

TEACHING OR GET OFF THE LECTERN: IMPEDIMENTS TO IMPROVING INTERNATIONAL LAW TEACHING

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International law teaching combines the worst aspects of sex and the weather. Everyone thinks they are an expert; they complain about problems but do nothing to improve the situation. This is an exaggeration, but, in spite of protestations to the contrary, the teaching of international law does not seem to be a major interest of professional associations devoted to international law or, for that matter, to most professors who teach the subject.

In some ways, the last fifteen years have seen a marked increase in discussions about the teaching of international law. The American Society of International Law (ASIL) has an interest group on teaching.¹ The International Law Association (ILA) has established a committee on the Teaching of International Law.² ASIL President, Anne-Marie Slaughter, established a

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1. The Interest Group has existed for more than a decade. This is the official description of its role:

The Teaching International Law Interest Group provides a forum for those involved in or interested in teaching international law to discuss approaches, methods, and new techniques taking place both in the United States and abroad. The Group operates under the premise that effective teaching leads to increased public awareness and a greater understanding of international law. Although innovative new practices are often highlighted, standard approaches are also examined in order to keep them fresh and effective.

The Group has recently addressed topic areas such as curriculum and pedagogies in both doctrinal and non-doctrinal courses, requiring international law courses, infusion curriculum, and international law certificate programs within the JD program. The Group addresses these topics through discussions and workshops, as well as through co-sponsorship of international conferences.

See The American Society of International Law, *available at* <http://www.asil.org/teachingil/index.html> (last visited Feb. 7, 2007).

2. The Committee has approximately thirty members and alternates and has participated actively in all ISL Bi-Annual Meetings since 2000. I serve as rapporteur for the committee. *See* International Law

“teaching initiative” that held two workshops: Workshop One, held on Saturday, April 3, 2004 in Washington, D.C.—sponsored by ASIL, Teaching Initiative; ILA Committee on the Teaching of International Law, Institute for International Law & Politics, Georgetown University; Workshop Two, Monday, August 23, 2004, Faculty of Law of the University of Potsdam, Germany—sponsored by ILA Committee on the Teaching of International Law; ASIL, Teaching Initiative; Faculty of Law, University of Potsdam.

Both were successful, drew good attendance, and discussed a wide range of issues important to teachers from the content of examinations, information age teaching techniques, to the place of international law in the curriculum.

Given successes like these workshops, it is tempting to declare that the condition of international law teaching is good. I do not accept this positive assessment. Rather, I believe there are institutional, systemic barriers to significant improvement in international law teaching. Unless these can be overcome, we might miss a once-in-a-generation opportunity.

Until fifteen years ago, my experience with international law teaching was fairly typical. International law always had been my principal research interest and occupied perhaps a quarter of my teaching. I developed certain impressions about international law teaching from teaching courses once or twice per year. In no way was my knowledge of international law teaching systematic, developed as it was from my own experiences and from occasional discussions with colleagues.

Things changed for me in 1989, when the Ford Foundation seemed eager to fund a survey of international law teaching via a grant to the ASIL. I was the only person active in ASIL with interests in international law and survey research, so I got the job of organizing, developing, and administering the survey that resulted in *Teaching International Law in the 1990s*.³ The first step in the survey was drafting a questionnaire that would be sent to thousands of professors, academic administrators, and even some students to assess their experiences with international law teaching. Two points about this experience illustrate both the success of the survey and why the project could not be replicated today. Soon after the project began, I convened a group—mostly from the project advisory committee—that met for two and a half hours after an ASIL annual meeting to discuss the details of drafts of the questionnaires. Those attending included: Goler Butcher, Charlotte Ku, Anne-Marie Slaughter, Lori Damrosch, Igor Lukashuk, Edwin Smith, Abram Chayes, Michael Molitor,

Association, available at http://www.ila-hq.org/html/layout_committee.htm (last visited Jan. 22, 2007).

3. JOHN GAMBLE, *TEACHING INTERNATIONAL LAW IN THE 1990S* (1992) [hereinafter *INTERNATIONAL LAW*].

Louis Sohn, Richard Edwards, Yasuaki Onuma, Tullio Treves, Louis Henkin, Alain Pellet, Daniel Turp, Keith Highet, Bruno Simma, Stephen Zamora.⁴

We agreed on different questionnaires for each of the several constituencies, and sent out 1,500 questionnaires with a return rate of more than fifty percent.⁵ In 2006, I do not think it would be possible to get this many leading scholars of international law to meet to discuss a questionnaire dealing with teaching. And, in the Internet age—when we are bombarded with e-mail questionnaires—neither would it be feasible to get such a high return rate.

Carrying out this survey broadened and deepened my interest in the teaching of international law. I moved beyond the anecdotal and, somewhat oxymoronically, made teaching one of my research interests.⁶

The survey found high levels of interest among faculty and students; both constituencies like teaching and studying the subject. Administrators in political science admit to a prejudice against international law because it is too normative and not amenable to the quantitative methods so prevalent in political science.⁷ Law school professors think international law should be taught better and to more students but, generally, oppose requiring any international law.⁸ “Only 23% of respondents would require the course.”⁹

Fast forward to 2006, let’s start with the good news. The confluence of three broad factors provides an excellent opportunity.

The Internet has matured so that teachers and students can communicate easily, comfortably, and inexpensively—almost irrespective of physical location. This makes it possible to draw students from many locations into the same course—not to mention the almost infinite range of audio visual enhancements now readily available for classroom teachers. However, my impression after talking with dozens of colleagues is that new modes of teaching are possible but often not sustainable because of the huge amount of time and effort needed. The real test of the Internet will be feasibility.

4. *Id.*

5. *Id.* at 141–87.

6. In addition to the aforementioned book, I have published: JOHN KING GAMBLE & CHRISTOPHER C. JOYNER, *TEACHING INTERNATIONAL LAW: APPROACHES AND PERSPECTIVES*, (1997); John Gamble and Natalie Shields, *International Legal Scholarship: A Perspective on Teaching and Publishing*, 39 *J. OF LEGAL EDUCATION*, 39–46 (1989); John Gamble, *Teaching of International Law: Innovative Techniques*, in *CONTEMPORARY INTERNATIONAL LAW ISSUES: OPPORTUNITIES AT A TIME OF MOMENTOUS CHANGE* 367–70 (1994); John Gamble, *An Introductory Course: Clear/er Solutions: The Case for a Bare-bones Course in International Law (BBCiL)*, in 4 *INTERNATIONAL LAW FORUM DU DROIT INTERNATIONAL* 208–14 (2002).

7. Survey, *supra* note 3, at 132–33.

8. *Id.* at 22.

9. *Id.* However, younger faculty seemed much more positively disposed towards a requirement.

On October 6, 2006, Harvard Law School announced a new international law requirement.¹⁰ While this is not as sweeping a development as initially inferred, it may change the thinking about U.S. international legal education. Harvard Dean Elena Kagan said, "This marks a major step forward in our efforts to develop a law school curriculum for the twenty-first century."¹¹ However, a single survey course is not required; instead, "each student will take one of three specially crafted courses introducing global legal systems and concerns—Public International Law, International Economic Law, and Comparative Law."¹² The result may be a sea of change in the quality and quantity of international law taught in the 190 law schools in the U.S. At least in the short run, this should mean heightened interest in international law teaching.

During the last fifty years, political science has been a difficult environment for international law. Most departments did not even teach the subject. Research in international law tended to be discounted. That situation has changed slowly, but drastically. International law is taught in more departments, and research is more active than ever. The International Treaty Research and Analysis Group (ITRAG) held a workshop October 12–14, 2006 at the University of Iowa. The meeting, organized by Professor Sara Mitchell, was attended by almost thirty people.¹³ This would have been inconceivable a

10. Harvard Law School, *available at* http://www.law.harvard.edu/news/2006/10/06_curriculum.php (last visited Jan. 22, 2007).

11. *Id.*

12. Harvard provided this description of the new requirement:

From the beginning of law school, students should learn to locate what they are learning about public and private law in the United States within the context of a larger universe—global networks of economic regulation and private ordering, public systems created through multilateral relations among states, and different and widely varying legal cultures and systems. Accordingly, the Law School will develop three foundation courses, each of which represents a door into the global sphere that students will use as context for U.S. law. A course on public international law will introduce students to the sources, institutions and procedures emerging over time through the bilateral and multilateral arrangements among states as well as the participation of nongovernmental actors. A course on international economic law will introduce students to the network of economic regulation and private ordering affecting commercial transactions, trade, banking and other systems for facilitating and regulating economic relations around the globe. A third course, on comparative law, will introduce students to one or more legal systems outside our own, to the borrowing and transmission of legal ideas across borders and to a variety of approaches to substantive and procedural law that are rooted in distinct cultures and traditions. Students will be allowed to elect any one of these courses in the first year.

Id.

13. Shambaugh Conference, Department of Political Science, University of Iowa, Oct. 12–14, 2006, *Building Synergies: Institutions and Cooperation in World Politics*, *available at* <http://www.saramitchell.org/shambaugh06.html> (last visited Jan. 22, 2007).

decade ago. There is some excellent international law research—most quite quantitative—being carried. The hope is that this research will lead to more and better teaching within political science.¹⁴

Given the present climate, I conclude the possibility exists for unprecedented synergy, innovation, and improvement in the teaching of international law. However, I fear the deck is stacked against major changes. Two factors conspire against the kind of change that is needed.

I. REWARD SYSTEM IN U.S. COLLEGES AND UNIVERSITIES

Rewards for faculty are stacked overwhelmingly in favor of research, not teaching. I have hundreds of friends and acquaintances with various kinds of honorific titles connected to their faculty appointments. Only one of them, Professor J. Martin Rochester, has the word “teaching” or “teacher” in his title; his title is “Distinguished Teaching Professor.”¹⁵ The difficulty is compounded by the fact that research accomplishments are much easier to measure than is teaching effectiveness. If a faculty member has published a number of articles in significant journals, research proficiency is a fairly safe assumption. Teaching is much harder to evaluate and measure. Most institutions in the U.S. and Canada now use some kind of course evaluation questionnaire (CEQ) by which students assess the quality of the instruction they have received. At their best, CEQs may provide increased accountability, but they are not a panacea.

CEQs are useful principally as a measure of student satisfaction. They are an imprecise, broad-brush measure of a phenomenon that is difficult to assess in the first place. There are other ways to judge teaching. If these are used judiciously along with CEQs, we will come closer to making a fair assessment of the quality of this art called teaching. We must remember that CEQs are a sundial, not a stopwatch, and higher education has many cloudy days.¹⁶

I suspect the following dynamic occurs fairly often. Most rewards faculty receives accrue because of research accomplishments. Teaching is difficult to assess, save for simplistic, inadequate CEQs. The most rational behavior for most of the faculty is to teach well enough to get reasonable CEQ scores. Innovation in teaching is discouraged because, in the short run, most change tends to lower CEQ scores. This creates the scenario where faculty concentrates on research, seeking the path of least resistance and relatively high CEQ scores for their teaching. As these faculty members receive tenure and

14. *Id.* For a list of papers and text of many, see Professor Mitchell’s website, available at <http://www.saramitchell.org/index.html> (last visited Jan. 22, 2007).

15. University of Missouri at St. Louis, see Dept. of Political Science, available at <http://www.umsl.edu/~polisci/faculty/profiles.html> (last visited Jan. 22, 2007).

16. John Gamble, *The Sundial/Stopwatch Dilemma*, 12 NEW EDUCATION 59 (1990) (on file with author).

become more senior, they have the opportunity to adjust their teaching duties away from large introductory courses towards advanced, smaller, much more specialized seminars that often are far closer to their research interests. This is not the climate where preeminent international law faculty will lobby the dean for support in trying to devise the best, most creative survey course in international law.

II. OUR MAJOR PROFESSIONAL ASSOCIATIONS DO NOT TAKE TEACHING SERIOUSLY

This may be biting the hand that feeds me. Both the ILA and ASIL have shown token interest in teaching with, respectively, a Committee on teaching and an Interest Group. But neither has prospered. The ILA Committee has trouble getting branches to appoint members. Reports of the Committee are not taken seriously and, because they do not fit the usual ILA mold, often do not get published. Teaching is fundamentally different from other ILA foci, *e.g.*, “the regime of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured,”¹⁷ and has not found its niche. The ASIL Interest Group has conducted some activities, but overall has not been particularly active. Teaching usually is deemed not sexy enough for the ASIL Annual Meeting. The last plenary session on teaching at an ASIL Annual Meeting was in 1991.¹⁸ This was possible only because of the insistence of one of the program co-chairs (me). 400 people attended, including Yale Professor Myres McDougal. Professor McDougal—eighty-five years old at the time—sat in the front row, appeared to be sleeping, but asked the first and best question. I had hoped for a resurgence of interest at ASIL, but it has been very difficult. Executive directors generally are supportive of teaching; most ASIL presidents have not made it a high priority.

The opportunity exists for a major resurgence in interest in international law teaching. I think this argument can be made, although, so far, it does not seem to have held sway. In my opinion, two of the major problems facing professional associations like the ASIL and the ILA are appealing to both major membership constituencies, professors, and practitioners, and dealing with specialization and, ultimately fragmentation, *e.g.*, will an American Society of International Economic Law develop because economic law experts feel they are getting short changed by ASIL?

17. See List of Committees, available at http://www.ila-hq.org/html/DISPLAY_COMM_DETAILS.ASP?ID=33&COMM=Outer+Continental+Shelf&type=IC (last visited Jan. 22, 2007).

18. Proceedings of the Eighty-Fifth Annual Meeting of the American Society of International Law, Roundtable on the Teaching of International Law, American Society of International Law, April 17–20, 1991, 85 AM. SOC'Y INT'L L. PROC. 102.

A creative, ambitious rededication to international law teaching could address both of these problems. In dozens of conversations with ASIL and ILA members, I have been struck by the fact that all members have a common interest in international law teaching as students, professors—or more immediately—as the vehicle by which new and talented people are drawn to international law. Further, efforts to develop a good, efficient, effective survey course in international law should have broad appeal. More focus on teaching might also ameliorate the rift among sub-specialties. Improved teaching techniques and strategies should be of interest to all subspecialties. Sub-fields, *e.g.*, human rights law, law of the sea, and trade law, cannot be taught efficiently if students lack a basic grounding in international law. How can professors teach about the World Trade Organization (WTO) dispute settlement procedures if students have no prior knowledge of dispute settlement modes used in international law?

Where do we begin? First, we should seek practical, focused approaches that yield tangible results. With all due respect to my friend, the late Judge Manfred Lachs, an expansive approach to teaching such as that advocated in Judge Lachs' book is not the way to generate sustained interest.¹⁹ I suggest that a university join forces with a professional association to create an institute for the improvement of international law teaching (triple ILT). This must be a neutral forum, not favoring any particular approach or orthodoxy.²⁰ It would have to accommodate the fact that we teachers want to be assisted, not coerced, and often are suspicious of those offering to help us to teach better. Initially, I envision a website, organized by important topics. Faculty could visit to get advice, strategies, or anecdotes for teaching a particular subject. Subsequently, they could contribute to the site—making the endeavor interactive, almost organic. In the overall scheme of things, this task is not difficult. The problem—not surprisingly—is finding people with the determination, time, energy, and influence to make it happen. Of course, a sizeable grant would help, as would explicit expressions of support from officials of ASIL and the ILA.

19. See MANFRED LACHS, *THE TEACHER AND INTERNATIONAL LAW* (1982). I think Judge Lachs would agree with my assessment. In many long conversations, he explained to me that his book was an attempt to express his view of teachers integrating their efforts in research and teaching.

20. For example, if such a website were dominated by opposition to the war in Iraq, it would make it harder to sustain and develop the site for use in the long-term.