4. International Law in the Prairie Provinces

University of Manitoba

From 1872 until 1913 legal education in Manitoba was dependent almost entirely on apprenticeship, supplemented by private study.143 In 1913 the Law Society of Manitoba organized an improved programme of lectures for intending members of the bar and in 1914 the society entered into an agreement with the University of Manitoba to create and operate jointly the Manitoba Law School. The school's expenses were to be shared equally by the two parent bodies and its operations were to be supervised by a board of trustees consisting of two appointees chosen by each body and a chairman elected by the appointees. The school was modelled on the Osgoode Hall Law School in Toronto and offered a three-year lecture course.

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This article is the third of a trilogy on the history of the teaching of international law in Canada. The first was published in Volume XII of the Canadian Yearbook of International Law 67-110 (1974) and the second in Volume XIII, ibid., 255-80 (1975).

143 Though in 1885 the University of Manitoba had established a three-year reading course in law leading to the LL.B. degree, few students attended and the course soon came to an end. For essential background information, see Dale and Lee Gibson, Substantial Justice: Law and Lawyers in Manitoba 1670-1970 152 (Winnipeg: Peguis Publishers, 1972).
leading to both the LL.B. degree and admission to practice. As at Osgoode Hall, enrolment at the law school was not regarded as a substitute for service under articles. Classes were held in the morning and late afternoon and students were expected to carry out office duties during the remainder of the day.\textsuperscript{144}

International law was taught in the Manitoba Law School as early as the 1915-16 session, that is, in the year following the formal opening of the school on October 5, 1914. The instructor, W. F. Osborne, was a professor of English and French at Wesley College, "passionately involved in all aspects of international affairs, usually what in those days would have been called 'on the left'."\textsuperscript{145} A strong supporter of the loyalists in the Spanish civil war, a strong advocate of League of Nations sanctions against Italy and the common front in France, he was not obviously a full-time scholar of international law. He was pressed into service at the Law School for a short period when no suitable instructor was available.

Marcus Hyman, an Englishman who had studied international law under T. E. Holland at All Souls College, Oxford, followed Osborne from 1916 until 1920. Hyman’s notes of Holland’s lectures, dated 1905, indicate that Hyman dealt in a general way with war, belligerency, and peace.\textsuperscript{146} Hyman was “a fascinating character,” observes David Golden, “an engaging combination of socialist and imperialist . . . one of the finest orators whom I have ever heard and I have heard many great orators. He had a magnificent command

\textsuperscript{144} There was one full-time instructor, R. P. Hills, an Englishman, and seven part-time lecturers. The law school was only pro forma a faculty of the university: Gibson, \textit{op. cit.}, 215-17, 247-51, 268-70, 272-73, 288-90, 295-97, 302-5, 316. “The Law School constituted yet another variant on the relationships the university had formed with professional bodies, relationships determined not so much by academic considerations as by the professional predilections and the strength of the various bodies”: W. L. Morton, \textit{One University: A History of the University of Manitoba 1877-1952} 98-99 (Toronto: McClelland and Stewart, 1957). See too E. K. Williams, “Legal Education in Manitoba: 1913-1950,” (1950) 28 Can. Bar Rev. 759-80, 880-92. For a concise historical narrative, see the booklet entitled \textit{Robson Hall, Faculty of Law, University of Manitoba}, published on the occasion of the opening of the new law building on September 15, 1969.

\textsuperscript{145} Letter from David A. Golden, dated July 17, 1973, at 2. Mr. Golden, now president of Telesat Canada, was a part-time member of the staff from 1947 until 1951. For biographical details on W. F. Osborne, see A. G. Bedford, \textit{The University of Winnipeg: A History of the Founding Colleges} 29, 52, 129 (University of Toronto Press, 1976).

\textsuperscript{146} His notes are available for inspection in the Archives of Western Canadian Legal History, Robson Hall, University of Manitoba.
of language and could deliver a speech that was almost letter perfect with no notes whatsoever.... [He] sat for some years in the Manitoba legislature where he was very effective in debate but certainly not in ever getting any of his ideas adopted.... He was poor at compromise, poor at understanding human nature, and extremely intolerant of lesser intellects — that meant, of course, that he was intolerant of almost everyone.... I would have thought that his lectures on international law would have been extremely stimulating.”

A complete reorganization of the curriculum took place in 1921 under Joseph T. Thorson, the newly appointed dean. The most dramatic change was the adoption of a model law school curriculum proposed by the Canadian Bar Association and a reduction in the time required to be spent in concurrent articling. Thorson took the view that the Law School “should provide instruction and opportunity for students not only in the subjects that might be called the practical subjects but also in those that might be termed academic ones. This was one of the reasons why I found places in the curriculum for such subjects as Roman Law, Jurisprudence and Public International Law.”

Thorson believed that “the subject of Public International Law” should and would become “an important subject for the students who wished to have the LL.B. degree.... I was also influenced by the fact that the three subjects to which I have referred were included in the B.A. course in Jurisprudence at Oxford University.”

148 Gibson, op. cit. supra note 143, at 248-52. This modest experiment with full-time study was brought to an end eight years later when concurrent articling was fully reinstated.
149 Letter from Joseph T. Thorson dated June 12, 1972, at 2 and 3. Thorson was born in Winnipeg in 1889. He was educated at the University of Manitoba (B.A. 1910, LL.B. 1912) and Oxford (B.A. in Jurisprudence 1912). Called to the bar in Manitoba in 1913, he was a part-time lecturer at Manitoba Law School from 1919 to 1941 and dean from 1921 to 1926. He left academic life to enter federal politics in 1926. In 1938 he was a delegate to the Assembly of the League of Nations. In 1952 he was selected president of the International Congress of Jurists, Berlin. Thorson was Minister of National War Services, Ottawa, 1941. He was appointed president of the Exchequer Court of Canada on October 6, 1942, and held that office until statutory retirement at the age of seventy-five on March 15, 1964. See Canadian Who’s Who, vol. 13, 1973-75, at 988. See too Val Ross, “Thorson’s Last Stand,” Weekend Magazine, October 9, 1976, at 25.
150 Letter from Joseph T. Thorson dated June 12, 1972, at 3. Thorson’s influence on the curriculum appears to have been short-lived: public international law did not become “an important subject”; the Manitoba Law School was for
resultant new course in international law was offered by H. W. H. Knott who, with Frederick Read, was the other full-time member of faculty. Knott continued until 1925, when the lectures were given by C. Rhodes Smith.¹⁵¹ Little is known of what Osborne, Hyman, or Knott thought about international law or of their influence on students. It is known, however, that they used W. E. Hall's textbook and Norman Bentwich's Leading Cases and Statutes on International Law and that, after its initial offering in 1915, the course was taught in third year.

C. Rhodes Smith was born in Portage la Prairie in 1896. He graduated with a B.A. from the University of Manitoba in 1916 and an LL.B. in 1923. After three years' service in the Canadian and British armies during World War I, he was appointed a Rhodes scholar at Oxford, where he studied from 1920 until 1922, following, among others, the lectures in international law given by Sir Erle Richards.¹⁵² He received B.A., M.A., and B.C.L. degrees from Oxford and in 1923 was called to the Manitoba bar. For fourteen years, from 1925 until 1939, except for the year 1929-30, when Dean E. H. Coleman filled in, he lectured in international law as a part-time member of the staff.¹⁵³

¹⁵¹ Knott was "a learned and articulate, but hopelessly intemperate man, whose brief tenure at the law school left those who came in contact with him rich in anecdotes." His "turbulent association" with the school came to an end in 1925: Gibson, op. cit. supra note 143, at 248-49. We know nothing about Knott's course in international law or his attitude to the subject.


¹⁵³ E. H. Coleman was appointed dean in July 1929, with freedom to practise in the afternoons. He left the law school in 1933 to take up the position of Under-Secretary of State, to which he was appointed by Prime Minister R. B. Bennett. Though "an urbane intellectual with a mania for reading," he was really a part-time dean. We know little about his academic interest in international law. He served as Canadian Ambassador to Cuba (1950-51) and to Brazil (1951-53). Biographical details appear in Who's Who in Canada 1956-57, at 964; Canadian Who's Who, vol. 8, 1958-60, at 216.
Smith's course was a one hour a week, twenty-seven hour compulsory credit for fourth-year students. It was given in conjunction with the Law Society of Manitoba and was based on the recommended texts: W. E. Hall's *International Law*, Norman Bentwich's *Leading Cases*, and Lawrence B. Evans' *Leading Cases*. The bulk of the course was devoted to the laws of war, in particular the Hague Conventions of 1899 and 1907 and the Prize Court decisions of Lord Stowell. On the "peace" side, attention was given to topics such as jurisdiction, diplomatic and sovereign immunities, the structure of the League of Nations, the Permanent Court of International Justice, and the International Labour Organization. One of Smith's students during this period, Samuel Freedman, was later to succeed him as chief justice of Manitoba. There were about eighteen students enrolled in the course. One of these was Maxwell Cohen, who has recently observed that "in a setting where the general patterns of curriculum and teaching were heavily bar-oriented, and the students part-time, there was not too much room even for an ambitious teacher to make many wide-ranging intellectual demands on his students." Nevertheless, "a great deal of it stuck, which is more than is often admitted for the old-fashioned, black-letter days after all."

In 1939 the course was dropped from the curriculum as an economy measure. "Several other courses which were regarded as academic in nature, were dropped at the same time. I was shocked at the removal of International Law from the Law School curriculum at that particular time," wrote Smith, "so much so that I went to see the President of the University of Manitoba, the late Sidney E. Smith, who was a member of the Law School Board of Trustees. . . . My own opinion, in light of the world condition at that time, a few months prior to the outbreak of World War II, was that, instead of dropping the subject of International Law, it should be made available to everyone attending an institution of higher learning."

Student interest in the retention of the course was demonstrated when a group of students approached Smith to express their disappointment at the suspension of the course and to request that

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154 In 1927 the law course was lengthened to four years and the concurrent articling system in the third and fourth years was reinstituted. "The previous program had in the trustees' opinion been too theoretical in nature": Gibson, *op. cit. supra* note 143, at 249.


156 Letter from C. Rhodes Smith dated April 21, 1972, at 2.
he deliver a series of informal lectures on Saturday mornings. This he did, and the majority of students in all years responded by attending. During World War II, the number of law students declined—there were only two graduates in the class of 1944—and the Law School budget was reduced.

It was not until 1946 that formal classes in international law were revived. Dean G. P. R. Tallin, formerly a Manitoba Rhodes scholar and Winnipeg practitioner, offered a one hour a week, two-term course to third-year students continuously from 1946 until 1965. The reference materials included Oppenheim, G. Schwarzenberger, Stark, L. C. Green's *Cases*, Pitt-Cobbett's *Leading Cases*, and Henry Wheaton's *Elements of International Law*. Although Tallin taught the course for nineteen years, mostly as a full-time member of the staff, he was teaching other subjects as well and, it seems, "had no particular interest in international law." His heavy administrative duties and extensive community involvement prevented him, like Rhodes Smith, from contributing to the published literature in the field. Tallin retired in 1964 and was replaced as dean by C. H. C. Edwards, who has continued in that capacity to date.

Smith later served as Minister of Labour, Minister of Education, and Attorney-General in Manitoba; Chairman of the Restrictive Trade Practices Commission, and Chairman of the Canada Labour Relations Board in Ottawa; Chief Justice of Manitoba 1967-71; and Chairman of the 1973 Commission of Inquiry into the Forest and Industrial Complex in Northern Manitoba. In 1968 he was awarded an LL.D. degree *honoris causa* by the University of Manitoba. Unfortunately Smith found no time to write in the field of international law. For his published opinion "that the aim of legal education is fundamentally practical," see his essay "Legal Education: A Manitoba View," (1935) 13 Can. Bar Rev. 404-14. His entry in *Canadian Who's Who*, vol. 13, 1973-75, at 923 makes no reference to his academic interests.

The length of the school term was shortened, lectures were curtailed in some courses, and the school’s calendar was reduced to a mimeographed bulletin: Gibson, *op. cit. supra* note 143, at 272. The situation was similar in other Canadian law schools.


A biographical note on Tallin appears in *The Winnipeg Free Press*, Monday, June 4, 1945. The same information appears in (1945) 17 Manitoba Bar News 39. "Pete Tallin bore an uncanny resemblance to Mussolini both in face and girth. He kept extremely fit and used to spend his lunch hour exercising as he ate an apple as his mid-day meal. One of his more unusual
From 1965 until 1967 international law was offered as an optional subject by S. J. Langer for two hours a week in both terms. From 1967 to 1976 the course remained an elective third-year subject under John M. Sharp, a first class honours graduate of Cambridge, an International Law Fund scholar at the British Foreign Office, a former lecturer in international law at the University of Wales (1964-67), and the first director of the Legal Research Institute of the University of Manitoba. On the average, about thirty students elected to take the subject, which dealt with the usual topics. The reading list included J. G. Castel’s *Cases*, J. L. Brierly’s *The Law of Nations*, C. W. Jenks’ *The Common Law of Mankind*, Hans Kelsen’s *Principles of International Law*, D. W. Greig’s *International Law*, and Marjorie Whiteman’s *Digest*. Though there was no second course, such as existed in several other Canadian law schools, Sharp’s competence as a scholar and his popularity as a witty and compassionate teacher attracted increasing student interest and attendance. His death in 1976 at the age of thirty-five was a grievous loss to the development of the subject in Winnipeg and throughout the country.\(^{161}\)

In retrospect it would appear that the vigorous intellectual life of the city of Winnipeg, “the Bull’s Eye of the Dominion,” the location of three powerful newspapers, the birthplace of the Canadian Institute of International Affairs, the home of the grain exchange, the cultural centre of the prairie provinces, and the place of origin of many persons prominent in the public life of Canada, was not in the early days fully reflected in any significant scholarly interest in international law.\(^{162}\) The subject attracted little attention in a curriculum that was, until recently, the child of the working bar. Smith and Tallin kept the lamp burning, but it was only within the last few years, under the energetic leadership of the late John M. Sharp, that the light began to brighten.

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occupations was to invite people to jump up and down on his abdomen which, although ample, was extremely strong”: letter from David A. Golden, dated September 17, 1976, at 2.

\(^{161}\) Though John Sharp published extensively, most of his writings were on torts and commercial law. He was preparing to return to international law, his favourite field, when illness overtook him. An obituary notice appears in *The Winnipeg Tribune*, June 16, 1976.

The University of Saskatchewan was established in 1909 and the College of Law, created in 1912, admitted its first students in 1913. The university had included among its earliest professorial appointments two Dalhousians, Arthur Moxon and Ira Allen MacKay, both of whom were trained in law. MacKay and Moxon formed the nucleus of the law faculty that began to function in 1913. In 1911, however, MacKay had offered a course in international law, the first of its kind in any division of the university, in the political science department. Although the facilities were not available throughout, it seems that during these earlier years, specifically from 1915 to 1917, courses in international law were offered by the political science department and were open to law students on an elective basis. This option must have been dropped in the law curriculum of

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163 A short history of the College of Law can be found in the calendar of the College for 1972-73, at N-3-7, and in the brochure entitled “College of Law 1913-1967,” distributed at the opening of the law building in 1967. Brief references to the College appear in Arthur S. Moxon (ed.), Saskatchewan: The Making of a University 70, 97 (Toronto: University of Toronto Press, 1959). For F. C. Cronkite’s tribute to Arthur Moxon, see J. A. Corry, F. C. Cronkite, and E. F. Whitmore (eds.), Legal Essays in Honour of Arthur Moxon ix-xii (Toronto: University of Toronto Press, 1953). See too the note on Moxon in (1963) 28 Sask. Bar Review 107; and the warm appraisal of former Prime Minister John G. Diefenbaker: “He could have touched the heights in law. He had a great heart, and his knowledge and appreciation of jurisprudence brought that subject to life for us. No student I know who was privileged to have had him as professor but would agree with me that no one was his equal as a teacher. Certainly, he inspired in his students a determination to emulate his erudition, however small our success in the attempts”: John G. Diefenbaker, One Canada: The Crusading Years 1895-1956, at 80 (Toronto: Macmillan of Canada, 1975).

164 For biographical information on MacKay, see supra note 14. “No one had a greater influence on me in university than he. He was my professor in political science and law, and he had that quality essential to a great teacher, the power to inspire. He was a man of much wisdom and I remember many of his lessons. He judged that a people can never be made good by legislation, a point that many of us never learn. His words come back to me when I think of the Morgentaler case: ‘The law is not what should be; the law is what the consensus in the community ordains that it shall be....’ But Ira Allen MacKay was also a man often remote from the ordinary things of life. On one occasion, he came goose-hunting with three or four of us. We dug the pits, a surprise to him, and put out the decoys. Before long, a flock of geese began their approach. When they were about a hundred yards away, he stood up to proclaim: ‘Never, in all my life, have I ever before realized the meaning of the poetry of motion.’ That was the end of his goose-hunting with us!”: John G. Diefenbaker, One Canada: The Crusading Years 1895-1956, at 79-80 (Toronto: Macmillan of Canada, 1975).
1917-18 since there is no mention of it in the general university calendar for that or subsequent years. Indeed, it is striking to find that after 1917 no course in public international law was offered in any division of the university until 1950, when the College of Law included the subject in its programme of studies for the first time.\textsuperscript{165}

In 1950 D. Gordon Blair offered an optional course in second year. Blair had worked under John E. Read in the legal division of the department of external affairs, had studied international law at Oxford, and had returned to Saskatoon to practise law. He was engaged to lecture on a part-time basis. "I cannot recall any significant conversations leading to the creation of the new course. It seems now like an idea whose time had come. Public international law was visibly more important; at about the same time other law schools in Canada were launching courses; and it seemed appropriate to give young lawyers some exposure to it."\textsuperscript{166} The new course, based on Oppenheim, J. L. Brierly's \textit{Law of Nations}, and P. C. Jessup's \textit{Modern Law of Nations}, was encouraged by Dean Cronkite and represented, according to Blair, another example of Cronkite's attempt "to break through the rather rigid mould of law school curriculum of the pre-war years."\textsuperscript{167}

In 1951-52, Charles V. Cole was appointed a special lecturer, full time, and replaced Blair in the subject.\textsuperscript{168} Cole, now an officer with the department of external affairs, gave an introductory half-year course, based on Brierly and MacKenzie and Laing. This course was compulsory for second-year students.\textsuperscript{169} Cole continued until 1955, when he left to join the department of external affairs in Ottawa. In 1955-56, the instructor was Hilton A. McIntosh, a graduate of the college who, after receiving his LL.M. from Dalhousie in 1955, was persuaded to provide the course on a part-time basis.\textsuperscript{167}

\textsuperscript{165} Professor W. H. McConnell, to whom I am indebted for having responded to many queries and for having checked all general calendars of the university from 1915 to 1962, provides this information in his letter of June 14, 1972, at 1.

\textsuperscript{166} Letter from D. Gordon Blair dated March 8, 1974, at 2.

\textsuperscript{167} Ibid., 2.

\textsuperscript{168} The teaching staff comprised four full-time professors and six or seven part-time lecturers from the local bar, a reasonably strong establishment for those days.

\textsuperscript{169} Cole recalls that MacKenzie and Laing's casebook was outdated; that there was no other suitable casebook to assign to students; and that library resources were inadequate: letter from Charles V. Cole dated May 22, 1973, at 2, 3. The situation would have been similar in other Canadian law schools.
basis, which he did until his departure for the department of justice in 1956. McIntosh, now assistant deputy minister (legislative programmes) in that department, gave the same course as Cole had given. He was followed by Otto E. Lang, later dean of the faculty (1961-68) and now minister of transport in the federal government.

In 1962, D. Colwyn Williams assumed responsibility for the course and, about the same time, took an active interest in the United Nations Association in Canada, of which he became national chairman. A man of effervescent personality, boundless energy, and incurable optimism, which survived a lengthy period of internment in nazi prison camps, Williams promoted and rationalized the international law collections in the library, taught the basic course, and became something of a one-man public relations officer for international law in the province. On his untimely death in late 1971, W. H. McConnell took over the introductory second-term course beginning in January.\textsuperscript{170} In recent years two half-term courses have been offered by Neil Cameron (and occasionally McConnell). The prescribed text has been Max Sorensen's \textit{Manual of Public International Law}, with J. G. Castel's \textit{Cases} as the primary reference. L. J. Romero has offered a course in international economic transactions.

The failure of the College of Law to encourage the study of international law during the first thirty-seven years of its operation can be attributed in part to the curiously ambivalent attitude of Frederick Clinton Cronkite, whose long tenure as dean spanned the thirty-two years from 1929 to 1961. Cronkite was an outstanding law teacher who inspired students to be interested in fields of law far beyond the ordinary range of legal practice.\textsuperscript{171} However, he took the view, shared by Arthur Moxon, his predecessor as dean, and probably by the then vast majority of law professors in Canada, that international law was essentially a matter of morality and political organization and could better be left to the faculty of arts and

\textsuperscript{170} Biographical details on Colwyn Williams appear in (1971-72) 36 Sask. Law Rev. 234.

\textsuperscript{171} A leading Canadian law teacher and a fine scholar, Cronkite held B.A. and M.A. degrees from the University of New Brunswick, and M.A. and LL.B. degrees from Harvard. He graduated from Harvard Law School in 1923, practised for a year in Woodstock, New Brunswick, and joined the staff of the law school in Saskatoon in 1924. His M.A. work at Harvard was in economics and international law, the latter under George Grafton Wilson. Professor W. H. McConnell's profile of Cronkite appears in (1974) 38 Sask. Law Rev. 375.
science. To use his own words, he simply "did not believe that Public International Law had a proper place on a Law School curriculum."\(^{172}\) Accordingly, the important early emphasis on public law, especially administrative and constitutional law, that characterized the programme at the University of Saskatchewan did not carry over to the area of international legal studies. And this is to be regretted. Cronkite was "not worried at the prospect of lawyers going into External Affairs without having had a course in Public International Law. The Department is loaded with precedents and you can trust the lawyer to find one to respect the integrity of the sanctified territorial state. . . . Despite all our idealism the so-called rules on international conduct yield to power when coupled with interest and unscrupulous courage. I'm quite pessimistic, and I'm not alone in this."\(^{173}\)

Despite this negative perspective, the absence of international law from the curriculum did not mean that the subject was completely ignored. Cronkite's compulsory course in jurisprudence, sociological and philosophical in approach, made reference to the concept of the territorial state and the primacy of international rules, and his annual examination in the subject included a standard question as to whether international law should be dignified with the title law.\(^{174}\) Constitutional law offered many possible analogies for world federalism. A public law seminar included one study on world government each year and efforts were made to stress in the teaching of constitutional law the desirability of extending the "rational order" characterizing the internal housekeeping of a federal state to the whole world.\(^{175}\) It is possible, therefore, that, despite his own testimony,

\(^{172}\) "In terms of your inquiry my perspective is negative. Speaking for the thirties, forties and fifties, no International Law was taught at Saskatchewan. This was for the reason that I did not believe that Public International Law had a proper place on a Law School curriculum": letter from F. C. Cronkite dated April 3, 1972, p. 1. Cronkite died April 27, 1973.

\(^{173}\) Ibid., 2.


\(^{175}\) Letter from F. C. Cronkite dated April 3, 1972, at 1; letter from W. H. McConnell dated June 29, 1972, at 3; and letter from B. L. Strayer, dated September 24, 1976, at 2: "It should also be kept in mind that the curriculum in the College of Law included, during his time, compulsory courses in legal history and in jurisprudence, a situation not I think very common among Canadian law schools. This reflected, I think, Dean Cronkite's views as to the importance of developing well-rounded lawyers. Again, this approach would have tended to favour the inclusion of public international law in the curriculum. I therefore am inclined to agree with your conclusions . . . [in footnote 177]."
Cronkite was making a virtue of necessity. "After all," observes Principal J. A. Corry, "three full-time law teachers had their hands full in teaching young people how to be civilized and how to use the tools of the trade."

In addition to the fact that Cronkite was in charge during the economic depression of the 1930's and the turbulent years just before and after World War II, when money was tight, qualified teachers hard to attract, and teaching loads excessive, any assessment of the situation should take into account the school's geographical location, far from the "international" life of the country, and the fact that many of the students, understandably concerned about the immediate future, doubted the practical utility of the subject. However that may be, the fact is that public international law has not in the past flourished on the Saskatoon campus.

University of Alberta

The University of Alberta opened in 1908, three years after the creation of the province itself, and in 1913, after negotiations between the university (whose president was then Henry Marshall Tory) and the Law Society of Alberta, a course of studies was established leading to the degree of bachelor of laws. The books and

176 Letter from J. A. Corry dated May 28, 1973. Corry writes as follows: "I left the Saskatchewan Law School in 1936 and have not had any detailed knowledge of it since. For the period from 1920 to 1936 your story is correct, and Cronkite's philosophy of the matter was as you state. Moxon, the Dean who preceded him, took the same view. How far they were making a virtue of necessity I cannot say."

177 Cronkite was ambivalent on the subject. His letter of April 3, 1972 first states that he "did not believe that Public International Law had a proper place on a Law School curriculum." But then he adds that, "a few years before my retirement I had gathered materials for a seminar class designed to show the necessity and feasibility of world law or, if you like, enforceable international rules of law. . . . I had recruited [Colwyn Williams] largely because of his known interest in international affairs." Obviously there is a contradiction here. Those with whom I have corresponded emphasize that throughout his career Cronkite maintained the need for an idealistic approach to law and society. Mr. Gordon Blair believes that "the extreme intellectual honesty of Dean Cronkite may have caused you to over-emphasize an apparent lack of interest in public international law during his deanship": letter from D. Gordon Blair dated March 8, 1974, at 3. My conclusion is that Cronkite, who was interested in world federalism, was not intellectually hostile to international law; he was preoccupied with the priorities of other teaching and administrative necessities.

178 Henry Marshall Tory was an extraordinary man. He became successively (from 1905 on) founder of McGill College in British Columbia, later to be-
subjects were prescribed by the Law Society, and changes could be made only with the consent of both parties. The examinations were to correspond with those conducted by the Society and the Society was to approve the examiners selected by the university to prepare and mark the examinations.  

Articled students from Calgary and Edmonton were accepted. At Calgary the chief lecturer was W. Kent Power, a Dalhousie law graduate of 1904, who had served as a law writer in New York, arrived in Calgary in 1912, and taken over the editorship of the Western Weekly Reports, "a post he filled regularly except for a period during World War I, until 1958, never missing an issue or a deadline." Power wrote a standard work on divorce and established the Canadian Encyclopedic Digest of Law (Western). At Edmonton the lecturing was carried mainly by Dr. Walter S. Scott, officially listed as Adviser on Legal Studies to the Law Faculty. Dr. Scott, a graduate in classics and English literature from Trinity College Dublin, had read law at The King’s Inn, Dublin, and at Lincoln’s Inn, London. Before settling in Edmonton, where he was counsel to the legislative assembly, Scott had served on the editorial staff of Halsbury’s Laws of England. He was a bencher of the Law Society of Alberta, vice-president of the Canadian Bar Association, and a member of the Conference of Commissioners on Uniformity of Legislation in Canada. Power and Scott were the original law “faculty” in Alberta.

See W. H. Johns, History of the Faculty of Law, The University of Alberta (Edmonton, 1973). This short statement, prepared for and distributed at the opening of the Law Centre on May 4, 1972, provides useful information about the school from 1908 to 1971 and shows how the teaching of law began as a kind of extension activity from 1913 until 1921, when the first intramural class was registered. The flavour of the early days is caught by W. F. Bowker in his articles on Chief Justice Harvey in (1954) 32 Can. Bar Rev. 933, 1118.


Neither had any notable interest in international law. Power wrote a short article, “Search and Seizure at Sea,” (1938-40) 5 Alberta Law Quarterly 182-89; Scott returned to England where he edited Craies Statute Law.
Teaching of International Law in Canada

The 1913-14 calendar of the faculty of law provided for a three-year programme leading to the LL.B. degree. The course of study, arranged on a part-time basis to meet the requirements of the Law Society of Alberta, prescribed as well certain “additional” courses which were necessary to obtain the degree.¹⁸² Examinations in the additional courses could be taken along with the examinations in the Law Society’s required courses or after the latter had been satisfied. For students wishing to sit the examinations in additional courses along with the yearly required examinations, it was recommended that international law be taken in the third year. The examination was based on the first edition (1904-7) of John Westlake’s *International Law*. In 1914 eight students were listed as receiving the bachelor of laws degree — whether they had actually taken a course in international law we do not know — and ten honorary (part-time) lecturers were listed on staff in each of the two cities. There were about one hundred and fifty lectures given annually in each city, scheduled in such a way as to permit the students to carry on their office work. We have no other information about the status of international law at this early stage, more precisely, as to whether a course of lectures was actually offered and, if it was, who the instructor might have been.

In 1921 the faculty of law was reorganized on a basis of full-time attendance.¹⁸³ The new plan offered a three-year LL.B. course or a six-year combined B.A.-LL.B. programme. It would appear that in 1921, in the sixth year of the combined course, lectures in public international law, based on W. E. Hall, were compulsory.¹⁸⁴ However, in the calendar for 1922-23, international law appears as a subject in the “degree with distinction” course. The LL.B. with distinction was awarded to students who, having achieved a high stan-

¹⁸² The University of Alberta, Calendar 1913-14, at 103-7.
¹⁸³ The first professor of law and, soon after his appointment, dean of the faculty, was John Alexander Weir. Weir died in 1942 and was succeeded by Malcolm Murray MacIntyre, who joined the faculty in 1930, established the Alberta Law Quarterly, resigned in 1944, and joined the U.B.C. Law School in 1948. Weir and MacIntyre, the only full-time teachers during this long period, taught about fifteen hours a week, an “exploitation almost inevitable in a university whose services had far outstripped its income.” MacIntyre’s tribute to Weir appears in (1942) 5 Alberta Law Quarterly 1, and W. F. Bowker’s tribute to MacIntyre in (1964) 3 Alberta Law Review 161. Interestingly, President Tory first asked Roscoe Pound of Harvard Law School to suggest an appropriate dean and Pound suggested Ivan C. Rand, who was unable to accept.
¹⁸⁴ The University of Alberta, Calendar 1921-22, at 85-86.
standard in first-year law, elected, with faculty approval, to take two of five additional courses during the second and third years and completed all courses with "a high standard of scholarship." Although there is no indication in the calendar that public international law was not taught in the law school, there is no evidence that it was. It may have been offered in the department of political science. No information is available as to the number of students involved (probably very few) or the identity of the instructor (if any). After 1944 no further references are made in the law calendars to a degree with distinction until 1949, when the earlier provisions were resumed. In 1952-53 these provisions seem to have been dropped permanently from the law calendar, though they were formally continued under the university's general regulations. It would appear, therefore, that while the Law School had inscribed international law "on the books" during the years 1913-14 and 1921-23, and may have provided occasional lectures to a handful of students during those years, no sustained involvement with the subject took place until 1963.

185 The four courses, in addition to international law, were legal philosophy, corporation finance, political science, and Roman Law: The University of Alberta, Calendar 1922-33, at 88.

186 This question remains unresolved. Professor Peter L. Freeman writes that in 1922-23 "International Law does not appear to be an offering of the Law School, but this year marks the beginning of the Degree with Distinction, whereby a student was permitted to take additional subjects, one of which was International Law. The Degree with Distinction was continued until 1961. There do not appear to have been any other offerings of International Law within the Law School to that date": letter from Peter L. Freeman dated June 21, 1973, at 1. In view of the fact that Weir was the only identifiable full-time professor from 1921 until 1930, when he was joined by McIntyre, and that, from 1930 until 1942, when Weir died, both men were handling most of the teaching of the traditional subjects, it is unlikely that time or energy was available for international law. The calendar certainly implies that the subject was available in the law school. But we have no record of an instructor being assigned or of students taking the course.

187 The degree with distinction was continued under the university's general regulations until 1960. In 1961 it became a university-wide degree: The University of Alberta, General Calendar, 1960-61, at 32 and 1961-62, at 31. No information is available about the status of this degree in the law school in recent years. The "last successful candidate was Mr. Morris Shumiatcher in 1941. Thereafter, chiefly because of lack of staff and perhaps of interest during and after World War II, the option was not taken. It does not appear in the Calendar for 1952-53 so I presume it was dropped in 1952": letter from W. H. Johns dated January 9, 1974. Professor W. H. Angus agrees: letter from W. H. Angus dated March 4, 1974, at 1.

188 "Clearly the subject of International Law was not offered in the curriculum in the 1959-1961 academic years": letter from Professor W. H. Angus dated March 4, 1974, at 1.
In 1963 Ivan L. Head returned as a full-time teacher to the faculty from which he had graduated in 1952. The programme of study in 1963-64 now prescribed a seminar in international law.189 This seminar, though offered the previous year as an option in the final year by Philip Ketchum, a practising lawyer, was directed by Head on a full-time basis for the next four years, that is, until his departure for Ottawa at the end of the academic session 1966-67. Based on Bishop's Cases, Head's seminar dealt with basic principles of international law. A paper was required of each student. In the session 1966-67, Head established an advanced seminar for graduate students studying for the LL.M. degree. This seminar, which also required a paper of each student, was devoted to problems with "characteristics peculiar to Canada's geography, history, governmental structure, and external relationships." The references were to J. L. Brierly's The Law of Nations and J. G. Castel's Cases.

Ivan L. Head was called to the bar in Alberta in 1953 and practised in Calgary until 1959, when he proceeded to Harvard Law School on a Frank Knox Fellowship. Following three years with the department of external affairs, serving in Ottawa, Kuala Lumpur, Rangoon, and Bangkok, Head taught at the University of Alberta from 1963 until 1967, when he was appointed associate counsel to the minister of justice for Canada (1967-68). He served subsequently as Legislative Assistant to the Prime Minister (1968-70), and Special Assistant to the Prime Minister (1970 to date). During his brief four-year teaching career, Head was recognized throughout the country as an imaginative and productive scholar with very contemporary intellectual interests. He addressed important public issues, constitutional as well as international, as evidenced by his influential essays on Canadian claims to arctic regions, the status of aliens in Canada, and offshore mineral rights.190 His radio

189 As in most Canadian law schools of the time, library resources were grossly inadequate. "We were struggling along in all fields and international law was not a priority when we first began to build up the law library starting in about 1962. I remember that at that time the total annual appropriation for the library was $3,600": letter from Professor Andrew R. Thompson dated March 18, 1974.

programme on "Asia Today" ran weekly for two full years and gained a listener audience greater than any other programme on the air at the same time in the province. A vigorously constructive force in Canadian academic law, Head's crucial contributions to Canada's international law policies, made mostly in Ottawa, were influenced by his experiences at Harvard, as a member of the department of external affairs, and as a reform-minded professor of law at the University of Alberta.\textsuperscript{191}

After Head's departure for Ottawa in 1967, there were at least three staff members, J. W. Samuels, Tung-pi Chen, and G. V. LaForest, who took a direct interest in international law.\textsuperscript{192} In 1967 a basic course of two hours per week was offered as an option in two sections in the first term of the third year, by J. W. Samuels and Tung-pi Chen. In all, some twenty-five students attended. The course description followed that of the master's course in the 1966-67 calendar. In 1968-69 this course was opened to second-year students in the first term. The lecturer was G. V. LaForest, a prominent member of the University of New Brunswick Law School, who had succeeded Wilbur Fee Bowker as dean.\textsuperscript{193} A research seminar in

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\textsuperscript{191} Assessors of Ivan Head's contributions to Canada's international law position should not overlook the effect of private practice on his intellectual formation. Head has in fact a very practical, private lawyer's approach to law, life, and world affairs. Before arriving in Ottawa, he interested himself mightily in the subtleties (of which there are few finer) of locating the oil and gas lease within the given framework of the English law of real property. "I am," he has observed, "a disciple of Louis Henkin who said: 'the rule of law is an ideal state of health, not a prescription for achieving it'."

\textsuperscript{192} It is understood that if he had remained at the university his plans for an interdisciplinary programme in international legal studies, already well advanced, would have led to co-operative programmes between law, political science, and other divisions of the university. Head worked to this end with Grant Davey, King Gordon, and Neville Linton. The Banff Conference on World Affairs, 1965, was one consequence of their collaboration. That conference produced a book entitled This Fire-Proof House: Canada Speaks Out about Law and Order in the International Community (N.Y., Oceana Publications, 1966).

\textsuperscript{193} For Professor Anderson's tribute to Bowker, with asides on the policies and problems of the Alberta law school, see D. Trevor Anderson, "Wilbur Fee Bowker: In Appreciation," (1976) 14 Alberta Law Rev. 199-222. For bio-
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International law problems, offered by J. W. Samuels, became available for the first time in second year. This seminar, "dealing in depth with a specific problem in international law . . . [was] designed to train students in the use and evaluation of international legal materials." The basic course was a prerequisite and the seminar attracted fifteen students. In 1969-70 Chen assumed direction of the basic course and L. C. Green, who took over Samuel's advanced seminar, became associated with the Law School.

Leslie C. Green was born in London in 1920. He took an LL.B. with first class honours at the University of London in 1941 and then served with the British Army in India until 1946. From 1946 until 1960 he was a member of the dynamic department of international law at University College, London, where he edited *International Law through the Cases*, now in its third edition, published numerous periodical articles, and was instrumental in the success of *The Yearbook of World Affairs* and *Current Legal Problems*. He was secretary of the British Branch of the International Law Association from 1947 until 1960. In 1965 Green arrived in Edmonton from the University of Singapore, where he had served as professor of international law (1960-65), dean of the law faculty (1964-65), and director of the institute of advanced legal studies (1962-65). Appointed to Alberta as a University Professor, Green started immediately to teach international law in the department of political science both on the undergraduate and graduate levels. His courses at this time were unavailable as LL.B. options. From 1969 until 1973 he taught the advanced international law course in the Law School. In 1972 he was an adviser to the department of national defence in Ottawa. In 1974-75 he was academic in residence in the bureau of legal and consular affairs of the department of external affairs in Ottawa, and in 1976 he was awarded an LL.D. degree by London University in recognition of his work in international law.

The following years saw certain staff changes. In 1971-72 Chen was replaced by J. P. Lordon and L. C. Green by R. Hornung. In 1972-73, L. C. Green resumed his former seminar and Hornung was shifted to the basic course. In 1973-74 the basic course was...

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194 L. C. Green's impressive publications, to which, happily, he continues to add, are too numerous to list here. A few of them have been collected under the title *Law and Society* (N.Y., Oceana Publications, 1975).
taught by a visiting American, D. V. Kerig of the University of San Diego. He was succeeded by Michael F. Rutter in 1974. In 1975-76 A. C. Rice took over the basic course on a permanent basis and L. C. Green conducted the seminar in international law problems. The faculty now offers an introductory course in international law (three hours in the first term) as one of four "perspective courses" (the three others being criminology, legal history, and jurisprudence) of which a student must take at least one prior to graduation; an advanced course of two hours per week one term, taught by L. C. Green; and a graduate programme at the LL.M. level. Although the graduate programme in international law has not yet been developed, library and research facilities have expanded significantly.

There were many demands on the Alberta Law School during the early years. Its resources were limited, sessional lecturers with appropriate qualifications were not always available, student interests were predominantly vocational, and the School's primary concern was to graduate capable practitioners who would serve the needs of a new and developing province. It was not until 1963 that the faculty was able to assign to international law a full-time member who could devote significant time to the subject. Since then faculty support

195 Professor Anderson comments as follows: "There is some danger in looking at the school with particular regard to the teaching of international law, of leaving the impression that the outlook of the faculty in earlier years was generally limited and almost exclusively vocational. I think that would be wrong. Weir was both learned and scholarly; MacIntyre was one of the first of the Canadian teachers to display the law effectively to students in the light of its social purposes and utility (he had been much influenced at Harvard by Pound and his ideas); Alex Smith always taught constitutional law in the wider context of political and social development, and Dean Bowker always gave great emphasis to the value of a broad education in law, himself having particular interest in legal history, jurisprudence and civil liberties. The sentence on page 7 [of a draft of this essay] attributing to 'many members' of the faculty the opinion that international law was a 'frill,' seems to me to overstate the matter. Rather, it was a question of priorities as between courses competing for curricular space, given limited faculty members, the qualifications of available sessional lecturers, and the predominant interests of the students. Once the School entered the era of rapid expansion in the 1960's, it did, as you say, make much greater provision for international law, and I am sure that if Ivan had not joined the staff in 1963, someone else qualified in the subject (and you will recall it was pretty popular at that stage in LL.M. courses everywhere) would have soon been recruited for the purpose of developing at least a basic course in the subject.": letter from D. Trevor Anderson dated March 7, 1974, at 1. However, Ivan L. Head observes that during the post-World War II era "the curriculum offered no room for what were then called 'frills'... Had anyone suggested an option or indeed a subject that could not be tied directly to the earning of fee
for international law has been obvious from the inclusion of the subject as one of the four perspective courses from which intending graduates must choose. The School, which occupies perhaps the finest law building in Canada, attracts an able student body, and enjoys a favourable situation, is now in an excellent position to undertake serious work in many areas of international law, for example, arctic resources, continental water use requirements, foreign investments, and problems pertaining to Asian trade.\textsuperscript{196}

5. \textit{International Law on the Pacific Coast}

University of British Columbia

The Faculty of Law at the University of British Columbia was established in 1945, the year after N. A. M. MacKenzie assumed the presidency of the university.\textsuperscript{197} Having regard to MacKenzie's background and interests, one is not surprised to find that a full-year course in public international law, compulsory for second-year law students, open to arts students as well, was established as early as 1946, the second year of the Faculty's operation. The texts prescribed were Oppenheim and Brierly, and the casebook was MacKenzie and Laing.\textsuperscript{198} MacKenzie taught this course himself, from

\textsuperscript{196} Although the school paid little attention to international law in the past, a number of its graduates have made notable careers in the field. Max Wershof in 1930 (formerly legal adviser to the department of external affairs); William Epstein in 1935 (until recently director of the disarmament division of the U.N.); and Ivan L. Head (now special adviser to the prime minister of Canada). J. O. Parry and J. S. Stanford are members of the bureau of legal and consular affairs in the department of external affairs in Ottawa.

\textsuperscript{197} For a brief description of the founding of the Faculty of Law, see Harry T. Logan, \textit{Tuum Est: A History of the University of British Columbia 157-58, 178, 186, 229} (Vancouver, 1958). For information on the beginnings of legal education in the province, see Alfred Watts, \textit{History of the Law Society of British Columbia 1869-1973} (Vancouver, no date); A. B. Russ, “The Law Student in Early British Columbia,” \textit{(1953) 11 The Advocate 77-80}, outlining the educational requirements for enrolment as a student at law from 1875; and for a note on recent developments, see Charles B. Bourne, “Legal Education in British Columbia,” \textit{(1966) 24 The Advocate 41-45}.

\textsuperscript{198} In 1947 Frederick L. Shuman’s \textit{International Politics: An Introduction to the Western State System} was added to the list; further readings were recommended thereafter, for example, Arthur Nussbaum, \textit{A Concise History of the Law of Nations} (N.Y., Macmillan Co. Ltd., 1947; 3rd rev. ed. 1954).
1946 until 1948, to classes that numbered as many as two hundred students. However, the administrative duties of the presidency weighed heavily on him and in the following two years the lectures were delivered by George F. Curtis, the founding dean of the Faculty.199

George Curtis, a Rhodes scholar from Saskatchewan, had been inspired by the lectures of J. L. Brierly at Oxford — “he was simply a superb lecturer and drew my interest” — and had maintained his fascination with international law while at Dalhousie, where he had assumed the teaching of the subject in 1939 and had delivered extra-mural lectures with the encouragement of R. A. MacKay. A busy man, much in demand by the university, the legal profession, and government, Curtis found it necessary to turn the course over to Charles Bourne in 1950. However, he continued his interests in the field apart from active teaching. In 1952 he was appointed by the federal government to be a special adviser on the law of the sea. In 1958 and again in 1960 he was a Canadian delegate to the United Nations conference on the law of the sea. In July and August of 1965 he was a visiting professor at the Australian National University in Canberra, where he taught public international law.

Curtis was dean of the Faculty of Law for twenty-six years, from its establishment in 1945 until his return to normal academic duties in 1971. Most of his writings are on legal education. He describes his role as having to do not so much with teaching and research in international law and organization as with giving direction and encouragement to international legal studies, building up the staff in this area, actively seeking out students to pursue graduate studies in the subject, finding opportunities by way of scholarships, and facilitating the entry of students into graduate schools. He was instrumental in developing a multidisciplinary institute of fisheries at the university, where he conducted seminars on the law of fisheries with postgraduate students in biology and zoology. The number of such students was not large enough to justify the holding of seminars each

199 “When young dean Curtis first stood on the raw pitch of ground that was to become the site of the new Law School, all he had was his appointment and his ideas, but he affixed to the freehold the incorporeal hereditament of enthusiasm. The first physical fixture to reach the ground was an army hut, sawn in two, so as to be brought on a couple of trucks. And the Law School became a going concern”: E. A. Lucas, “Faculty of Law,” (1946) 4 The Advocate 7-12, 128, 166-67. See too the tribute to Curtis by Professor J. M. MacIntyre in (1971) 6 U.B.C. Law Review 108-10. Associate Professor Frederick Read of Manitoba was the other full-time member of the founding faculty.
year, but they were sufficient to indicate that, at the graduate level at least, worthwhile crossdisciplinary instruction was feasible and preeminently worthwhile.

Charles B. Bourne, who assumed responsibility for international law in 1950, graduated with first class honours from the law course at the University of Toronto in 1945 and with first class honours (with distinction) from St. John's College Cambridge in 1947. In 1970 he received the S.J.D. degree from Harvard. From 1947 until his appointment to the University of British Columbia in 1950 Bourne was a member of the College of Law at the University of Saskatchewan. He has established himself as an expert on the law of international rivers and lakes, with particular reference to the Columbia River Basin, and has been active in the work of the International Law Association in this area. In 1962, with the active support of MacKenzie and Curtis, he became founding editor of the Canadian Yearbook of International Law, a responsibility that he has discharged with distinction to date. In 1967 Bourne edited, with L. G. Jahnke, a collection of cases and materials on public international law. During the academic session 1971-72 he was on leave of absence from the university to serve as the first academic in residence to the legal operations division of the bureau of legal and consular affairs of the department of external affairs in Ottawa. A productive scholar, he has long been the faculty's principal lecturer on international law, a senior member of the country's international law community, and a much respected officer of the association of Canadian law teachers.

In 1961-62 two new courses were added to the curriculum: a seminar on current problems in international law, offered by John Flackett, and a seminar on international economic law, offered by Gordon Jahnke. In 1963 Jahnke took on public international law and international economic law, the only two courses offered that year. In 1964 Bourne and Jahnke collaborated on the general course and Bourne inaugurated a "research seminar in which selected problems of international law of current interest and importance will be investigated," the examples cited being the financing of the United Nations, offshore fishing limits, the Cyprus situation, and peaceful co-existence. In 1965 a seminar on international economic transactions became available under Jahnke.200

200 It covered "principles of international law in the context of economic transactions. The first part will be concerned with public economic institutions
In 1970 the students and faculty reduced the status of international law to an optional subject with the result that enrollment and interest diminished. More recently, however, there has been a change of attitude and more students are selecting the courses in international legal studies. For example, in 1973-74 there were fifty-seven students enrolled in the general course, eighteen in international organizations, ten in international law problems, and three in international business transactions. Although the majority of students now leave on graduation without much knowledge or information of international law, it would appear that the subject is regaining much of its former importance. In 1972 Donald M. McRae, a New Zealand-born scholar, whose advanced training was taken at Cambridge and Columbia, joined the faculty from the University of Western Ontario. In 1974-75 he was acting director of the Institute of International Relations at the University, in which capacity he was especially active in research on the law of the sea.

The combined interest and abilities of MacKenzie, Curtis, and Bourne have operated to place international law in a prominent position in the U.B.C. Law School. For a quarter of a century the subject was a compulsory part of the general background of all law students and it is noteworthy that the basic course has throughout been open to arts students and that substantial numbers have enrolled in it. The school continues to discharge an important research responsibility at the present time. Further interdisciplinary co-operation was evidenced in 1973-74 when Bourne, together with a member of the arts faculty, offered a seminar in the international studies programme of that faculty. What does not show in the formal record of the teaching programme but deserves special emphasis is the encouragement that has been given at U.B.C. to students, upon graduation from the Faculty, to go on to graduate work in international law and to interest themselves in careers with the department of external affairs. From 1966 to date the legal advisers to the department have been graduates of the U.B.C. law school.

and treaties with economic significance. The latter part will be devoted to an examination of the effects of these institutions, treaties and principles upon economic transactions."

Conclusions

1. The Pre-World War I Period

In Quebec, indeed in Canada, the first course in international law was offered in 1851 at Collège Ste. Marie in Montreal. Lectures in the subject were started at Laval in 1857 and at the University of Montreal in 1888. In both institutions the lectures were somewhat irregular. They were given by distinguished part-timers on a limited basis and included conflict of laws as well as public international law. Belgian and French textbooks were prescribed. At McGill, where international law was first introduced, on a compulsory basis, in 1856, the subject was taught mainly by full-time members of the law faculty. The reading list included a blend of English and French language authors.

In Ontario, introductory courses in international law were offered at Queen’s (1880-83), Western Ontario (1885-88), and the University of Ottawa (1892-96). At the University of Toronto, where a course in international law had been offered in the political science department as early as 1858, David Mills lectured on the subject for four years (1888-92) until the close of the law school in 1892. No lectures on international law were available at Osgoode Hall. It is reasonable to suppose that the history of legal education in Ontario, and the teaching of international law in particular, would have been radically different had the Law Society of Upper Canada adopted a more tolerant attitude to the fledgling university law schools of the nineteenth century. As it was, these schools, patterned on the English rather than the American model, were obliged for one reason or another to close their doors, not to reopen until 1949. Outside the civil law jurisdiction of Quebec, the only fully functioning university law faculty, and indeed the only law faculty in Canada committed to the idea of full-time study and research on the American model, was Dalhousie Law School in Halifax. The Nova Scotia Bar had encouraged and actively supported the foundation of this school and it was there that Dean Weldon first started to teach international law in 1883. His personal supervision of the basic course, over an unbroken period of thirty-one years, until his retirement on the outbreak of World War I in 1914, ensured the security and prominence of the subject in the Dalhousie curriculum.

The content of the courses in Ontario and Nova Scotia, and at McGill University in Montreal, was fairly similar: the treatment of
the subject tended to be as much descriptive as it was analytical, focusing on the history of the main doctrines and on political science and international relations generally. For example, Dean Weldon’s examination paper of 1885 asked the students to describe the Alabama dispute and to trace “the history of the attempts from 1806 to 1812 to stretch the doctrine of Blockade.” In 1886 Dean Weldon requested the students to “name eight of the most authoritative writers on the Law of Nations,” a question that might well pose embarrassment for law students in the Canada of 1975. In 1893 he asked for a brief discussion of “the Outrages on the (a) Chinese in San Francisco in 1877; (b) Italians in New Orleans in 1870; (c) U.S. sailors in Valparaiso in 1891.” Though there was an occasional reference to The Franconia, the cases cited tended to be in the domain of municipal law, such as extradition, the rights of aliens, and diplomatic immunities. At McGill, there was a noticeable emphasis on the law of the sea. For example, in 1874, W. H. Kerr asked for the meaning of blockade: “How and by whom can it be exercised?” In 1879 he asked about belligerent rights; in 1886 he posed a question on the breadth of the territorial sea. N. W. Trenholm’s examination paper of 1895 asked “what four rules on Maritime Law were agreed to at the Treaty of Paris of 1856,” and in 1900 Eugène Laflleur requested the students to outline the controversy between France and Great Britain over French fishing rights on the shores of Newfoundland.

As far as textbooks were concerned, English, American, and Scottish writers were recommended, roughly in that order. W. E. Hall’s International Law was prescribed at Ottawa; Kent’s Commentary on International Law was used at Queen’s and Western; Reddie’s Inquiries and Lorimier’s Institutes were referred to at Toronto; T. A. Walker’s Manual of Public International Law was used at Queen’s; and Henry Wheaton’s Elements, a strong favourite down to the 1930’s, was on the reading list at both Toronto and Queen’s.202 At Dalhousie, Weldon started with Theodore D. Woolseley’s Introduction to the Study of International Law, presumably because he had studied under Woolseley at Yale, but in 1892 he switched to W. E. Hall, “perhaps the most versatile and likeable

202 Henry Wheaton, Elements of International Law (Boston: Little, Brown & Co., 6th ed. by William B. Lawrence, 1855), with very extensive and illuminating “introductory remarks.” These remarks explain the unusual publishing history of this influential work, which, according to Reddie, “although not British, [was] indisputably the best of the kind in the English language.”
\footnote{Kent's Commentary appeared in 1826 and Wheaton's Elements in 1836. W. O. Manning's Commentaries on the Law of Nations does not seem to have been used in Canada. In 1866 J. T. Abdy, the editor of Kent's Commentary, wrote as follows: "The science of international law has never lacked able and eloquent exponents from the times of Ayala and Alberic Gentili down to our own. But it must be acknowledged that, among modern authors at all events, there are three whose learning and labour, as judges and writers, have shed glory over the legal literature of the United States, and have earned the singular distinction of being recognized as authorities on international law throughout Europe. I need scarcely say that I speak of the honoured names of Story, Wheaton, and Kent." For stimulating discussion of the literature, see D. H. N. Johnson, supra note 203.}
Wheaton and Kent, American texts, were used, in a period of anti-American feeling, not because they were American but because they were, for Canadians, the first accessible works in the English language.\footnote{H. Lauterpacht, "The Grotian Tradition in International Law," (1946) 23 Brit. Yb. Int'l L. 1-53.}
As far as teaching techniques were concerned, the inductive approach to law teaching was not of course in vogue in Canada. The lecture method was used in Nova Scotia and Ontario, and in Quebec it would appear that the art of delivering the "majesterial" lecture was highly developed and fully appreciated. The law lecturers in that province, Thomist by training, seem to have held firmly to a system of natural justice between states, without, however, defining it very accurately. They accepted natural law as an independent source of international law and regarded natural law generally, in Sir Hersch Lauterpacht's phrase, as a lever of progress.\footnote{205}
With the notable exception of LaFleur's justly acclaimed books and articles, and Mills' newspaper and periodical comments, there was little published scholarship at this time. Energies and resources were devoted to teaching and administrative responsibilities and to the development of library collections. Bearing in mind, however, that Canada was an integral part of the British Empire, without semblance of international personality, that pioneer conditions prevailed in most regions of the country, that the number of full-time law professors could be counted on the fingers of one hand, and that (obviously) there was no career structure for students of international law, it is remarkable that the subject was taught at all, let alone as early as 1851 in Montreal, 1858 in Toronto, and 1883 in...
Halifax. Of particular interest is the fact that international law was required as a prerequisite for a law degree in the law schools of nineteenth-century Canada. The subject was not at the outset regarded as "too academic" or "too non-vocational." Nor was it in any way marginal to the mainstream of the curriculum. What must be evident to an observer in 1977 is that the early explorers of legal education in Canada looked far beyond the immediate concerns of settlement, agriculture, transportation, and natural resources. They took a wide view of the responsibilities of a law faculty, the practise of law, and the possible future of their young country in the international community. They fully reflected in their professional domain the optimism that was the characteristic and ruling passion of Canada until the end of World War I.206

2. The Inter-War Period

World War I and its aftermath — the great divide — stimulated the teaching of international law in Canada. The country "had paid its subscription to the society of sovereign states."207 It became an original member of the League of Nations, appointed its own diplomatic representative in Washington, reorganized its department of external affairs, transformed its relationship within the British Empire, and settled down to a period of rising nationalism.208 Loring Christie became the first of a line of policy-oriented legal advisers; neighbourhood problems with the United States, many of them legal,
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became more demanding as they became complex; constitutional and related international law questions arose more frequently; and international law acquired more practicality than it was thought to have had before 1914.

On the civil law side of the universities, the teaching of international law continued to be somewhat uneven. At Laval, the faculty had no full-time professors for any of its courses, let alone for international law. At the University of Montreal, where lectures seem to have been compulsory from an early date, Hector Mackay, a specialist, kept the course alive until his retirement in 1951. He was not, however, a productive scholar. At McGill, Smith, Corbett, and Humphrey took over from where LaFleur had left off. High quality instruction was offered on a regular basis and, most important, the foundation was laid for the development of a Canadian literature on international law. These enthusiastic scholars took a keen professional interest in problems "in which Canada is directly concerned."

In common law Canada, the case method of instruction, brought to Dalhousie by Sidney Smith from Harvard Law School, was automatically applied to the teaching of international law. Stowell and Munro's *International Cases* continued in use for a time, but Horace Read and others trained at Harvard soon turned to J. B. Scott and Manley O. Hudson. This switch from lecture to case method — sinking shafts and sinking them deep, as John Willis would say — was important in the history of law teaching generally, and international law teaching in particular. In Ontario, instruction in international law was available in the political science departments at Queen’s and Western. At the University of Toronto, where the law programme was conducted by the arts faculty, John D. Falconbridge and N. A. M. MacKenzie were offering lectures and seminars of quality. A modest graduate programme was in place, and MacKenzie and Laing’s *Canada and the Law of Nations* appeared in 1938. No course in the subject was available at Osgoode Hall. On the prairies, an introductory course had been taught at the Mani-

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210 For a superb summary of what the case method was, and has become, see Max Rheinstein, "The Case Method of Legal Education: The First One Hundred Years," in (1975) *University of Chicago Law School Record* 3-15.
toba Law School from 1915 until 1939, but no course was offered at the College of Law in Saskatoon. If lectures on international law were given in Edmonton after 1921, they were short-lived. The University of British Columbia had not yet been founded.

The materials prescribed for student use provide a rough idea of the content of the courses and the intellectual influences at work during this period. Dalhousie, as indicated, was using American casebooks supplemented by Canadian materials; the law school was under Harvard's pedagogical dominance. At Queen's and Western, the political scientists who had charge of international law recommended Pitt Cobbett's *Leading Cases*, Westlake's *International Law* and, in the late 1930's, Frederick L. Schuman's *International Politics*. Until his own collection of Canadian materials appeared in 1938, MacKenzie prescribed for his Toronto students a mix of English and American references. At the Manitoba Law School the students were referred to W. E. Hall, Bentwich's *Leading Cases*, and Lawrence B. Evans' *Leading Cases*, the latter an American collection first published in 1917.\footnote{Lawrence B. Evans, *Leading Cases on International Law* (Chicago: Callaghan and Co., 1917; 2nd ed., 1922). No other reference to this early collection of British and American judicial decisions appears on a Canadian syllabus.} The McGill reading list, reflecting the wider outlook of a bilingual environment, was more sophisticated, including, as it did, de Martens, Sir Travers Twiss, and Holland's *Studies*. There are few, if any, surprises in these references. They simply reaffirm the fact that England, France, and the United States were the main sources of inspiration for a small, isolated professoriate that had yet to generate its own materials. The absence of German and Spanish citations, and of philosophical works in general, is a reminder that Canadians were not much better linguists then, and no more interested in philosophy, than they are now. One notable omission from all reading lists is any reference to the classics of international law.

On the research side, credible contributions were made at Dalhousie (Munro, MacKay, and Read) and the University of Toronto (MacKenzie). McGill, however, was the faculty whose work was distinguished in terms of respectable quantity as well as high quality. A few of the scholars of the time may have become interested in the subject through their work in constitutional law, considering the problems raised first by Canada's dominion status and later by the federal system of government. Others had come to the
universities after brief careers in international organizations. Still others developed their interest as a reaction to World War I and the dislocations that followed it. All of them turned to the task of creating a much needed national literature on international law. In a wider context, however, it must be admitted that student and faculty interest in the subject was not great. The international law professorate was a small and lonely one. Most of the law schools, professionally oriented, were struggling as best they could with few teachers, heavy teaching loads, inadequate libraries, and limited resources. There were few posts available in international law. Most professors interested in the subject carried other courses as well. University budgets were drastically reduced during the economic depression of the 1930’s, the years of hopeless inertness, when, for the first time in four decades, there was a net loss of population by migration to the United States. The relevance of public international law was not evident to the students of the day and the department of external affairs was just beginning to employ graduates trained in the subject.

3. The Post-World War II Period

The effects of World War II on the teaching of international law were similar to those of World War I, but were of much greater impact. After the war the ambit of international law and organization increased rapidly; Canada became an active participant in world politics; Canadian interest in the United Nations was high; and the expanding department of external affairs engaged more legally trained personnel both at home and abroad. In addition to increasing opportunities for international lawyers in government service, where legal officers discharged important policy-oriented responsibilities, there were in Canada, as in other countries, greater demands for knowledge and information about international law. The rise in the number of international organizations, such as the United Nations, the increased volume of government regulations and other rules of international law, the boom in world trade, and the contraction of distance by modern communication systems, meant that more questions concerning international law arose in law offices and were publicized in the press. It was in this atmosphere that in-

212 The mood of the times — what it felt like to be a law professor in the 1930’s — is beautifully caught by John Willis in his reminiscences in *Ansul* (Dalhousie Law School forum), January 13, 1976, at 62-67.
International law began to progress in the law schools and at a time of unprecedented advances in the material conditions of legal education in Canada.

During the late 1950's and throughout the 1960's, developments were particularly notable. With the reconstruction of the older schools in Quebec, the maritimes, and the west, and, most important, the re-establishment in Ontario of the fully recognized university law schools in 1957, more teaching posts became available, more teachers were appointed, and more persons specialized in international law. The subject was offered at least optionally at virtually every school. New courses were introduced to deal with new aspects of international law, such as air and space law at McGill, the law of the sea and the maritime environment at Dalhousie and at the University of British Columbia, and Soviet law at Toronto. Canadian content improved. Many law schools offered advanced seminars on subjects such as international organizations, international business transactions, international economic law, international environmental law, international penal law, and the international protection of human rights. Graduate programmes were developed at McGill, Toronto, Dalhousie, Laval, and the University of British Columbia.

The background of each of the law schools, however, was in part reflected in its courses. At McGill, the influence of the constitutional lawyers, Smith and Cohen, and of the Roman lawyers, Corbett and Humphrey, was apparent in courses that emphasized the United Nations, human rights, and jurisprudential aspects of the subject. In the French-language law schools of Quebec, noticeable advances were made during the fifties and sixties, mainly under the leadership of Morin in Montreal and Dufour in Quebec City. The civil law environment, the European postgraduate experience of the professors, and the use of French and other European texts in classes and seminars resulted in courses of a rather conceptual nature, although, in recent years, stress has been placed on the economic rather than the philosophical aspects of the subject. In Ontario, the relationship of the law faculties with departments of political science and other divisions of the university produced a broadened approach, with courses in international organizations, international business transactions, international sanctioning processes, and foreign policy problems of special interest to Canadians. In short, the teaching of the subject blossomed in Canada during the favorable economic conditions of the 1950's and 1960's. More money was available,
more people were involved, and the number of courses mush-
roomed.  

Published writing and research increased during the third quarter of the century. As in literature and the arts, there was a new confidence and a new nationalist awareness: the slightly self-deprecating colonialist attitude towards England, France, and the United States had all but disappeared. However, the writing, mainly of the law review and casebook variety, eschewed model-building, theories of international law, and conceptualization. There was no systematic textbook on the law of nations by a Canadian writer either in English or French. Nothing that could be called a “school” or a “philosophy” of international law emerged in Canada, either in the sense of a philosophy common to all international lawyers or of a philosophy prominent within the country. The abstract, theoretical bent of the civilians in Quebec, evident in their writings on administrative and constitutional law, had not been reflected in their work on international law. The minds of the scholars, English as well as French, remained practical and pragmatic.

Nor were there any serious efforts to develop a sociology of international law. From the period of Max Weber's death in 1920 through the 1950's, when sociology was so much in vogue, there was no significant Canadian struggle to apply the findings of sociology to contemporary international law. Whether or not anything that can be described as a “golden age” will be produced by the current whirl of soul searching and law review writing remains to be seen.

A note on developments at that time appears in R. St. J. Macdonald, “Meeting of Teachers of International Law,” (1964) 1 Canadian Legal Studies 103.

It is appropriate to recall that many, admittedly not all, of the great international lawyers of the past — Wheaton, Lorimer, Oppenheim, Lauterpacht, Kelsen, Sereni, Dahm — enjoyed a familiarity with both the civil law and common law systems. These outstanding lawyers combined a conceptual and panoramic view of the principles and the classificatory ideas of the civil law with the analytical and procedural skills characteristic of the common lawyer in handling the richness of factual detail in the common law system. Canada's pluralism and, more specifically, its bilingualism, provides an opportunity, not yet fully exploited, especially in a centralized teaching institution, for fruitful thinking and writing about international law within the framework of the two legal systems.

See, for example, Thomas M. Franck in (1975) 31 Int'l J. 180; John Clay-
Canadian international lawyers are aware of and involved in what is going on throughout the world.

Thus ends this review of the history of the teaching of international law in Canada from 1851 until 1975. In bringing into relief facts that may have been forgotten or perhaps undervalued, it is hoped that this account will exercise our sense of alternatives and inspire our energies for the future. Our immediate past is a spectacle of commitment and attainment. It is a history of expanding values, of dynamic activity, experimentation, and discovery. It is a history of progress — and of promise.

It is a pleasure to acknowledge once again the generous assistance of Professor D. Trevor Anderson (Manitoba), Professor Peter L. Freeman (Alberta), Dr. Marianne Scott (McGill), and Mrs. Carol Creighton (Toronto). Details about the Collège Ste. Marie (1851-1867) have now been published by Léon Lortie, "The Early Teaching of Law in French Canada," (1975) 2 Dalhousie L.J. 521. H. W. Arthurs’ stimulating essay, "Paradoxes of Canadian Legal Education," (1976) 3 Dalhousie L.J. arrived after my manuscript had been completed. Additional information about the University of Toronto appears in C. A. Wright, "Legal Education: Past and Present," in R. St. J. Macdonald (ed.), Changing Legal Objectives 3-16 (U. of Toronto Press, 1963). I hope to cover the teaching of international law at the University of Sherbrooke and the University of New Brunswick at a later date. What is needed now is a history of ideas (attitudes, ideologies, and interests) in Canadian international law writings; and an account of the impact of major social and economic forces, inside as well as outside Canada, on the development of the country's international law position. The latter is part of the social whole, the product of Canadian society, and the interaction between Canada's aspirations and Canada's "place" in the wider world community.