

no candid, competent, and informed person could possibly have thought, prior to the Supreme Court's capitulation in the Court fight, that such legislation had even a ghost of a chance against the Court's powers of invalidation and interpretation.

A matter of fact, the President's Court Plan is not even mentioned in *The Good Society*; instead, Mr. Lippmann criticizes the Court for abusing its powers.¹³ So, if the Court Plan is at the bottom of Mr. Lippmann's bitterness toward the President and the New Deal, it appears that, for some strange reason, Mr. Lippmann was unwilling to discuss it.

Why this should be, one can only guess; but, at least, it is apparent that Mr. Lippmann, in writing *The Good Society*, was in another "unpleasant predicament." Most of the things that he wanted to urge should be done by the government, the New Deal was already trying—blunderingly, perhaps—to do; most of the things that the New Deal had done, he actually approved; yet he was passionately anti-New Deal and unwilling, or, perhaps, unable, to discuss the real basis of his opposition. In such a predicament, a man would be likely, it seems to me, to turn out just the sort of inconsistent and over-rhetorical wordiness that is found in *The Good Society*. And unless there was some such cause operative, it is impossible, I think, to conceive how a sincere and able man like Mr. Lippmann could ever have written so confused and confusing a book.

WILLIAM W. CROSSKEY*

Cases on International Law. By James Brown Scott and Walter H. E. Jaeger. St. Paul: West Publishing Co., 1937. Pp. lxxix, 1062. \$5.50.

Cases and Other Materials on International Law. Edited by Manley O. Hudson. 2nd edition. St. Paul: West Publishing Co., 1936. Pp. xl, 1440. \$6.50.

———. Shorter selection, 1937. Pp. xxxix, 622. \$5.00.

The Law of Nations: Cases, Documents, and Notes. Edited by Herbert W. Briggs. New York: F. S. Crofts & Co., 1938. Pp. xxix, 984. \$8.00.

In 1775 Benjamin Franklin wrote to Frederick Dumas that Vattel's treatise on international law "has been continually in the hands of the members of our Congress now sitting."¹ Ever since the establishment of the United States, rules of international law have been applied to countless instances of the external affairs of the country, and since the early days of the Union international law has been a subject of academic studies. None less than Chancellor Kent considered international law "an essential part of the education of an American lawyer." The international law which was taught in the law schools of the country at and after Kent's time was essentially based on Vattel and on other writers who, like Vattel, thought and wrote in terms of natural law. When the historical and the positivistic schools of law and their realistic successors became dominant, it was thought that international law deals more with that which ought to be rather than with that which is; international law lost ground in most law schools and became one of the social sciences.

This was the situation against which Professor James Brown Scott took a stand when he published his casebook in 1902.² Endeavoring to prove the legal character

¹³ *The Good Society*, pp. 257 *et seq.*

* Associate Professor of Law, University of Chicago Law School.

¹ See 32 *American Journal of International Law* 346 (1938).

² Scott, *Cases on International Law* (1902).

of international law, he stated that "international law is part of the English common law; that as such it passed with the colonists to America . . . Municipal law it was in England; municipal law it remained and it is in the United States."³ In acceptance of a suggestion of Professor James Barr Ames, Professor Scott relied mainly upon decisions of English and American courts in which international law was applied. In the present and third edition of Scott's Cases, the authors have maintained the basic idea of the first edition, *i. e.*, to prove the existence of international law in the decisions of municipal courts. But the present edition differs from its forerunners in various respects. More stress is laid on the administration of international law by international tribunals, and, as a table shows,⁴ the court reports of 63 existing and defunct countries have been canvassed for decisions bearing on international law. As the authors state in the introduction,⁵ "American cases constitute slightly less than twenty per cent. of the collection, the cases of arbitration somewhat over twenty per cent. and the balance—or approximately sixty per cent.—are decisions of municipal courts of foreign countries."

Professor Hudson, the distinguished judge of the Permanent Court of International Justice, was, according to the introduction to the first edition of his casebook,⁶ induced to publish it by "recent developments in international law." According to Judge Hudson, the international adjudication merits the primary concern of the international lawyer, and—the book was published in 1929—the international law of war seemed to be of little interest in times of international pacification. In the second edition, the author did not touch the fundamental structure of his book; he restricted himself to bringing the earlier edition up to date. The recent 1937 edition is but a shorter edition of that of 1936. It is intended for the use of students who devote "only a few months to the study of international law." Both the 1936 and the 1937 editions contain many notes and quotations from treaties, etc.

The casebook of Scott and Jaeger and that of Hudson have in common the fact that they were compiled for the use of law students. They are composed more or less in the usual form of legal case-books. Different from the traditional pattern is Professor Briggs' casebook. It is intended to fill a long-felt need inasmuch as it contains not only cases and documents, but also additional notes of the author in textbook style. By doing this, the author attempted a synthesis of the case- and textbook methods, or, more correctly, a case, text, and source book in one volume. The author had the advantage of treating each subject matter in the method best suited for it. Without doubt, Professor Briggs' book will be of great advantage to his students and to the students of other teachers who are satisfied with Professor Briggs' selection of cases and documents. Naturally the author could not attempt to cover the field as thoroughly as casebook editors like Scott and Jaeger and Hudson, or as editors of source books like Harley.⁷ This restriction of materials will make it necessary for students to consult other works in addition to Briggs'. Nevertheless, it is felt that the author ought to incorporate materials hitherto omitted in a second edition and that he ought to add a general bibliography to his dispersed bibliographical notices.

W. B. STERN*

³ P. v.

⁴ P. lvii.

⁵ P. v.

⁶ Hudson, *Cases and Other Materials on International Law* (1929).

⁷ Harley, *Documentary Textbook on International Law* (1934).

* University of Chicago Law School.