TRIBUTE TO WILLIAM F. RYAN, 1920-1994

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William Francis Ryan – sometime student, LSS president, lecturer, professor, dean, and dean *emeritus* – in the Faculty of Law died on 8 July 1994 in his native city of Saint John.

Ryan was born on 7 February 1920, the son of William Michael Ryan (BCL '12), Liberal MP for Saint John, and Mary Alice Duston. Undergraduate studies at UNB in History and Political Science earned him the gold medal for the Arts faculty on graduation in 1941. He was also president of the SRC. In 1943, like his father before him, Ryan enroled in the Saint John law school. He was graduated in 1946, in a class which included both his brother Henry Edward (a future judge of the Court of Appeal) and his future sister-in-law Mary Kathryn Boyle. At law school he was president of the Law Students' Society.

After practising law for two years at Saint John Ryan took an LLM at Columbia in 1948, commenced teaching part-time at the Saint John law school and, in 1949-50, undertook study at the University of London as a Beaverbrook Overseas Scholar. It was from England that he was summoned, in 1950, to join George McAllister in becoming the first full-time instructors in the Saint John school's 58-year history.

In 1956 Ryan became the first full-time dean of the institution, a position he held for 15 years. During that time the school increased many-fold its complement of teachers and students and moved from Saint John to Fredericton (1959) and to Ludlow Hall on the UNB campus proper (1968). In 1971 Ryan was appointed to the newly-founded Law Reform Commission of Canada and moved to Ottawa. From 1974 to 1986 he served on the Federal Court of Appeal.

During the 1950s, the first decade of Ryan's teaching career at the UNB Law School, law in common-law Canada was still struggling to establish itself a discipline with a place in a university setting. It is fitting that this Ryan memorial opens with Ryan's own thoughts on that subject, delivered as a speech during the first year of his deanship. This memorial also gathers memoirs of Ryan from three of his students, from the university president who made him dean of law, from three teachers hired by Ryan, and from colleagues at the Law Reform Commission and the Federal Court. For further particulars of his New Brunswick career see D.G. Bell, *Legal Education in New Brunswick: A History* (1992).

THE FACULTY OF LAW: ITS PLACE IN THE UNIVERSITY

W. F. Ryan*

It may be asked whether law has a place among university faculties. Some may say that law is essentially a professional or technical study. They may say it lacks those liberal elements that would warrant its inclusion in a community of scholars. But law can, I believe, be justified as a university study historically, and practically and essentially. At least I shall so argue. I can only hope that the argument will not be tedious; the intent will not at any rate be insidious; and I hope you will not blame me if I do not, after all, lead you to any overwhelming question.

In the Middle Ages, law was typically one of the faculties of the great European universities. Indeed, in the university, law was ranked as second only to theology. And on the European continent today, in line with this ancient tradition, the university law faculties are the focal points of legal creativity. The professors of law, rather than the judges, shape legal development.

Canon law was taught at Oxford from very early times. In the fifteenth century the canonists were largely replaced by the civilians. It was not until the eighteenth century that the common law was taught in England as a university subject; half-way through that century, however, Blackstone was appointed to the chair of English law at Oxford. It was considerably later though that the teaching of the common law became a vigorous university discipline.

As a matter of fact, it must be conceded that in the common law world legal education in the sense of training for practice was regarded traditionally as a function of the Bench or Bar. Indeed in England it is still regarded as a special responsibility of the Bar. The English university law faculties do not profess to train lawyers, that function is left to the Inns of Court. During the medieval period these Inns, though not formally university faculties, were not dissimilar in their constitution and functions to university colleges. They were educational and cultural centres of outstanding merit. After the Middle Ages, however, they lost much of their intellectual vigour, a vigour which has never really been regained.

The university law faculties in England today are professedly academic faculties giving undergraduate honours course in history or philosophy. It is true that more and more young men who plan on law as a career do read law, rather than Greats or Modern Greats or History. But it is by no means necessary that they should do so. It is now clear, however, that in England a strong university tradition of law teaching is established.

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*This address was given by Dean Ryan at a UNB Alumni dinner, 28 November 1956.

In the United States and Canada preparation for the Bar was at first and for a lengthy period through apprenticeship supplemented by private study and written exams set by Bar societies. This was, of course, the Abe Lincoln path to legal practice. The Harvard Law School was established in 1817, but did not attain full vigour until the middle years of the century. Today, of course, the university law schools are the training grounds for the American Bar.

In our own Province, the normal course pursued by a candidate for the Bar, until the last decade of the nineteenth century, was to article with a practicing lawyer and to pass a set of Bar exams. Indeed, until 1950 it was possible to gain admission to the Bar by following this course; a university law degree was not essential.

The articling system broke down, however. It has, I think, completely disappeared both in this country and in the United States. There were more reasons than one for this breakdown. A very practical one was that the young law clerk, at one time useful as a copyist of legal documents, was rendered obsolete for this purpose by the typewriter and stenographer. Also with an increase in the number of university graduates wishing to study law, office space was not available. A more important reason, however, was the impact on the legal structure and on legal practice of the increasing complexity of modern industrial society and the growth of the functions of the modern state. The modern lawyer still conducts litigation and does conveyancing. But these activities on the average occupy less of his time than was true of his predecessor. Today he is, as well, the counsellor of the businessmen, and the middleman between the citizen and the vast administrative state. With these developments it has become necessary for the lawyer to acquire competence in new subjects – in taxation, in corporations, in constitutional and administrative law. Indeed, the traditional subjects have developed their own complexities with the growth of a more specialized commerce and the extension of social planning of the use of what formerly been regarded as private resources. Any lawyer will tell you of the problems that town and country planning pose in so traditional a subject as real property. Then, too, the vast expansion of credit financing of both production and consumption has made infinitely more involved the law of sale of goods and personal property security. These are but a few examples of an all-pervasive process. The consequence has been that the acquisition of even minimum competence has made necessary the devotion of three years of the student's life to a carefully organized program of studies conducted in part at least by academic lawyers with the time and training to organize and present systematically selected areas of law. This task simply could not be done by the haphazard methods of apprenticeship.

From the purely practical point of view, it is not surprising that in New Brunswick the tiny Faculty of Law established in Saint John in 1892 as a Faculty of King's College grew in importance. As you know, this Faculty became in 1923 a Faculty of the University of New Brunswick. Nor is it surprising that as time

went on, fewer and fewer students read law in a lawyer's office and sat for the Bar exams. In 1950, the inevitable happened. A university law degree became pre-requisite to admission to the New Brunswick Bar. The old articling-bar exam avenue to practice was closed – probably forever. It may just be mentioned here that a B.C.L. degree from U.N.B. entitles its recipient to be admitted to practice without further examination, a privilege not accorded our Barristers' Society to law graduates of any other university; graduates of other universities must pass special examinations on practice and New Brunswick statutes.

But I have said that the inclusion of law in a university can be justified *essentially* as well as historically and practically.

It seems to me that a subject that seeks inclusion in a university curriculum must base its case on a significant link between its subject matter or techniques and intellectual activity or, alternatively, on a significant link with art or beauty. Now I believe that a case could be made on aesthetic grounds for the law – a powerful and persuasive brief or factum appeals to the passion for order and clarity in the human soul. But I think that law has a more special link with intellect. Justice Holmes did say that experience, not logic, is law's life. But that was said, in my opinion, to counteract a trend prevalent at the time to over-emphasize the mechanistic application of verbal formulas to the solution of problems with inadequate regard for social consequences. Holmes would, I believe, have been the last to underestimate the importance of clarity and consistency in legal thinking. A very great medieval philosopher defined law itself as "a rule of reason" for the common good. Rationality was to him an essential mark of law. To speak of irrational law was to utter contradiction. This emphasis on reason as the basis of law is important, today as an antidote to systems of law and politics which see in force the ultimate basis of law.

Now granted a link between law and intellect, I would also base my case for law as a university study on its "social significance" and on the amenability of this significance to scholarly investigation.

Man by nature is social. Life in an orderly and efficient social group is a pre-condition to the full development of his personality, that is to say of his natural faculties, his intellect and will. But such order and efficiency require rules to guide social action along productive channels without waste, rules to settle clashes of individual and social interests in line with the underlying postulates of the group. These are pre-eminently, though not exclusively, the jobs of the legal order.

The student must be given insight into these purposes. We must be made to feel his responsibility, as a professional person, for seeing to it that the law performs its tasks efficiently and justly. It is partly for this reason that in New Brunswick an Arts, Science or Commerce degree is a pre-requisite to admission

as a student-at-law. A young man or woman with training in philosophy, economics, political science or history ought to be in a better position to approach with comprehension the study of law as the most specialized instrument of social order, and for the realization of a just society. A particular task of legal education is to relate significantly the student's literary and social science background to the special functioning of the legal order as a system of social control. Surely such an education possesses those liberal and humane elements rightly demanded of a university discipline.

To pursue this idea another step: I have said that the social significance of law is amenable to scholarly investigation. This investigation must be undertaken in the universities if it is to be done at all. In practical terms this means that the university and its friends must appreciate that the responsibility of the academic lawyer is not discharged by lecturing alone. He must be a scholar, that is a researcher and a writer. But, as in other fields of knowledge, legal research, to be significant, demands time free from administrative and teaching pressures. It also demands reasonable specialization – only the specialist can probe deeply and incisively enough to make the product of his investigation worthy of publication. As a rough rule of thumb I would suggest that a law teacher responsible for teaching more than three subjects is seriously handicapped as a scholar. I would also urge the desirability of the establishment in universities of a regular system of sabbatical leave. A man who has taught a subject for seven years is then in a position to make efficient use of a year free of classes to write a book that will add to the sum of human knowledge. I do plead for a university and community understanding of the vital need for research in law as well as in the physical and social sciences, and in particular for a sympathetic response to proposals that are essential if these needs are to be met.

For the reasons I have just given I submit that law has a natural place in the university.

It is therefore good that, in our provincial university, law is a Faculty in every sense of the word. The Faculty of Law enjoys a status under the University of New Brunswick Act identical in all material respects with the Faculties of Arts, Science, Engineering, Forestry and Graduate Studies. I sit as a member of the Board of Deans; the Law Faculty has three representatives – as has each other faculty – on the University Council; we have our own Faculty Council as has each faculty. The members of the Law Faculty are appointed by the University Senate and are paid by the University. Indeed it is only fair to say that the financial burden of legal education in New Brunswick is being borne almost exclusively by the University of New Brunswick. The students in the Law Faculty are as much students of the University as are the students in Arts, Science or Engineering. All these are simple truths, but I am afraid that in the past there has been a tendency to overlook them – a tendency to regard the Law School as an entity apart from

the university proper. I conceive it to be one of my tasks to make it clear to all that we are an integral part of the University.

And our university association has been fruitful over the past six years. In that period the University Senate have added three full time professors to our staff. And, for better or worse, they have appointed a full time Dean. These appointments, together with Lord Beaverbrook's gifts of a building and library, have placed us in a position to do constructive work in legal education. Of course it is important that we should do constructive work. A province of our size, with our actual and potential resources, simply must have a training centre for lawyers – a centre in which our young people can be trained for a profession that has always and should always play a vital role in our public and commercial life; a centre in which students may be trained, not only in the general principles of the common law, but in the statutes, legal institutions and practice particularly applicable to us. We should strain, too, to create a faculty of such strength and reputation that we will draw in students from beyond provincial frontiers.

In this connection I am reminded of a letter written by Pliny the Youner to Tacitus in late first century Rome, Pliny said:

> Being so lately at Comum, the place of my nativity, a young lad, son of one of my neighbours, made me a visit. I asked him whether he studied oratory, and where. He told me he did, and at Mediolanum. 'And why not here?' Because (said his father who came with him), we have no masters.' 'No' said I, 'surely it nearly concerns you who are fathers (and very opportunely several of the company were so) that your sons should receive their education here, rather than anywhere else. For where can they be placed more agreeably than in their own country, or instructed with more safety and less expense than at home and under the eye of their parents? Upon what very easy terms might you, by a general calculation, procure proper masters, if you would only apply toward the raising of a salary for them, the extraordinary expense it costs you for your sons' journeys, lodgings, and whatever else you pay for upon account of their being abroad; as pay indeed you must in such a case for everything ... May you be able to procure professors of such distinguished abilities, that the neighbouring town shall be glad to draw their learning hence; and as you now send your children to foreigners for education, may foreigners in their turn flock hither for their instruction.

Well, as we lawyers say, the situation in New Brunswick is clearly distinguishable from that in Comum. Here we have gone a long way to meet the advice that Pliny gave the parents of that ancient Italian community. Very many of our own youth, properly I submit, stay with us rather than go to neighbouring towns. We here are in an infinitely better position than were the parents and students of Comum. We have an institution in which we can take pride. But Pliny's underlying message is not without relevance even for us. We must have pride and a sustaining interest in – above all we must have loyalty to – our own educational institutions.

Yes, we have made progress. But this progress must be seen in the context of post-war developments in Canadian legal education. In almost every part of Canada there has been a surge of interest in legal education, particulary in the universities. In many university families, law is no longer the Cinderella among faculties, crouching in the midst of the embers. We have, I think, so far maintained our relative position, but we must sustain our interest if we in New Brunswick are, not only to keep pace with what others are doing, but improve our relative position. We have, I believe, a good, sound faculty. But, if we are to move ahead, we must have the interest and support, not only of the University, but of the Alumni. In particular we need the support of the members of the New Brunswick Bar, so many of whom hold our degree.

When I accepted the Deanship, I made it clear that my objective was to make of our Faculty at the very least a good middle power in the world of legal education. I have pressed – even at the risk of misunderstanding – for measures to achieve that objective. With the co-operation of all interested parties, I believe that the objective can be taken. So long as I know that support and co-operation are available – that I enjoy the sympathy of all concerned in this pursuit – I will continue to devote my energies to this important task – important, not only to the university and the profession, but to the Province as a whole.