Chapter Four

THE YEARS LEADING TO WORLD WAR II

Twenty-five years ago you could almost count on your fingers the people in the United States who knew or cared anything about international law. The formation of the American Society of International Law gave one of the great initial impulses towards laying the foundation of knowledge and understanding necessary for a democracy which is to take an active part in the affairs of the community of nations. During the twenty-five years which have passed the increase of popular interest in international law and in the study of it has been extraordinary and most gratifying.

– Elihu Root
Letter to James Brown Scott, March 6, 1931, reprinted in 25 ASIL Proceedings 1 (1931)

A. ADMINISTERING THE SOCIETY IN THE THIRTIES

1. James Brown Scott, President of the Society

When James Brown Scott was elected President of the Society at the 1929 Business Meeting, several members offered encomiums. He seemed not only the logical choice to succeed Charles Evans Hughes, but the only choice. After the tributes had concluded, Scott took the chair and gave a genuinely modest response to what had just been done and said:

I have never considered myself as possessing the attainments which a President of this Society should have and should hold. I have not held high political positions. I have from time to time held positions of trust. My belief is that the traditions of the Society should be continued in the future as they have in the past. I accept this post for the coming year as an expression of your affection, with the understanding that in the meantime you will have the opportunity of considering for the office as my immediate successor one who possesses the qualities and the titles of what may be considered the traditions of the Society. Although I shall be happy indeed to contribute as far as is humanly possible to the success of the Society during the coming year, I withdraw at this moment and in
advance to my successor who shall be elected, as I hope and believe, at the forthcoming session of the American Society of International Law.¹

The members of the Society did not permit Scott’s withdrawal to take effect until ten years later. He served as President from 1929 until 1939.

Scott continued the tradition of delivering a presidential address at the outset of each Annual Meeting.² His address in 1932 characterized his beliefs, at least during his later years. The theme was that a single moral standard applies both to the individual and to the group of individuals who make up the state:

The world, notwithstanding the artificial personality called the state, is made up of human beings. Their laws must be consistent with their nature; the laws of human kind are not and can not be the dictates of the artificial entities which we call states, since these entities in fact have no existence separate and distinct from their incorporators – the people who have made them what they are.

... There can not be two standards. There must be a single standard for the human being applying to all of his activities, whether they be isolated or communal: a house divided against itself falls. There can be but one standard for the groups of individuals which, taken together, form humanity, and the groups which, as such, compose the international community. Humanity needs and the world must have the moral interpretation of history.³

Scott did not identify the standard he had in mind. Clearly, though, he believed that international law needs to reflect moral principles rather than simply being controlled by state practice and opinio juris. Moreover, he believed he could demonstrate that modern international law had its origins in “universal justice – whether called natural law, divine law, human law, or all three.”⁴ Accordingly, he regarded Francisco de Vitoria, rather than Hugo Grotius, as the founder of

¹ 23 ASIL Proc. 201 (1929).
² Scott’s presidential address at the 25th anniversary Annual Meeting, in 1931, is discussed in Section B, infra.