James Brown Scott’s International Adjudication between Tradition and Progress in the United States

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One remarkable feature of international law in the last few decades has been the staunch opposition of the government of the United States of America to the jurisdiction of international courts. Observers have been tempted to regard the United States' confrontational posture as a mere product of egoistic political realism. Often, the story goes that this realism is at odds with the 'authentic' spirit of cosmopolitanism and internationalism proclaimed by President Woodrow Wilson (1856–1924) and international lawyers such as James Brown Scott (1866–1943) one century ago.

And yet, it would be simplistic to characterize today's defiant attitude of the United States towards international adjudication as a realist, nationalistic degeneration of an originally cosmopolitan ideal. Looking beyond the surface, both old and current approaches to international law in the United States...
reveal themselves as sharing crucial assumptions, all expressions of American values.²

Importantly, the current critique of international adjudication is not simply a realist attempt to oppose politics to law and the judicial method. Critics specifically attack international law and adjudication, whereas they maintain a strong faith in the domestic rule of law and revere the Supreme Court. Often, these critics do not reject international courts as such, but as a threat to the United States' popular sovereignty that the Supreme Court represents. They denounce international adjudication whenever they assume that it restrains the rule of law in the United States.

This attitude is not entirely different from that of James Brown Scott and the other ‘idealists’ who founded the American Society of International Law in 1906. Both generations shared similar goals, though they implemented diverse strategies to attain them. The men of 1906 wished to strengthen the rule of law at home, and believed that the best means to achieve this was to make the United States’ version of it universal and export it. They came to appreciate the establishment of an international judiciary as a suitable institutional tool to spread American democratic values and civilize the world. The project of James Brown Scott and his colleagues in academia and at the State Department was to endorse international adjudication as shaped in the United States' image. This article explores Scott's historical work in view of the aftermath of World War I as a paradigmatic example of that American project.

1 The American Quest for an International Court

James Brown Scott had a penchant for anniversaries. The introductions of his main works of 1918, revolving around the constitutional history of his country, the United States, are all, with one exception, dated 11 November, the day of

² Throughout this article I use the adjective ‘American’ to refer primarily to the culture or agency of United States’ nationals or society, rather than in relation to the entire American continent. I am aware of the possible ambiguities of this choice. Yet, I believe this usage is common enough today not to create confusion and is in line with the language of the early 20th century debates I describe here. The ambiguity was already there: the founders of the American Society of the International Law often used ‘American’ as juxtaposed to ‘European’ to underline the more modern and progressive nature of the values and the law put forward by the new continent. On the other hand, invariably, their use of the word would collapse into referring to their own country, as with the name of the Society and its American Journal of International Law.