

Letter of Ambassador Dodd to Senators

Special to THE NEW YORK TIMES.

RICHMOND, Va., May 11.—

Following is the text of the summary of a letter written by Ambassador Dodd to Senators Glass, Bulkley and others, as published here today:

The reports which come to us indicate that many friends of the President seem to think the Supreme Court has the constitutional right to overrule majority opinion of the country as well as of Congress majorities. I can't see how university presidents take the attitude they do. Our history should at least be fairly understood by eminent men. How can Senator Borah, so long in high position, fail to recognize the meaning of anti-Democratic judicial and Senate minority vetoes?

The most familiar example of anti-democratic urging was the Borah campaign of 1919. At that time, as the evidence in all nations shows clearly the masses of peoples were hoping and praying for the application of Wilson's democratic plan for world peace. In the United States half the Republicans and about all the Democrats favored the world application of Democratic principles; and they also favored the cooperation of the United States; note what thirty-one of the greatest Republican leaders said in 1920 and had been saying since Theodore Roosevelt urged the adoption of a World Court.

Yet the Borah group of Senators were willing to defeat the world peace plan because they personally disliked Wilson or feared the principles of democracy. A minority of the Senate finally defeated Wilson's plan, and we are now in as dangerous a world position as in 1914.

If the United States had entered the League, they could have retired when their representatives found that French, English and American arms manufacturers had defeated the disarmament plan. At any rate, we would have given world democracy a chance.

Recalls Court Decision

And our Senate defeated American entrance in a way which their successors twenty years from now will not be proud of. Think of the Supreme Court's deciding to seat the corruptly chosen Senator from Michigan by declaring the Congressional Act of 1911 to be unconstitutional—also of the popular reactions the next few years against Senators who voted to seat the Michigan man.

This I mention as revealing how minorities have often defeated the majority of our people—and really endangered democracy in our greatest of all democracies.

Two or three other decisive performances of the Supreme Court will reveal more of the meaning of judicial attitudes. If one thinks I am the only historian who sees things thus, he has but to read Corwin's recent book on the Supreme Court or Fleming's book of 1933 on the Senate performances in 1919-21.

Jefferson was challenged by John Marshall in 1803 in the Marbury vs. Madison case. The new Chief Justice claimed the right to veto acts of Congress approved by the President.

Jefferson, Madison and Callatin, certainly able and informed men, declared the Constitution gave no such power; and practically every other living man who had participated in the convention of 1787, except Hamilton, was of the same opinion. Jefferson's second campaign, 1804, showed, in spite of all the violent opposition, such a result as Roosevelt's campaign of 1936.

Judge Chase of the Supreme

Court, having behaved shamefully on several occasions, decided as chief of the District Federal Court in Baltimore that Maryland's restoration of manhood suffrage (abandoned under Charles II in 1670) was unconstitutional. That was in 1804. The Maryland people were resentful. Jefferson and all his Cabinet decided, after carrying all States but Connecticut and Delaware, to test the case, and Chase was impeached before the Senate in the Winter of 1805.

Marshall's Method Assailed

John Marshall manipulated the decision so as to defeat Jefferson and the country on a Senate minority vote of one more than a third. The will of the people was overwhelmingly against this performance.

Another and equally disreputable case was already before the Supreme Court. Georgia's Legislature of 1796 granted the vast Yazoo land area to speculators, largely of New Englanders, every member but one reported to have been bribed. The people of Georgia were so exasperated that they unseated every member except the one who had voted against the grant. The new Legislature and Governor repealed the act, as British Parliaments had done scores of times. Alexander Hamilton, representing the speculators, prepared a Federal court contest.

When Marshall induced his fellows to agree with him that a Legislature could not undo its former blunders and to declare the second Georgia act on the Yazoo matter unconstitutional, he renewed the claim of the Supreme Court to declare anything it wished unconstitutional.

The popular resistance to such ruling was so intense that Federal judges in Pennsylvania were ridden through towns on fence rails by masses of protesting people. And one might remember that Jefferson's support increased so in 1806 that every Senator but three or four claimed to be for him, and all the Representatives but 15 to 20.

Jefferson's Program Defeated

Yet the most important measures of Jefferson—especially his plan of gradual abolition—were defeated, and defeated by the very methods that are now being applied, dividing the majority party's representatives in the Senate.

Another case of the "greatest" justice we have ever had came up in 1815. It had to do with Virginia's land policy. In 1673 Charles II granted 6,000,000 acres of Virginia land to a favorite, Lord Culpeper—the land between the Rappahannock and the Potomac.

About 1730 this land, all that had not been sold, belonged to Lord Fairfax, who settled near Winchester of today. When the Revolution came, about all the Fairfax heirs returned to England, being Tories. In 1783 Virginia took back all this land that had not been settled, some two or three million acres in the famous valley, and paid many of its soldiers by gifts of homesteads. Virginia's action in 1673 to 1700 was most hostile to the Culpeper grant, its rights being ignored.

In 1784-90 John Marshall represented the Fairfax claimants of England for restoration of the land. The same situation existed in Pennsylvania and North Carolina, where the Penn and Granville heirs claimed five times as much land—lands settled by Revolutionary soldiers. Curiously Marshall, his brother and Robert Morris, a shameless speculator of Philadelphia, bought the "rights" of English heirs for \$18,000, perhaps £18,000 Virginia currency.

The Virginia Supreme Court decided more than once unanimously against Marshall's arguments. After Marshall became Chief Justice and began his campaign for declaring acts of Legislatures and Congress unconstitutional, the Fairfax case was carried to the United States Supreme Court.

Land Restored to Claimants

For reasons one may only guess, the court did not act till 1815. Then Marshall declined to vote himself, but "his court" voted unanimously to restore the Fairfax lands to the English claimants, largely to Marshall and the Morris heirs. Early in 1816 the Virginia Supreme Court voted unanimously against the Supreme Court of the United States, and President Madison simply said: "Let the court enforce its decree; it has no command over the army." This was the man who knew most about the writing of the Federal Constitution. North Carolina and Pennsylvania peoples were greatly pleased. There were not then to be State civil wars!

These cases were of great importance, the last one never clearly understood by historians, though Senator Beveridge learned them but hesitated to print his account. There were several other Supreme Court decisions between 1816 and 1824 which went quite as far and caused tremendous opposition. One only has to read the debates in Congress and in the various State conventions between 1820 and 1850. There can be no doubt as to how the claims for judicial supremacy came into application. It was a re-assumption of judicial powers which the Stuart despots tried to apply in England between 1603 and 1642, when the system was abolished and has never since been reapplied in England or her dominions. Parliaments enact laws carefully and courts apply them.

The last and most fatal action of Marshall came in the Virginia Convention of 1829. Jefferson had fought fifty years for the gradual abolition of slavery. His son-in-law and grandson, both slave owners, continued the fight, not forgetful of Jefferson's repeated statement that civil war would come if the slave States did not gradually abolish that institution, though guaranteed in the Federal Constitution.

The people of Virginia voted in a big majority in 1829 for a convention which was to reform the State Constitution in such a way as to allow gradual abolition. The delegates of the majority, including delegates from Jefferson's and Monroe's counties, were definitely instructed.

'Fight Against Democracy'

When the issue was being decided, Monroe and Madison reversed themselves, abandoned their deceased hero and joined Marshall in his last great fight against democracy. A Jefferson delegate from Norfolk was expelled after having been duly seated a month before, and the leader from Jefferson's county reversed himself. Marshall renewed claims that rights of property (including slavery) could not be modified even if great majorities favored that.

The famous editor of The Richmond Enquirer, Thomas Ritchie, who had fought for and with Jefferson for more than twenty years, was threatened by great slave owners. His paper was to be ruined if it did not abandon its democratic policy. A new paper was to be set up if he did not yield (see Ambler's biography of Ritchie). Being deeply in debt, due to the great depression which followed Napoleonic wars, the slave-owner opponents loaned

Ritchie \$20,000, and his paper changed its policy—80 per cent of all the Southern press did the same thing in five years.

The most important convention since 1787 defeated the lifelong hope of Jefferson and the biggest majority Virginians had ever aligned for a reform movement. Maryland, Kentucky, Tennessee and North Carolina had similar majorities (supported by the conservative Henry Clay) whose leaders had been planning to do the same thing which the Virginians had hoped for. The North Carolina convention of 1835 shows how strong the gradual abolition element was.

Paved Way for a Sectional War

This decisive defeat of majorities by minorities that owned slaves caused the leaders of the movement to go to Ohio, Indiana, Illinois and Michigan and start the abolition movement—a sectional war was the result, and everybody knows what was lost between 1861 and 1865.

Lincoln was a follower of Jefferson, as he wrote Boston in 1858; but he could not win the war without surrendering to Northern business men in December 1862 and again in the Spring of 1864.

When the war ended there were 2,000 millionaires in New York City alone—men who had made their fortunes by arms activity, loans and speculation. These privileged men and their Republican followers renewed the minority and Supreme Court policy of the slave holders, and no President who really tried to adjust things so that democracy could actually be applied and prevent national and State exploitation—Sam Insull a good example—was successful.

Think of Cleveland's great success on the abusive tariff issue in 1892. Yet he was defeated by the splitting of his party in the Senate and bribery from the sugar trust. Think of Theodore Roosevelt 1905-1909 when he had an overwhelming majority. Yet his Republican Party turned against him and he was defeated on every important issue, the Supreme Court against him. I have described above, in part, what happened to Wilson's comprehensive scheme. How much have we all suffered from that?

Says Many "Wish a Dictatorship"

Now we have a President with the same general objectives of Jefferson, Cleveland, Theodore Roosevelt and Wilson and with a majority like that of 1804-1806, every State but two. The situation is more dangerous than at any time since Lincoln.

If the party which re-elected Roosevelt on an overwhelming majority last year decides to do as both parties have done in the past, we are in grave danger of losing our democratic system. If the party breaks up, the 80 per cent anti-democratic press may do what the 80 per cent pro-slavery press did in the South, 1830-1860.

There are individuals of great wealth who wish a dictatorship and are ready to help a Huey Long. There are politicians who think they may gain powers like those exercised in Europe. One man, I have been told by personal friends, who owns near a billion dollars, is ready to support such a program and, of course, control it.

These dangers and their likely consequences cause me to write this brief summary. I have studied our history forty years and can't help feeling that all of us who know something of our history believe in our system and must do what we can to support our President, even if we wish to amend some of his reform measures.

WILLIAM E. DODD.