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ARNOLD McNAIR

ARNOLD McNAIR had a many-sided genius and he accordingly attained distinction in several fields and in many different places. One of the merest handful of international lawyers acknowledged the world over as being at the pinnacle of their profession, Judge and President of the International Court of Justice at the Hague, Judge and President of the European Court of Human Rights at Strasbourg, Past President and Membre honoraire of the Institut de Droit International, Bencher and Treasurer of Gray's Inn, Vice-Chancellor of Liverpool University, active man of public affairs and member of the House of Lords; through it all he never for one moment let go the conviction that the University of Cambridge was where he belonged. And it is with Arnold McNair as a Cambridge don that this note is concerned, as in duty bound.

His quality must have been recognised early by his masters at Aldenham, for they encouraged him in his ambition to come up to Cambridge to read law, and, after making inquiries about colleges, told him that it seemed there was a rather particularly able law teacher called W. W. Buckland at Gonville and Caius College. They added, however, that there was some risk: for Buckland was reported to be in indifferent health. McNair decided to take the risk: rightly as it turned out, for Buckland, appointed Regius Professor in 1914, became a friend as well as teacher, collaborated with McNair in their book on *Roman Law and Common Law*, and after a vigorous career died in 1946 at the age of 87. So McNair came up to Caius in 1906; though it is interesting to recall that his first night in Cambridge, when he came up for the Caius Scholarship Examination, had been spent in the Master's Lodge at Jesus, thanks to some connection with the then Master, Henry Arthur Morgan.

McNair was early elected a Fellow of his College, and a university lecturer. That was the order of importance then, and indeed until the Second World War. Quite apart from the high standard recognised as attaching to a Fellowship, it gave one quite enough to live on and the University Lectureship added no more than a very small supplement

on a piece-work basis. But in the law school of that time McNair became one of a company not only of distinction—one need think only of Buckland, Gutteridge, Hollond, Oliver and Winfield—but also every one of them men of remarkable personality.

McNair was trained in the common law and in classical Roman law, for long the staple diet of the Cambridge Law School. He had a particular interest in contract, the subject on which he first lectured to undergraduates, for it was only later that he turned to international law and became, in the thirties, Reader in International Law and then for a short spell (1935–37) Whewell Professor. He was always strongly of opinion that a would-be international lawyer must first become master of his own system of private law: “It is most important that international law should from time to time get a good drench from the spirit of the common law.” His interest in contract remained. His principal book in international law: the book, or rather books, the two “editions” being really two quite different books, on the law of treaties were in effect about the law of contract in international law. And for years the best treatment of frustration of contract in English law was McNair’s chapter on that subject in *The Legal Effects of War*. It is still incomparable as a statement of problems and principles.

McNair was a superb lecturer in a generation of good lecturers in a law school that has always taken lecturing seriously. He had, of course, been President of the Union, so had no difficulty about thinking on his feet and never read from a manuscript. Long before he occupied the Whewell chair he gave the principal lectures for the Tripos. The present writer remembers going to hear him, of all unlikely places, in the main lecture theatre of the Pathology Laboratory on the Downing site. In those enlightened days, international law, besides being compulsory in the Law Tripos, was an optional subject in both Part II History and in Part II Economics; and the old law school in Downing Street did not have a big enough lecture room for McNair’s audience.

He entered wearing cap and gown, opened all windows within reach, and then placed his square carefully and exactly on the right-hand top corner of the lectern. This was the signal for silence. He had a pleasant, clear and well-inflected voice but always a quiet one. The audience was already provided with a fairly elaborate printed syllabus with all needful references. The reading list advised candidates to read “the latest editions of the text-books of Oppenheim or Hall or Lawrence according to the time they can devote to the subject and their preference as to the style and method of the respective authors.” He begged his audience, with the aid of the syllabus, to make their own notes before coming to the lecture. One

of his lecture syllabuses began with the warning: “. . . no attempt will be made to cover the ground outlined in this syllabus.” But the lectures might often stray outside the syllabus, *e.g.*, his first Tripos lecture in 1935 was entitled: “The World Situation.”

His delivery was deliberate, polished and lucid. A master of dry, even sardonic humour, he did not hesitate to enliven the facts of a case to make them more memorable. Once, he even had one party in a complicated case having lunched off “perhaps chops and tomato sauce”—this with the lightest suspicion of a smile which saved one from searching the report for so unusual a reference. Having posed a problem with exemplary clarity, he offered the solution with an actor’s sense of timing, after a nicely calculated pause, leaning forward over the lectern, finger upraised, and in an almost hushed and confidential manner which suggested that the answer was being shared as both a revelation and a privilege.

Although he took his share of the burden of university administration, McNair was never deceived about the essential unimportance of what Mark Pattison called “the frippery work of attending boards and negotiating some phantom of legislation.” He could be even caustic about so-called “power” in the university. Nevertheless, without seeking power, he did in fact have it to a remarkable degree. And it was he who, together with Harry Hollond, secured in the late thirties the removal of the law school from its cramped quarters in Downing Street and its re-establishment in its former home in the Old Schools. The secret of his influence in the university, as in other places, was his persuasiveness. It was not just his very expert use of the spoken and written word: it was also the manner of it. As someone—not a don nor indeed of this country—reminded the writer recently: McNair would listen to an opposing view apparently with such patient interest, though not without some air of open-eyed surprise, and then—after most careful consideration—gently, courteously and kindly explain again in simpler terms his own view, as to one who, though having tried, had failed quite to understand; so at that juncture one usually gave in, feeling that it would hardly be decent to persist in opposition.

Besides his devotion to the lawyers’ reason—he might have hesitated to call it doctrine—applied to problems of international law, especially those parts of it that tend to march with municipal law (exemplified in very many articles, the second edition of his book on treaties, and the books on the legal effects of war, and on air law, as in his Tripos lectures), McNair was also a pioneer in delving in the then largely untouched quarries of state practice, for the extraction of valuable material sources for the elaboration, adaptation and tempering of the stuff of international law. The two

great works in this field were the *Annual Digest of International Law Cases* (started jointly with Hersch Lauterpacht) and his three volumes of *International Law Opinions*. It was typical of his approach that the first edition of his *Law of Treaties* was largely a commentary on British practice as evidenced in law officers' Opinions and that it was the much later, second edition in which he felt able to abandon these underpinnings and to venture into a much larger work of a general character.

These two different but strictly complementary approaches were also evident in his teaching in the post-graduate stage: mainly in those days for candidates for Section D of the LL.B., for McNair belonged very much to his period in firmly discouraging a man from the Ph.D., insisting that a good short article published in a reputable journal would stand him in better stead than a research degree.

For these graduates he ran a seminar in international law: not a seminar in the American sense, with its organisation and documentation, but something very like a supervision; and, like a supervision, it was not in the law school but in his keeping room in Caius. We sat round the fire in easy chairs, McNair sat on the right of the fireplace, the usual position of the senior in any kind of college gathering, and we talked quite informally and rather generally about some topic of international law for an hour. There was also the international law club which he founded—an example since followed in Oxford and Harvard—which also met in his keeping room after hall, when discussion could go on to a late hour. This assembly would include other dons interested in international law, such as Patrick Duff, Emlyn Wade and Bryan King, and the late J. Mervyn Jones.

One thing one learned inevitably from McNair in these meetings was caution in expressing an opinion unless one had done one's homework. At a time when the burning topic was whether the Suez Canal could lawfully be closed as a sanction against Mussolini's adventure in Abyssinia, international lawyers known and unknown were writing daily to *The Times* declaring their convictions one way or the other. So we asked McNair what was the right answer: long, thoughtful pause, and then: "Well . . . that is a subject that requires more consideration than I have yet been able to give it."

But his teaching for the LL.B. included the quarrying side too, for in the early thirties he was beginning his work in the materials in the Public Record Office (on the lines first mapped out, it should be added, by the late Professor H. A. Smith). McNair was not content just to give his pupils a glimpse of this work. He made available to his seminar pupils lists of P.R.O. references for particular topics, which he suggested they should follow up on day excursions

to London, not to help provide material for his own work but for them to work up into an article of their own if they were ambitious enough to do so. And of course the article could be “tried out” on the international law club.

McNair was remarkably helpful and kind to young lecturers just making a start. Faced with the preparation of a first, and new, course of lectures, such a one received eight closely hand-written “rough notes which may suggest something to you for your lectures,” together with “a few of my cards from which you may be able to pick up some fragments. Please let me have them back.” It was a paper eloquent of characteristic McNair approaches: a sharp distinction between history that illuminated modern law or legal problems, and “Pre-history or Antiquarianism”; an emphasis on the rules and content of international law rather than the literature; a valuable idea is suggested as “worth looking at”; “it is not easy to be really scientific while avoiding details”; so-and-so’s work was useful, “But he is very academic—what the French call *un érudit*.”

McNair was a first-rate after-dinner speaker: felicitous of phrase, slyly humorous, never solemn or portentous, always timing it so that one wished there could have been a little more. Some readers of this note will remember his speech at the Faculty Dinner in Jesus College to celebrate the 80th birthdays of McNair and Hollond. Recalling the chaperones required to be present whenever he visited Marjorie, the future Lady McNair, while she was still an undergraduate at Somerville College (it must have been about 1910 or 1911): “the chaperones did not actually knit; but morally and intellectually, that is what they were doing.”

It has been remarked that McNair, though opportunities and distinctions from outside Cambridge were his in plenty, never let go of the notion that Cambridge was where he belonged. But of course he belonged to a time when few would have been found to question that simply being a don at Cambridge was a career that could hardly be bettered. And for the Cambridge of their generation they were probably right.

It would not be right to conclude without a mention of McNair’s deep friendship with Hersch Lauterpacht, his former pupil at the London School of Economics where McNair, like Gutteridge, began his teaching career. Lauterpacht was to follow in McNair’s footsteps as Whewell Professor and then as Judge of the International Court of Justice, but was cut short at the very height of his powers. In many ways—as so often happens in great friendships—the two men could hardly have been more different. Even in their approach to international law they were different. But they were alike in great humanity.

R. Y. J.