

REVIEWS

ELIHU ROOT AND THE CONSERVATIVE TRADITION. By Richard W. Leopold.
Boston: Little Brown and Co., 1954, Pp. x, 222. \$3.00.

In the winter of 1937, as a law clerk employed in a New York office, I was sent to serve papers on the firm of Root, Clark, Buckner and Ballantine. I noticed on arrival that an immense, almost palpable hush had fallen upon their sumptuous offices, and I was informed that its members had just received word of the death of the senior Elihu Root. Plainly this was a figure of no small eminence that had passed, and one who had left upon all his associates a deep and abiding impression. Recently, never having read the standard two-volume life of Root by Philip Jessup, and having acquired no more than the journeyman historian's information about the bare externals of Root's career, I turned with great interest to Professor Richard Leopold's brief biography in the expectation of learning a good deal more about the life and personal character of this Titan of American conservatism whose passing, long after his active years were over, had still cut such a broad swath of silence among those who had known him.

Certainly, from the standpoint of Root's reputation, this seemed an auspicious moment for the reevaluation of his career. For Root was, politically, most notable as a solid conservative, and American conservatism is today undergoing a reevaluation far more sympathetic than it could have received at any time during the past thirty years or more. Mr. Root's second biographer, moreover, I knew to be an historian of parts who could be counted on to do more than merely add another to the small pile of modish but largely unsatisfactory books that have accumulated of late in the name of the "New Conservatism." Mr. Leopold has in fact made a serious effort to emphasize Elihu Root's positive qualities. He finds him a candid, humorous, witty, urbane, honorable, and affectionate man, a consistent and, on the whole, constructive internationalist, and, in his role as Secretary of War under McKinley and Secretary of State under Theodore Roosevelt, a notable administrator. He believes that Root "stands out as the ablest, most constructive conservative in American public life since 1900."¹ In this high claim I cannot quite concur. To me it seems that Theodore Roosevelt himself can be understood and appreciated only as a conservative—a judgment in which his most recent interpreters seem to concur—and that the late Henry L. Stimson might also contend with Root for this accolade. In support of his judgment, Mr. Leopold cites, in addition to Root's consistent and outspoken defense of conservatism against the New Nationalism, the New Freedom, and the New Deal, four outstanding contributions to our politics: his establishment,

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as Secretary of War, of a responsible, honest, and disinterested machinery for the governance of the American colonial system; his forward-looking administration of the army from 1899 to 1904; his anticipation of the Good Neighbor policy in Latin America; and his realistic approach to diplomacy, which took the form of a sober and qualified internationalism.

However, to balance these positive findings, which he spells out at as much length as the scope of a brief interpretive volume will permit, Mr. Leopold has an impressive set of negative judgments to record. He finds that Root, during the earlier phases of his career, was quite unconcerned about the social injustices of the 1880's and 1890's, and that he seemed "inured to the social evils of the day."² As a lawyer in New York City, he had no comprehension of the connection between business enterprise and urban corruption or misrule. While his work as Secretary of War was eminently fruitful, his tenure as Secretary of State produced no noteworthy constructive innovation. As for his six years in the Senate, from 1909 to 1915, these were "the most unhappy and least successful part of his public service."³ "The course of legislation would not have been very different if he had never sat"—a "rather appalling waste of talent."⁴ Speaking of Root's defense of conservatism in this period, Mr. Leopold observes that although he was widely hailed as "the brainiest man in public life . . . Root never evolved a systematic philosophy of government."⁵ He was not, in his biographer's estimation, "a profound political thinker,"⁶ and even the lectures on politics that he gave at Yale in 1907 "were devoted to underscoring the obvious."⁷ Root had two ideas that he "reiterated endlessly": the virtue of representative government, which he counterposed to the Progressive effort to achieve more direct democracy, and the need for an independent judiciary, which was his answer to various Progressive attacks upon the decisions and the judges of the time. He opposed such historically defensible reforms as the Income Tax Amendment and women's suffrage, and almost every item in Wilson's domestic program. Later, despite his veneration for law and the Constitution, Root accepted the suspension of civil liberties in wartime, asserting that one cannot have at the same moment a free democracy and a successful war. He joined the mob in favoring the elimination of the teaching of German from American schools. While Root waxed dogmatic about the causes and significance of the war, Leopold observes that his views had very little influence upon the way in which it was conducted. He received, Leopold thinks, "more credit than he deserved in the field of scholarship."⁸ But even in his own field, "he was not a specialist in international or constitutional law. He was not a constructive jurist . . ."⁹ His reading lacked the voraciousness of Theodore Roose-

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velt's or the scholarly bent of Lodge's. Although his speeches were on occasion effective, "he did not possess the voice or showmanship to be a great orator."¹⁰ He was not a gifted writer, even though he wrote creditable briefs and party manifestoes. In his capacity as a lawyer, he "did not vitally influence the nation's history or the American conservative tradition."¹¹ Indeed his role as a spokesman of conservatism depended, not merely upon his character, but also upon "the relative inarticulateness of his group"¹²—that is, upon the fact that few conservatives could do any better. Even so, "Root could not fire the imagination of his contemporaries."¹³ In the perspective of history, he "never matched the creative achievements of Hamilton and Marshall."¹⁴ Indeed, today, "as a defender of the conservative tradition Root seems strangely outmoded."¹⁵ In sum, while Root was a fine man, and an outstanding one, the cause of conservatism "could benefit from a little more daring, imagination, and faith in the people than Root was able to contribute."¹⁶

We live in a somewhat paranoid age, and I fear that Mr. Leopold has left himself open to the charge, on the part of the suspicious, that he has written a biography of Root only to sabotage from within the advancing search for a viable conservative tradition. It appears to me, however, that as Mr. Leopold's work went on, he became increasingly embarrassed by the thinness of his subject, and that this is a far more serious reflection on the American conservative tradition than it is upon this biographer. Indeed the only complaint I have against Mr. Leopold is that he has given us too little of Root's own utterance by which we may judge for ourselves the precise quality of his conservatism. Even one who shares, as does this reviewer, Root's preference for representative as against "direct" democracy and for an independent judiciary, might well be interested in the character of Root's arguments. We are also told, for instance, that Root gave a memorable public reprimand to General Miles in 1901, that he made a devastating attack on Bryan in 1900, that he made a "sincere but fatuous argument" against women's suffrage in 1915, that he made a major speech against the Federal Reserve Act in 1913—but in no case do we have here enough of the texture of Root's thought or prose to decide on the wisdom of his views.

What Mr. Leopold's study does is to confirm the widespread belief that while the United States has had conservatives aplenty, it has had hardly any conservatism worthy of the name for almost a hundred years. Undoubtedly the unreflective and, for all his personal ability, basically mediocre stand-pattism that Root represented, like the naive and impulsive reformism of some of his counterparts on the other side, was something that the simpler and more innocent

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 11. P. 191.
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America in which he flourished could well afford. But if it is true, as I think it is, that we need today a sounder and more supple conservatism than we had in the past, the career and mind of Elihu Root is not likely to set too illuminating an example. We need more political leaders who will be not quite what Root was but what he might have been, just as we need more biographical essays like Mr. Leopold's that do not succumb to the biographer's common temptation to exalt his subject.

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THE INTERNATIONAL LAW STANDARD IN TREATIES OF THE UNITED STATES.

By Robert Renbert Wilson. Cambridge: Harvard University Press, 1953. Pp. x, 321. \$4.50.

COMPARED with most fields of law, "international law" suffers a heavy burden. Branded in one instant as non-existent, it is exalted in the next as the last hope of the Atomic Age. But with all the vexatiousness that surrounds it there is an increasing sense that among the various systems of law, international law has the most pressing responsibility toward the future, a responsibility which demands that practitioner and theorizer alike discard antique disputation and windy doctrine; that they turn a deaf ear to the clamor of lay sentiment and eschew reliance on the hoped for "change of heart" in international relations; that, in short, they take cognizance of themselves and international law in the reality of the modern world. There are stirrings in the literature that give promise of this development,¹ yet almost no research has produced more than the recasting of one legal proposition in terms of another. It is astonishing that a recent writer can say without risk of contradiction that "no thorough study based on historical data of the relation between international law and international politics has ever been made."² What is urgently needed are studies which relate doctrine and practice *within* the legal system to events and trends *outside* it.³ Without such studies it is not possible to determine what purpose is effectively served by international law in its traditional form. Moreover, the recent proliferation of official and unofficial international interaction through the United Nations, the Marshall Plan, Point Four, and like programs increases the demand for appropriate legal norms. These norms can be evolved rationally from existing international law (or created *de novo*, if need be) only with the assistance of a more penetrating knowledge of how "law" actually functions in the world society—what purposes it pursues, what effects it gains. It has

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1. For a recent example, see CORBETT, *LAW AND SOCIETY IN THE RELATIONS OF STATES* (1951).

2. LISSITZYN, *THE INTERNATIONAL COURT OF JUSTICE: ITS ROLE IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY* 3 (1951).

3. The problem of "recognition" is developed in this way in JAFFE, *JUDICIAL ASPECTS OF FOREIGN RELATIONS, IN PARTICULAR OF THE RECOGNITION OF FOREIGN POWERS* (1933).