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The Law of Treaties (Book Review)

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THE LAW OF TREATIES. By Arnold Duncan McNair. New York: Columbia University Press, 1938, pp. 578.

Vice-Chancellor McNair, of the University of Liverpool, formerly Professor of International Law at the University of Cambridge, England, in the midst of one of the greatest orgies of treaty repudiation in history, gives us a scholarly treatise on the law of treaties. The timeliness, therefore, of this really distinguished work is impressive.

In the foreign offices of the various governments of the world, where the determination of obligations under treaties is being generally subordinated to the advancement of particular local policies, it will come as a wholesome surprise to realize that there exists at hand a fully developed system of law with respect to treaty obligations.

Professor McNair has been thorough, giving the rules governing the formation of treaties, the interpretation of their terms, the effect of their operations, and the manner of their modification and termination. Of course, he writes only from the point of view of the decisions made by the English courts and the English diplomatic officers. But an examination of the contents of the treatise will show a close affinity between British views and our own.

The book proceeds more by example than by precept. The author states his conclusion and then produces copious illustrations from the history of English diplomacy to show the manner in which the rules he lays down have been applied in practice. By this empiric method he produces a thoroughly authenticated result, from which one derives a feeling of authority. This is, therefore, a book not to read but to study; a treatise designed to prove conclusions rather than merely to state them; a scientific effort to demonstrate that over a long period of history there has existed a course of conduct, recognized by law, under which agreements between nations may be given effective legal sanction.

No discussion of treaties of current interest could possibly be complete without some reference to the position of the German Government with respect to its post-war treaty obligations. Professor McNair points out that in the Treaty of Versailles the German Government was compelled to treat as null and void a number of treaties which she had induced other states to conclude, "in many cases doubtless under the coercion resulting from successful military competition." At the same time the British Government has never given the slightest assent to the suggestion that the German Government itself, which had no alternative but to ratify the Treaty of Versailles, had any justification for treating that convention as not absolutely binding upon it. Nor has the British Government attached any greater significance officially to the position of the German Government that it was not bound by the disarmament provisions of the Treaty of Versailles because they had failed of their general objective to bring about a general state of disarmament.

When one bears in mind, however, that this official attitude on the part of the British Foreign Office has not been effectively asserted, either because of the unwillingness of the British Government to resort to the only ultimate available sanction against spirited repudiation of treaties, or because of other considerations of policy, it will be apparent that the "law in books" with regard to

treaty obligations falls far short of giving a true picture of the "law in action".

The wholesale repudiation of treaties in times of stress must not, in the light of the data collected in this book, be deemed a failure of international law. It must rather be construed as the prevalence, for the time being, of new forces which make necessary the avoidance of accepted legal principles. The same thing happens in private law when unforeseen circumstances bring about legislative moratoria that interfere with normal enforcement of the obligations of contract. One cannot be pedantic about any legal principle because it is of utmost importance to realize that behind every decision of a court or other tribunal stand the economic, political and social forces of the world. It is only through the light of these that a true appreciation of the course of law can be had at all.

At least in democratic countries, however, the effort to return at the earliest possible moment to the rule of the strict law in private matters is constantly being made. It is of equal importance that in international affairs a similar effort be put forth with utmost force. The task of enforcement in private law is difficult in many cases and frequently impossible where the law is out of tune with the social desires, as, for example, in the case of national prohibition in the United States. So, too, in international affairs treaties negotiated, which do not have a solid basis in the expression of the wishes of the peoples who are to be bound by them, will find the rule's enforcement difficult, if not impossible, to achieve.

These are the lessons of history, but they make all the more important the true understanding of the law of treaties. In this book Professor McNair has made a complete and distinguished contribution to that subject.

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LAW IS JUSTICE: NOTABLE OPINIONS OF MR. JUSTICE CARDOZO. Edited by A. L. Sainer. New York: Ad Press, 1938, pp. xv, 441.

Mr. Hendrick Van Loon in *The Arts* says that the poet is one who expresses his dreams in universal rhythm, which perhaps is another way of expressing Socrates' concept of "beauty in the inward soul". No reading, even the most cursory, of Justice Cardozo's opinions can fail to convey the impression of the attunement of his soul to the universal rhythm. He himself has likened the work of a judge to that of an artist, who, although he must know the handbooks, should never trust them for his guidance. On the basis of Mr. Van Loon's definition, we may permissibly classify Justice Cardozo not only as a great artist but also as a poet.

The opinions, drawn from Justice Cardozo's eighteen years on the bench of the New York Court of Appeals, and his more than five years as a member of the United States Supreme Court, illustrate the striking feature of his supremacy in two divergent fields of the law. The work of the two courts is of

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