

has been discovered. It lies in the last decision which the Court made—an advisory opinion—on the legality of the proposed customs union between Germany and Austria. That decision has been widely criticized here in the United States. It was an eight to seven decision and the critics claim that this vote in itself discloses the fact that the Court is not a court of law; it is a parliament of opinion. In a country in which the decisions of our own Supreme Court are frequently on a five to four basis, this sounds like a strange argument.

The decision has also been attacked on the grounds that it was based not on legal considerations, but on political considerations. Perhaps you have had an opportunity of reading the majority opinion. If you have, I am sure you will agree with me that it is no more political in character than John Marshall's decisions on the rights of American Indians. It is no more political than the decision of the Supreme Court on the Fugitive Slave Law. It is no more political than the progressive decisions of the Supreme Court in the insular cases or in the interstate cases. Doubtless you will remember the remark of Mr. Dooley with reference to the Supreme Court's insular decisions of 1901 to the effect that whether or not the United States Constitution followed the flag, it certainly followed the election returns.

There is a sense in which any court, if it faces facts realistically, must take cognizance of political questions. Indeed Mr. Charles Warren, our leading student of the United States Supreme Court, claims that that court exercises "essentially political functions." But for a court to be conscious of political questions is quite different from having politics in the court. And the third argument made against this recent decision of the Court of International Justice is that it was frankly the result of political maneuvering. It was a Latin block against a Nordic block. It represented the efforts of France to take advantage of discordant political elements, and line up behind the majority opinion the judges favorable to her position.

There seems to me to be little that is valid in this argument. It is interesting to note that the Chinese and Japanese judges voted on the same side of the case. The tension between France and Italy at this moment is particularly acute, and yet the French judge and the Italian judge sustained the same opinion. At a time when