

**THE LAW OF NATURE AND
NATIONS IN SCOTLAND: BEING
THE LECTURES DELIVERED IN
SESSION 1895-1896 IN THE
UNIVERSITY OF GLASGOW**

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The Law of Nature and Nations in Scotland: Being the Lectures Delivered in Session 1895-1896
in the University of Glasgow by William Galbraith Miller

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WILLIAM GALBRAITH MILLER

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THE
LAW OF NATURE AND NATIONS
IN SCOTLAND:

BEING THE LECTURES DELIVERED IN SESSION 1895-96 IN THE
UNIVERSITY OF GLASGOW, INTRODUCTORY TO
THE THREE COURSES OF

- I. *Philosophy of Law, General and Comparative Jurisprudence:*
- II. *The Law of Nations, or Public International Law: and*
- III. *International Private Law.*

BY

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P R E F A C E.

THE Law of Nature and Nations held an honoured place among the subjects studied in Glasgow University during the eighteenth century, forming as it did the main topic of treatment from the Moral Philosophy chair. To Adam Smith, who held that chair from 1752 till 1764, belongs the honour of separating the new science of Economics, of which we may see the germs in certain chapters in the works of Grotius and Pufendorf.¹ Glasgow being his own country, it is only now, after the lapse of 130 years, that the people of Glasgow have been able to found a chair of Economics to commemorate his connection with the University.

The decline of legal studies at the commencement of the present century was as conspicuous in Oxford, Cambridge, and Edinburgh as it was in Glasgow.

When the revival took place in Glasgow in 1878, I was invited to give a qualifying course on "Public Law." I treated this subject as still the old one of the Law of Nature and Nations, but, in compliance

¹ Even in Stair and Bankton it is interesting to notice what are to us irrelevant economic remarks, evidently derived from the same sources.

with the demands of modern science, divided my course into four short ones of—(1) Philosophy of Law; (2) The Law of Nations systematically and doctrinally treated; (3) The History of the Law of Nations; and (4) Private International Law. In order to meet the requirements of the new Ordinances, the University Court have made three separate courses, involving from 120 to 140 lectures or class attendances in each academic year, and they have done me the honour of entrusting these courses to my care. It may be interesting hereafter to know precisely the view which I take of the scope of the various subjects, and I have therefore ventured to publish these Lectures.

Pope Nicholas expected the University of Glasgow to have two Faculties of Law,—the one of the Canon and the other of the Civil Law. Mr. Rashdall, in his recently published work on the Universities of Europe, says (II. 305-6): “The earliest extant statutes, those of 1482, make it plain that the University was intended by its founder to be one of the Bologna pattern,—a Student University; a desire no doubt inspired by the ambition that his University should become a great school of Law.”

In 1831 the Rosebery Commissioners reported (Gen. Rep. xii. 54): “The real interests of the community

may be most materially sacrificed if the course of study of law shall be adapted wholly to the supposed convenience of a portion of the Students. The country is deeply interested in the character, the independence, and influence of the advocates to whom the defence of their property and liberties may be entrusted; and it will be in vain to hope that the independence and character of the Bar can be maintained, if the study of Law is not conducted on an enlightened and philosophical plan.

“The great extension of the subject only renders it the more important to provide that the instruction of the Students shall not be limited to the details of a technical art, the philosophy and science of Law sacrificed, in order to furnish materials for the Manual of a Practitioner.”

In 1893 the present Commissioners enacted (Ordinance 31)—

“With regard to the University of Glasgow—

“(4.) The following professors shall constitute the Faculty of Law :—

“The Professor of Law.

„ Forensic Medicine.

„ Conveyancing.”

According to the interpretation put upon this Ordinance by the University Court, the Commissioners have suppressed Queen Anne's chair of the Civil Law ; and now not one of the compulsory subjects for the degree of Bachelor of Laws is represented by a professor.

The degree in Canon Law—*Decretorum Doctor*—has apparently survived, though its Faculty has long ago disappeared. The Theological Faculty take D.D. as representing *Sanctæ Theologiæ Doctor*. The degree in the Civil Law (LL.D.) has met a worse fate. The Universities have forgotten that the laws referred to are Justinian's. Even in the days of Dr. Reid degrees in Law were conferred after examination on deserving students. In the University of Aberdeen, down to the time of the 1858 Commission, the regulations for obtaining LL.D. were similar to those for obtaining M.A. In the first of the following Lectures I point out the attitude of unconscious hostility to Law perhaps necessarily assumed by Theology and Medicine, and now the teaching profession have secured special Doctorates in Literature, Science, and Philosophy for those who possess special qualifications in any of these subjects ; while the Doctorate in Civil Law is conferred on those who cannot take these

degrees, or even on persons who possess no academic qualification whatever.¹

The General Council of Glasgow memorialised the Commissioners to put an end to this anomaly, for the practice of the Scottish Universities as to degrees in Law is unique, if not in Christendom, at least in Great Britain, while in the Scottish Universities themselves the Law Professors are the only ones who are not permitted to examine for and award a Doctorate in their own Faculty. The Commissioners no doubt have aimed an Ordinance at the acknowledged abuse by demanding reports with special reasons for conferring the degree, but they forgot that it is easy first to give a degree and to find reasons afterwards. The influence of the Arts and the Science Faculties must now therefore be added to those of the Theological and the Medical as opposing forces to be reckoned with. The matter of degrees is a small one, but for that very reason it affords important evidence of the position of legal studies and of the Faculties of Law in all the Universities. It is the straw which shows

¹ The honorary degree should be reserved for those who contribute to the science of Law, or who do distinguished work in the legislative, judicial, executive, or administrative departments of Government, imperial, local, or municipal.

how the wind blows, and its importance has been exaggerated by the refusal of the other Faculties to give any assistance towards the reform of the manifest abuse.

It rests with the legal profession in Glasgow to do as the clerical, the medical, the engineering, and the teaching professions have done with their subjects, to demand that the Faculty of Law—the most ancient and the model of all the others—shall be restored to its former place in the University. In fighting for themselves and for Law, they are fighting the battle of the University itself. And to this battle I may, perhaps, be pardoned for applying the words of von Ihering: “In Kampfe sollst Du Dein Recht finden. Von dem Moment an, wo das Recht seine Kampfbereitschaft aufgibt, gibt es sich selber auf.”

It is, however, a profound mistake to imagine that legal and political studies are a matter of mere professional interest. The general public is as vitally interested in these as in other subjects of academic study. And yet we find that in Scotland, without reckoning the chairs of Forensic Medicine and of Economics, there are only eight endowed *chairs* of Law in all the four Universities, and even of these five have been devoted or diverted to the teaching of merely professional