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PEACE THROUGH LAW: THE UNITED STATES AND THE WORLD COURT, 1923-1935

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In late February of 1923, Warren Harding requested the Senate's approval of American membership in the Permanent Court of International Justice, more commonly known as the World Court. His proposal touched off a turbulent controversy, lasting nearly a dozen years, which culminated in the Senate's rejection of membership in January of 1935. The United States thus remained outside the World Court, an institution which it had done as much as, perhaps more than, any other nation to establish, and which embodied an ideal with which it was closely identified — the belief that the rule of law and respect for the techniques of legal settlement of international disputes were necessary in maintaining a stable world order. The purpose of this paper is to examine the origins of the Court proposal, the proposal's place in America's interwar diplomacy, the nature of the controversy over membership, and the reasons for the failure to join the Court. Although membership would have produced few practical benefits for the United States, let alone the international community, it would be unwise to dismiss as petty and inconsequential either the proposal itself or the controversy which enveloped it, for both reveal a good deal about the character of United States foreign policy during the interwar years and about the forces which shaped and limited that policy.

The World Court came into existence as a result of Article XIV of the Covenant of the League of Nations, which provided for the establishment of an international judicial tribunal. A modest institution, lacking in far-reaching powers, the Court was intended to resolve legal disputes and develop international law. Its judges, who were elected by a concurrent vote of the Assembly and Council, could hear and decide issues submitted either by League members or by certain non-members, the United States among them. No nation had to submit a dispute, unless it had signed the Optional Clause (which conferred compulsory jurisdiction on the Court in legal disputes involving the signatory) or obligated itself in some other way. The Court was powerless to enforce its decisions, and although there was language in the Covenant which might have permitted the League to do so, force was never used. Under the terms of Article XIV the judges could also render advisory opinions on legal issues at the request of either the Council or Assembly; such opinions were not legally

binding but did carry weight because of the Court's prestige.[1] Although connected with the League, the Court also had a certain measure of independence, and was not simply an organ of the League as the present International Court of Justice is of the United Nations.[2] The relationship between the two institutions, ambiguous as it was, became the greatest barrier to American membership.

No nation had better reason for joining the Court than the United States, since no nation had contributed more to its creation. Although the idea of a world court was very old, having a history dating from the Middle Ages, Americans did not begin talking about the idea until after the Napoleonic wars, when it was first propagandized by members of the peace movement. The movement, limited initially to a small group of Christian pacifists, in time grew more secular and much larger in numbers, and by 1914 had become an influential source of thought and planning about international reform. The world court idea was among the most popular peace nostrums of the day. The idea also lodged itself in the minds of policymakers, then in the process of developing a cautious, legally-oriented programme of international reform which marked the beginning of a quest for world order later taken up by Woodrow Wilson and the policymakers of the interwar period. From the Second Hague Conference to the eve of the world war, no nation eclipsed the United in its efforts to produce an agreement on a plan for a court. While the war temporarily foreclosed such efforts, the world court idea retained the loyalty of nearly all peace advocates, even those who now also favoured more ambitious forms of international cooperation such as a league of nations with enforcement powers. It was curious, therefore, that at the Paris Peace Conference Wilson was reluctant to include a provision for a court in the Covenant, although eventually consenting to Article XIV. Whatever the reasons for his reluctance, they did not include an opposition either to the judicial settlement of disputes or the rule of law.[3]

Because of the Court's relationship with the League, Harding refused to endorse it during the 1920 presidential campaign, despite the fact that his party was on record in favour of just such a tribunal and that former Secretary of State Elihu Root, the party's elder statesman and a well-known advocate of judicial settlement, was a member of the Committee of Jurists then drafting the Statute for the Court. The "Root Court", as the press often referred to it, was a potential embarrassment for Harding, who was determined to straddle the League issue so as to avert a party split and ensure his own election. For a time he and his advisers considered making the "Root Court" the keystone of an alternative to "Wilson's League" but, when this plan fell through because of Root's objections, Harding put forward

an ambiguous scheme for an association of nations and a world court which he eventually carried with him to the White House.[4]

Once in office, Harding left his vague proposal for a court in the capable hands of his Secretary of State, Charles Evans Hughes. As a former Justice of the Supreme Court and a leading member of the New York legal and financial guild, Hughes appreciated the value of law in preserving an orderly society, and he believed it might serve a similar purpose on the international scene. While he never regarded the Court as a panacea, he did assign it a key role in the evolution of a law-abiding community of nations and believed that the United States was duty bound to assist it. For more than a year, Hughes did nothing about membership, mainly because he needed the goodwill of the Senate while it was occupied with the separate peace treaties and the Washington Conference treaties. Yet he was stung by charges from pro-Leaguers that he was snubbing both the Court and the League, and he perceived a growing sentiment for membership in the Court.[5] In the summer of 1922, Chief Justice William Howard Taft, while visiting Great Britian, spoke with several British statesmen and jurists at Hughes' request about the terms of American membership. Taft's report to Hughes was encouraging.[6] After returning home, he continued to serve as an unofficial go-between, and over a period of several months accumulated an extensive correspondence involving himself, his contacts in Britain, and Root. With the benefit of this correspondence and other expert advice, Hughes formulated the proposal for membership which Harding sent to the Senate.[7]

Under the terms of the proposal the United States would remain outside the Court until both the Senate and the signatories (those states already belonging to the Court) had accepted four reservations. The two most important safeguarded against any relation with the League or Covenant and permitted participation in the election of judges; the other two obligated the United States to contribute to the financial upkeep of the Court and made its consent mandatory for amendment of the Statute. Not wanting to jeopardize the proposal's chances in the Senate, Hughes refused to recommend signing the Optional Clause.[8]

In January of 1926 the Senate consented to a resolution of adherence which, in addition to the Hughes reservations, included a fifth reservation giving the United States the right to prevent the Court from rendering an advisory opinion in a dispute in which it had or claimed an interest. At a Conference of Signatories held in September (to which the Coolidge administration declined to send a representative), the member-states accepted the Hughes reservations

but refused to accept the fifth reservation without qualification, since it might have granted the United States a veto power not possessed by other member-states and restricted the usefulness of the Court's advisory function. It was only three years later that the deadlock over the reservation was finally broken as a result of the so-called Root Protocol; designed by Root in cooperation with a group of eminent jurists and approved by a second Conference of Signatories, the Protocol was a special diplomatic instrument intended to preserve the fifth reservation while assuring the signatories that both their own rights and the Court's advisory function would be protected. Too ambiguous to satisfy the skeptics in the Senate, the Protocol became the subject of a lengthy, highly technical, and tedious debate which ended only when the Senate repudiated membership.

In terms of immediate benefits, membership in the Court would have counted for very little. A useful institution, the Court nonetheless had only a limited ability to maintain peace. Although the prestige, moral encouragement, and financial assistance which American membership would have brought the Court would have been helpful, they were not essential to its survival; the Court performed satisfactorily despite the refusal of the United States either to join or to submit disputes. By becoming a member, the United States would have assumed no responsibilities, except to help defray the Court's expenses and participate in the election of judges. It would have been under no obligation to submit disputes either on its own initiative or at the bidding of other states. Moreover, its freedom to use the Court was restricted by two understandings inserted by the Senate in the resolutions voted upon in 1926 and 1935; the first permitted recourse to the Court only by means of special or general treaties with the parties to a dispute; the second affirmed the policy of nonentanglement as well as the United States' "traditional attitude towards purely American questions" (meaning, of course, the Monroe Doctrine).

Why, if the proposal brought so few concrete benefits, did four administrations solicit approval in the face of formidable opposition? There is no simple answer to this question, since the policymakers who were most responsible for the proposal in each administration differed not only in their motivations, but in the value they placed on the proposal and the degree of support they gave it. Whatever their differences, policymakers agreed that the significance of the proposal lay as much, or more, in its symbolic value as in its short-term rewards. They believed in what is symbolized — namely, the nation's readiness to assist, in limited fashion, in building a law-abiding community of nations.

During the 1920's and well into the 1930's American leaders

pursued a policy of voluntary internationalism which had as one of its goals a stable world order under the rule of law. A compromise policy, voluntary internationalism combined a qualified loyalty to the isolationist tradition with a good many of the internationalist aspirations which had been evolving since before the war.[9] Policymakers were prepared to work with other nations to maintain stability, but resisted any form of cooperation or commitment, especially of a policial or military nature, which would curtail the nation's freedom of action in an undesirable fashion. In conducting their diplomacy, they preferred to rely on moral suasion and economic power rather than on armed force; they eschewed all joint commitments to use force, no matter whether the commitment took the form of an alliance or a collective security agreement.

Although refusing to join the League or participate extensively in European political affairs, policymakers carried forward Wilson's quest for a stable, liberal-capitalist world order, safe from the threat of both radical revolution and traditional imperialism. They sought to ensure the moral and material expansion of their country, while at the same time stabilizing relationships among the major powers, by urging the creation of an orderly and responsible international community based on cooperation, an "open door" for trade and investment, and the rule of law.[10] Shocked by the devastation and disruption caused by the world war, they identified their nation with the cause of peace, doing so in the belief that peace was not only desirable in itself, but conducive to the advancement of the nation's interests and principles. The United States, they believed, could best exercise its moral leadership, promote its economic interests, and maintain its security in a predictable international environment, as free as possible from violent and arbitrary alterations of the *status quo*.

It was only natural that American leaders, in implementing the policy of voluntary internationalism, should pay homage to the peace-through-law ideal. Since the ideal demanded no commitment to use force or entanglement in European political affairs, it was consistent with their policy. It was also consistent with their goal of a stable world order suitable for the advancement of American interests and principles. Law is generally a conservative force, designed to preserve the existing order and protect against arbitrary action, and it is more likely to be invoked by those who are content with their lot than those who are not. As a relatively secure nation, uninterested in territorial expansion or in extending its power by violent means, the United States stood to benefit from the emergence of a law-abiding community of nations, all the more so because international law had

traditionally been weighted in favour of the major powers and reflected the Graeco-Christian values which Americans cherished.[11]

Respect for law had historically been a vital part of American life. Created and guided in its early years by men schooled in Anglo-American jurisprudence, the nation developed a culture bound by the rule of law — the very word "law" coming to have moral and patriotic connotations in American thought.[12] There had been a legalistic strain in American diplomacy since the days of the Founding Fathers and over the years the United States had maintained a good, if not unblemished, record of abiding by international law. The policymakers of the interwar period fell heir to this tradition. Very often trained in the law themselves, they permitted their professional experiences and habits of mind to affect their conduct of diplomacy; they were attracted, moreover, to the liberal theory of foreign affairs, which counseled statesmen to rely on the rule of law rather than the rule of force whenever possible.[13]

Considering that the Court proposal was an innocuous gesture towards peace and the rule of law, it is remarkable that it provoked the longest and one of the more bitter foreign policy controversies of the interwar years. If not for the Court's relationship with the League, the controversy would not have occurred. The strongest bond uniting the anti-Courters—that is, those who rejected membership on terms endorsed by the White House—was a profound hostility to the League which made them wary of, or opposed to, participation in what they stigmatized as a "League Court". This is not to imply that the controversy was a repeat performance of the conflict over the League. Unlike Wilson's proposal for League membership, the Court proposal entailed only a limited, highly specialized type of cooperation not requiring a wholesale repudiation of the isolationist tradition. Furthermore, because the Court was a judicial institution, membership posed distinctive questions about the legitimate function of a court of justice and the extent to which the United States should submit to its jurisdiction — question which antedated the League fight and which would have been asked even if the Court was unrelated to the League. Finally, the proposal's symbolic value gave the controversy a distinctive character of its own. While policymakers and other pro-Courters looked upon the proposal as a token of the nation's willingness to cooperate on reasonable terms in building a peaceful, law-abiding world, anti-Courters regarded it as a dangerous flirtation with Europe and the League which would contribute little, if anything, to peace or the rule of law.

The anti-Courters were comprised of two groups, the ultra-

nationalists and the legally-minded critics, the former being more numerous and effective. Inspired by the isolationist tradition and often resorting to both flag-waving and anti-European diatribes, the ultranationalists refused to accept the proposal no matter what reservations accompanied it, although they used reservations for obstructive purposes. Ambivalence characterized their attitude towards the peace-through-law ideal. While they refrained from assaulting the ideal itself, they showed little interest in putting it into practice, certainly not to the extent of having the United States join a court dominated by unsympathetic foreigners.[14] The legally-minded critics, although suspicious of the League and of European entanglements, were considerably more attracted to the peace-through-law ideal; yet while they advocated membership in an international judicial tribunal, they were unhappy with the "League Court" and with the terms of the Court proposal. Prior to the Senate vote of 1926, they produced a bewildering variety of proposals for membership either in the existing Court or in an improved substitute, proposals which were variously designed to protect American interests, prevent involvement with the League, and promote the rule of law.[15] After 1926 most legally-minded critics lapsed into silence; those who continued to speak their minds, especially from 1930 onwards, offered no counterproposals, but instead insisted, as did the ultranationalists, that the Senate not water down the terms of its 1926 resolution in order to reach agreement with the signatories.[16]

Because of changing circumstances and their own divergent views, the anti-Courters did not all criticize the proposal in the same way, but a number of themes did appear rather consistently in their speeches and writings. No theme was sounded more often than the threat posed by the Court's relationship with the League; that relationship, argued the anti-Courters, endangered not only the United States, which would have to affiliate itself with a League organ and might eventually be sucked into the war-breeding European political system, but the Court itself, which as a creature of the League lacked the independence of a true international judiciary. In an effort to disparage the proposal, the anti-Courters often harped upon the Court's imperfections (such as the absence of a code of law for it to apply), on its inability to eradicate the major causes of war, and on the meagre benefits of membership. Oddly, many of the same anti-Courters who denigrated the Court were most fearful that it would tamper with American interests and were most eager to refuse membership or to join only with foolproof safeguards.

The Court's power to render advisory opinions at the request of the League made the anti-Courters especially apprehensive. In Europe

and elsewhere, advisory opinions were common judicial practice, but most American lawyers believed that a court of justice, rather than give legal advice to another branch of government, should restrict itself to hearing and deciding litigated cases. For the anti-Courters the Court's advisory power constituted proof of its subordination to the League; they denounced the power as a corruption of the true purpose of a judicial tribunal and demanded protection lest the power be turned against the United States. Their cries of alarm were bound to have an effect, since even some pro-Courters took a dim view of advisory opinions. When the signatories gave only qualified approval to the fifth reservation, the anti-Courters were granted a second chance to sabotage the proposal. From 1926 onwards they fussed a good deal over the Court's advisory function, defended the sanctity of the fifth reservation (which meant rejecting the Root Protocol), and in general exploited the complex and technical advisory opinions issue for their own purposes.

In responding to the anti-Courters, policymakers depicted membership as safe, reasonable, and honourable, as a modest yet necessary gesture on behalf of peace, international cooperation, and the rule of law. They denied that the Court's relationship with the League would subvert its independence or would embroil the United States in the League or in European political affairs. Membership would bring no unwanted obligations and would give a boost to the Court, which despite its limitations remained a useful instrument for resolving legal disputes and developing international law. It would be unworthy of the United States to stand apart from an institution whose creation it had long urged and which embodied the peace-through-law ideal. Such appeals to duty by policymakers (which took on greater urgency after the ratification of the Kellogg-Briand Pact) were coupled with assurances that the United States was protected against interference in its affairs by the Court. In an effort to defuse the advisory opinions issue, policymakers denied any intention of backtracking from the fifth reservation and at the same time dismissed charges that the Court's advisory function undermined its independence by making it an "attorney" for the League.

In defending the proposal, government officials were, by implication, justifying the policy of voluntary internationalism. The anti-Courters tested that policy and, in the process, raised questions about the nature and extent of the United States' role in maintaining world order. It was the ultra-nationalists who offered the most serious challenge. The assurances of policymakers notwithstanding, the ultra-nationalists refused to believe that the proposal would not draw the nation into the European political system and leave its interests at

the mercy of foreigners. So broadly did they construe the principle of non-entanglement and so great was their antagonism to the League and the European system that even limited, non-political cooperation of the kind called for by membership in the Court was repugnant to them. Loyal to the isolationist tradition, they were certain that the United States could better remain at peace and advance its own interests by maximizing its freedom of action rather than by involving itself in risky cooperative endeavors.

The legally-minded critics, besides being attracted to the peace-through-law ideal, interpreted the principle of non-entanglement more narrowly than the ultra-nationalists; they regarded legally-oriented cooperation as not only permissable but desirable, a conviction they shared with the proponents of voluntary internationalism. In criticizing the Court proposal, they questioned not the policy of limited cooperation but the manner in which the policy was being implemented. If the United States was to join the Court (or a court), it would have to be on their terms — terms providing for membership, without entanglement, in a judicial tribunal free of unnecessary imperfections. Cooperation with other nations was to be on a take-it-or-leave-it basis; the United States would either have its own way or refuse to participate. Certainly such an attitude was both arrogant and self-defeating; if voluntary internationalism was to work, the United States could not demand more concessions of other nations than they could reasonably grant. Unfortunately, policymakers themselves sometimes ignored this common-sense rule, as was the case between 1926 and late 1929, when the Coolidge administration refused to seek an accommodation on the fifth reservation.

In the end, whatever the merits of the arguments put forward on each side of the issue, the fate of the proposal depended on four elements being present; if one ore more was missing, the proposal was doomed.

The first element was the readiness of the signatories to accept the Senate's terms. Because the signatories were anxious to break down resistance to the League in the United States as well as to strengthen the Court, they tried to facilitate membership whenever possible. The Senate resolution of 1926 did, to be sure, cause suspicion and hesitation, primarily because of the fifth reservation but also because some Latin American states were unhappy with the implied reference to the Monroe Doctrine in one of the understandings. Even so, the Conference of Signatories was fair in its response to the resolution and was justified in refusing to accept the fifth reservation without qualification. When Root, with the blessings of the Coolidge adminis-

tration, sought to iron out differences over the reservation, the member-states were quite receptive to his suggestions, which formed the basis for the Root Protocol approved unanimously by the Conference of Signatories in 1929. Sensitive to the climate of opinion in the United States, the signatories avoided actions which might embarrass the government politically and refrained, whenever possible, from exerting pressure for immediate action on the proposal. It was hardly a coincidence, moreover, that an American was invariably elected to the Court. Only in a limited sense can the signatories be held responsible for keeping the United States out of the Court.

A second element determining the proposal's fate was the state of public opinion. Although no national opinion polls were taken during the controversy, overwhelming evidence from a variety of sources testified to the proposal's popularity until at least the early 1930's.[17] Considering the harmlessness of the proposal, pre-war efforts on behalf of a world court, and the attractiveness of the peace-through-law ideal, this popularity was not at all surprising. Here was a measure which was certain to appeal to the majority of Americans who, in the buoyant 1920's, yearned for peace but rejected both extreme isolationism and membership in the League. Even the Court's relationship with the League appeared less frightening by the mid-1920's, by which time United States representatives were attending League conferences on arms limitation and on humanitarian and economic matters. Anti-Courters were hardpressed to churn up the anti-League feeling which had existed immediately after the war.[18] For all the proposal's inherent appeal, it would never have become so popular had it not been for a well-organized and widespread propaganda campaign by pro-Court publicists associated with the peace movement.[19] Following the war the movement attained an unprecedented size and influence and until the mid-1930's it remained internationalist in its outlook. Without the backing of the movement, the proposal might not have gotten by the Senate in 1926 or survived to face a second test nine years later.

Beginning in late 1930 the controversy entered a second phase in which the advantage in cultivating public support shifted from the pro-Court publicists to the anti-Courters. As a result of the depression and events abroad the climate of opinion grew increasingly isolationist, thus enabling the anti-Courters to attract a larger and more responsive audience than ever before. The longer the Senate delayed action, the more stale the proposal became and the more encrusted with technical issues beyond the interest or understanding of most citizens. The reputation of the Court,which had always been high, suffered as a result of an advisory opinion rendered in 1931 dealing with a proposed customs union between Austria and Germany, which many observers

felt had been influenced by the national loyalties of the judges.[20] The Court also served as a convenient target for those Americans who wanted to take a potshot at the League and the debt-defaulting Europeans. In competing with the anti-Courters, the publicists were handicapped by a lack of funds, by the absence of forceful leadership in either the Senate or White House, and by a growing interest in neutrality legislation in the peace movement. When the proposal came to a vote in 1935, the publicists were unable to mount an effective campaign, in contrast to the anti-Courters who triggered a deadly barrage of protest at a critical moment in the Senate's deliberations. With only some exaggeration, it can be said that the proposal died as it lived—by the grace of organized opinion.

A third element necessary to ensure membership was resolute leadership on the part of the White House and State Department. Whether such leadership was forthcoming depended on the temperament and political skills of policymakers, their attitude towards the proposal, and the circumstances in which they operated. In determining how much support they would give the proposal, they calculated the effect that the Court controversy would have on their political fortunes, on the prospects for approval by the Senate, on key sources of opinion, and on other foreign policy measures or pending domestic legislation. Legislative and diplomatic strategies, while varying from administration to administration, were as a rule marked by caution and procrastination. Despite its symbolic value, the proposal was not so important that it could not wait if the risks involved in pressing ahead were too great. While on occasion policymakers did act decisively (as did Hughes in opening informal discussions in 1922), yet it is equally true that they were often hesitant and unenterprising, which accounted in part for the proposal's slow progress and eventual defeat.

Ultimately, whatever the quality of leadership supplied by policymakers, it was only with the Senate's consent that the United States would enter the Court. Influenced by Denna F. Fleming's *The United States and the World Court*, a full-length account of the Court fight written from a Wilsonian perspective, historians have concluded that the proposal was the victim of obstructionism, prejudice, and shortsightedness in the upper house.[21] That there is a measure of truth in this conclusion is undeniable. The anti-Courters were a mulish lot, often resorting to obstructionist tactics, and the Senate was parochial and overly suspicious in its attitudes. Yet it would be misleading to dwell upon the black arts practiced against the proposal in the Senate while overlooking the sporadic support provided by the Executive. Neither should one exaggerate the strength of the anti-Courters (they were sometimes disunited and ineffectual) nor forget that a

majority of Senators always favoured the proposal and that a number of them did yeoman's service in its behalf.

Membership never became a major political issue between the two parties, thus sparing the proposal from the partisan crossfire which had riddled the Versailles Treaty. However, the benefits derived from having bipartisan endorsement were more than offset by squabbling within the two parties, initially among the Republicans but later among the Democrats as well. Despite urging from three Republican administrations, the Senate Republicans were too wary of the League and European entanglements to ever be zealous about the proposal, though many voted for it in 1926.[22] No Republican Senator of the calibre of anti-Courters such as Hiram Johnson or William E. Borah ever championed the proposal; more than half the Republicans voted against it in 1935. During the first phase of the controversy, the Democrats were overwhelmingly in favour of the proposal and took the lead in pressing for its approval. Besides being popular and having intrinsic merit, the proposal was politically advantageous, since it divided the opposition party while uniting both those Democrats who still hoped for membership in the League and those who preferred less ambitious internationalist measures. During the second phase of the controversy, as a result of the same conditions which narrowed the proposal's popular appeal, Democratic support deteriorated to such an extent that Franklin Roosevelt was unable to keep almost a third of the Democrats from defecting to the anti-Court camp. What had always been touted as a bipartisan measure was struck down by a bipartisan vote.[23] Roosevelt, like his Republican predecessors, was confounded by his inability to unite his own party on the Court issue.

The defeat of the proposal helped to shatter the policy of voluntary internationalism which Roosevelt in his own inconsistent, circumspect, and opportunistic fashion had pursued since taking office. If the proposal, one of the most publicized and acclaimed manifestations of that policy, was so harshly treated, then administration officials had to have second thoughts about the viability of the policy itself. Without sufficient backing from Capitol Hill and the country at large, the administration would hesitate to consider other internationalist gambits. Stung by the Court setback yet sensing its implications, Roosevelt predicted that "we shall go through a period of non-cooperation in everything . . . for the next year or two."[24] Within a few months, Congress had passed the first of the neutrality acts in the belief that self-imposed legal restraints could insulate the country from war. The peace-through-law ideal had been turned inside out.

NOTES

[1] Manley O. Hudson, *The Permanent Court of International Justice, 1920-1942* (New York: The Macmillan Company, 1943), ch. 8 and 10.

[2] Shabatai Rosenne, *The International Court of Justice* (Leyden: A.W. Sijthoff, 1957), pp. 34-35.

[3] Warren F. Kuehl, *Seeking World Order, The United States and International Organization to 1920* (Nashville, Tennessee: Vanderbilt University Press, 1969) places American efforts to create a court in a broad setting. The most detailed account of these efforts, especially useful for its explanation of Wilson's behaviour at Paris, is David S. Patterson, "The United States and the World Court to 1920", Paper delivered at the Annual Meeting of the Organization of American Historians, 1971.

[4] For an account of the Court's role in Harding's campaign strategy, consult the author's "The United States and the World Court, 1920-1927", (Unpublished Ph.D. Dissertation, Department of History, University of California at Berkeley, 1968), ch. 2.

[5] For Hughes' sensitivity to criticism of his hands-off policy towards the Court see Hughes to Edwin Gay, August 1, 1922, Charles Evans Hughes Papers (Library of Congress, Washington, D.C.).

[6] W.H. Taft to Hughes, July 21, 1922, decimal files, Department of State, Washington, D.C., 500 C114/236. Materials from State Department files will hereafter be cited by file number.

[7] Hughes to Harding, February 17, 1923, 500. C114/225a.

[8] The Senate had traditionally opposed accepting the compulsory jurisdiction of international tribunals. Hughes to Harding, March 1, 1923, 500.C114/228.

[9] Isolationism and internationalism were not self-contained or homogeneous bodies of thought and opinion, so that overlapping between the two was entirely possible. Internationalism rested on the conviction that continuous and/or organized cooperation was necessary to maintain a stable world order and that the United States, by cooperating to reduce needless competition and discord, could advance its own interests and principles as well as benefit humanity. Since cooperation could take many forms and involve the United States in many ways, internationalists advocated a variety of measures and often disagreed with one another, as the proponents of voluntary internationalism did with Wilson over the League. Isolationism was sustained by the belief that the United States must avoid "entanglement" - that is, foreign involvement of a political or military nature, with European nations above all, which restricted the nation's freedom of action in an undesirable fashion. While some types of involvement, such as participation in an alliance, clearly constituted an entanglement, other types were problemmatic. The non-entanglement principle was ambiguous enough to be differently interpreted and applied, depending on the individual, the circumstances, and the type of involvement. The proponents of voluntary internationalism accepted the principle but only to the extent of refraining from participation in an alliance, membership in the League, and extensive involvement in the European political system. They were thus able to pursue an internationalist policy while retaining a loyalty to the isolationist tradition, as they understood it. It is also well to remember that the distinction between isolationism and internationalism was either blurred or disappeared entirely when such matters as the Monroe Doctrine or trade expansion were under consideration.

The best introduction to isolationism during the twenties is Selig Adler, *The Isolationist Impulse* (New York: The Free Press, 1966), but for the thirties, Manfred Jonas, *Isolationism in America* (Ithaca, New York: Cornell University Press, 1966) is better. I have learned a good deal from William A. Williams, "The Legend of Isolationism in the 1920's," *Science and Society,* XVIII (Winter, 1954), 1-20, and especially from two stimulating essays by Albert

Weinberg, "The Historical Meaning of the American Doctrine of Isolation," *American Political Science Review*, XXXIV (June, 1940), 539-547, and "Washington's 'Great Rule' in its Historical Evolution," in Eric F. Goldman (ed.), *Historiography and Urbanization: Essays in Honour of W. Stull Holt* (Baltimore, Maryland: John Hopkins Press, 1941).

Internationalist thought during the interwar years has not received the attention it deserves. Adler, *Isolationist Impulse,* is helpful, as is Robert Divine, *Second Chance: The Triumph of Internationalism During World War II* (New York: Atheneum, 1967), chapter 1.

[10] N. Gordon Levin, Jr., *Woodrow Wilson and World Politics* (New York: Oxford University Press, 1968), pp. 1-5. I am indebted to Levin's analysis and believe that it can be applied, with modifications, to United States policy after 1921. The proponents of voluntary internationalism did not accept *in toto* the type of internationalism espoused by Wilson but their goals were remarkably alike.

[11] Nam-Yearl Chai, "Law as a Barrier to Change: A Korean Experience," in Charles A. Barker, ed., *Power and Law* (Baltimore: Johns Hopkins Press, 1970), pp. 111-115.

[12] William L. Neumann, "Law and Order in American Thought: An Ambiguous Heritage,"in Barker, *Op cit.*, p. 61.

[13] The liberal theory of foreign affairs is criticized in Hans Morgenthau, *Scientific Man Versus Power Politics* (paperbound edition; Chicage: University of Chicago Press, 1964) and dispassionately analysed in Walter Schiffer, *The Legal Community of Mankind* (New York: Columbia University Press, 1954).

[14] Two specimens come immediately to mind: Senator Hiram Johnson of California and William Randolph Hearst, the newspaper magnate, both of whom followed the ultra-nationalist line throughout the controversy.

[15] The most influential legally-minded critics in the Senate were George Wharton Pepper, a conservative Republican and prominent Philadelphia lawyer who was instrumental in the drafting of the fifth reservation, Henry Cabot Lodge, and William E. Borah. Each offered an alternative proposal. See U.S., *Congressional Record*, 68th Cong., 1st Sess., May 22, 1924, pp. 9157-9158 (Pepper); *New York Times*, May 9, 1924, 1 (Lodge); John Chalmers Vinson, *William E. Borah and the Outlawry of War* (Athens, Georgia: University of Georgia Press, 1957), p. 75 (Borah). Borah was, however, at heart an ultra-nationalist who took on the trappings of a legally-minded critic only when it was expedient.

Legally-minded critics outside the senate were a diverse lot; they included David Jayne Hill, an international alwyer who had served in the State Department prior to the war, and Salmon Levinson, an indefatigable Chicago lawyer and peace worker who tried to link membership in the Court with the outlawry of war. See David Jayne Hill, "The Whole Case of the World Court of Justice," Part II, *Saturday Evening Post*, CXCVIII (January 16, 1926), 161-162; John E. Stoner, *S.O. Levinson and the Part of Paris: A Study in the Techniques of Influence* (Chicago: The University of Chicago Press, 1942).

[16] Pepper was one of the legally-minded critics who defended the fifth reservation. See U.S., *Congressional Record*, 71st Cong., 2nd Sess., March 18, 1930, pp. 5559-5561.

[17] Newspaper opinion served as one index of the proposal's popularity. The American Foundation, a leading pro-Court peace group, undertook polls in 1925 and 1930. Of slightly more than a thousand papers polled in 1925 only 17% were against the proposal. *New York Times*, December 13, 1925, X, 3:2. Of 1,622 papers surveys in 1930 only 265 were against membership. *Ibid.*, December 8, 1930, 15:1.

[18] Writing in 1930, Hiram Johnson made a revealing appraisal of anti-Court sentiment:

"While I do not think the same spirit exists in respect to the World Court, nor probably is the antagonism to it so great as existed against the League of Nations, nevertheless a very large number of the American people view entry into this League of Nations' Court just as we do, a preliminary step to taking us into the League itself, and then into every European controversy."

Johnson to John T. Adams, January 17, 1930, Hiram Johnson Papers (Bancroft Library, University of California, Berkeley).

[19] The proposal was more widely endorsed within the peace movement than any other measure. Among the organizations most active in supporting it were the American Foundation, the League of Nations Association, the National Council for the Prevention of War, the Committee on the Cause and Cure of War, the Federal Council of Churches, and the National World Court Committee, established in the latter half of 1929 to coordinate the activities of more than twenty-five pro-Court groups.

[20] "A World Court 'Split' Stirs Up Its Foes," *The Literary Digest,* CX (September 26, 1931), 9.

[21] Denna F. Fleming, *The United States and the World Court, 1920-1966,* (New York, Russell and Russell, 1968). The chapters dealing with the interwar years were originally published in the same author's *The United States and the World Court* (Garden City, New York: Doubleday, Doran, 1945).

[22] The vote in 1926 was 76 to 17. The seventeen nay-sayers included two Democrats, one Farmer-Laborite, two Progressive Republicans, and twelve Repulicans. U.S., *Congressional Record,* 69th Cong., 1st Session, January 27, 1926, p. 2825.

[23] Senators of all parties and from all sections of the country voted against the 1935 resolution. Of the thirty-six anti-Courters, twenty were Democrats, fourteen were Republicans, one a Progressive, and one a Farmer-Laborite. U.S., *Congressional Record,* 74th Cong., 1st Sess., January 29, 1935, p. 1147.

[24] Roosevelt to W.E. Dodd, February 2, 1935, Franklin D. Roosevelt Papers (Franklin D. Roosevelt Presidential Library, Hyde Park, New York).