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Craig Scott

Osgoode Hall Law School of York University

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Profile / Profil

Ronald St. John Macdonald and International Legal Education

CRAIG SCOTT¹

Ronald St. John Macdonald has been a unique figure in the world of public international law. Beginning in the early 1960s, he achieved a high stature in Canada through a combination of his writings, influence on Trudeau-era foreign policy, and tireless efforts to internationalize legal education in Canadian law faculties, including as Dean in not one but two respected law schools (University of Toronto, 1967-72, and Dalhousie University in Nova Scotia, 1972-79).² But Macdonald has also been the quintessential cosmopolitan, whose global network of academic, professional and friendship relations over the past four decades has been matched by few others. In addition to the tireless energy involved in staying in contact with colleagues and former students on a one-on-one basis, his role as something of a “grand convenor” of people of diverse backgrounds is legendary. This capacity and role is almost certainly what made possible the pulling together of what is widely – if not universally – regarded in the international legal community as the leading anthology of original contributions to the theory and fundamental doctrines of international law: *The Structure and Process of International Law*.³ Apart from his academic cosmopolitanism, Macdonald is most known out-

¹ Associate Professor and Associate Dean (Research and Graduate Studies), Osgoode Hall Law School, Toronto. The author is preparing, with Graham Boswell, a volume of collected works entitled *Towards a Constitutional International Law: Selections from the Work of Ronald St. John Macdonald* (expected publication in 2003).

² As one measure of Macdonald’s influence in Canada, two recent events are worth noting: a special plenary session at the annual conference of the Canadian Council of International Law in October 2001 that revisited the ideas in Ronald St. John Macdonald and Douglas M Johnston, eds., *The Structure and Process of International Law: Essays in Legal Philosophy, Doctrine and Theory* (The Hague: Martinus Nijhoff, 1983); and a special day-long symposium on the influence of Macdonald’s work in several fields, which was held at Dalhousie University in Halifax, Nova Scotia, in May 2002 and which attracted scholars of all generations from across Canada.

³ *Structure and Process*, *ibid.* Note the academic partnership and close friendship of Macdonald and Johnston in the 1970s and into the 1980s; many, including myself, would consider Johnston to have been Canada’s leading theorist of international law for a period of several decades. In terms of the *FORUM* theme, the pedagogical role of this book bears

side the academy for the singular accomplishment of being the only non-European (he does not have any dual nationality) ever to be elected to the European Court of Human Rights, having been summoned out of the blue by the Crown Prince of Liechtenstein to be asked whether he would stand as that country's first-ranked nominee to the Court.⁴ Travelling monthly to Strasbourg from Halifax for the Court's sessions, Macdonald served on the Court for 18 years before his retirement in 1998.⁵

At the height of the Cold War, Macdonald was a noted interlocutor with the international legal academy in the Soviet Union, his contact having begun in the 1960s when he was head of Canada's delegation to the UN General Assembly's Third Committee. He began to foster visits to the University of Toronto of Soviet scholars and to seek out articles for the *Canadian Yearbook of International Law*, a good example of Macdonald's ability to meld multiple roles and work in overlap-

mentioning. It is not only that many consider it a first point of reference when delving into a core concept, fundamental principle or school of international law. It is also that copies of it were at one point sent to countries in the South – to foreign ministries and law libraries – as part of an aid program funded by a Western government's development agency. As for the reference to Macdonald as a "grand convenor", I first used this description when writing a piece that described the papers and discussions at the first-ever annual conference of the Canadian Council of International Law in 1972, at which Macdonald, as founding President of the Council, had assembled, along with the who's who of Canadian international law of the day, an impressive international supporting cast that included Myres McDougal, Percy Corbett, and Suzanne Bastide. See Craig Scott, "1972: New Approaches to International Law" in Yves Le Bouthillier, Donald McRae, and Donat Pharand (for the Canadian Council on International Law), eds., *Compendium: The First Twenty Years / Les Premiers Vingt-Cinq Ans* (Ottawa: CCIL, 1998) 128-142.

⁴ See the chapter on Macdonald in Jack Batten, *Judges* (Toronto: Macmillan, 1986) for a story of this episode as well as other interesting dimensions of Macdonald and his life.

⁵ Macdonald used the time on the Court mostly to build a body of writing on the doctrinal principles underlying the Court's jurisprudence, playing a collegial role on the Court itself and not tending to dissents or separate opinions. His trilogy of synthetic pieces on derogations, reservations and the margin of appreciation are amongst the leading pieces in the field: see "Derogations under Article 15 of the European Convention on Human Rights" (1997) 36 *Columbia Journal of Transnational Law* 225-267, "Reservations Under the European Convention on Human Rights" (1988) 21 *Revue Belge du Droit International* 429-450, and "The Margin of Appreciation in the Jurisprudence of the European Court of Human Rights" in (1990) Vol. 1, Book 2 *Collected Courses of the Academy of European Law* 95-161. A version of the latter piece also appeared in the leading anthology on the European Convention that Macdonald co-edited: Ronald St. John Macdonald, Franz Matscher and Herbert Petzold, eds., *The European System for the Protection of Human Rights* (Dordrecht: Martinus Nijhoff, 1993) 83-124.

ping communities. However, it is probably the role he played in providing external support for the opening of legal education in China that is his single most impressive and long-lasting contribution as citizen-diplomat. At the dawn of the 1980s, letter of introduction from Prime Minister Trudeau in hand, Macdonald traveled to China, where he was received by Wang Tieya, one of the century's most respected international law scholars in China and someone who had greatly suffered during the Cultural Revolution. A lasting bond was formed, both with Wang and with Beijing University (known locally as Beida).⁶ Macdonald was appointed the first non-Chinese Honorary Professor in the Social Sciences at Beida. Apart from these beginnings and the demonstration of solidarity, external links developed that included a steady outflow of Chinese students to do graduate work with Macdonald and colleagues at Dalhousie and then to the University of Toronto after he had returned there as Professor Emeritus in the early 1990s. From my conversations with scholars in Beijing, I am certain that it is no stretch to say that Macdonald is revered in the international law university community in China, certainly at Beida.⁷ During my own visit to Beida campus several years ago, I was struck by the very first wall decoration that one encounters when entering the hallway of the law faculty: a large framed photograph of Macdonald. A picture is indeed worth a thousand words.

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⁶ As evidenced by Macdonald's article "Legal Education in China Today" (1980) 6 *Dalhousie Law Journal* 313-339 and by an excellent *Festschrift* for Wang Tieya in which Macdonald's lead essay bears witness to Wang's struggles: see "Wang Tieya: Persevering in adversity and shaping the future of public international law in China" in Macdonald, ed., *Essays in Honour of Wang Tieya* (Dordrecht: Nijhoff, 1994) 1-29. See also the articles in honour of Wang in (2002) 4 *Journal of the History of International Law* at 139-246. Macdonald is the founding editor and now editor-in-chief of this journal.

⁷ One Chinese scholar and former student of Macdonald told me that, in this particular community, people sometimes go so far as to speak of Macdonald as the Norman Bethune of international law in China. (Bethune was a Canadian doctor who distinguished himself serving the Republican side during the Spanish Civil War before joining Mao's revolutionary forces. When Bethune died of blood poisoning from a cut received while operating, Mao composed an ode to Bethune that for many years, and perhaps even to this day, is still studied in schools in China. The doctoral student who told me about the Bethune-Macdonald comparison was able to recite Mao's poem to Bethune, two or three decades after having learnt it. I provide this background to convey a sense of Bethune's place in the Chinese imagination and thus to convey the meaningfulness of speaking of Macdonald metaphorically in this way.)

It is fitting that Ronald St. John Macdonald be featured in the current issue's Profile column given that this issue of the *FORUM* is dedicated to the theme of teaching international law. In the course of preparing the forthcoming edited collection of his key work, I have had occasion to review Macdonald's entire body of writing. From that *oeuvre* emerge two dominant passions: the pursuit of a "rule of law" ethos in international life, analogous to the role of constitutional law in domestic legal orders; and the profound importance of international law for legal education.

Macdonald has been a ceaseless advocate for the inclusion of international law as a central feature of legal education. On this front, two engagements stand out in particular: his central role in encouraging the adoption of, and subsequent progress of, a UN Decade of International Law; and his key role as a member of the Institut de Droit International in placing international legal education on their agenda. With respect to the Decade, Macdonald criss-crossed Canada in an effort to promote a higher consciousness of the need for cosmopolitan legal education in what was then, and still by and large remains, a highly parochial legal education system in Canada. He organized symposia and less formal get-togethers, and drew in a range of students, law school alumni and academics from across the country in a series of such meetings – in the process demonstrating his basic instinct for inclusiveness. As for the Institut's study, Macdonald drafted the resolution on the teaching of international law that was adopted by the Institut as a whole.⁸ While cause and effect cannot easily be disentangled from complementary parallel efforts, I personally have little doubt that Macdonald's work over the Decade and within the Institut have been important elements in fostering a variety of initiatives in the realm of internationalized legal education that have blossomed in the last few years – from the involvement of the UN in pushing for an information and experience-sharing curriculum database through an emergent worldwide network of law schools, to various gatherings of leading internationalist educators from law faculties around the globe seeking to establish some kind of organization to promote a shift in legal education, to a myriad of bilateral and multilateral partnerships of law faculties that have emerged in recent years or that are in the planning stages.

Macdonald has also been a disciplined chronicler of the evolution of international law university teaching in Canada.⁹ He began with a short note published in

⁸ See (1997) 69/1 *Annuaire de l'Institut de Droit International*, Session de Strasbourg, 123-217.

⁹ And legal education more generally. See Macdonald, ed., *Dalhousie Law School, 1965-1990: An Oral History* (Toronto: University of Toronto Press, 1996).

1964 that drew attention to a gathering of international law teachers, before then publishing four articles from 1974 to 1983 in the *Canadian Yearbook of International Law*.¹⁰ The four-part “An Historical Introduction to the Teaching of International Law in Canada” combines his interest in international legal education with a long-standing fascination with history generally and with the history of international law and organization in particular.¹¹

It is here that another aspect of his work on international legal education deserves emphasis, and that is his devotion to the intellectual biography as a way not only to chart the development of an area of international law but also, implicitly, to make a point that is not always in vogue with professional historians: human agency matters, and matters profoundly, in the direction “history” takes. After the inaugural biography of Maximilien Bibaud, “the pioneer teacher of international law in Canada”,¹² all four subsequent biographies concern international law academics who have made an impact both as teachers and as contributors to the “real world” development of international law.¹³ In the process of interweaving teaching, scholarship and extra-University career paths, Macdonald’s narratives serve as testimony to the institutional interchange between theory and practice that characterizes the field of international law to a greater extent than many other areas of the law.

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¹⁰ See “Meeting Teachers of International Law” (1964) 1 *Canadian Legal Studies* 103-108; and the four installments of “An Historical Introduction to the Teaching of International Law in Canada” in (1974) 12 *Canadian Yearbook of International Law* 67-111, (1975) 13 *CYIL* 255-281, (1976) 14 *CYIL* 224-257; (1983) 21 *CYIL* 235-265.

¹¹ Which interest resulted in his founding and now editing one of the more exciting international journals to have emerged in the past few years, the *Journal of the History of International Law*; see *supra* note 6. Macdonald was also founding editor of the *Osgoode Hall Law Journal*, the *Dalhousie Law Journal*, and the *University of Western Ontario Law Journal*, while he was general editor of the *University of Toronto Law Journal* for over a decade (1961-1972). Corresponding to each journal, Macdonald was on faculty at Osgoode Hall Law School (before it separated from the profession and attached itself to York University) 1955-1959, University of Western Ontario 1959-1961, University of Toronto 1961-1972, and Dalhousie University 1972-1990.

¹² “Maximilien Bibaud, 1823-1887: The Pioneer Teacher of International Law in Canada” (1988) 11 *Dalhousie Law Journal* 721-743.

¹³ “Maxwell Cohen at Eighty: International Lawyer, Educator, and Judge” (1989) 27 *CYIL* 3-56, “Leadership in Law: John P. Humphrey and the Development of the International Law of Human Rights” (1991) 29 *CYIL* 3-91, “Charles B. Bourne: Scholar, Teacher, and Editor – Innovator in the Development of the International Law of Water Resources” (1996) 34 *CYIL* 3-88, and “Wang Teyea: Persevering in Adversity”, *supra* note 6.

Allow me at this point to make the shift in form of address. When I think of Ron, I sometimes think of Georges Scelle's useful notion of *dédoublement fonctionnel*, for Ron has always been both a citizen of Canada and a citizen of the world. The two identities always have the potential to create tensions, especially for Canadians who seek to engage the United States while protecting our right to be distinct (and distinctive in the world), but Ron has negotiated his identities almost seamlessly in the course of belonging to multiple professional circles within the notional (but still highly segmented and fragmented) community of international lawyers. Fiercely proud as a Canadian and idealistically committed to making cosmopolitanism a reality, Macdonald possesses a particular character trait that seems to me to be most responsible for his capacity to be one with many worlds, namely his own thirst to learn and his own willingness to learn by listening to others.

In this respect, I think it worth mentioning that relatively few would say that it has been in the traditional classroom lecture setting where Macdonald has made his mark as a teacher and educator. Rather, it has been through the web of individual relationships he has formed, with students, former students and colleagues. His role as mentor for countless younger-generation scholars – both those students with whom he worked at Dalhousie or the University of Toronto and those, like myself, who simply benefited from the support he demonstrated for their work – has been made possible by the sincere interest he always showed, and continues to show, in what people are doing and thinking about, by his great personal warmth, and by the infectious enthusiasm that sometimes causes him to resemble nothing so much as a bubbling font of ideas and proposals.

Forever drawing people to each other's attention, Ron is an intellectual match-maker, a human semi-conductor. He is also always concerned to encourage individuals in their careers, and in the process to turn international law into a flesh-and-blood existence for those drawn to it in their legal studies. I would be remiss, in this context, if I did not recognize something that is commonly known and celebrated amongst those who know Ron, and that is his longstanding practice of encouraging women to enter the international legal world, either as scholars or professionals. Well before anything resembling a strong feminist critique had emerged in international legal scholarship, Ron could often be heard forcefully arguing that international law was an unacceptably male preserve that had to become more diverse.

* * *

To end with a beginning, I hope readers will indulge me with a personal anecdote. My first encounter with Ron occurred in late 1979 or early 1980 when I was 17 and at a junior college in western Canada that was organized around principles of

“international understanding” in education. As one of only two Nova Scotians at the college, I was pulled forward by the principal to meet Ron who was visiting the campus on the way to or from Halifax. Standard fare would have been a polite acknowledgement and some formulaic words of encouragement from someone in Ron’s position. But Ron was Ron.

As he made his way down the path towards a waiting car with various dignitaries in tow, he ushered me along with him, managing to ask and find out not only about my background but also about my vague hope to someday be an international something or other (having no real idea what that might entail, readers will understand, beyond someone who might find a job with Amnesty International). I still recall the ease and heartfelt sincerity with which he made this aspiration sound both worthy and eminently doable, and the words with which he encouraged me to hold onto this hope and make it a reality. I cannot now say with certainty that I would not have found my way to this profession, and more particularly the academy, had I not met Ron for those fleeting three or four minutes. What I can say is that our brief conversation often popped up from my memory over the next decade when various decisions had to be made about what university and then what career path I would take, and that this memory did encourage me to pursue my ever-clarifying goals. For this I will always be grateful, a sentiment I suspect is shared by hundreds of others whose education and careers have been influenced by Ronald St. John Macdonald.