EDITORIAL COMMENT

EDWIN D. DICKINSON, 1887-1961

With the passing of Edwin D. Dickinson on March 26th, we have lost an outstanding "elder statesman" of international law and of our Society. As a former student and research assistant, and a long-time friend, may I point out how he was recognized by students, fellow-teachers, and co-workers in international law as one of the ablest, most thoughtful, inspiring, modest, and kindest persons in our field.

Holder of degrees from Carleton College and Dartmouth, followed by the Harvard Ph.D. and Michigan J.D., as well as honorary degrees, Ned Dickinson found his life work as a law school teacher of international law and related subjects, while also active in professional organizations and work for better legal education. Following earlier political science teaching at Dartmouth, his work as professor of international law, admiralty, and conflict of laws at the University of Michigan Law School from 1919 to 1933 did much to develop international law at Michigan and to build the foundation for the school's present strength in comparative and international legal studies. Moving to California in 1933 to concentrate on international law in both the political science department and the law school, he was soon called upon to serve the cause of legal education as Dean of the School of Jurisprudence at Berkeley. In 1948 he relinquished these administrative tasks to move to Pennsylvania and devote his full energies to teaching and research. Even after his retirement from Penn and return to California, he taught for a time at Hastings College of Law as one of its "Over 65" group of teachers retired from other law schools.

Government service included the post of Special Assistant to the United States Attorney General in Washington from 1941 to 1943, General Counsel for the American-Mexican Claims Commission in 1943–44, brief service with UNRRA and at the San Francisco Conference of 1945, and the chairmanship of the United States Alien Enemy Repatriation Board. He was also named the United States Commissioner on the Inter-American Permanent Commission of Investigation and Conciliation, and as a member of the Permanent Court of Arbitration.

In 1949 he served as President of the Association of American Law Schools, and in 1952–1953 as President of the American Society of International Law. After election in 1924 to the Board of Editors of THE AMERICAN JOURNAL OF INTERNATIONAL LAW, he worked with distinction on the JOURNAL until in 1938 his duties at California resulted in his resignation. The Board of Editors and the Society were pleased to associate him with the JOURNAL again in 1954 as an honorary member of its Board, in which capacity his last contribution to our JOURNAL was a book review published posthumously.[1]

[1] Review of Wallace McClure, World Legal Order: Possible Contributions by the People of the United States, 55 A.J.I.L. 508 (1961). In a letter to the undersigned

Professor Dickinson was a quietly unassuming but successful teacher, arousing great student interest in, and enthusiasm for, the subjects he taught. He encouraged many to take thought of international legal problems, stimulating his students to learn accurately and carefully in matters of detail, while never losing sight of the broader perspectives and underlying theories and fundamentals. The words he wrote concerning his mentor, Professor George Grafton Wilson, might just as appropriately be used by his own former students concerning Professor Dickinson, when in the preface to his *Equality of States in International Law* he expressed "his immeasurable debt" to his professor "for arousing interest in the subject, encouraging at every stage with kindly criticism and helpful suggestion, and inspiriting with the generous enthusiasm of a great teacher." [2]

Discussing early in his career the problems of teaching international law, particularly in law schools, he urged the importance of the case method for international law courses:

> Finally, the teacher of international law may compromise, attempting, on the one hand, to save as much of the true case-method as seems to be warranted by the nature of the subject and the materials available, and, on the other hand, to broaden the scheme and content of the course by supplementing the usual British and American cases with selected decisions of civil law courts, excerpts from standard treatises, abridged reports of arbitrations, articles from treaties, occasional extracts from state papers, and references to historical materials. Such a compromise is difficult to execute satisfactorily. But it offers a way, if not the only way, to secure the chief pedagogic advantages of the case-method without obscuring the real nature of international law or giving the student a false notion of its sources. . . . it makes possible a classroom in which all may participate in the work of analyzing, comparing, criticising, and applying. If the teacher is alive to his responsibilities, intellectual independence and individual thinking on the part of students need never degenerate into mere dialectic and casuistry. The introduction, from the storehouses of history, of relevant facts in regard to territory, physiography, population, race, culture, resources, industries, wealth, land and sea power, laws, manners, and the like, should make it possible to discuss freely the most primitive and plastic of all branches of the law without lending countenance to barren scholasticism. If the student's notions of international law at the conclusion of such a course are somewhat lacking in symmetry, systematic arrangement, or certainty of outline, may it not be that he has a truer picture than he would have received from more dogmatic instruction? [3]

Bearing such ideas in mind, after experimenting with mimeographed versions, he published in 1929 an excellent and widely used volume entitled *A Selection of Cases and Other Readings on the Law of Nations Chiefly As It Is Interpreted and Applied by British and American Courts.*[4] In its

written on the day of his sudden death, Ned Dickinson expressed his interest in preparing for the JOURNAL an article on "acts of state."

[2] Dickinson, The Equality of States in International Law viii-ix (1920).

[3] Dickinson, "The Teaching of International Law to Law Students," 17 Am. Pol. Sci. Rev. 464, 473 (1923).

[4] McGraw-Hill, 1929. Reviewed by Fenwick, 23 A.J.I.L. 891 (1929).

preface he spoke of the necessary combination of public international law, private international law, some constitutional law, and "a substantial selection from the municipal law which is applied by courts in various cases affecting international relations." He also referred to its scope of coverage as more limited than previous casebooks, a policy adopted because he was "satisfied that students derive a more thorough understanding of the subject and a keener zest for further acquaintance from a relatively more intensive study of a few fundamental topics." Along the same line, he often mentioned in conversation that teachers must bear in mind that we no longer live in the "Blackstone–Chancellor Kent era," when a single book or law course purported to cover the entire body of the common law. He would also refer to the international law professor as often called upon to teach "a whole law school curriculum" of international law, rather than a single course comparable with each private law course.

In his 1950 *Cases and Materials on International Law*,[5] which commenced with emphasis on the facts of the international community, he maintained throughout each chapter the distinction between material dealing with international law in the "international forum," and that from the "national forum." This volume has also been widely used. Many of his influential ideas on the teaching of international law were also expressed from time to time in the Teachers Conferences conducted in cooperation with the American Society of International Law, and in the Institute on International and Comparative Law held in New York in 1948 by the Committee on International and Comparative Law of the Association of American Law Schools.

Looking to legal education generally, in his 1949 address as President of the Association of American Law Schools on "What is a Law School?"[6] he referred to the large sums which would be needed to accomplish some desirable things in the law, but characteristically added:

> Meanwhile, however, there is no end of vitally useful things which may be done, even where resources are modest, if ideals are only sound. We have not been speculating today about the ideal law center. We have been speaking of important services in some measure within the range of every law school having sound ideals.

Dickinson took an active part in the work of the Harvard Research in International Law, where his study on Jurisdiction with Respect to Crime[7] comprised a draft convention which is a model of clarity, and a thorough investigation of a wide range of comparative criminal law and procedure materials as well as the traditional international law sources. He took great interest in the work of the American Law Institute, although never in a position to undertake on its current *Foreign Relations Law Restatement* that work which his colleagues hoped he might.[8]

[5] Foundation Press, 1950. Reviewed by Woolsey, 45 A.J.I.L. 607 (1951).

[6] 1949 Handbook of Association of American Law Schools 45, at 53.

[7] Published in 29 A.J.I.L. Supp. 435–651 (1935).

[8] *Cf.* Oliver, "The American Law Institute's Draft Restatement of the Foreign Relations Law of the United States," 55 A.J.I.L. 428, 432 (1961).

The *Annual Digest of Public International Law Cases,* now become the *International Law Reports,* was another project close to his heart. Beginning with the second volume to be compiled (1927–28), he was for some years the contributor of digests of United States cases, while commencing in 1932 with the volume for 1919–22 he became a member of the Advisory Committee for the project.[9] He rightly regarded this series as an important step in making available for workers in international law material already in existence but often overlooked because of difficulties in finding it.

Dickinson's writings on international law covered a wide variety of topics, exhibiting technical skill in research, felicitous expression, penetrating insights, and a constant eye on the broader aspects of the international legal process.[10] Among the topics he treated were equality of states,[11] recognition and non-recognition,[12] maritime jurisdiction [13] and jurisdiction with respect to crime,[14] the relationship of international law to national law and its application by national organs, both judicial and political,[15] domicile under extraterritorial regimes,[16] problems of war and neutrality,[17] closure of ports held by insurgents,[18] nationality,[19] defamation

[9] In the preface to the 1919–22 volume of the Annual Digest, Dr. Hersch Lauterpacht and Sir John Fischer Williams acknowledged Dickinson's participation as a "capital contribution of essential importance to the usefulness of the present volume." (p. ix.)

[10] See Dickinson's articles or books: "The United States and World Organization," 16 Am. Pol. Sci. Rev. 183 (1922); "New Law of Nations," 32 W. Va. Law Q. 4 (1925); "The Law of Change in International Relations," 11 Proceedings of the Institute of World Affairs 173 (1933); "International Law: An Inventory," 33 Calif. Law Rev. 506 (1945); What Is Wrong with International Law? (pamphlet, 1947); Law and Peace (1951).

[11] The Equality of States in International Law (1920).

[12] "The Unrecognized Government or State in English and American Law," 23 Michigan Law Rev. 29, 118 (1923); "Recent Recognition Cases," 19 A.J.I.L. 263 (1925); "Recognition Cases 1925–1930," 25 A.J.I.L. 214 (1931); "Recognition of Russia," 30 Mich. Law Rev. 181 (1931).

[13] "Is the Crime of Piracy Obsolete?", 38 Harv. Law Rev. 334 (1925); "Jurisdiction at the Maritime Frontier," 40 *ibid.* 1 (1926); "Treaties for the Prevention of Smuggling," 20 A.J.I.L. 340 (1926); "Are the Liquor Treaties Self-Executing?" *ibid.* 444; "The Supreme Court Interprets the Liquor Treaties," 21 *ibid.* 505 (1927), and 27 *ibid.* 305 (1933).

[14] Harvard Research in International Law, Jurisdiction with Respect to Crime, *loc. cit.* note 7 above; "The Blackmer Case," 26 A.J.I.L. 351 (1932); "Jurisdiction Following Seizure or Arrest in Violation of International Law," 28 *ibid.* 231 (1934).

[15] "International Political Questions in the National Courts," 19 A.J.I.L. 157 (1925); "Changing Concepts and the Doctrine of Incorporation," 26 *ibid.* 239 (1932); The Interpretation and Application of International Law in Anglo-American Countries (1932, privately printed; substantially the same as his Hague Academy of International Law lectures on "L'interprétation et l'application du droit international dans les pays anglo-américains," 40 Recueil des Cours 305 (1932, II); "The Law of Nations as Part of the National Law of the United States," 101 U. Pa. Law Rev. 26, 792 (1952, 1953); "The Law of Nations as National Law: Political Questions," 104 *ibid.* 451 (1956).

[16] "Domicil of Persons Residing Abroad under Consular Jurisdiction," 17 Mich. Law Rev. 437, 694 (1919).

[17] "The Lusitania—Destruction of Enemy Merchant Ships without Warning," 17 Mich. Law Rev. 167 (1918); "Enemy Alien Litigants in the English Law," *ibid.* 596

of foreign governments,[20] sovereign immunity,[21] *et cetera.* His obvious competence as a legal technician did not obscure his lasting concern with underlying hypotheses and theoretical assumptions. He showed steady interest in the basic ideas and philosophical foundations of international law and a mastery of the classical writers, as well as familiarity with present-day positive international law. His rarer discussion of other areas of the law, particularly admiralty,[22] manifest the same excellence.[23] Among his many ideas and themes in international law, a few are selected for mention in this editorial because of their timeliness, or timelessness.

In an early article [24] he criticized the analogy often drawn between states in international law and individuals in domestic law, urging that

> A revaluation of the analogy would be a distinct contribution to the much needed adjustment between international law and the world in which we live. It would place less emphasis upon fictitious resemblances and more upon inherent differences.

In international organization, he declared that

> One of the greatest obstacles to progress . . . will be found in the tendency to personify international persons and attribute to them rights derived from the analogy with human beings. The so-called rights of existence, independence, equality, and property, as hitherto construed by a majority of the writers, are likely to prove an insuperable obstacle to real progress in the direction of international government.

He concluded that the analogy

> must not be permitted to warp our conception of international society, obstruct an understanding of the true nature of international persons, perpetuate the unreality of international law, encumber the system with rules inapplicable to international persons, or establish impracticable classifications.

In his first major scholarly contribution, *The Equality of States in International Law,*[25] he distinguished the practically unattainable equality of rights from equality before the law, and equal protection of the law, which latter

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(1919); "Execution of Peace with Germany: An Experiment in International Organization," 18 *ibid.* 484 (1920); "Neutrality and the Munitions Traffic," 1935 A.S.I.L. Proceedings 45; "The Neutrality of the United States," 1937 Ill. S.B.A. 17.

[18] "Closure of Ports in Control of Insurgents," 24 A.J.I.L. 69 (1930).

[19] "The Meaning of Nationality in the Recent Immigration Acts," 19 *ibid.* 344 (1925).

[20] "Defamation of Foreign Governments," 22 *ibid.* 840 (1928).

[21] "Waiver of State Immunity," 19 *ibid.* 555 (1925); "The Immunity of Public Ships Employed in Trade," 21 *ibid.* 108 (1927).

[22] See his mimeographed casebook on Admiralty (1924); Dickinson and Andrews, "A Decade of Admiralty in the Supreme Court of the United States," 36 Calif. Law Rev. 169 (1948).

[23] See, for example, "Gratuitous Partial Assignments," 31 Yale Law J. 1 (1921).

[24] "The Analogy between Natural Persons and International Persons in the Law of Nations," 26 Yale Law J. 564 (1917).

[25] Published in 1920 as an expansion of his Ph.D. dissertation at Harvard under G. G. Wilson.

> is not inconsistent with the grouping of states into classes and the attribution to the members of each class of a status which is the measure of capacity for rights. Neither is it inconsistent with inequalities of representation, voting power, and contribution in international organizations.[26]

As for "equality of rights" in international organization, he wisely and perhaps too prophetically said:

> No civilized state has ever tried to combine universal suffrage, the folk-moot, and the liberum veto. It may be suggested parenthetically that the organization of human beings on such a basis would be less unreal and would give greater promise of success than the organization of nations on the same principle. . . . Insistence upon complete political equality in the constitution and functioning of an international union, tribunal, or concert is simply another way of denying the possibility of effective international organization.[27]

In a 1933 article[28] he thoughtfully examined the whole international legal process, and declared:

> in the immediate future we shall be relatively less concerned with the logic and symmetry of the law and more absorbed in exploring the fundamental factors which have determined its form and content. A legal system is the product of underlying geographic, ethnic, economic, historical, political, or social factors. It is only in the terms of such factors that its content can be adequately explained. We have not yet given adequate attention to these elements in our studies of the international system. They are the key to an appreciation of national outlooks, interpretations, and ideals; and it is, of course, a mere truism to say that until we understand those outlooks, interpretations, and ideals we can hardly hope to penetrate the mysteries of the conflicts and rivalries which the processes of international law must eventually resolve.
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> . . . Law is absolutely indispensable in our international life, as all informed persons will agree, but there are many things which law cannot do. Assuredly it cannot stabilize our environment in a world of everlasting change. Law is a process, not a strait-jacket. It is a manner of living together, not a dead code of immutable principles and rules. It is a method of attaining orderly life in a changing society, not an impervious obstacle to growth. As the true nature of law and its function in international relations are appreciated, we shall be relatively less concerned with its sanctions and more anxiously attentive to its adequacy as a means of facilitating orderly development. We shall give less attention to its logic and relatively more attention to the way in which it serves our needs.

Trenchant criticisms of our present international legal system appear in a 1946 lecture, *What Is Wrong with International Law?*[29] Among these were that in the international community "pretensions of legal order have

[26] *Op. cit.* 335. [27] *Ibid.* 336.

[28] "The Law of Change in International Relations," 11 Proceedings of the Institute of World Affairs 173, 177 (1933).

[29] What Is Wrong with International Law?, 7th Bernard Moses Memorial Lecture, May 22, 1946. This was largely based on Dickinson, "International Law: An Inventory," 33 Calif. Law Rev. 506 (1945).

concealed imperfectly an underlying political anarchy"; that international law has been "in large measure a system of rights without remedies," lacking "the essential means and procedures of practical amelioration or application"; and the "ever present likelihood that disputants will take the law into their own hands and resort to force." He concluded that:

> a realistic appraisal of existing international law reveals a system in which pretensions of legal order have been a thin and imperfect cloak for underlying political confusion, in which there has been a tragic lack of essential agencies and procedures of amelioration and adjustment, in which the constant threat of force has worn many disguises and has led ultimately to the madness of war, in which divergent interests and fears have given excessive resistance to discordant localisms, and in which basic logic has stemmed chiefly from a major premise of irresponsibility and the resulting code of conduct has been an uncoordinated aggregation of rules in space largely devoid of useful precept.

He felt that this "inadequacy stems largely from the circumstance that international law has been a product of life in what has been hitherto a loosely organized and politically chaotic community of independent nations."

Returning to these same themes in his Norman Wait Harris lectures on *Law and Peace* at Northwestern University in 1950,[30] he declared:

> The better order called peace will be built of law in all its ramifications. In pressing on with improvement of the law's administration and with a more forthright extension of its rule, we cannot wait for an international constitutional convention. There may come a time for such an assembling, but meanwhile we must use and develop the institutions at hand to better advantage. The institutions available will not work miracles, but they are capable nevertheless of strengthening peace in an infinity of ways.[31]

Turning to existing institutions, he asserted that:

> There are no compelling reasons why a more coherent and effective structure of more assuring competence should not be established through the United Nations. Indeed, the truly remarkable accomplishments of the United Nations and its related organizations in extending adequacy and order in the broader areas of international administration, such as civil aviation, communications, finance, food and agriculture, health, labor legislation, and the non-self-governing territories, afford firm indication of what might be achieved were the problems of judicial administration to be attacked with comparable vision and vigor.[32]

In so doing, he felt that:

> the institutions and processes of the law's administration need to be strengthened and improved. Law needs to be extended into areas which up to now have been a no-man's land of competing policies. The extravagances of sovereignty and their corresponding restrictions of the concept of "legal disputes" and exaggerations of "matters which

[30] Published as Law and Peace (1951). [31] *Op. cit.* 119–120.
[32] *Ibid.* 127.

> are essentially within the domestic jurisdiction'' need to be progressively mitigated. Always to be stressed is the basic proposition that it is the human individual rather than the inhuman state that is the subject of our ultimate concern.[33]

Reverting to the title of the lectures, he concluded that ''law and peace are not separable but are intimately related aspects of the same great enterprise.'' [34]

In his address as President of the American Society of International Law, April 23, 1953, so typically called ''Progress: The Middle Way,'' he well described our Society in saying:

> International law is the province of no one class of specialists or technicians. There are some areas where one proficiency must have a dominant role and other areas belonging chiefly to another, but the whole is assuredly an enterprise requiring the collaboration of many skills and outlooks. So it has been that from the beginning we have been a company of publicists and diplomats, of judges and lawyers, of experts from the armed as well as the civilian services, of public servants and private citizens, and of teachers and students. In a very real sense we have all been students, united in confidence that our studies may be significant and useful and in conviction that our avowed ideal is worthy of an undivided allegiance.[35]

He pointed out that:

> ''law and justice'' are words identifying distinctively the emerging adjustment processes of modern world society. The processes in our time have come to combine much of historic growth and a good deal of conscious creation. They exist to ameliorate and reconcile in ways best calculated to conserve a decent minimum of order in harmony with such ideals of fairness as have come to have a wide or substantial acceptance. In continuing support of order and the fair solution, they distill the reasoned principle from a past or present experience and project it cautiously as guide for an uncertain future. In one way or another, they utilize every available adjustment technique, whether denoted negotiation, conciliation, adjudication, administration, legislation, or something other. Patently this all-embracing law process is no mere doctrinal scheme. It is no mere wilderness of instances. It is a way of life cultivated deliberately and in firm reliance upon the premise that force channeled in order and fairness may be made a wholesome thing where force unchanneled must be bleak barbarism.[36]

Insisting that these processes are truly processes of law, and that they are ''cultivable in the sense that they invite study with a view to conscious and continuing improvement,'' he left with us the guiding words:

> without ideals there can be no progress, only change. The stars that guide you may never touch with your hands, but ''following them you will reach your destiny.'' [37]

WM. W. BISHOP, JR.

[33] *Ibid.* 132–133.
[34] *Ibid.* 143.
[35] 1953 A.S.I.L. Proceedings 5–6.
[36] *Ibid.* 3.
[37] *Ibid.* 7.