of the committee, which should be of keen interest to all members of the Association.