THE TEACHING OF INTERNATIONAL LAW

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I have been out of university law teaching, as you very well know, for several years—not many, but several—and so I come back with all my original prejudices fully refreshed through absence.

I had the opportunity a few years ago of preparing the United Kingdom National Report on the Teaching of International Law for a UNESCO study which was later a publication in their "University Teaching of Social Sciences" series. In the UNESCO study I surveyed such information as I could obtain (which, as you can imagine, knowing law teachers, was obtained very reluctantly in many cases) on the teaching of international law in this country, and the result was a rather gloomy and certainly a very patchy picture. The kind of criticisms that one could make of the teaching of international law in this country in 1964 would occur, I imagine, to most of you today: very poorly structured courses, very often grossly inadequate facilities, certainly little coherent post-graduate effort, and a polarization of the real intellectual thrust in the field as a whole into two centers. I will not, in order to spare the blushes of the people present, indicate where those two centers were, nor will I indicate whether one of them was in the city in which we now find ourselves. But the remainder of the country outside the two centers had rather a poor picture to present.

I wondered whether I should this evening try to make a conspectus of the improvements that have occurred in certain areas since 1964. But I decided in the end that I would prefer within the time limit which Rosalyn Higgins has imposed upon us (very sensibly) to say something about two central and related problems which I think are of really great urgency to law teachers and of course to teachers of international law. One concerns the reform of legal education in this country, and the other concerns the place of international law teaching in it.

As you know, there is a considerable controversy over the relationship between professional training and legal education in this country. This has been the subject of a recent Report by the Ormrod Committee and is likely to lead in the next two or three years to a substantial debate in which we shall all be involved. This is based on the fact that there has

been a very great expansion in recent years of law teaching in the universities in this country and also in colleges of higher education. Perhaps our Amercan friends may find the figures startlingly small, but we now have reached the massive total of something like 1,800 students as an annual intake figure for university law students in England and Wales. (Anyone who has had the opportunity, as I have, of studying in the University of California or in the National University of Mexico will realize how startling is that figure.)

The Ormrod Committee projection (you see, we are even making projections in this country now!) is that 2,000 graduates per annum will be turned out at the end of the next quinquennium and that the profession will absorb about 1,300 of those.

The central problem in the Report is how education is to be related to training. There seems to be an acceptance, belated but nevertheless welcome, that apprenticeship to a learned profession, which was always a shibboleth in this country, whilst it may be indispensable, is not sufficient by itself; and there is a welcome concern in the Report with how English legal education is going to evolve in an integrated way and to compare alongside the great improvements in the *formation juridique* (in the French system) and in the *Rechtsbildung* (in the German system) that have occurred in recent years.

The Ormrod Committee recommends that academic and vocational training should be integrated into a coherent whole—not perhaps you might say, a startling recommendation, but one that has taken nevertheless many years to reach. It suggests that there should be stages—an academic stage, a professional stage (which would include both institutional training and in-training), and then continuing education and training opportunities afterwards.

Now, I think that people who teach subjects like international law will be most concerned with the recommendation that a law degree, according to the Ormrod Report, obtained after at least a three-year full-time university course will in the future be recognized per se as the normal way of completing the academic stage of that person's formation; and to that extent it will form part of the qualification that he or she has to practice, and it will not merely be in the future as it is now the basis for a selective entitlement to exemption from some of the professional examinations. Of course, this is only a recommendation, and like others in the Report, it is going to be subjected to considerable discussion in a process of consultation that has been proposed in the Report as between the principal interested parties.

The purpose and the object of the three-stage proposal and the "integration," if one wants to put it that way, of the university degree as a central part of the whole program is of course to be welcomed. But I certainly feel that there is a very real danger that if implemented, this recommendation, when applied to the normal three- or four-year law degree courses in this country, will be in very many places likely to lead to courses being structured to meet the needs of the intending practitioner, as those needs are seen and interpreted by the profession. Thus the teaching of the less obviously vocational subjects such as international law and in this country, comparative law, conflict of laws, and jurisprudence could suffer. I also think that a consequence of the implementation of this would mean that the newer subjects could suffer. I include amongst those—and the word "new" of course in the English context, as Professor McDougal will know, is very relative—European Communities law, labor law, social legislation law, and urban legal studies.

The law teachers' association in this country, the Society of Public Teachers of Law, showed itself aware of this problem in the submission that it made to the Ormrod Committee. There is to be an Advisory Committee on Legal Education which I think should be asked by teachers of international law and of the other subjects I have mentioned to look very closely at the pressures in this area.

So far, what I have said relates to the "pure law" degree courses. I happen to be particularly concerned about the fate of universities which have what are called "mixed degree" courses—those universities, such as my own, which endeavor to introduce students during part of their course (perhaps as in the case of my own, for the first year of a three-year course) to subjects and to disciplines other than strictly legal ones. Now, the Ormrod Committee recommends that such universities will have to include at least eight law subjects, including the five core subjects (tort, contract, property, constitutional law, and crime), if they are to be regarded as eligible for accreditation as the first academic stage.

I am concerned about the fate of the "mixed degree" courses because I am convinced of the necessity of our being able in universities to continue to experiment with interdisciplinary and multidisciplinary courses. I am anxious that we should move away from what we have often shown in the past to be a predilection for a rigid and a traditionalist attitude to the province of international law.

So I am amongst those, a minority in this country, I believe, but

perhaps a growing one, who want to try (walking first and then running later) to deepen our treatment of international law where it overlaps with other legal subjects (such as jurisprudence, constitutional law, conflict of laws) and other disciplines (international politics, international economics, sociology, etc.). The pressures that I see emerging from a successful implementation of this simple recommendation in the Ormrod Report are likely, I think, to inhibit rather than to encourage those possibilities of experimentation.

Now, as far as the content of international law courses is concerned, I would only like (because I see that my time is running out) to add a very few words which link up with the last comment I made on the danger I see inherent in the Ormrod Proposal.

I firmly believe that we need to look, as law teachers, at law generally and at international law in particular much more widely than is done traditionally in this country. We want to look at a social phenomenon and not at a catechism to be annotated. I want to try to ensure that students can look not only at rules through their operation in concrete dispute situations, but at their working (I mean here at their high- and low-level working) in day-to-day practice. So I want to see encouraged in courses that I am concerned with, an empirical approach, an investigation of international law as a means of communication rather than as a set of rules, and as a function rather than as a group of institutions. As a very high priority, I would want to stress as an object in elementary undergraduate courses an understanding of the nature and function of international law as it is compared with other means of controlling and regulating international relationships. To put it another way, I would like to make an attempt to impart some understanding and appreciation of the values and limitations of the word "legal" in the international arena.

As far as the areas that are chosen for study are concerned, perhaps I should admit a preference for certain problems of peace-keeping, for inquiry into problems relating to the evolution of regional international organizations, particularly those with a politico-economic integration objective in Europe, in the Americas and in Africa, and for the international protection of human rights. I do not in saying this wish to set aside or diminish the classical province of international law, as so many of my colleagues in this country tend to think whenever these kinds of argument are advanced; nor do I wish to abandon legal argument in favor of political posturing or ill-digested economic theories. It is simply

an attempt, I would believe, to move toward an interpretation and an understanding of the role and function of international law in the contemporary international society that we have for far too long in this country chosen to ignore in favor of a predilection for a much more traditionalist and institutionalist approach.