

EDITORIAL COMMENT

JOHN BASSETT MOORE

Judge Moore was born December 3, 1860, in Smyrna, Delaware, and died in New York City on November 13, 1947. He thus lived to be nearly eighty-seven years old and leaves behind a memory as the greatest authority on international law and as a character that became the envy of all who knew him. His ethical standards were so high as to win the admiration of all those who appreciated him.

Mr. Moore's contributions to human welfare were almost unlimited in number. His first public engagement was from 1885 to 1891 in the Department of State. After passing a Civil Service examination, he was selected by Secretary Bayard as a law clerk. Soon all the affairs of the Department drifted instinctively into Mr. Moore's hands. His first instruction was in connection with the Hale Claim in Buenos Aires. When Mr. Bayard read the proposed note of instruction and found himself unable to suggest any change in it, he knew at once that he had found a genius. Mr. Moore was in turn the Secretary for the North Atlantic Fisheries Commission, for the Samoan Condominium, and for various other commissions centering in the Department of State. He began the preparation of a Digest of International Arbitrations as a proposed supplement to Wharton's Digest, but the work soon developed into a six-volume study of the arbitrations which man has undertaken in his more deliberate and peaceful moments. Forever afterwards Mr. Moore remained a pioneer in international arbitration and became a devotee of peace. He soon, by virtue of the profundity of his knowledge, became the unquestioned authority on international law in all its phases. The International Adjudications, of which seven volumes appeared before his death, are in a sense a revised edition of his original work. This work enlisted all the scientific devotion of this great student, and though much sought after as a practical man of affairs, science always engaged his major affection.

In 1890 Mr. Moore married Helen Frances Toland of Philadelphia, and Mrs. Moore continued to grace his life and add sweetness to all his affairs by a devotion that lasted until his dying day. Three daughters of the marriage are now themselves married and added numerous grandchildren to Mr. Moore's cup of happiness. Undoubtedly his domestic bliss had much to do with his capacity to work.

In the early nineties he realized that President Cleveland was getting beyond his depth in espousing the cause of Venezuela in the controversy with Great Britain concerning British Guiana. Mr. Moore determined to get the facts before President Cleveland and did so in a letter written to

his Postmaster General. When Cleveland observed what he had been doing, he at once reversed his position, and thus peace with Great Britain was assured. Mr. Moore worked closely with Secretary Gresham just before the latter's unfortunate death. Mr. Gresham has left us some appreciation of Mr. Moore's greatness.

In 1898 he was called back to the Department as Assistant Secretary and later in that year was appointed by President McKinley as Counsel and Secretary of the Commission which drew up the treaty with Spain. As can well be imagined, the laboring oar was pulled by Mr. Moore. I would say that this was the last peace treaty ever made, being in no sense comparable with that of Versailles.

When Mr. Moore came back from Paris he at once entered into the closest relationship with Secretary Hay, notably in the Boxer Rebellion case in which Mr. Moore directed the instructions to Mr. Conger at Peking and also in the instructions issued to Mr. Swensen in Copenhagen in connection with the purchase of the Danish West Indies. Had Mr. Moore's proposals been accepted, we should have acquired the Virgin Islands for four million dollars. As it is they cost the United States twenty-five millions in 1916.

Mr. Moore is perhaps best known to the general public by his standard work, the *Digest of International Law*, of which eight volumes appeared in 1906. So heavily had this work fallen on Mr. Moore's shoulders that he suffered a nervous breakdown after completion of the work. He then was stimulated to partake of a vacation—almost the first in his life—lasting over two years. He traveled much of the time and acquired useful information of Europe and the Near East—information which helped him maintain his balance when in 1914 the European nations went to war. Throughout his life he considered the 1914 war unnecessary and blamed Woodrow Wilson and his inexperience in international affairs for its development.

In 1913 Mr. Moore permitted himself to be persuaded to return to the Department with the rank of Counselor. He well knew the difficulties before him, but he was wont to say that the longer he knew Wilson the less he thought of him, whereas the longer he knew Bryan the more he thought of him.

Having committed himself only for a year, it was not too hard for Mr. Moore to leave the Department in the spring of 1914. He was dismayed by President Wilson's ineptitude in dealing with Huerta in Mexico. In the summer of 1914, the European war began and Mr. Moore was overwhelmed by clients seeking his expert knowledge. Mr. Moore did his level best to keep Woodrow Wilson straight on neutrality problems and particularly on the position of armed merchantmen, but it was too difficult for him to debate with President Wilson, and most of his advice was not taken. In due time we became a party to the war on legal grounds

which cannot stand the light of examination. Mr. Moore acted like a good soldier and respected the Presidency of the United States. Not a sign can be found in Mr. Moore's writings which indicates his personal disappointment with Wilson, but the Chairman of the Foreign Relations Committee, William Stone, recognized the fact that in following Wilson into the European war we were abandoning the American tradition.

In 1910 he was a member of the American Delegation to the Fourth Inter-American Conference at Buenos Aires, and in 1912 served on the Commission of Jurists at Rio de Janeiro. During the war Mr. Moore was on the Executive Committee of the American Red Cross and head of the New York office. He also was Vice-Chairman of the Inter-American High Commission established at the Inter-American Financial Congress, and throughout its active career did the major work of organizing the office.

Mr. Moore, who had read much all his life, was not enamored of the League of Nations, which he regarded as a flimsy device to hold down the *status quo*. His article in Duggan's "The League of Nations, the Principle and the Practice" is still the classical criticism of that institution.

To Mr. Moore's great surprise, he was elected a Judge of the Permanent Court of International Justice in 1921. Mr. Root had advised his colleagues in Europe that Mr. Moore would be much more useful than he. "He has an accurate mind, great learning in international law, and practical experience in international affairs. . . ." As in the case of all his appointments, Mr. Moore took the assignment seriously and soon became known as the principal Judge of the Court. It was not only his profound knowledge of international law, but his proverbial tact, that soon won him the esteem of all his colleagues. He declined the presidency of the Court on more than one occasion, believing that such an office should not be given an overseas judge.

In 1922/23 Mr. Moore presided over the Conference to deal with the subject of the use of radio and aircraft in time of war. In 1924 he retired from his professorship at Columbia, and in 1928 he resigned as Judge of the Court, in order to devote himself exclusively to his scientific obligations.

Although illness caused his retirement as a student from the University of Virginia, the universities of this country later vied with each other in showering Mr. Moore with honorary doctorates in law. In 1927 he was the recipient of the Theodore Roosevelt Medal. It may not be generally known that he furnished Theodore Roosevelt with an argument in advance justifying the subsequent seizure of the strip known as the Canal Zone. From 1928 on until the Carnegie subvention was withdrawn he devoted himself to the *International Adjudications*. After January, 1944, when he suffered a heart attack, he was not capable of working any longer, but his pioneer work stands as a monument to one of the greatest thinkers the world has ever known. Mention might be made of the fact that the trustees of the Equitable Life Insurance Company took a secret vote as to who

in their ranks was the best story-teller. Mr. Moore received every vote but his own, and the writer can remember that a friendship of forty years left Mr. Moore with a fund of anecdotes that was by no means exhausted by time. Mr. Hackworth, the former Legal Adviser of the Department of State, often sought Mr. Moore's advice, from which F. D. R. might have profited greatly. Mr. Hackworth is wont to say that in Mr. Moore's presence he felt that he was in the presence of the Pope. If so, it was a humorous Pope, because Mr. Moore had the charming facility of clothing his profound thought in the material of an anecdote. That charm died only with the man himself. It has fascinated many friends and students who sat at his knee with undisguised reverence. In writing for the *American Bar Association Journal* on Mr. Moore's life, the writer affirmed the following estimate of the man:

Not without reason did John Bassett Moore become the master of international law and the acknowledged dean of the profession. Throughout his life he exhibited a high character, an enviable knowledge of private and of public law and of history, an appreciation of human and national psychology, great industry, the courtesy of an innate diplomat, objectivity, tact, tolerance, deference, unusual modesty, and a rich fund of humor.

EDWIN BORCHARD

FINDING INTERNATIONAL LAW

The availability of materials on international law is an unremitting problem for those who work in the field. While at times the problem may be merely one of knowing what to look for and where to look, more often the difficulty lies in the fact that materials are not readily accessible. With reference to the first difficulty, Clyde Eagleton has recently pointed out that, since lawyers are supposed to know all about law, the ignorance and skepticism about international law exhibited by the average practitioner has naturally influenced laymen.¹ It is unfortunately true that lawyers do not always recognize international law when they have resort to its principles to win a case. The tools employed by the practicing lawyer sometimes tend to conceal from him the fact that the municipal law upon which he relies embodies the requirements of international law. For example, the *General Digest* for the years 1941-1942 listed only 42 decisions under the rubric "International Law." By making his own index and by diligent effort, the writer was able to discover a total of 124 cases decided by United States courts during that period in which the decision turned upon some question of international law.² Most of these cases are

¹ This JOURNAL, Vol. 41 (1947), p. 438. See R. H. Smith in same, p. 906.

² These cases are reported or digested in Lauterpacht's *Annual Digest and Reports of Public International Law Cases, 1941-1942*. For 1943-44 the *General Digest* lists 40 cases under "International Law." The writer has collected 74 for the same period for inclusion in the 1943-44 *Annual Digest*.