The Place of Constitutional Law and International Law in Legal Education

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"Mr. Chancellor, I have the honour to present for the degree of Doctor of Laws, *honoris causa*, DAVID HUGHES PARRY, first Director of the Institute of Advanced Legal Studies of the University of London, in whom are combined thorough scholarship in English Law and distinguished service in the thorny field of academic administration.

"In honouring him this University pays tribute to his long and enviable record as a legal scholar and to his able handling during the difficult post-war years of the onerous duties which fell to him during his term of office as Vice-Chancellor of the University of London and as Chairman of the Committee of Vice-Chancellors of the United Kingdom."

N. A. M. MACKENZIE

I was taught as a boy at home, and I have since learned from experience, that one should take care not to put one's sickle in another's harvest. It is, therefore, with a healthy measure of diffidence that I venture into this particular field of discussion.

The subject which has been assigned to me is "The Place of Constitutional Law and International Law in Legal Education". Although I myself have always taught and practised in the fields of property, conveyancing and succession, it has been my good fortune to work for over a quarter of a century at the London School of Economics, where Oppenheim, Pearce Higgins, Sir Arnold McNair and Professor Lauterpacht have taught International Law; and Sidney Webb, Graham Wallas, Professor Laski, Sir Ivor Jennings and Professor Robson have discoursed on the British Constitution and Constitutional Law. I have, therefore, had full opportunity not only to watch proceedings, but also to

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inhale the public-law spirit generated by these distinguished pioneers.

There are one or two things which I should like to make clear to you before I get down to my subject. The first thing is that a law degree in England is not a professional qualification. A person who has taken such a law degree may get his period of apprenticeship under articles to a solicitor reduced from five to three years and he may obtain exemption from the greater part of the solicitors' Intermediate (or First) Examination; but that is all.[1] And a bar student who is certified by his university to have reached a prescribed standard in certain subjects at the university examinations may get exemption from the examinations in those subjects conducted by the Council of Legal Education. It follows that university law degree courses are planned as academic courses and not as instructional courses for a profession. Members of the legal profession may have been consulted during the planning of such courses but their influence in the framing of them is not a dominating one.[2] The Council of Legal Education and the Law Society have their own professional law schools in London to prepare their students for their professional examinations; but attendance at such professional schools is not compulsory, except that the Law Society requires prospective solicitors to attend law classes for a year at a university or its own school.

In planning degree courses in subjects of a technological character, British universities generally take the broad line that the work of a university in technology should be more related to fundamental science than is necessarily the case in a technical college. The courses, the universities would say, should be more widely based on higher standards of fundamental science and contain a smaller element of training related to immediate or special work in industry.

I believe that this kind of division of work would be accepted in British university circles as desirable in legal education. Accordingly, it would be thought inappropriate to include in university undergraduate courses the study of a restricted field of law pursued to a high technical level. The university graduate who had followed

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[1] A graduate in any faculty (and not merely a law graduate) is entitled to this reduction of the period of articles from five to three years.

[2] I make this point in view of the question asked by Chief Justice Vanderbilt in Men and Measures in the Law, at page 57, "whether the law schools [of the U.S.] have not erred in the past in letting the legal profession, through the boards of bar examiners, shape the curriculum, just as our business civilization has in turn too largely dictated the standards of the profession."

a wide course might be less useful in a solicitor's office, or in a barrister's chambers, or in a government department, until he had gained more practical experience; but he would be expected to contribute more effectively as social or economic or constitutional conditions changed or new problems arose. While the professional lawyer, like the technologist, would normally learn *how* to do a thing, the university-trained lawyer should be taught to interest himself in the *why* and the *wherefore* behind the *how*. In his valedictory address on relinquishing his chair at Oxford in 1893 Lord Bryce summed up the position in this way:

> Over and above that general liberal education which it is the main business of the University to give, and on which neither law nor any other special study must be suffered to infringe, it is her duty to handle professional studies in a wide and philosophic spirit, to raise them above mere gainful arts into the domain of science, to draw to herself the ablest of those who are entering those professions, the men from whom each profession receives its tone and its temper.

In brief, there is no attempt in the university law schools in Great Britain to turn out the finished professional article ready on his own to appear in court for a client or to draft legal documents. Moreover, the professors and most of the other teachers of law at the British universities are full time teachers. In some universities a number of practising lawyers assist the full time professors and other teachers.

The second thing which I should like to make clear is that the number of professionally qualified lawyers is not nearly so great in England and Wales, proportionately, as it is in the United States. For example, it has been estimated[3] that in May 1939 there were 5,368 lawyers engaged in legal positions in the federal government of the United States and that this number had increased to 8,500 in 1943. It has also been stated that the Corporation Counsel's Office in New York City has a staff of over 550 attorneys and that the Department of Law of New York State has nearly 300. Moreover, in North America the lawyer is regarded as being from the outset an indispensable member of any group, whether governmental, business or social, that actually negotiates agreements or understandings. He is not merely, as is so often the case in Britain, an expert who is called in when the negotiations are concluded to give legal form to discussions from which he has been absent. Up to the beginning of World War I, the idea of employing professional economists on the business of government in any sphere seemed hardly to have

[3] Esther Lucile Brown: Lawyers, Law Schools and the Public Service (1948) 28-29.

occurred to anyone. And the same is in great measure true of the employment of lawyers. The inclination was to rely to a large extent on civil servants and to be content with gentlemen's understandings without resorting to legal forms.

A third consideration is that in a country with a federal system of government constitutional issues may be involved in many more cases than is true in a country with a unitary form of government. That was made only too clear to us in Britain recently during the *Australian Banks* case before the Privy Council. On the other hand, the rise of the welfare state and the expansion of the process of nationalization has brought the British citizen into more frequent and involved contacts with government than he has ever been before.

My main theme is that public law (in which I include in particular constitutional law, administrative law and to some extent public international law) has not in the past occupied a very significant part in our legal education and that for the future a number of pressing reasons dictate that it should command a more prominent place in our curricula.

Constitutional law in most English universities takes its place as a compulsory introductory course for the law degree. It is intended to occupy a third or a fourth of the student's time during his first year. He will get little if any opportunity thereafter to pursue further his studies of the subject. In the University of London course, for example, there is no second or third year course in constitutional law; but the student may take Constitutional Laws of the British Empire or administrative law or international law as an optional subject in his second or third years. Our experience is, however, that these options are taken by overseas students and students intending to enter government service and not by those who intend to enter practice. Administrative law is a comparatively recent introduction into the optional list of courses at the universities and I believe that it is steadily growing in popularity. But it is entirely ignored so far as the professional law schools and the professional examinations are concerned.

On the other hand it is interesting to note that university students of political science and government tend to crowd into the lawyers' lectures and courses on constitutional and administrative law, and these subjects seem to me to be just now in danger of becoming the exclusive preserve of political scientists. The direct results of the insignificance of public law among the university law courses are a lack of interest on the part of lawyers generally in public affairs and foreign relations and a general tendency for lawyers to ignore, so far as they can, the existence of administrative regulations and the problems they create. So long as the attention paid to the teaching of public law at the universities as part of the law degree courses remains scant, the subject itself will tend to be unexciting to lawyers. I think it was Holmes who said that taught law is tough law. There seems to me to be far too much flabbiness and too little toughness about many aspects of our public law. More attention directed to it at the universities would at least tend to improve its form and its general attractiveness.

The growing complexity of human affairs has generated endless new relations between man and the state, and between the state and a variety of social groups. The nature of these relations has to be comprehended, their growth studied, their underlying principles understood and the lines of their possible development appreciated. The university law school cannot wash its hands of the responsibility for its share of these studies. It cannot by default relinquish the task to the political scientist and the sociologist. I should like to refer to three examples of particular concern to us in Great Britain at the present moment.

The first I will take from the field of nationalization. In the course of the last four years a number of statutes have been passed for nationalizing or taking over control of certain industries and public services. This was done by legislation following certain broad patterns that had been shaped spasmodically during the late nineteenth and early twentieth centuries. When one looks back, one cannot but be amazed at the fact that these great political and constitutional changes, directly affecting so many citizens, had been preceded by so little legal research into precedents and so little general discussion among the legal profession of the legal issues involved. Surprisingly little attention had been paid by law schools to the problems. The how, and the why and the wherefore of the changes had, to a very large extent indeed, been left to others to discuss and to determine.

The second example is the growth in Great Britain of what has been approximately described as the welfare state through the extension of the social services. Under the state contributory scheme for national insurance the citizen makes his weekly contribution and becomes entitled to a number of benefits—medical attention, dental treatment, spectacles, wigs, accident and unemployment insurance, pensions (widows' and old age) and even funeral or death benefits. All these changes have brought about direct relationships between the individual and the state in place of numerous arrangements, contracts and understandings between individuals and private organisations. In this second example there could be included also a large mass of other social and labour legislation with most of which lawyers are altogether unfamiliar. Indeed the working man and his wife themselves are often much more knowledgeable about this field than are many lawyers; and for advice on many points in this branch of the law they tend to turn to trade union agents and social workers, and particularly to citizens' Advice Bureaus. I am wondering whether the new Legal Aid and Advice Act of 1949 will not bring about some change in this subject.

My third example is that new organisation known as Western Union. The costly lessons of two world wars and the general desire for better defence against aggression have forced the Western European countries, and Great Britain among them, to form a Union, now known as Western Union. Hitherto this Union has been in the main concerned with the organization of military, naval and air forces for defence; but in due course there will no doubt be pressure to include other fields of activity, such as finance, money, trade, citizenship, immigration and social services. The Union involves the forging of new constitutional links, and a possible fusion in some spheres of constitutional and international law.

These three new developments alone would in my view warrant an urgent demand for greater prominence being given to public law in our university law schools; but there are other considerations that seem to me to have almost equal weight.

The great pressure of economic forces after the recent World War has necessitated in our respective countries the issue of a large number of governmental regulations relating to internal and external trade. This has added greatly to the area covered by administrative law and international law. International economic relations have gradually moved from the field of private and non-organisational relations into the field of public and organisational relations. State interference and intergovernmental relations in the economic field have ceased to be the exception and have become the rule. Numerous bilateral and multilateral economic treaties and a number of international economic organisations have come into existence and call for careful examination and study. A new branch of international law has made its appearance; and both a third year course and a post-graduate course in the subject (under the title International Economic

Law) have been added to our list of optional courses. These have already established themselves as popular choices with the economics students who specialize in international trade.

It is not too much to say that the future of British local government is in the balance. For many years successive governments have shelved the issue of its reform and there are few, if any, of our leaders who have any clear idea as to possible ways of remedying the present situation. So far as our university law courses go, the subject of local government law is almost completely neglected and local government itself is almost entirely studied in the departments of political science. The subject may be taken as an optional subject in the solicitors' final examination; but it is taken almost entirely by those who intend to enter local government service.

I had an opportunity last night to draw attention to some steps that are being taken to reform "lawyer's law" in England and to the need for leadership among lawyers in planning and effecting such reforms. I referred in particular to the committee under Lord Porter's chairmanship which has recently reported on amendments to the law of libel. Two fundamental constitutional issues will be in conflict when legislation is introduced. On the one hand will be the priceless right to defend one's reputation, and on the other will be the right, equally priceless in a democratic society, to express one's opinions, whether orally or in print, freely and without fear.

In all these spheres there is need for study, and further study, by law teachers and law students at the universities. There is need for a special study of the procedure of administrative tribunals. The general impression is that there are as many methods of procedure as there are tribunals, with the result that there is much confusion. There is need also for a special study of the system of appeals from administrative tribunals. If more general interest were taken in these subjects both at the seats of learning and among members of the profession, measures of reform would follow without undue delay. I would be hiding my head in the sand if I were not to point out the main obstacle in the way of giving wide recognition to public law in our law courses. This obstacle I should observe has little relation to the merits of the subject as an element in the training of students or as a field for research. The main obstacle is that the curricula of our university faculties and professional law schools are so tightly packed with subjects that it is difficult to make more room for subjects which have recently been growing in importance. The burden already borne by the student is such that to add to it almost amounts to cruelty; and in any case there is always a time-lag in securing desirable reform.