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THE INTERNATIONAL LAW STANDARD IN
TREATIES OF THE UNITED STATES, by
Robert R. Wilson. Harvard University Press,
Cambridge, 1953. Pp. vii, 321. \$4.50.

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predestinarianism. Mannheim is among those who reject this conception in the name of a scientific view of nature's laws in which potentiality, rather than predetermination, is the principal characteristic. It would be a rewarding exercise to explore Mannheim's thought with the same tools with which the author conducted his pioneering analysis of the Romantics.

Clearly the works of Karl Mannheim belong to that select category of fundamental studies basic to the equipment of anyone responsibly concerned with grasping or affecting the policy processes of our epoch.

*Harold D. Lasswell**

THE INTERNATIONAL LAW STANDARD IN TREATIES OF THE UNITED STATES, by Robert R. Wilson. Harvard University Press, Cambridge, 1953. Pp. vii, 321. \$4.50.

"Treaty law" has been much in the domestic news of late, and in the contemporary writing about and teaching of international law in this country it is being increasingly stressed. In the law school world it may be that through shifts in the coverage of courses in international law, by the creation of courses such as counseling in international transactions, and as a result of the development of "international legal studies"¹ the law of treaties is now beginning to receive that degree of close attention which some two decades ago legislation began to get.

Professor Wilson's meticulous study is a considerable contribution to the more detailed study of specific treaties and types of treaties. Essentially, his book takes us behind the language of the treaty to the concepts of, or to "the concepts about the concepts" of, customary international law which his research indicates are to be associated with that language.

The chief utility of his work may well turn out to be this: that at an early stage of a new emphasis on treaty law Professor Wilson has called our attention to a fact sometimes overlooked in connection with the development of studies in legislation:

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1. A useful term to cover a good many different things, which it seems should be credited to Harvard; see Cavers, *The Developing Field of International Legal Studies*, 47 AM. POL. SCI. REV. 1058 (1953).

that many words in black letter have significant relationships to ideas based on prior general doctrine. The reviewer is especially struck by the parallel between Professor Wilson's study and an interest of his own in the influence of common law concepts upon the interpretation of federal tax law.² These relationships ought to be well understood by all draftsmen and users of black letter. Professor Wilson is seeing to it that they will be as to U.S.A. treaties.

But it would be quite wrong to leave the impression that Professor Wilson's book bears only upon matters of the drafting and interpretation of treaties. Professor Wilson is a scholar³ who has also participated in the conduct of American foreign policy.⁴ While devoting himself to the pursuit of the standards connoted by treaty references to "the law of nations," "acknowledged practice of civilized nations," "equity," "justice," and so on, Professor Wilson has also written a rather good short history of American diplomatic practice regarding the major headings of his book and ranging from 1778 to 1950, viz.:

Pacific Settlement (Chapter II)

Commerce and Navigation (Chapter III)

Independence and Jurisdiction of States (Chapter IV)

War and Neutrality (Chapter V)

When Professor Wilson deals with the "international law standard" behind or in relation to American international agreements in the above areas, he does not confine himself to the bare bones of treaty language or to an examination of the preparatory papers. He goes into the whole foreign affairs operation involved, dealing in detailed but compact text and footnotes with the ins and outs of complex negotiations such as those involved, for example, in the U.S.A. interest (1845-1853) in a plank-and-rail road across the Isthmus of Tehuantepec.⁵ Thus, in writing of the "international law standard" in treaties, he brings out much about the dialectical use of international

2. Oliver, *The Nature of the Compulsive Effect of State Law in Federal Tax Proceedings*, 41 CALIF. L. REV. 638 (1953).

3. With much excellent publication to his credit in connection with treaties.

4. As a sometime officer of, and later adviser and consultant to, the Department of State, U.S.A., specializing in commercial treaties.

5. This is dealt with in detail, pp. 136-149, in the "Intervention" subdivision of the chapter on "Independence and Jurisdiction of States." The chapter is a rather good summation of an important aspect of relations between the United States of America and other American republics, especially our neighbor immediately to the south.

law in the conduct of American foreign policy (but without calling it such). Some of the utilizations are very interesting in historical perspective:

(1) That American claims to free navigation of the Mississippi were based upon the "law of nature and nations";⁶

(2) That open navigation of the Amazon was required under international law as declared by the Congress of Vienna;⁷

(3) Denial that the law of nations authorized visit and search of suspected slavers;⁸

(4) "That, according to the acknowledged principles of public law and the usages of nations, ancient and modern, the obligations of good neighborhood and national friendship make it the duty of a state to allow reasonable transit over its own territories to the citizens and subjects of other friendly governments . . .";⁹

(5) That customary international law requires prompt, adequate and effective compensation for the nationalization or confiscation in time of peace of the property of aliens;¹⁰

(6) Development of special high seas claims-of-right (or power) while adhering to the principle of limiting territorial waters to three miles;¹¹

(7) That the "rules" of the *Alabama* claims treaty were merely expressive of "the law" on neutral duties as it already existed.¹²

When, in addition to such comfortable conformity between the national interest (as viewed at the particular epoch in our history) and American assertions of what the "international standard" requires, we note from Wilson's work the well-developed American doctrine in connection with peaceful settlement of disputes that some matters simply are not susceptible

6. Rather, Jefferson said, than upon the treaty of 1763 between Great Britain and Spain or the British-American treaty of 1783; see pp. 110, 112.

7. P. 117.

8. Pp. 129, 134.

9. Secretary of State Daniel Webster to the Mexican minister, June 30, 1852, detailed at p. 141.

10. The monograph refers to the well-known Mexican caveat on this; cf. Re, *The Nationalization of the Foreign-Owned Property*, 36 MINN. L. REV. 323, 329 (1952) and FORD, *THE ANGLO-IRANIAN OIL DISPUTE OF 1951-52*, Part II, § 10 (1954).

11. Pp. 166-174.

12. P. 213 *et seq.*

of settlement by legal means,¹³ when we have traced for us the elaborate care with which domestic jurisdiction has been husbanded from international inroads over the years—we begin to wonder a bit about the validity of one viewpoint in the current controversy about the role of law in the international community: that which finds international law in conflict with national interest because inherently restrictive of national interest. On the other hand, there is enough in Wilson's study to preclude the opposite conclusion: that international law means precisely what we want it to mean: nothing more, nothing less. As Professor Wilson writes in his penultimate paragraph:

"Perhaps the most general impression to be had from a study of the manner in which—in such widely differing situations as those that have been examined in the foregoing chapters—the international law standard has been the subject of specific provisions of treaties is that the principle of legality may be underlined and strengthened through treaty acknowledgment of a pre-existing body of law It may be questioned whether mention of the law in a general, declaratory way has not at times been a substitute for commitments to something more specific Nevertheless, a formal recording of the parties' intention to adhere to the standard, or of their deferring to it when for special purposes over a temporary period they agree to apply special treaty rules, frequently has represented more than high-sounding phraseology"¹⁴

Thus, Wilson's readers will learn a good deal about a very important number of American treaties and have a terse refresher or introductory survey as to some major aspects of American foreign policy. He will have to keep his undivided

13. Professor Wilson finds the greatest number of references to the international law standard in United States treaties dealing with pacific settlement. In the same area we find the full development of "criteria for distinguishing juridical questions." Professor Wilson adds (p. 244): "The designation of disputes 'susceptible of settlement' by application of the principles of law presupposes that there can be disputes not within that description. To this position the United States has consistently held, despite a strong view (although still a minority one, it would appear) among publicists and governments that the concept of nonjusticiable disputes is unsound. . . ."

Contrast KENNAN, *AMERICAN DIPLOMACY 1900-1950*, 95 (1951) and on the implications of the contrast, cf. Oliver, *Reflections on Two Recent Developments Affecting the Function of Law in the International Community*, 30 *TEXAS L. REV.* 815, *passim* and 841 (1952).

14. P. 254.

attention on the text, because it is tightly packed, heavily foot-noted, and the subject matter sometimes gets a little involved, or just dull.

The reader could not wish for better guides into the material. The index is first rate. Appendix I, a table of United States treaties, is useful. Appendix II deals with the international law standard in the treaty practice of other selected states. Perhaps it is not permissible to draw any conclusions about the general topic from the fact that the practices of all save one of the old (pre-World War II) major powers, including Nazi Germany and the U.S.S.R., do not appear too dissimilar from U.S.A. practice in regard to treaty references to the international standard. The exception was Japan, but the possible implications of this escape the reviewer.

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INTRODUCTION TO CIVIL PROCEDURE, by Alison Reppy. Dennis & Co., Buffalo, 1954. Pp. xiv, 860. \$8.50.

CASES AND MATERIALS ON CIVIL PROCEDURE, by Bernard C. Gavit. Bobbs-Merrill Co., Indianapolis, 1953. Pp. xi, 582. \$8.50.

Legal education has not been impervious to the criticism it has received from the bar in recent years. Although much of this criticism has been uninformed and histrionic, some has been reasoned and constructive. The latter has stimulated considerable self-examination on the part of law schools that has not been merely narcissistic in character. Self-appraisal has revealed a wide disparity of views as to what law schools can and should teach. This is most forcefully displayed in the area of procedural courses by the number and variety of new casebooks.¹ These books range widely from the "survey" courses

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1. In addition to the two casebooks reviewed here, see HAYS, CASES AND MATERIALS ON CIVIL PROCEDURE (1947); ATKINSON & CHADBOURN, CASES AND OTHER MATERIALS ON CIVIL PROCEDURE (1948); MICHAEL, THE ELEMENTS OF LEGAL CONTROVERSY (1948); SCOTT & SIMPSON, CASES AND OTHER MATERIALS ON CIVIL PROCEDURE (1950); CLEARY, CASES ON PLEADING AND RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS (1951); BLUME & REED, PLEADING AND JOINDER, CASES AND STATUTES (1952); CLARK, CASES ON MODERN PLEADING (1952); VANDERBILT, CASES AND OTHER MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION (1952); BROWN, VESTAL & LADD, CASES AND MATERIALS ON PLEADING AND PROCEDURE (1953); FIELD & KAPLAN, MATERIALS FOR A BASIC COURSE IN CIVIL PROCEDURE (1953).