

International Legal Education

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I. Introduction

This year's contribution from the International Legal Education Committee to International Legal Developments in Review focuses on two primary topics. The first is the issue of whether it is desirable to require all law students to have some exposure to international or transnational law, and, if so, what form this exposure should take. The second topic examines the impact that the tragic events of September 11, 2001, have had on international legal studies. For example, the current or future difficulties foreign LL.M students may have in getting visas or other possible barriers to their legal studies in the United States, and the introduction of new courses stimulated by September 11, such as "Terrorism and the Law" or "National Security Law Post 9/11."

II. International Law and the Law School Experience

Globalization and legal education has recently become a widely discussed subject.¹ Although there is still resistance in some circles, the majority view now appears to be that

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1. For example, the theme of the 2003 Annual Meeting of the Association of American Law Schools was "Legal Education Engages the World." There have also been a number of law review articles on this subject. See Alberto Bernable-Riefkohl, *Tomorrow's Law Schools: Globalization and Legal Education*, 32 SAN DIEGO L. REV. 137 (1995); W. Michael Reisman, *Designing Law Curricula for a Transnational Industrial and Science-Based Civilization*, 46 J. LEGAL EDUC. 322 (1996); David S. Clark, *Transnational Legal Practice: The Need for Global Law*

legal education should be modified or even transformed to respond to the globalization phenomenon. There is not necessarily an agreement, however, on the steps that should be taken to produce this end. A major constraint, of course, is the amount of resources that a law school is able or willing to devote to increasing the international dimension of the law school experience. But there are a number of law schools with elaborate international legal studies programs that require resources beyond the reach of most law schools.² For instance, few, if any, law schools have the resources available that New York University Law School has allocated to its "Global Law School" program.

Depending on available resources, steps toward internationalization or globalization of a law school could include "adding courses, hiring more international faculty, sponsoring more international academic programs, opening research centers with global connections, and augmenting the number of formal international linkages."³ There has been a movement to introduce international or transnational elements, known as "modules," into courses that have primarily a domestic law focus, especially courses required as part of the first year curriculum.⁴

Perhaps the most noteworthy development, which was reported by Jeffery Atik and Anton Soubot in last year's *International Legal Developments in Review*, was the University of Michigan's decision to become the first U.S. law school to require a course in "Transnational Law."⁵ Adopted by the Michigan faculty on May 4, 2000, the proposal to offer a course in transnational law was initially implemented, "[i]n order to get a head-start and to gather some experience," through the offering of the course as a first year elective in the winter of 2001 (in one section).⁶ Beginning with the 2001–2002 academic years, the course became a pre-graduation requirement. Students may take the course either as a first year

Schools, 46 AM. J. COMP. L. 261 (Supplement 1998); Claudio Grossman, *Building the World Community: Challenges for Legal Education and the WCL Experience*, 17 AM. U. INT'L L. REV. 815 (2002); Diane Penneys Edelman, *It Began at Brooklyn: Expanding Boundaries for First-Year Law Students by Internationalizing the Legal Writing Curriculum*, 27 BROOKLYN J. INT'L L. 415 (2002).

2. Some examples of law schools with extensive international legal studies programs include Georgetown, Columbia, American University, George Washington, Virginia, Harvard, and Cornell.

3. Grossman, *supra* note 1, at 817.

4. The rationale behind this approach was provocatively stated by Phillip Trimble:

Because I am skeptical that academic international lawyers will actually respond to the training needs of future generations of lawyers, I think that a more realistic remedy for some of the deficiencies of existing teaching materials is simply to introduce international law and practice into the relevant courses across the entire hitherto domestic law curriculum. For example, the U.N. Convention on the Sale of Goods should be presented in Contracts; the Hague Conventions (and the distinctive due process issues in transnational litigation) in Civil Procedure; treaties and presidential foreign relations power in Constitutional Law; limits on extraterritorial application of law in Antitrust, Securities Regulations, or Bankruptcy. The fundamentals of the subject could be introduced in a mini-course of ten or fifteen hours in the first year of instruction. Of course, a professor will assure you that there is never enough time to teach her particular subject matter in the time allotted. Nevertheless, the basic international law doctrine, underlying political realities and constraints, bureaucratic governmental processes, and issues of accountability could be readily introduced in a one-unit course. Such a development would be one step toward addressing the problems of academic international law.

Phillip R. Trimble, *What's Wrong with International Law Scholarship? The Plight of Academic International Law*, 1 CH. J. INT'L L. 117, 119 (2000).

5. Jeffery Atik & Anton Soubot, *International Legal Education*, 36 INT'L LAW. 715, 717 (2002).

6. Report of the Steering Committee of the Center for International and Comparative Law, University of Michigan Law School (on file with authors).

elective or during the second or third year, however, students who plan to take advanced international courses are strongly encouraged to take the course earlier rather than later.

As this article is being written, the course on transnational law is being taught during the 2003 winter term at the University of Michigan Law School. Although, at this point, the course has been taught for only a limited period of time, perhaps enough experience has been gained to allow for some preliminary reports from those teaching the course, some tentative observations on the strengths and weaknesses of the Michigan approach, and the possibility of alternative approaches.

To this end it is worthwhile to recall the basic purposes behind the initial proposal. The course was designed to "provide an introduction to the international dimensions of law" including "the foundations of public as well as private international law with a particular view to the professional needs of current and future lawyers, both in government and in private practice." Further, the course should "teach every student the minimum *every* lawyer should know about law beyond the domestic (American) orbit in order to be qualified for practice in an age in which virtually every area of law is being affected by international aspects" and would "be the basic course on which further, more specialized international and comparative courses can build." Lastly, the course should be:

[A]n introduction to the field and thus proceed on a basic level. Its goal is not to feed students with a massive amount of detailed information but to teach them to think in international terms about legal issues. It should also give an overview of the international subjects, demonstrating their respective relevance and relationship amongst each other so that students can make better informed choices about advanced courses.⁷

This is an ambitious agenda, especially for a two-credit course. Indeed, James Hathaway and Mathias Reimann, who co-taught the one section offered on an elective basis in the 2001 winter term, reported in a memorandum on their experience that:

[S]tudents complained that we required too much for a two-credit course—not only in terms of quantity but also in terms of the complexity of the material. There was wide agreement that three-credit hours would have been necessary. We strongly agree. It is a serious question whether even the basics in this field can be taught meaningfully in less than three-credit hours.⁸

Tim Dickinson, who had the primary responsibility for teaching the Transnational Law course in the 2002 winter term also expressed his opinion that two-credit hours for the course was insufficient. The syllabus for the course covers a wide range of public and private international law subjects. After an introductory class featuring the Romanov jewels story and a discussion of "What is Transnational Law?," the syllabus turns, in chronological order, to international actors, including states, international organizations, "individuals in international law," and non-governmental organizations, examining their responsibilities and rights. Also covered, are a wide range of sources, such as, the ICJ Statute, treaties, customary international law, general principles and regulatory regimes; public international law and domestic (U.S.) law; private international law (taught by Mathias Reimann), including international conventions (especially the Convention on the International Sale of Goods), *lex*

7. The quotes are from the curriculum committee's memorandum to the Michigan faculty explaining the format and objective of the course (on file with the authors).

8. Memorandum by James Hathaway and Mathias Reimann on "Teaching Transnational Law: The First Experience" (on file with authors).

mercatoria, and private contracts. The course covers fundamental international principles, including "The Groundrule" (the *Lotus* presumption), principles of jurisdiction, and limitations on jurisdiction (comity I). Students are required to study issues involving international dispute resolution, including among states: the World Court, among private parties: international jurisdiction, private parties versus sovereigns, foreign sovereign immunity (Foreign Sovereign Immunities Act excerpts), the act of state doctrine, concurrent jurisdiction (comity II), which includes tolerance, deference (*lis pendens* and *forum non conveniens*), and interference, enforcing foreign judgments (comity III), American statutory rules (Foreign Money Judgments Recognition Act), American judgments abroad, an international convention. Along with dispute resolution there is a section covering international commercial arbitration, including the legal framework, what can be arbitrated, and recognition of foreign arbitral awards. Finally, the class studies international transactions, including providing for dispute resolution (e.g., drafting arbitration clauses), international negotiations, and drafting international agreements.

The last three classes are devoted to three distinct subject matters taught by three different members of the Michigan faculty. These are international human rights (James Hathaway), European Union law (Daniel Halberstam), and international trade (Robert Howse); all in all, a substantial offering indeed. The need for at least three credit hours would seem self-evident.

On March 11, 2003, Tim Dickinson kindly spoke by telephone with John Murphy about his experience in teaching the course. Prior to the conversation Murphy had sent Dickinson an e-mail message asking him to respond to five questions. These questions and Professor Dickinson's responses follow:

1. *Question:* Has Michigan's requirement that students take the Transnational Law course resulted in and increased interest in international law among the general student body, e.g., increased enrollment in the international and comparative law courses? *Response:* There has been an increased "generic interest" in international law among the student body. This has resulted in increased enrollment in the specialized courses, e.g., European Union law and international trade, but there has been a decrease in the enrollment in the basic public international law course.
2. *Question:* Is there any immediate prospect that the credit hours for the Transnational Law course might be increased from two to three, as suggested by Professors James Hathaway and Mathias Reimann based on their experience in teaching the course in 2001? *Response:* It is likely that the credit hours will be increased to three, perhaps as early as next year.
3. *Question:* More generally, how successful do you think the course has been? If you had your druthers, would you make any changes? *Response:* The course has been successful. Students like it even if they took it under protest. Once into the course the objectors have usually changed their minds. Even with three credits, it would be impossible to fulfill the goals of the course completely. It was especially difficult to do so with the first year students because of their limited background in legal studies. Hence, it would be desirable to make Transnational Law a required upper level course to be taken in the second or third year of law school.
4. *Question:* Is Michigan contemplating any other changes in its approach to international legal studies? *Response:* The Transnational Law course has greatly increased faculty support for the study of international law. In considerable measure this has come about

because faculty teaching on the domestic side of the curriculum has become aware of the international dimensions of their subjects. An example would be family law. Increasingly, non-international law faculty are inviting international law faculty to come to their classes to make presentations on the international dimensions of their subjects.

5. *Question:* My understanding is that so far no other law school has followed Michigan's lead and required that their students take an international or transnational law course. Is this correct? *Response:* Although a number of schools are considering instituting such a requirement, at this juncture, Michigan is unique.

In closing, Dickinson suggested that requiring students to be exposed to international law is an idea whose time has come. His view is that it is best to have a course that combines public and private international law elements, especially in view of the increased artificiality of the distinction between public and private international law.

As Dickinson mentioned, a number of law schools are considering requiring their students to have some exposure to international law as a condition of graduation. Certainly, the "Michigan model" is one they should carefully consider. It should be noted that Dickinson and some of his colleagues at Michigan are in the process of preparing a casebook on transnational law based upon their experiences in teaching the course. There are, however, alternatives to the Michigan approach that should be considered as well.

One alternative would be to increase the "internationalization" of the domestic law curriculum to the extent that international law and practice would be introduced into the entire domestic law curriculum. Carried to its logical conclusion, this proposal would eliminate most of the international law side of the curriculum and, according to one commentator's suggestion, replace it with the internationalized domestic courses and a mini course of ten or fifteen hours in the first year of instruction that would cover the fundamentals of the subject.⁹

Although there is much to be said for introducing international legal components into the domestic law curriculum, one may be skeptical as to whether this would be an adequate substitute for mandatory student exposure to a broader view of the international legal order. One is reminded of Alexander Pope's admonition that "a little learning is a dangerous thing,"¹⁰ especially since, at best, the exposure to international law and practice in the domestic courses of the curriculum is likely to be limited in light of the other subjects that must be covered in such courses.

Another alternative approach, one we believe deserves far more attention than it has received to date, would be to require all students to take public international law, either as an elective in the spring semester of their first year or during their second or third year. To be sure, from a narrow, "practical" perspective, such a requirement would not be desirable because relatively few law students will make their living practicing public international law with the State Department, some other U.S. government agency, or with an international organization. But as the Michigan course demonstrates, even for the lawyer in private practice it is eminently practical to have some knowledge of public international law.

9. See Trimble, *supra* note 4.

10. In *An Essay on Criticism* Pope states: "A little Learning is a dang'rous thing; Drink deep, or taste not the Pierian spring." Alexander Pope, *An Essay on Criticism*, available at <http://eserver.org/poetry/essay-on-criticism.html> (last visited Apr. 8, 2003).

More importantly, there are topics in public international law that all students should have some exposure to because of their future roles as community leaders, fulfilling what Anthony Kronman has called “the ideal of the lawyer-statesman.”¹¹ Especially during this time of the Iraq crisis and the “war on terrorism,” one thinks of international law’s constraints on the use of armed force—both the *jus ad bellum*, the law of resort to the use of armed force, and the *jus in bello*, the law regulating the way the armed force is employed—as well as the many international law issues associated with arms control, disarmament, and the non-proliferation of nuclear and other weapons of mass destruction. These are subjects that in most law school curriculums are covered, if at all, only in a course on public international law. There are other subjects which are also normally only covered by a course in public international law, such as the law of the sea and the law governing airspace, aviation and outer space, that, arguably, all law students should have some exposure to.

Also, a well taught public international law course introduces students to “something really different.”¹² By comparing the U.S. legal process with the international legal process, it is possible to highlight differences and similarities between the two, which can deepen students’ understanding of the nature of law and the role it plays in society.

We have reason to be grateful for the University of Michigan’s groundbreaking experiment designed to ensure that the school’s law students are exposed to the international dimensions of law. Now is the time to examine the Michigan experience as well as other possible approaches in order to ensure that our future lawyers are as well equipped as possible to fulfill their responsibilities as lawyers and lawyer-statesmen in the current millennium.

III. International Legal Education after September 11

The year 2002, it goes without saying, was the first year following the events of September 11, 2001. As teachers of international law, the authors wondered whether September 11 had produced noticeable effects on the teaching of international law in U.S. law schools. In the 2001 report, Atik and Soubot noted that several law schools have added innovative course offerings in response to student interest in the war on terrorism.¹³

An informal (and likely incomplete) review of law school offerings reveals the following course offerings during 2002–2003:

School	Course Title
Fletcher School of Law and Diplomacy	Seminar on U.S. Intelligence, Terrorism and National Security
Harvard Law School	Terrorism in the 21st Century
George Mason University	Cyber-terrorism
Loyola Law School	Terrorism and the Law
Northwestern School of Law	9/11 Seminar
Rutgers–Camden School of Law	Terrorism and the Laws of War
Seton Hall Law School	Terrorism and Civil Liberties
UCLA School of Law	Anti-terrorism and the Law

11. ANTHONY T. KRONMAN, *THE LOST LAWYER* (1993).

12. Monty Python fans will remember the introduction to the Monty Python television series: “And now for something really different.”

13. See Atik & Soubot, *supra* note 5, at 716.

School	Course Title
Washington University	International Legal Process Seminar: The Crime of Terrorism
Widener University School of Law	Terrorism and Emergency Law
William and Mary School of Law	Terrorism Seminar

Based on personal impression, the authors proposed two hypotheses: (1) enrollment in general international law courses surged, due to the pique in student interest following the events of September 11; and (2) foreign students, especially students enrolling in U.S.-based LL.M. programs, would be reduced in numbers due to visa difficulties and concerns about hostility.

We asked two outstanding Villanova law students, Brya Keilson and Charles Kocher, to help us survey various U.S. law schools to see if these impressions were founded. The results of their survey were, to put it plainly, equivocal. Further, the responses were too few to permit meaningful scientific conclusions. That said, we report here the results for their anecdotal value.

With respect to enrollment in international law courses, many schools reported no perceptible increase.¹⁴ There appears to be one outlier.¹⁵

Directors of LL.M. programs generally reported no effect on foreign student enrollments due to September 11.¹⁶ Two schools reported increased foreign LL.M. student enrollment.¹⁷ One school reported a significant drop in LL.M. applicants "from the Middle East."¹⁸ Another Dean anticipates that LL.M. applications will be down.¹⁹ Most responding schools report trouble with visas, but many describe these troubles as usual, with students from China typically experiencing the greatest difficulties in obtaining student visas.

All told, nothing earthshaking revealed in U.S. law schools. But certainly Deans and administrators project the anxieties of the moment. On the one hand, current international crises make the study of international law even more imperative. On the other hand, fear and division pose greater challenges to the conduct of international legal education.

14. Among law schools reporting no perceptible increase were Connecticut, Georgia, Northwestern, University of Pennsylvania, Vanderbilt, Washington and Lee, and Wisconsin.

15. Loyola Law School (Los Angeles) reports enrollments in International Law more than doubled in 2002–2003.

16. Among law schools reporting steady foreign LL.M. enrollments were Connecticut, Harvard, Wake Forest, and Washington University.

17. Boston University and University of Miami.

18. Case Western reports applicants "from the Middle East" dropped from eighteen, prior to September 11, to four, after September 11.

19. Duke University.

