

A PLEA FOR MORE STUDY OF INTERNATIONAL LAW IN AMERICAN LAW SCHOOLS

This JOURNAL was opened with Elihu Root's¹ insistence on the need for popular understanding of international law; he spoke of popular understanding, not of expert knowledge. Much is being done in this respect in this country. In addition, international law is taught in the departments of political science of many universities.² And while the latest Conference of Teachers of International Law and Related Subjects seemed to fear that international law in the Colleges had been pushed into the background by the "Related Subjects," and while certainly much still remains to be done in this area,³ the situation is more favorable in the United States than in other countries.

But the teaching of international law by and to political scientists cannot replace the study of international law by lawyers, just as courses on "American Government" do not remove the necessity of studying "Constitutional Law" in the Law Schools.

We are concerned in this paper with the neglect of international law in American law schools, that is, its neglect exactly there where it, as a legal discipline, primarily belongs. Even here, certainly, the situation has improved, compared with the complaints made about forty years ago.⁴ American funds support the *Institut de Droit International*, the *Académie de Droit International* at The Hague, the *Institut Universitaire de Hautes Etudes Internationales* at Geneva. There is the American Society of International Law, publishing this JOURNAL. There is the important "Research in International Law, Harvard Law School," under the direction of Professor Manley O. Hudson. There are the highly valuable scientific publications of the Carnegie Endowment for International Peace. There are in this country magnificent libraries of international law, which, in leading instances, form parts of law school libraries. An important and characteristic American science of international law⁵ is in existence.

¹ E. Root, "The need of popular understanding of international law," in this JOURNAL, Vol. I (1907), pp. 1-3.

² F. Symons, *Courses on international affairs in American Colleges*, with Introduction by J. T. Shotwell, 1931, pp. 353.

³ Professor Shotwell (work quoted above, n.2) gave warning in 1931 that the importance of the many courses on international affairs "must not be overestimated, because, frequently, it is only a consequence of the desire to be up to date," only a question of a "journalistic interest in half-understood things." Dean Vanderbilt laments to-day that the students coming to the law schools have obtained in their pre-legal training "no intimate knowledge of foreign relations in the broadest sense or any interest with respect to the matter" (Arthur T. Vanderbilt, *A Report on Prelegal Education*, published by American Bar Association, 1944, p. 42).

⁴ Gregory, "The study of international law in Law Schools," in *American Law School Review*, Vol. 2 (1907), p. 41.

⁵ See this writer's studies, *Die nordamerikanische Völkerrechtswissenschaft seit dem Weltkrieg*, in *Zeitschrift für öffentliches Recht*, Vol. XIV, No. 3, pp. 318-351, and "The American Science of International Law," in *Law: A Century of Progress*, 1937, Vol. II, pp. 166-194.

The third,⁶ fourth, and fifth⁷ Conference of Teachers of International Law and Related Subjects carefully surveyed the problem of the study of international law in law schools. Yet even to-day the situation of international law in American law schools is entirely unsatisfactory. The same is true of Great Britain, where Sir Arnold D. McNair, the eminent British international lawyer, now a Judge on the International Court of Justice, read a paper⁸ before the Grotius Society in London in 1944, stressing the need of a wider teaching of international law.

Apart from not being a subject of bar examinations, international law is taught only in a small number of American law schools at all. A search through the catalogues of a considerable portion of about 100 law schools members of the Association of American Law Schools, reveals that international law is given at only sixteen schools, not given at all in thirty-nine schools, including the law schools of many State Universities and other important universities.⁹ This is a serious situation. It becomes more serious, if one considers that even where international law is taught in law schools it is offered sometimes by political scientists and sometimes by professors of law who are not specialists in this field. Few law schools have professors who dedicate their life primarily to the study of international law.

Not only is the situation in the law schools inadequate, as it is offered only in a small number of law schools and not always by men who can claim to be real authorities in this field, but it is also to be noted that international law, even where given, is nearly always elective, not required; in some law schools international law is offered only as a graduate course, in others, on the other hand, graduate studies and seminars in international law are not available. Finally, even where international law is offered and taught by first class men, the number of students taking these courses is infinitesimal, compared with the total number of law students. What Dean Vanderbilt stated¹⁰ a generation ago, when a man of the authority of John Basset Moore was at Columbia Law School "lecturing to a mere handful of students on international law, while in nearby classrooms hundreds of bright young men were studying

⁶ Manley O. Hudson, "The teaching of international law in America," in *Proceedings of the 3rd Conference of Teachers of International Law*, Washington, 1928, pp. 178-189.

⁷ Edwin D. Dickinson, "The Law School Curriculum," in *Proceedings of the 5th Conference of Teachers of International Law*, Washington, 1933, pp. 117-122.

⁸ Sir Arnold D. McNair, "The Need for Wider Teaching of International Law," in *Transactions of the Grotius Society*, Vol. 29, 1944, pp. 85-98.

⁹ No international law was given at the law schools of the State Universities of Alabama, Arizona, Arkansas, Colorado, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Minnesota, Missouri, Ohio, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, Wyoming. No international law was given at the law schools of the following Universities: Boston College, Buffalo, Chicago, Cincinnati, Denver, DePaul, Duke, Emory, Louisville, Loyola (Los Angeles), Marquette, Newark, Pittsburgh, Richmond, St. Louis, San Francisco, Southern California, Southern Methodist, Syracuse. The lists, of course, are not complete.

¹⁰ Arthur T. Vanderbilt, "Law School Study after the War," in *New York University Law Quarterly Review*, Vol. XX, No. 2 (Nov. 1944), pp. 146-164, at p. 154.

"bread-and-butter subjects" is still true to-day; the same writer speaks ¹¹ of international law as "a subject generally neglected in the law schools."

Sir Arnold D. McNair, pleading for wider study of international law at British Law Schools, bases his plea on three reasons: the national, the international and the professional reason. All these three reasons apply here even with greater force; but we would like to add as a very important fourth reason the scientific reason.

It is hardly necessary to dwell at length on the fact that this country has emerged from the Second World War as the most powerful nation in the world and as irrevocably committed to take a share, and a leading share, in international affairs from political and economic to cultural international relations. This country is pledged to the creation and maintenance of peace. Peace must be based primarily on law and justice. In consequence expert knowledge of international law by lawyers is essential. For national and international purposes, for the Department of State, for the American diplomatic and consular service, for American participation in the United Nations, other international organizations, and in international conferences, for American officials in these international organs, for American Judges and Commissioners upon and American agents before international Courts and Tribunals, lawyers are needed who are experts in international law and who are international lawyers by profession.

This national and international need is at the same time the basis for the professional reason. But there is more to it. At the Fourth Conference of Teachers of International Law, held in 1929, Sir Cecil Hurst explained the lack of interest in international law in Great Britain with the brutal sentence: "There is no money in international law." Even that is no longer true. "International law," says Vanderbilt,¹² "will inevitably become a bread-and-butter subject." Not only will lawyers, experts in international law, be needed for all the above-mentioned official national and international assignments, but international law is bound to play a great role in the work of the attorney-at-law. We need practitioners of international law, attorneys who are experts in international law. There are vast possibilities, even from the purely professional angle. The liquidation of the war, the enormous increase in international relations will bring up problems of international law in many cases before the Courts, in many instances of a practicing lawyer's duty to advise his clients.

But the study of international law at Law Schools will have even deeper significance. It will give the law students a more complete legal education than was thought possible, hitherto, under the "pressure of practicality." "Our law schools," says Vanderbilt,¹³ "in concentrating on the law of our business civilization, have sadly neglected the study of public law. With

¹¹ A Symposium in Legal Education after the War, *Iowa Law Review*, Vol. XXX, No. 3 (March, 1945), p. 326.

¹² Same, p. 326.

¹³ Vanderbilt, as cited above, note 10, pp. 154, 156.

new international relations thrust upon us willingly or unwillingly the law schools have an obligation to the nation that cannot be ignored"; and he laments¹⁴ that the "law students neglect in law school the legal aspects of the problem of international relations with the result that the country to-day is suffering most seriously for want of enlightened leadership in the field of international affairs." Already in 1933 Edwin D. Dickinson¹⁵ had written: "International law in the American law schools is a curricular luxury. It is actually affecting a very small percentage of the law students. It is the type of law school training . . . of legal technicians. We have placed an extraordinary emphasis upon the mechanics of law practice. It may well be doubted whether we have perfected a training which is adequate for the preparation of a well rounded and well qualified lawyer. . . . Great progress has been made in instruction in international law in the past century, but this progress has been essentially superficial. . . . An institution for higher international studies is very much needed in America." "Every University," writes Sir Arnold McNair,¹⁶ "which aims at giving a legal education that is a liberal education and not merely a professional training should make international law a compulsory subject at some stage in its curriculum."

The task of the Law School is not only to teach law to students, but also to prepare professors of law and to advance the science of law, especially since "American universities," as Dean Landis remarks,¹⁷ "are certain to become more important centers of world education than they were before the War."

Naturally the jurist who devotes his life to the study of international law must know and understand many things, such as history, politics, languages, and so on, in order to be fully equipped for his task: "the study of international law calls for a linguistic and cultural equipment that is unhappily none too common on the part of either instructors or students in American law schools."¹⁸ But what is necessary too is the legal and scientific approach. It is no exaggeration to state that a great deal of the contents of the usual textbook on international law, much of the mass of monographs, articles, discussions, all allegedly on international law, have little or nothing to do with international law. They constitute often, as the case may be, pious sermons, propaganda, prejudiced political statements, fancy theories, wishful thinking, metaphysics, in a word what a French scholar ironically called "quasi-judicial novels." The unsatisfactory status of the science of international law, which often fails to approach its object with the necessary scientific neutrality and objectivity, and is sometimes not, as all science must be, interested only in truth, but in success, explains why Courts¹⁹ have

¹⁴ Vanderbilt, as cited above, note 3, p. 42.

¹⁵ Dickinson, as cited.

¹⁶ McNair, as cited, p. 97.

¹⁷ *Annual Report, 1944-1945, of the Dean of Harvard Law School*, p. 12.

¹⁸ Vanderbilt, in work cited above, note 11, pp. 326-327.

¹⁹ "The views expressed by learned writers on international law have done in the past, and will do in the future, valuable service. . . . But in many instances their pronouncements

reproached international lawyers with confusing proposals *de lege ferenda* with the statement of the positive law, and why legal scholars had not much esteem for this science. In 1909 John Chipman Gray wrote: "On no subject of human interest, except theology, has there been so much loose writing and nebulous speculation as on international law." Edwin D. Dickinson quotes²⁰ this word of Gray today and speaks himself of a "labyrinth of pseudo-judicial effusion." Such "international law" can be a guidance neither to international courts, nor to the Bar and Bench. And the Bar and Bench are at this moment, as Charles Cheney Hyde recently testified in Washington, in great need of guidance, of solutions offered by the science of international law. The correct statement of the positive law is also the basis for worthwhile proposals *de lege ferenda*. To advance the science of international law, to make it a science, and not merely a multitude of purely subjective statements, is certainly a task in which the law schools have to play their role.

The law schools of this country, after a period of reduced activity in consequence of the war, are now about to enter an era of great expansion and to seriously reconsider their curricula and their method of approach toward the teaching of law. It is very much to be hoped that international law will gain the place in the law schools which is its due and which is made necessary by the world position of this country. Signs of such favorable development are not lacking. Judges and practicing lawyers show a great interest, the pages of the *American Bar Association Journal* have in these last years to a very considerable extent been devoted to problems of international law. Many important law reviews have published a number of studies of considerable value on topics of international law. The discussions and writings on post-war legal education stress the importance of the study of international law in the law schools. There is no doubt that the Association of American Law Schools and the American Bar Association, which are primarily concerned with raising the standard of legal education, will give their attention to the problem of international law. The American Law Schools have an obligation in this respect and, surely, they will be willing and able to meet the challenge of the law on a planetary basis. "The lessons of this war," writes Dean Landis,²¹ "call for relating this experience to the place of the lawyer in our present and future society. . . . After all, the rule of law is humanity's only hope. The challenge to law is thus immeasurably increased. In the meeting of that challenge legal education has a primary role. . . . The fac

must be regarded rather as the embodiments of their views as to what ought to be, from an ethical standpoint, the conduct of nations *inter se*, than the enunciation of a rule or practice so universally approved or asserted to as to be fairly termed . . . 'law': *West Rand Central Gold Mining Co. v. The King*, 1905, 2 K.B. 391.

²⁰ Edwin D. Dickinson, "International Law: An Inventory," in *California Law Review* Vol. XXXIII, No. 4 (December 1945), pp. 506-542, at p. 541.

²¹ Work cited, above, note 17, pp. 1, 9, 11, 12.

of war too frequently expresses itself in a distrust of all that law has meant in the past. It typifies itself in such observations as the notion that international law is outdated. The development of international relations on a far-flung scene . . . means an emphasis upon international law. Obviously, instead of discarding international law, the challenge is one to its fuller realization. The tragedy is not having done too much, but having achieved too little. . . .”

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