

## The Rise of a New International Law in America

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Historians have written much about international lawyers and the study of international law in the early twentieth century, particularly with regard to their implications for American foreign policy and the American peace movement. Warren Kuehl's authoritative account of the development of internationalism up to the end of World War One touches upon the ideals of international law at the time,<sup>1</sup> while Roland Marchand describes the role of lawyers in the peace movement.<sup>2</sup> Calvin DeArmond Davis's books on the Hague Peace Conferences of 1899 and 1907 demonstrate clearly that the study of international law served as the theoretical underpinning of the two conferences.<sup>3</sup> There is, however, a conspicuous lack of historical works dealing with a younger generation of international lawyers who were emerging at the time. This group began advocating a change in the focus of international law in the early 1910s, and their presence became distinctive because of the experience of World War One.

In the early years of the twentieth century, the American Society of International Law (hereafter ASIL) served as the primary sponsor of discussions related to issues concerning international law. At the

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Society's meetings, established lawyers such as Elihu Root, James Brown Scott, and Charles Fenwick led vigorous interchanges. The outbreak of World War One, however, focused more attention on the study of international law and gave lawyers an opportunity to reconsider the role of law in world affairs. Younger lawyers tended to think that international law before the war was deficient and needed to be changed, while older, more established lawyers maintained the importance of the traditional approach. After the war, opinions in the ASIL about the future course of international law divided along these lines.

This paper will contrast the two groups of international lawyers and emphasize the emergence of the younger group, examining their ideas and activities in some detail. Providing a full record of the activities of international lawyers will shed light on a "forgotten" page of American history, the history of those who proposed the intellectual framework that would shape a new international order after World War One.<sup>4</sup>

#### ROOT AND SCOTT AND THE AMERICAN SOCIETY OF INTERNATIONAL LAW

The ASIL was established on January 12, 1906 with five hundred members, increased its membership to almost a thousand by 1930, and included not only scholars of international law but also diplomats and those practicing international law. By far the most important contributors to its initial development were Root and Scott. Not only were they instrumental in laying the foundation for the society but their ideas also became central during the first decade of the ASIL's existence.

Some knowledge of the initial orientation of the ASIL is necessary to understand the fundamentals shared by its founding members. Its origins may be traced to the May 1905 Lake Mohonk Conference. The conference, which had started in 1895, invited people who were interested in the problems of peace. At the time arbitration was considered to be the most effective means of solving international disputes. In particular, the success in 1871 of arbitration in settling the so-called Alabama claims between the United States and Great Britain had made arbitration popular, leading the First Hague Peace Conference to establish the Permanent Court of Arbitration. Because of the attention given to arbitration, which required a professional

knowledge of law, many of the participants of the Lake Mohonk Conference were lawyers. Their desire to deepen their discussions led to a move to establish an independent professional organization concerned specifically with international law.<sup>5</sup> A motion to set up such a professional society was proposed by three participants: Scott, Professor of International Law at Columbia University; George Kirchway, Dean of Columbia University Law School; and Robert Lansing, Associate Counsel on the Bering Sea Claims Commission.<sup>6</sup>

At the first meeting, Oscar Straus, Secretary of Commerce and Labor (1906–1909), stressed the need for popularizing international law. He remarked that the Society should be composed of specialists but that discussions and papers should seek to create broad public interest in international law. He cautioned that if the society limited its outreach, it would “fail of its *raison d’être*, namely, to popularize and develop international law.”<sup>7</sup> Straus’s emphasis on popularizing international law helps to explain why Article Two of the ASIL’s constitution reads: “The object of this Society is to foster the study of international law and promote the establishment of international relations upon the basis of law and justice.”<sup>8</sup> The latter part of this article is worth noting because the phrase “law and justice” had a special significance for the ASIL, as is shown by the fact that its Latin translation served as the Society’s motto. Although the first part of Article Two—to enhance the study of international law—was a natural and obvious goal for such an academic organization, the second principle was more political, reflecting the desire that the study of international law should serve as a guideline for international relations. This dual aim would influence how the ASIL developed.

Reflecting the high positions of the lawyers in public service and the Society’s inclination to influence public policy, the original members of the ASIL contained many notable public figures. The first president was Root, who had served as Secretary of the War Department (1899–1904) and of the State Department (1906–1909) under President Theodore Roosevelt. Root remained president of the ASIL until 1923, and throughout his tenure he was one of the most vocal and indispensable figures in the development of international law. Other distinguished figures such as Chief Justice Melvin W. Fuller of the United States Supreme Court, Andrew Carnegie, and Judge George Gray served as vice-presidents of the Society.

No less important for the ASIL than Root was Scott, who served as

secretary (1906–1924), vice-president (1924–1929), and then president (1929–1939) of the Society. Because of his devotion to the development of international law, he later came to be called the “Dean” of international law. In particular, Scott played a significant role in the publication of the Society’s journal, which was based on a plan that he had presented at the Lake Mohonk Conference. Because of the shortage of funds, Scott personally paid the expenses for the first two volumes, but the ASIL subsequently reimbursed him.<sup>9</sup> He then became a solicitor at the State Department (1906–1911) under Root and joined the so-called “Root cult.”<sup>10</sup> The close cooperation between Scott and Root was crucial to the development of the ASIL.

Before examining Root and Scott’s ideas on international law, it is worth noting that 1907, the year that the ASIL had its first annual meeting and the *American Journal of International Law* was first published, was the year of the Second Hague Conference. The two Hague Conferences served as an important background to the early history of the ASIL. The First Hague Conference (1899) had adopted two principles to contribute to peace. One involved codifying the conduct of war so that war would be humanized and its calamities decreased, and the other pertained to settling international disputes judicially. The Permanent Court of Arbitration that had been established by the First Hague Conference, however, had no provisions for obligatory arbitration, and supporters of the arbitration movement hoped to adopt such provisions at the Second Hague Conference.

Root was Secretary of State at the time of the Second Hague Conference, and he appointed Scott as technical advisor to the U. S. delegation. Scott was in charge of drafting the provision for the court proposal.<sup>11</sup> Although the Second Hague Conference failed to approve a court with obligatory arbitration, the results of the conference were welcomed by advocates of arbitration and deemed to be a step toward a Third Hague Conference. In 1910 Scott founded a separate society to work on the cause of the judicial court, the American Society for the Judicial Settlement of International Disputes. The ASIL included other supporters of or delegates to the Hague Conferences such as David Jayne Hill, an American delegate to the two Hague Conferences, and Lansing who ardently supported arbitration. The support given by some members to the cause of settling international disputes judicially would later become a key factor in the development of the ASIL.

In regard to the positions of Root and Scott about international law, historians have labeled their views "conservative."<sup>12</sup> An elitist view of law and society, an atomistic view of international society, and a judicial approach to international relations have been mentioned as the elements of their conservatism. Root's conservative views derived from his political and social position, and his discussions of international law were rather general and not purely academic. He incessantly tried to popularize international law, and in "The Need of Popular Understanding of International Law," the lead article of the first issue of the *American Journal of International Law*, Root stressed that an understanding of international law among the public was important for carrying out successful foreign policies. With an increase of democratic control in foreign policy, statesmen and diplomats would have to consult the public to get approval of their policies.<sup>13</sup> He thought that if the public had appropriate knowledge of international law and understood the rights and duties of their country and of other countries, they would appreciate the results of foreign policy.

Scott's academic conservatism had a more sophisticated view of international law. He advocated using the case method of instruction, which he thought was "scientific and practical" because it probed the principles of law in real situations. In 1902, while Scott was at the University of Illinois, he revised and published a case book on international law, which became so popular that it was reprinted the following year.<sup>14</sup> In a paper stressing the need for the case method, Scott compared legal education to the study of medicine. He argued that, just as students of medicine learned the functions of the body through studying anatomy, "the students of law must take up the concrete case, examine it, discuss it, and decide it in the light of theory." He contrasted this method with the boredom of the lecture method, where the student "listens and looks at the clock, and falls asleep betimes."<sup>15</sup> Case method instruction did not however become as widespread in international law as it did in other areas of jurisprudence.

Scott's view of the nature of international law can be seen more clearly in "The Legal Nature of International Law" that was published in 1907. In it Scott refuted the position of John Austin, a famous scholar of jurisprudence who had denied the legal standing of international law. Austin had argued that law needed to be administered by a commonality superior to its subjects, but because international society was composed of independent states without a superior authority, observa-

tion of international law would depend on the will of each state. Even if a common court were to be established, submission or withdrawal of cases to such a court would also depend upon the will of each state. Scott criticized this position, stating that this was too rigorous. He cited the existence of common laws that developed out of accepted customs and which people observed without sanction by a higher authority. As observing customs continued, some of them came to be accepted by the courts and were thus elevated to the position of common law. Because international law had also been accepted by municipal courts, Scott concluded that international law qualified as law in the same sense that common law did.<sup>16</sup>

Scott's emphasis on the case method and judicial process formed the theoretical base for his advocacy of forming an international court. If application by municipal courts sanctioned international law, then a worldwide application by international courts would be even better.

#### NEW AND DIFFERENT VIEWS: REINSCH, BORCHARD, AND FENWICK

Although the views of Root and Scott were dominant among academics, there were other views that caught the attention of other audiences. In particular, a younger generation of international lawyers with innovative ideas was emerging. Among these were Fenwick, Paul Reinsch, and Edwin Borchard.

Reinsch, a professor at the University of Wisconsin, was labeled a progressive intellectual because of his concern to end unrestrained individualism and laissez-faire economics and because of his desire to see the restoration of values in society.<sup>17</sup> Reinsch's distrust of individualism in domestic affairs was echoed in his opinions about international relations. He compared the individual in domestic society to the sovereign state in international relations, and just as he argued for the need to control individualism in domestic society, he prophesied that a time of interdependence was coming which would "gradually make national sovereignty obsolete." For Reinsch, the main principle of international law was the "community of interests upon which the law must be based if it is to be respected."<sup>18</sup> He called the eighteenth century a time of nationalism and saw the world moving toward internationalism. He considered that bonds based upon internationalism were already manifest in the growing number of international unions such as postal unions and other administrative agreements.<sup>19</sup>

Deploring the incomplete results of the Second Hague Conference, Reinsch described it as a product of the period of nationalism. To overcome the atomistic nature of international relations and to enforce judicial decisions effectively, he stressed the need for international organizations by writing "if the idea of legality is no longer dependent upon universal and specific recognition by every individual state, but may be determined by an international organ, then it is clear that we have entered upon a new stage in the development of international law."<sup>20</sup>

Borchard, Law Librarian at the Library of Congress (1911–1913 and 1914–1916), a solicitor for the Department of State (1913–1914), and later a professor at Yale Law School, sided with Reinsch in his optimistic view of international progress. He wrote in 1911 that "this present century is to be one of international development" as demonstrated by the increase of commercial and industrial transactions among nations and in the growing solidity of international organization.<sup>21</sup> Borchard stressed the need to shift social thought from individualism to a reevaluation of collectivity. He wrote that the "early nineteenth century individualistic notions of liberty, contract and property had to yield to new interpretations impelled by the new conception of social solidarity."<sup>22</sup> In the realm of international law, such concepts as independence, sovereignty, and territorial jurisdiction, which Borchard described as having a strongly "individualistic flavor," were to be tempered by the "recognition of limitations created by the interests of other states and peoples." He was critical of the static nature of the positivistic approach to the study of law because its reliance on precedents limited attention to problems of current legislation. He wrote that "the traditional attitude of common law toward legislation indeed, has often proved a serious obstacle to social progress."<sup>23</sup> Borchard thought Americans should follow the German example, in which recent legislation had successfully solved social problems and jurisprudence emphasized what law should be rather than analyzing its current situation.

Fenwick, a lecturer at Washington College of Law, also published a critique about the dominance of the positivistic approach. In "The Authority of Vattel" in the *American Political Science Review*, he called for a reappraisal of natural law. Early in the history of international law, Hugo Grotius, known as the father of international law, had stressed the balance between the natural and voluntary laws of na-

tions, the latter representing positive law. In the nineteenth century, English and American writers departed from the Grotian school and formed the analytical positivist school that focused on studying current actual law. Fenwick decried the state of the discipline, writing that “International law has now come to be regarded as consisting of the rules actually observed by nations, whether or not those rules embody the principles of justice which have come to be generally recognized among them.”<sup>24</sup>

Fenwick further elaborated his argument in “Two Representatives of the Grotian School” in 1914, when he dealt with two recent French treatises that emphasized Grotius’s principle of the balance between the natural and voluntary laws of nations. Henry Bonfils and Frantz Despagnet had both stressed the need to test actual and positive international law through the principles of international law. Fenwick approved of their position because “They are not both content with merely stating the law but are ready to criticize it when it appears to them to be based upon principles not consistent with international morality.” Fenwick called for a balance between the rules actually in force and those that should be in force. In concluding, he recommended translating the two works into English because they would be “a valuable addition to English and American textbooks, which are generally more concerned with practice than with theory.”<sup>25</sup>

Taking into account that there were two views about how to study international law, one positivist and represented by Scott and the other theoretical and represented by Fenwick, what can be said about the general situation of the study of international law? A nationwide survey in 1913 of colleges and universities in the United States was conducted by the Carnegie Endowment for International Peace to obtain information on how international law was taught. Some of its questions referred to which department the subject was taught in, whether it was required or elective, who taught it, how many course-hours were offered, and what kind of textbooks were used. The published report listed both colleges and universities that taught and did not teach international law and included a list of instructors. Of the 613 institutions that responded to the survey, 244 claimed to have courses in which international law was taught. Still, there was some confusion about whether international law should be taught as an independent discipline. Sometimes international law was confused with private international law or the conflict of laws, while at colleges it was often con-



fused with the study of law in general, political science, or comparative constitutional law. Departments where international law was taught also varied and included those of history, political science, and law.<sup>26</sup>

In regard to how to teach international law, the report did not state a preference for the case method but only said that "it is fundamental that international law be considered as a system of jurisprudence, that its principles be treated as legal principles, and that their nature, application, and development be clearly shown." It also did not give a preference for any particular textbooks, noting that any textbook might be used if it was ample and clear enough "to give the student an adequate idea of the origin, nature, and importance of international law."<sup>27</sup>

Despite indicating no preferences concerning methods and textbooks, the report considered it necessary to enhance the study of international law at higher educational institutions. It wrote that in spite of the favorable impression given by the survey, a closer examination of the tables made it clear that "a relatively small number of students actually take the courses offered." Those who did comprised only 3.9 percent of all students, while at law schools the figure was 15.5 percent. Accordingly, the report adopted several recommendations to enhance the study of international law.<sup>28</sup>

Following the recommendations in the Carnegie report, the ASIL sponsored the Conference of American Teachers of International Law in April 1914 to "increase and broaden instruction of international law." Invitations were distributed and about forty professors of international law from all over the country participated in the conference, including not only such distinguished scholars as Scott and G. G. Wilson of Harvard, but also young scholars such as Stanley K. Hornbeck from the University of Wisconsin, who later became chief of the Far Eastern Division in the Department of State. The conference was divided into seven committees based on the recommendations of the report. Each committee discussed a different set of issues, for example how to increase interest in the study of international law or the desirability of using international law in state bar exams.<sup>29</sup>

Perhaps the most important topic discussed was "the placing of instruction in international law on a more uniform and scientific basis," which was to set the general guidelines for the study of international law. The subcommittee that discussed this subject presented a resolution stating that "In the teaching of international law emphasis should

be laid upon the *positive* [italics added] nature of the subject and the definiteness of the rules” and that the “widest possible use should be made of *cases* [italics added] and concrete facts.” It therefore explicitly supported the case method and the positivist approach. Although not an official delegate, Fenwick was permitted to speak in the general discussion, and he argued that a distinction should be made between law schools and political science departments. He said it would be a mistake to place too much emphasis on the case method in the courses taught in departments of political science because “a large part of international law never comes before the court” and because students would not receive an adequate knowledge of international law if they were only taught by the case method.<sup>30</sup>

Despite Fenwick’s opposition, the resolution was adopted without any changes, and the conference ended by declaring the importance of the case method and the positivist approach. The resolution manifested the prevalence of the positivist school and disregarded theoretical positions, but it was doomed to be dismissed. Three months later, in Fenwick’s words, “a rude awakening came with the month of August 1914,” and international law faced “a crisis in its development.”<sup>31</sup> War had started in Europe.

#### THE STUDY OF INTERNATIONAL LAW AND WORLD WAR ONE: DEVELOPMENT OF A SPLIT

The outbreak of war in Europe was a shock to many international lawyers. In April 1915, at the annual meeting of the ASIL, Root remarked that the entire structure of international law had been “rude-ly shaken.” The fundamentals on which the laws of war were based had been destroyed by the escalation of destructiveness in warfare and the introduction of new technology. Root even remarked that a “nation will observe law only when national interest prevails.” He was pessimistic about the future of international law, saying that the civilized world would have to determine “whether what we call international law is to be continued as a mere code of etiquette, or is to be a real body of laws imposing obligations much more definite and inevitable than they have been heretofore.”<sup>32</sup>

The sense of crisis expressed in Root’s address was shared by many members of the ASIL and led to vigorous discussion about international law at the annual meetings in 1916 and 1917. As the war in

Europe dragged on, numerous violations of international law were reported, and since the United States had increased its trade with the Allies, a serious question about American neutrality was posed. Under these circumstances, views emerged that were skeptical of applying the old rules of international law.

During the discussion on neutrality at the annual meeting in 1916, the two assigned speakers were critical of neutrality. James Wilford Garner of the University of Illinois raised a question about the ethics of a neutral's right to continue trading with belligerents. He charged that the United States was "a party to the war across the ocean" because it was furnishing arms to belligerents. He noted the contradiction in the attitude of most Americans, who went to church to pray for peace on Sundays while they produced arms to export on weekdays. He concluded by asking why "a double standard of conduct" was maintained.<sup>33</sup>

Professor Philip Marshall Brown of Princeton University, the second speaker, remarked that the system of neutrality itself contradicted the view which regarded the world as one body. "Under modern conditions of easy intercommunication," he argued, "no great nation can affect a selfish indifference to the interests of other nations, whether in times of peace or times of war." Rather than sticking to the old view of neutrality, he recommended the principles enunciated by the League to Enforce Peace, an internationalist organization that had recently been established in 1915 to aim at creating a world organization and supported the collective use of force against aggressors. Brown described this as "a frank abandonment of the idea of neutrality" and stressed that neutral nations were obliged to judge which nation was the aggressor and then to unite against it.<sup>34</sup>

Brown's paper completely rejected the idea of neutrality and argued strongly that all countries had an interest in any war. This viewpoint was debated again at the next meeting in 1917. Because it opened three weeks after the United States declared war against Germany in April, it was natural that the American entrance into the war would lead the way to discussions about the future possibilities of international organization. Fenwick, Scott and William C. Dennis presented papers on this topic. While Fenwick and Dennis lent their support to a new international organization, Scott vehemently defended his opinion against any such organization.

Although the topic assigned to Fenwick was "International Organization: Judicial," he emphasized the administrative aspect of in-

ternational organization. Stating that a league of nations would be indispensable to secure peace in the world, he argued that it should be more expansive than the Second Hague Conference. He also saw the need for intimate connections between an international judicial organization and an international executive body because the latter should "compel the parties to come before the court, and see to the execution of the award when rendered."<sup>35</sup>

Dennis appealed to allow an international organization to use force if necessary. Quoting Lord Balfour of England that "If existing treaties are no more than scraps of paper, can fresh treaties help us? . . . Law is not enough; behind law there must be power," Dennis stressed the need for sanctions in international law. He was an ardent supporter of the League to Enforce Peace, and he repeated the argument that any war was of concern to every nation: "It is no longer a mere figure of speech to say that no nation can break the peace without endangering the peace of every other nation."<sup>36</sup>

Replying to Dennis, Scott launched an attack on any international organization that would be based on the proposals of the League to Enforce Peace. He began by stating that his "purpose is not to quarrel with the League to Enforce Peace," but to enunciate complete opposition to it. He doubted whether a unity of mind or an agreement among all nations was possible, arguing that "Nations have insisted on living up to agreements when in harmony with their interests, and they have not lived up to them when they have not been to their interest." The reason, for example, that Great Britain went to war for Belgium, but not for Serbia, was "an interest which appealed to Great Britain" in helping the former. Scott considered that in the long run, national interest was the primary concern for all nations.<sup>37</sup>

Scott repeated his favorite theme about the importance of education, saying that the solution to international problems was not "to draw the sword, but a process of education." He admitted that this process would take time, "winning over one generation, winning over another generation, and another generation . . . until justice shall be the great interest of the world." The abolition of war would nonetheless depend on the power of reason over force: "Little by little, the powers of reason have won over the powers of darkness, the cause of justice has triumphed over physical force." For Scott, justice meant being judged by a court, and he wrote that "the judgement of a court of justice is almost self-executing."<sup>38</sup>

Scott's paper was not received favorably, and many opinions against it were aired in the ensuing discussion. C.D. Pugsley pointed out a contradiction in Scott's reasoning. Scott had said that decisions by an international court would be self-executing and that countries would observe the decisions of the court. At the same time, however, Scott had argued that nations acted only out of self-interest and cited examples from history. Pugsley argued that since the world was in a period of nationalism, it would take a while to establish a common ideal through education, and that a league with some joint force to enforce its decisions would be necessary for the time being. Hornbeck gave a similar opinion, stating that some sort of sanction from an organization would be necessary: "Force behind the law will make the law effective, but I cannot conceive that mere instruction will cause all peoples to be law-abiding." Scott responded by stressing the need to establish a general standard. He noted that there had been a change in the standards of mankind and added that "If that public opinion is not created, treaties are scraps of paper, judged by the history of the past."<sup>39</sup>

The severe criticism of Scott's views at the 1917 meeting may have been one of the factors that led to canceling the annual meetings for the next three years. From 1918 to 1920 the ASIL held meetings only of the executive council. Discussions on international affairs were conducted and published in the form of proceedings to inform other members of the executive council's ideas about the international situation. Present at the executive councils were Root, Scott, and other senior members, and their discussions reflected a conservative attitude toward international organization and prospects for the postwar years.

By this time a division clearly existed between supporters and opponents of the League to Enforce Peace. Most opponents were advocates of the Hague Conferences and, not surprisingly, given their long adherence to the Hague system of an international court, Root and Scott were among the leading critics. Scott, in fact, was considered to be the biggest obstacle to the League to Enforce Peace.<sup>40</sup> Lansing, then Secretary of State under President Woodrow Wilson and who had been an active member of the ASIL from its inception, was another conspicuous advocate of the Hague system. Lansing appointed Scott as technical advisor for the American delegation to the Paris Peace Conference, where Scott drafted a peace treaty under his direction, which incorporated the ideas of the Hague Conference.<sup>41</sup> President Wilson,

however, endorsed using military or economic force against law breakers and constantly opposed judicial procedures to settle international disputes. Wilson more than once deleted the section on judicial organization from the draft.<sup>42</sup>

The record of the ASIL executive council meeting held on April 19, 1919 vividly reflects the frustrations among the participants concerning the plans for peace. Root took the lead in expressing his opinion against the League of Nations. He said that "International law was mentioned in the preamble and never mentioned again. Apparently the whole Hague system was treated as scrapped." Professor John H. Latené deplored the neglect of the Hague Conferences by referring to the opinion of a friend, who told him that "the Hague Conferences had been a complete failure, because the Hague system could not avoid the outbreak of war" and that "accordingly, reference to international law and to the Hague Court had been purposely omitted." Hill pointed out the implications of establishing the League while ignoring the tradition of the Hague Conferences, saying that to scrap them was "to repudiate the whole conception of international law." According to Hill, "there was nothing binding at all in the Covenant," and the League would not make law but "just crystallize policies." Root mentioned two proposed amendments to the Covenant of the League of Nations that he had cabled to Lansing in Paris. The first provided that "the high contracting powers agree to refer to the existing Permanent Court of Arbitration at the Hague," and the other called for a convention of the Powers to deal with the status of international law.<sup>43</sup>

While the leaders of the ASIL were hoping to maintain the tradition of the Hague system and were critical of the League of Nations, other scholars of international law were working for the cause of the League to Enforce Peace and the League of Nations. World War One not only served to crystallize emerging philosophical differences, but it also forced each member to clarify his position given the developments after the war that led to establishing an international organization.

#### RISING STARS FROM THE WAR ERA: GARNER AND WRIGHT

Garner had been critical of neutrality at the ASIL meeting in 1916 and had established himself during the course of the war as the most notable opponent of current international law. Although Garner had been a distinguished political scientist, he was a relative newcomer to

the study of international law, and before the war broke out, his main interests had not been in international affairs. His specialty was comparative government, with a particular interest in France, but the war changed the course of his studies and he gave all his materials on French government to a colleague. From that time onward he was devoted to writing, teaching, and speaking about international law. In the 1920s and 1930s he traveled extensively—including to Europe, China and Japan—to speak about the cause of peace and international law.<sup>44</sup>

Garner sided with the League to Enforce Peace and authored a leaflet for the Illinois branch, stressing the importance of the United States accepting its share of responsibility in world affairs. One of the duties of great nations, he said, was to be “the trustees of our common civilization and the guardians of the general peace,” and hence the Americans could not “withdraw into their shells and maintain an attitude of indifference.” He also contended that the Covenant of the League of Nations did not contradict American adherence to the Monroe Doctrine.<sup>45</sup>

In 1920 Garner published a two-volume study entitled *International Law and World War*, which was hailed as a monumental contribution to the field. Favorable reviews appeared not only in American and English journals, but also in French and German ones, and the work sold so well that its price was reduced from 25 to 15 dollars. In it he detailed the application and violations of international law and concluded that “the whole system of international law itself would have been rudely shaken to its very foundations” because many of the rules of war were “inadequate, illogical, or inapplicable.”<sup>46</sup> Garner cited the need for an obligatory international court at some time in the future, but he also stated that it was important to have an international organization to enforce international law.

More importantly, he emphasized changing attitudes toward international conflict. He wrote that although the traditional attitude of countries not engaged in a conflict was to remain neutral, from that time onward every nation would have to be concerned with violations of the law. He asserted that “the making of war, except in case of self-defense, should be declared illegal and the disputants should be restrained by the joint action of the body of States from attacking each other and thereby disturbing the general peace.”<sup>47</sup> This position would develop into support for the idea of the “outlawry of war,” which

would become significant later in the 1920s, and for the idea of “collective security.”

Garner trained many students in the study of international law, but perhaps the most notable among them was Quincy Wright. When the war in Europe started, Wright was working on his doctoral dissertation—“The Enforcement of International Law Through Municipal Law in the United States”—that was completed in 1915 and described by Garner as “one of the most thorough and scholarly works.”<sup>48</sup> Wright analyzed the history of how international law had been enforced by municipal law, going beyond mere analysis and descriptions of each case and trying to clarify the relationship between international and municipal law.

Wright wrote to Scott to inquire about the possibility of publishing his dissertation through an arrangement with the Carnegie Endowment. Scott replied that publishing the entire work would be difficult, so he offered to publish one chapter in the *American Journal of International Law*.<sup>49</sup> This was “The Legal Nature of Treaties” that was published in November 1916 as the first of 515 articles that Wright published during his life.<sup>50</sup> In it he asserted that there was a contradiction between the power to ratify treaties and the power to put them into effect, which was caused by the American constitutional system of government with its division of powers and by changes in the nature of treaties themselves. Treaties had previously only specified the conduct of states—for example, cession of territories—but with the development of communications and the increase in transactions involving peoples and goods, treaties had gradually come to deal also with the rights of individuals. Such new treaties required administrative, legislative, and judicial enforcement.<sup>51</sup>

From 1916 to 1919 Wright was an instructor of international law at Harvard University, the president of which, Abbott Lawrence Lowell, had been one of the founders of the League to Enforce Peace. Wright cultivated an acquaintanceship with Lowell and came to support the cause of the League to Enforce Peace. In particular, he defended Article 10 of the League of Nations Covenant, which specified the collective use of force against aggressors. In April 1919, as debate about the Covenant intensified in the press, in a letter to a friend he criticized the *New Republic's* stand against the League, noting that its “condemnation of Art. X has got my goat,” and also referred to Walter Lippmann’s critique of Article 10 by saying that “I am unable to see how a



guarantee against 'external aggression' can be read as a guarantee of the territorial status quo."<sup>52</sup>

In 1919 Wright began to teach at the University of Minnesota, and during his stay there he wrote prolifically on issues involving international law. His interests focused on two topics. One was the new awareness about international law that had emerged during and after the war, and it included issues such as how to interpret the League of Nations and the effect of war on international law. In 1919 he published an article entitled "Effects of the League of Nations Covenant," in which he praised the Covenant because it was "a shift of emphasis from rights of state to responsibilities of state, [a] fundamental change of international law."<sup>53</sup> In another paper on the effect of war on international law, he often used phrases such as the "interest of the family of nations" and emphasized the need for a change in international law from laws governing war to laws governing peace.<sup>54</sup>

Wright's contention that the world was becoming integrated into a family of nations led naturally to his other concern, how to ensure domestic enforcement of international agreements. This had been a theme in his dissertation, and during the winter of 1920, when the Treaty of Versailles had still not been ratified by the Senate, the question of whether the American system was appropriate for controlling foreign relations was at "the forefront of everyone's mind."<sup>55</sup> Wright forged his ideas on this into a paper that was presented to the American Political Science Association in February 1920 and then published in the *American Political Science Review*.<sup>56</sup> He expanded it into a longer treatise, which was awarded the Henry M. Phillips Prize by the American Philosophical Society in April 1921 and was published as *The Control of American Foreign Relations* the next year. In it Wright sought to find a way to avoid friction with Congress and concluded that "Under present conditions we must frankly recognize executive leadership in foreign affairs," but only "after the most careful consideration possible." As concrete proposals, he suggested that the departments concerned with foreign policy deepen understanding among themselves and the Congress declare permanent policies.<sup>57</sup>

Having been introduced into the field of international law during World War One, Garner and Wright flourished in the interwar period when they elaborated a theory of international law that aimed to prevent war and to organize the world into a collective framework.

RECONSTRUCTION OR DEPARTURE:  
THE COMMITTEE FOR THE ADVANCEMENT OF INTERNATIONAL LAW

After the end of the war the members of the ASIL became settled in their different views of international law. A conflict developed over the question of whether international law should continue to be taught using some method based on the Hague system or whether that system should be discarded altogether and fresh approaches tried. Discussion was focused on this in the Committee for the Advancement of International Law, which was the product of an initiative of the League of Nations.

Although the Covenant of the League of Nations did not mention anything about the Hague Conferences, Article 14 provided that "The Council shall formulate and submit to the members of the League for adoption plans for the establishment of a Permanent Court of International Justice."<sup>58</sup> Based on this Article, the Council of the League of Nations issued an invitation in February 1920 to international jurists from various countries to discuss plans for a Permanent Court of International Justice. Root was invited,<sup>59</sup> and in the summer of 1920 the committee met in The Hague. Generally referred to as the Committee of Jurists, it adopted a report about establishing a permanent court of international justice and passed a resolution calling for periodic conferences for the advancement of international law. The resolution provided that "a new conference of the nations in continuation of the first two conferences at The Hague be held as soon as practicable."<sup>60</sup>

In the fall of 1920 Scott, then back from Paris, began working to resume the annual meetings of the ASIL. When preparing for the meeting of the Executive Council that same fall he informed Root of his preference for topics and wrote that the members of the Executive Council should discuss "various international events, particularly the project for the International Court of Justice and the services which periodic conferences in continuation of The Hague Peace Conference might render."<sup>61</sup>

A meeting of the Executive Council was held on November 13. Root explained the activities of the Committee of Jurists at The Hague and support was given to the idea of resuming the Hague Conferences. Lansing, who had declared that the maintenance of individualism among nations was "the very life blood of modern civilization" at the meeting of the American Bar Association in 1919,<sup>62</sup> was completely

against the League. He stressed that the project recommended by the Committee of Jurists had “nothing to do with the League of Nations” and was rather a separate conference that was “entirely distinct, . . . entirely in line with the ancient order of the Hague Peace Conference.” Admiral Charles Herbert Stockton expressed his relief by saying “It seems to me a very happy thought in this resolution that its recommendation is rather in the nature of a continuation of the consideration of the first two conferences at the Hague.”<sup>63</sup>

Scott began to prepare for the next annual meeting of the ASIL in line with the recommendations of the Committee of Jurists by informing members about the gravity of the Permanent Court of International Justice. When asking Root to contribute the lead article for the January 1921 issue of the *American Journal of International Law*, Scott wrote with typical but somewhat excessive eloquence:

Nothing would be, nothing could be, more timely than an article on the Permanent Court of International Justice. It would be peculiarly appropriate, as you know, from the pen of the statesman who directed and planned for such an institution to be laid before the Second Peace Conference at the Hague and who, thirteen years later, was privileged to put the finishing touches to the project drafted at a conference in pursuance of his instructions. More I can not say; less would not be the truth.<sup>64</sup>

Scott organized the participants of the conference on international law into four groups and chose chairmen to lead discussions about the different topics in the resolution, which were restating the old rules, amending and adding to the established rules, reconciling the divergent views, and new regulations in international law. Each participant was to submit his ideas before the meeting, and each committee would discuss its final conclusion at the Washington meeting. The chairmen were Reinsch, a former minister to China; Charles Noble Gregory, formerly Dean of the Department of Law at George Washington University; Harry Pratt Judson, the President of the University of Chicago; and Simeon E. Baldwin, a former Governor of Connecticut.<sup>65</sup>

Root gave the opening address at the 1921 meeting, stressing the importance of establishing a permanent court of international justice and codifying international law.<sup>66</sup> The Committee for the Advancement of International Law was organized according to Scott’s guidelines, but it was not particularly successful because of the difficulty of dealing with such diversified problems in strictly divided groups. Worse yet, some

members expressed their doubts about the rationale behind the project itself. Reinsch candidly stated that in his committee "a strong feeling was expressed that it would not be desirable for the emphasis of the action of the Society to be placed entirely or even primary on the rules of war or laws of war." A similar opinion was expressed by Judson who declared "I confess I feel not to be very much interested after all to amend the rules of international law," and Fenwick remarked that "We have not discussed at this meeting the question of international organization. The process of extending international law by judicial decision is very slow." Fenwick also admitted to entertaining "disappointment which has already been expressed by others that so many of our papers have dealt with the reform of the laws of war."<sup>67</sup>

Despite the complaints about the general orientation of the Committee for the Advancement of International Law, however, the following year's program was also designed to deal exclusively with the laws of war. When Professor Albert Bushnell Hart of Harvard University saw the program in late March, a month before the meeting, he complained in a letter to Scott that "I am not the only one who feels that the Society is too much personally conducted and that its Proceedings are too much confined to long and often very juiceless papers."<sup>68</sup> A year earlier Hart had also expressed the opinion that "most of the papers seem to me to hark back to a stage of the world in which we no longer live."<sup>69</sup> Scott invited him in a telegram to "Come, give us juice and eat with us,"<sup>70</sup> but Hart replied "I confess that Advancement of International Law does not seem to me likely to be reached by committee meetings or reports."<sup>71</sup> Hart's premonition was destined to be fulfilled.

At the beginning of the 1922 meeting of the Committee, Root restated his belief in the importance of the project. Although the League had for the moment declined to act on the proposal for a conference on international law, preparations by the Society were necessary, he said, because "The Hague conference would not have been able to do anything if the work had not been done beforehand."<sup>72</sup> The topics that the Committee was to deal with concerned the laws of war: "Visit, Search and Capture," "Status of Government Vessels," "Problems of Maritime Warfare," and "Offenses which may be characterized as International Crimes and Procedure for their Prevention."

Not surprisingly, the discussion proceeded exactly the same way as it did the previous year. Again, but this time more assertively and

vehemently, Fenwick attacked the topics. He said "We have discussed war, war, war, war, under each subheading," and that the topics were scarcely "worth discussion" because, as shown by the experience of World War One and clearly demonstrated in Garner's book, the Hague Conference had tried to legislate rules of war but "it absolutely failed." Fenwick reiterated his position by saying "I feel that our attention should be devoted to the constructive side of international law. The most vital problem before the world today is the problem of international organization." Jackson H. Ralston then indicated the fundamental problem in the general orientation of the study of international law, which was that "we stumble about what is practice." Many scholars of international law had discussed, for instance, the conditions of contraband, but they had never questioned whether contraband itself was legal. Referring to the example of prisoners of war, Ralston indicated the inherently contradictory nature of the law of war: "You cannot kill wounded prisoners. How utterly absurd! One instant you have a right to wound a man, you have a right to kill him, and the next instant, he being wounded and you capturing him, you have no right to kill him, perfectly absurd."<sup>73</sup>

Hill, a veteran of the Hague Conferences, replied to these criticisms by stressing that chaos and anarchy were conspicuous in international society and that "War has existed, may exist, probably will exist, if it is not averted." He noted that until human beings abolished war, there was "no hope of international organization," and that because war in the future was inevitable, "we should discuss the belligerents' rights." Hill argued for the benefits of the type of neutrality that the United States had practiced previously and which involved preserving trading interests with belligerents without getting involved in their wars. Fenwick countered by stressing the growing perception of common interests among nations and said that "the common interests of the nations are bigger than their mutual differences."<sup>74</sup>

At the end of the session, Arthur Kuhn, once a legal specialist for the Paris representatives of the League to Enforce Peace, suggested in a resolution that the Committee consider "the feasibility of some international organization as a means of conducting the international relations of states, in which the United States may properly cooperate." Scott, however, requested that this not be adopted because it "appealed to the political power of the government." It was the last time that Scott would be able to resist the Fenwick group.<sup>75</sup>

In April 1923 the triumph of Fenwick and his supporters was unmistakably manifested in the list of speakers for the session on the orientation of international law. The title of the session itself was changed to "The Existing State of International Law, its Bases, its Scope, and its Practical Effectiveness, Together with Constructive Suggestions for its Extension into New Fields." The first speaker was Fenwick, followed by Manley O. Hudson and Borchard.

In his presentation Fenwick mentioned that for the last two years the laws of war had been stressed but "no adequate study has been given to the laws of peace." He hoped to correct that deficiency by suggesting possibilities for future development in international law: the need of collective responsibility among the states, the necessity of an international legislature, and codification of laws. Above all, he emphasized that international law should enter the field of international economic relations. He argued in favor of widening the scope of international law, stating that "the history of international law in the past shows the gradual widening of its scope to include questions which were at one time regarded as purely political."<sup>76</sup>

Hudson, a professor of international law at Harvard Law School, had been a member of the Inquiry under Colonel Edward House and a legal advisor to the American delegation to the Paris Peace Conference. Hudson became an advocate of the World Court (the Permanent Court of International Justice) in the following decades, though he did not regard it merely as a continuation of the Hague conferences but as one of many international organizations to support peace.<sup>77</sup> He also stressed the need for international lawyers to change their focus to keep up with the development of international conventions, for example the International Air Navigation Convention, and said "We need a new philosophy, to catch up with what is going on."<sup>78</sup>

Borchard, who before the war had argued that sociological factors were important in international jurisprudence, gave the final paper of the session. While he sided with Fenwick in his attention to economic affairs, he was not as favorable toward a complete shift in focus from the law of war to that of peace. He cautioned against an easy disposal of neutrality and argued the merits of the traditional approach to neutrality. After lamenting the apathy of many toward reconstructing international law after the war, he raised the fear that a complete abolition of neutrality would only increase the rights of belligerents while forfeiting those of neutrals. Without rights for neutral parties, it might

become possible for belligerents to starve entire enemy populations, which would be suicidal for human civilization, so he stressed the importance of practical compromise rather than mere logic in claims between belligerents and neutrals. He also noted that legally regulating economic affairs was important because of the "legal vacuum of international unfair economic competition," which did not exist however in municipal law where there were safeguards such as the Interstate Commerce Act and the Anti-Trust Law. A "true operative force for war," Borchard concluded, lay in economic competition.<sup>79</sup>

The 1923 meeting adopted a resolution to establish "a committee of five to study and report upon the existing state of international law, and the further extension of the substantive body of international law."<sup>80</sup> With the adoption of this resolution, the Committee for the Advancement of International Law ceased to exist. Scott's letter to Root reporting this change was filled with quiet resignation: the "three most active members of this committee were as you will no doubt recall, Messrs. Fenwick, Borchard and Hudson. Their appointment would be in the nature of a continuation."<sup>81</sup> He also suggested the addition of Wright and mentioned Jesse R. Reeves, a professor at the University of Michigan, as a possible chairman. Borchard, Fenwick, Hudson, and Wright would become the most active and influential international lawyers in the following decades.<sup>82</sup>

After receiving the letter from Scott, Root expressed his intention to retire from the presidency of the ASIL. He wrote that "the Society ought to have a new president with a new mind and a new experience and fresh initiative."<sup>83</sup> The year 1923 was the last of Root's presidency, and with his resignation and the appointment of the four younger scholars to investigate the problems of international law, the ASIL entered a new era in its history.

## CONCLUSION

The generation represented by Root and Scott favored judicial approaches to international relations. They thought that an international court based on unified codes of law would be able to solve international disputes, and they believed that the American example should serve as a model for international relations. Scott revered the Supreme Court of the United States and thought the world should learn from the experience of American federalism. For lawyers of this generation,

the basic unit of international relations was the sovereign state, and they did not hold a positive view of universalistic concepts like internationalism or the community of nations. As their support for the laws of war demonstrates, they did not think it was likely that human beings would be able to abolish war.

Those who supported change in the study of international law were a generation younger. Fenwick was born in 1880, Borchard in 1884, Hudson in 1886, and Wright in 1890; while Root was born in 1845, Scott in 1866, and most of the architects of the Hague Conference in the 1860s and 1870s. The contrast between these two generations highlights a shift from national consciousness toward an international one.

Another feature of the younger generation was their background in political science. Among the four members of the new committee to investigate international law, only Hudson had a degree in law; Borchard, Fenwick, and Wright held doctorates in political science. The introduction of scholarship from political science into the study of international law resulted in a declining interest in juridical approaches to international problems. Not merely content with analyzing cases, the younger scholars broadened their interests to the policy-making and political implications of international law. The topic presented by Fenwick's committee during the 1924 meeting was "The Distinction between Legal and Political Questions."<sup>84</sup>

In the larger picture of American history, the new approach to international law was a part of the general trend toward internationalism. Root and Scott had not envisaged the world as a single body or a "family of nations," but as divided into separate, sovereign states. As a last resort war between sovereign states was permissible, and they did not feel the need to shift their focus from the laws of war to the laws of peace. Theirs was an international law based on nationalism. Reinsch, Fenwick, Borchard, Garner, and Wright, however, viewed the world as a single society. Wright, for example, often used such terms as "community of nations" or "family of nations." These international lawyers saw the world as having entered a stage of integration. Because the world was deemed to be one collective body, they favored the view that war between any of its members was a concern for all, and they believed that preventing war was necessary. For these supporters of the new vision of international law, the world was entering a civilized stage of development, and they would continue to work for the cause of peace during the following decades. It remains to be seen, however, whether



their assumption was correct and whether they did indeed contribute to creating peace in the world.

### NOTES

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<sup>1</sup> Warren Kuehl, *Seeking World Order* (Nashville: Vanderbilt University Press, 1969).

<sup>2</sup> Roland Marchand, *The American Peace Movement and Social Reform 1898-1918* (Princeton: Princeton University Press, 1972).

<sup>3</sup> Calvin DeArmond Davis, *The United States and the First Hague Peace Conference* (Ithaca: Cornell University Press, 1962); *The United States and the Second Hague Peace Conference: American Diplomacy and International Organization 1899-1914* (Durham: Duke University Press, 1975).

<sup>4</sup> For discussions of the young generation of international lawyers during the interwar period, see Hatsue Shinohara, "Nichi-Bei no Kokusaiho-kan o meguru Sokoku," *Kokusai Seiji* 102 (March 1993): 114-134. The present paper deals with the years prior to those discussed in the article in *Kokusai Seiji*.

<sup>5</sup> Marchand, 42-51.

<sup>6</sup> "History of the Organization of the American Society of International Law," *Proceedings of the American Society of International Law* (hereafter cited as *Proceedings, ASIL*) (1907): 23.

<sup>7</sup> *Ibid.*, 28.

<sup>8</sup> "Constitution of the American Society of International Law," *ibid.*, 5.

<sup>9</sup> George A. Finch, "The American Society of International Law 1906-1956," *American Journal of International Law* (hereafter cited as *AJIL*) 50 (April 1956): 296.

<sup>10</sup> For the relationship between Root and Scott see Ralph Dingmann Nurnberger, "James Brown Scott: Peace through Justice" (Ph.D. diss., Georgetown University, 1975), 139-142.

<sup>11</sup> Davis, *The United States and the Second Hague Peace Conference*, 251-276.

<sup>12</sup> Charles DeBenedetti, *Origins of the American Peace Movement* (Millwood, N.Y.: KTO Press, 1978), 45; Sondra Herman, *Eleven Against War* (Stanford: Stanford University Press, 1969), 22-54.

<sup>13</sup> Elihu Root, "The Need of Popular Understanding of International Law," *AJIL* 1 (January 1907): 1-4.

<sup>14</sup> Nurnberger, 41; James Brown Scott, ed., *Cases on International Law* (Boston: Boston Book Company, 1902).

<sup>15</sup> Scott, "The Study of Law," *American Law School Review* 2 (1906-1907): 3-4.

<sup>16</sup> Scott, "The Legal Nature of International Law," *AJIL* 1 (November 1907): 834-850.

<sup>17</sup> Noel Pugach, *Paul S. Reinsch: Open Door Diplomat in Action* (Millwood, N.Y.: KTO Press, 1979), 31.

<sup>18</sup> Paul Reinsch, "International Administrative Law and National Sovereignty," *AJIL* 3 (January 1909): 11-12.

<sup>19</sup> Reinsch, "International Unions and their Administration," *AJIL* 1 (October 1907): 579.

<sup>20</sup> Reinsch, "Failure and Successes at the Second Hague Conference," *American Political Science Review* 2 (February 1908): 216.

<sup>21</sup> Edwin Borchard, "The Legal Evolution of Peace," *American Law Review* 45 (September-October 1911): 712.

<sup>22</sup> Borchard, "Recent Developments in International and Municipal Law," *Law Library Journal* 10 (July 1917): 22.

<sup>23</sup> Borchard, ed., *Guide to the Law and Legal Literature of Germany* (Washington, D.C.: G.P.O., 1912), 11.

<sup>24</sup> Charles G. Fenwick, "The Authority of Vattel," *American Political Science Review* 7 (August 1913): 405.

<sup>25</sup> Fenwick, "Two Representatives of the Grotian School," *AJIL* 8 (January 1914): 39-44.

<sup>26</sup> Carnegie Endowment for International Peace, *Report on the Teaching of International Law in the Educational Institutions of the United States* (n.p.: Carnegie Endowment for International Peace, 1913), 1-3. The Carnegie Endowment, established in 1911 to promote peace and understanding in international relations, had a strong interest in international law.

<sup>27</sup> *Ibid.*, 32-33.

<sup>28</sup> *Ibid.*, 29, 35-36.

<sup>29</sup> *Conference of American Teachers of International Law* (Washington, D.C.: Byron S. Adams, 1914), 4, 8-9, 10-12.

<sup>30</sup> *Ibid.*, 23, 41-42.

<sup>31</sup> Fenwick, "The Sources of International Law," *Michigan Law Review* 16 (April 1918): 393.

<sup>32</sup> Root, "The Outlook for International Law," *Proceedings, ASIL* (1915): 2-4.

<sup>33</sup> James Wilford Garner, "Some True and False Conceptions Regarding the Duty of Neutrals in Respect to the Sale and Exportation of Arms and Munitions to Belligerents," *Proceedings, ASIL* (1916): 25-26.

<sup>34</sup> Philip Marshall Brown, "Munitions and Neutrality," *Proceedings, ASIL* (1916): 39, 41.

<sup>35</sup> Fenwick, "International Organization: Judicial," *Proceedings, ASIL* (1917): 72-73.

<sup>36</sup> William C. Dennis, "International Organization: Executive and Administrative," *ibid.*, 95, 98.

<sup>37</sup> Scott, "International Organization: Executive and Administrative," *ibid.*, 101, 103-104.

<sup>38</sup> *Ibid.*, 106.

<sup>39</sup> "Discussion," *ibid.*, 118, 124, 122.

<sup>40</sup> Martin Dubin, "The Carnegie Endowment for International Peace and the Advocacy of a League of Nations 1914-1918," *Proceedings of the American Philosophical Society* 123 (1979): 349, 364.

<sup>41</sup> *Ibid.*, 367; David Hunter Miller, *The Drafting of the Covenant*, vol. 1 (New York: G.P. Putnam's Sons, 1928), 32-33.

<sup>42</sup> Davis, *The United States and the Second Hague Peace Conference*, 347-357. For the differences between the two groups at the conference, see also Dubin, 367-368; David S. Patterson, "The United States and the Origins of the World Court," *Political Science Quarterly* 19 (1976): 290.

<sup>43</sup> "Minutes of the Meeting of the Executive Council," *Proceedings, ASIL* (1919):

45, 47–50; for the amendments proposed by Root see Miller, vol. 1, 377–382.

<sup>44</sup> John A. Fairlie, “Studies in Government and International Law by James Wilford Garner,” James Wilford Garner Papers, University Archives, University of Illinois, Urbana, Illinois, Box 3.

<sup>45</sup> Garner, *The League of Nations and the Monroe Doctrine* (Illinois, n.d.), 4, James Wilford Garner Papers, Box 2.

<sup>46</sup> Garner, *International Law and World War*, vol. 2 (London: Longmans, Green and Co., 1920), 452.

<sup>47</sup> *Ibid.*, 466.

<sup>48</sup> Garner to Wright, 22 March 1916, Quincy Wright Papers, Special Collections, Joseph Regenstein Library, University of Chicago, Chicago, Box 18, File 4.

<sup>49</sup> Scott to Wright, 10 July 1916, *ibid.*, Box 18, File 5.

<sup>50</sup> Manfred Lachs, *The Teacher in International Law* (Dordrecht, Netherlands: Martinus Nijhoff Publishers, 1987), 119.

<sup>51</sup> Quincy Wright, “The Legal Nature of Treaties,” *AJIL* 19 (October 1916): 708–733.

<sup>52</sup> Wright to Pittman Potter, 13 April 1919, Quincy Wright Papers, Box 18, File 8.

<sup>53</sup> Wright, “Effects of the League of Nations Covenant,” *American Political Science Review* 13 (November 1919): 558.

<sup>54</sup> Wright, “The Effect of the War on International Law,” *Minnesota Law Review* 5 (May 1921): 457; “The Effect of the War on International Law,” *Minnesota Law Review* 5 (June 1921): 517.

<sup>55</sup> Wright, *The Control of American Foreign Relations* (New York: MacMillan, 1922), ix.

<sup>56</sup> Wright, “The Control of Foreign Relations,” *American Political Science Review* 15 (February 1921): 1–26.

<sup>57</sup> Wright, *The Control of American Foreign Relations*, 370.

<sup>58</sup> “Covenant of the League of Nations adopted by the Peace Conference at Plenary Session, April 28, 1919,” *American Journal of International Law Supplement* 13 (1919): 133.

<sup>59</sup> See Root to Eric Drummond, 11 March 1920, [C]. 20/4/46. [V], The League of Nations Documents and Publications, 1919–1946, microfilm edition (New Haven: Research Publications, 1973), Reel V-1.

<sup>60</sup> “Resumption of Annual Meeting of Society,” *Proceedings, ASIL* (1920): 15.

<sup>61</sup> Scott to Root, 20 October 1920, the American Society of International Law Papers (hereafter cited as ASIL Papers), the American Society of International Law, Washington, D.C.

<sup>62</sup> “The Meeting of the American Bar Association,” *AJIL* 14 (April 1920): 218.

<sup>63</sup> *Proceedings, ASIL* (1920): 24–25.

<sup>64</sup> Scott to Root, 19 November 1920, ASIL Papers.

<sup>65</sup> Scott to Paul Reinsch, 24 March 1921, 31 March 1921; Scott to Harry Pratt Judson, 1 April 1921, ASIL Papers.

<sup>66</sup> Root, “Opening Address,” *Proceedings, ASIL* (1921): 1–13.

<sup>67</sup> “Meeting of Committee for the Advancement of International Law,” *ibid.*, 89, 95.

<sup>68</sup> Albert Bushnell Hart to Scott, 28 March 1922, ASIL Papers.

<sup>69</sup> “Remarks of Professor Albert Bushnell Hart,” *Proceedings, ASIL* (1921): 130–131.

<sup>70</sup> Scott to Hart, 31 March 1922, ASIL Papers.

<sup>71</sup> Hart to Scott, 5 April 1922, *ibid.*

<sup>72</sup> "Meeting of the Committee for the Advancement of International Law," *Proceedings, ASIL* (1922): 38.

<sup>73</sup> "Consideration of Reports of the Subcommittees," *ibid.*, 85, 88.

<sup>74</sup> *Ibid.*, 89.

<sup>75</sup> *Ibid.*, 92.

<sup>76</sup> Fenwick, "An Outline of the Problems Presented in the Further Development of International Law," *Proceedings, ASIL* (1923): 47, 50.

<sup>77</sup> James Thomas Kenney, "The Contributions of Manley O. Hudson to Modern International Law and Organization" (Ph.D. diss., University of Denver, 1976), 44-66.

<sup>78</sup> Manley O. Hudson, "International Legislation," *Proceedings, ASIL* (1923): 52.

<sup>79</sup> Borchard, "The Resurrection of International Law," *ibid.*, 61-70.

<sup>80</sup> "Meeting of April 28, 1923," *ibid.*, 137.

<sup>81</sup> Scott to Root, 8 May 1923, ASIL Papers.

<sup>82</sup> For their discussions about international law in the 1920s and early 1930s see Shinohara, "Nichi-Bei no Kokusaiho-kan."

<sup>83</sup> Root to Scott, 11 May 1923, ASIL Papers.

<sup>84</sup> "The Distinction between Legal and Political Questions," *Proceedings, ASIL* (1924): 44-83, 126-145.