

1981

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Recommended Citation

Snyder, Frederick E. (1981) "International Legal Studies in the Century of the Earth," *Hofstra Law Review*: Vol. 9: Iss. 3, Article 7.
Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol9/iss3/7>

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CORRESPONDENCE

INTERNATIONAL LEGAL STUDIES IN THE CENTURY OF THE EARTH

To the Editors:

It occurred to me while reading the last issue of the *Hofstra Law Review*, that the *Symposium on the Future of Human Rights in the World Legal Order*¹ may well serve as a much-needed stimulus for serious reflection about the future of international legal studies programs in American law schools.

The dialogue between the so-called "charterists" and the "new" international jurists over the sources of human rights law now appears to have developed into a passionate confrontation between two very different perceptions of the foundations of the international community. For the charterists, the vital principle remains the rule of law—immanent, autonomous, somehow wondrously self-perpetuating.² For Lane and Watson, the key to understanding lies in a structural reconstitution of our notions of international behavior.³

This debate over first principles comes at a time of intensive and growing self-consciousness about the nature and function of the study of international law in American legal education. The decision of the Section on International Law of the Association of American Law Schools to devote its discussion during the 1981 Annual Meeting to this issue is only the most recent indication of the scope and depth of this concern.⁴

Slaking student enthusiasm has been one very visible cause for alarm. One survey has found an average enrollment of only about twenty-two students in the various international and comparative law courses offered by most law schools in the United States.⁵ But student enrollment is merely one aspect of the problem. More serious, perhaps, has been the poignant, strangely seriatim departure from full-time teaching in the past

1. 9 HOFSTRA L. REV. 337 (1981).

2. See Sohn, *The International Law of Human Rights: A Reply to Recent Criticisms*, 9 HOFSTRA L. REV. 347, 355-56 (1981).

3. Lane, *Demanding Human Rights: A Change in the World Legal Order*, 6 HOFSTRA L. REV. 269, 294-95 (1978); Watson, *Legal Theory, Efficacy and Validity in the Development of Human Rights Norms in International Law*, 1979 U. ILL. L. F. 609, 609-13.

4. The meeting was held January 5, 1981 in San Antonio, Texas.

5. D. JACKSON & E. GEE, BREAD AND BUTTER?: ELECTIVES IN AMERICAN LEGAL EDUCATION 36-37, 60 (1975) (authors analyzed student-enrollment statistics in elective courses offered at 109 law schools approved by American Bar Association during academic year 1974-1975).

few years of so many of the "founding fathers" of international legal studies in post-World War II America,⁶ and the reluctance or inability of the nation's law schools to identify, cultivate, and hire competent successors.

There is some reason, then, to characterize these as troubled times for international legal studies. Wherefore the slump? It would be easy enough to blame it all on post-Vietnam student perceptions of the purported impotence of international law and faculty failure to bring it to life in the classroom. Recent events certainly have not helped matters in this respect: The contempt with which the Iranian Government received the International Court of Justice's decision in the *Hostages Case*⁷ did not exactly galvanize public confidence in formal judicial process as an effective mechanism for the management of international political crisis.

But the predicament facing international legal studies today is surely more complex in its origins than this—too complex to be explained away by any facile reference to that ambience of skepticism which has always left its haze over scholarly discussions of the role of legal process in world politics. Indeed, the proliferation—and genuine productivity—of international organizations in the last twenty years alone has, if anything, raised serious questions about the basis of that skepticism. And the predicament is surely much older in its origins than the fall of the United States Embassy in Teheran.

Whatever the reasons for the troubled times, the consciousness that a predicament exists at all can serve as a meaningful opportunity to review some of the assumptions that have spirited the development since World War II of international legal studies programs in many American law schools. Condorcet believed that the road to useful knowledge and self-renewal lay in the study of the past, of our history;⁸ perhaps a revitalized study of international law similarly awaits an examination of our academic consciences.

The intellectual history of the Harvard Law School's program in international legal studies is, in this regard, a potentially very fruitful point of departure—if for no other reason than that its early efforts included the production of a comprehensive and explicit statement of its premises, its first principles. Interestingly, Harvard identified the concepts underlying its program essentially in terms of their usefulness and relevance to American lawyers engaged in the practice of law on behalf of American

6. The past decade alone has witnessed the exodus from full-time law teaching at their "home" law schools of such seminal figures in international law scholarship as Richard Baxter (Harvard, deceased 1980), Henry de Vries (Columbia), John Hazard (Columbia), Milton Katz (Harvard), Covey Oliver (Pennsylvania), Willis Reese (Columbia), Oscar Schachter (Columbia), Rudolf Schlesinger (Cornell), and Telford Taylor (Columbia), to name only some.

7. *United States v. Iran* [1980] I.C.J. 3.

8. M. DE CONDORCET, *ESQUISSE D'UN TABLEAU HISTORIQUE DES PROGRÉS DE L'ESPRIT HUMAIN* 76,284 (1793).

interests; American ideas about the proper shape and operation of the world legal system constituted a key ingredient in the formula as well.

Thus, an early policy statement describing the program's objectives noted the need for practicing lawyers in the United States and elsewhere to concern themselves with transnational legal problems. Particularly, "American concerns in the areas of foreign commerce and investment have multiplied in recent years,"⁹ requiring special expertise and ingenuity on the part of lawyers to help satisfy the "appetite of American industry"¹⁰ for scarce raw materials. The study of international law was also touted for its capacity to help lawyers "perceive and fulfil their proper role in the orderly economic development of the newly changing societies of Latin America, Asia and Africa."¹¹ The theory here was that lawyers so trained would be better able to assist in constructing legal processes time-tested in advanced industrial societies and believed to be indispensable to meaningful social and economic development. Finally, the international legal studies program would sensitize law students and lawyers to their civic responsibility of interpreting world events to members of their community, a responsibility of acute significance "[a]s the United States moves forward in its task of international leadership. . . ."¹²

The ideas at the heart of Harvard's program were, of course, not unlike those contained in statements made in support or explanation of courses and programs in international legal studies surfacing at many other American law schools during the post-war period.¹³ In many respects, the world that such programs envisioned calls to mind the world that Walter Lippman saw—opening the door on the universe after the war and discovering the American Century.¹⁴ The international legal order contemplated by these programs, that is, was surely one that was or would be sympathetic to the needs and interests of the many embryonic societies that were only beginning to claim official recognition as members of the world community. But the development of this post-war world system was really expected to involve the elaboration (perhaps "penetration" is a more accurate term) of legal norms and values historically associated with the North Atlantic Community's success from 1648 to 1940 in

9. Katz & Leininger, *International Legal Studies at Harvard: A New Vista*, 4 VERDICT 9, 10 (Hilary Term, Oxford University 1968). The article is based on a Report of the Director, Harvard Law School International Legal Studies 1961-1963 (1963).

10. Katz & Leininger, *supra* note 9, at 10.

11. *Id.*

12. *Id.* at 11.

13. See, e.g., W. BISHOP, INTERNATIONAL LAW xiii (3d ed. 1971); E. DICKINSON, CASES AND MATERIALS ON INTERNATIONAL LAW vii (1950). See also Trakman, *The Need for Legal Training in International, Comparative and Foreign Law: Foreign Lawyers at American Law Schools*, 27 J. LEGAL ED. 509 (1975); Roundtable on *International Legal Center and Comparative Law*, 22 J. LEGAL ED. 253 (1970).

14. R. STEEL, WALTER LIPPMANN AND THE AMERICAN CENTURY (1980).

determining the allocation of regional and global resources and in shaping the rules of membership and conduct in the community of nations.¹⁵ Howsoever the specific content of public international law would unfold in the last half of the 20th century, a First World consensus would clearly comprise the dominant element.¹⁶

The world we now know is a very different place in which to live: A world that endorses very different ideas and assumptions about the relative importance of law, men, women, international investment, death, and corporate finance from those implicit in the design of many of today's international legal studies curricula. It is a world that has endured the rise and decline of scores of governments old and new; wars badly conceived by "world leaders" and even less happily executed; the rise to fashion of worldwide terrorism on behalf of factions claiming not only recognition, but equality of representation in the international community; the consolidation of a seemingly endless array of repressive autarkies and totalitarian regimes; the devastation of environments in the mad scramble for ever scarcer resources by ever increasing populations; the anguish wrought by worldwide inflation, unemployment, drought, famine, and pestilence; the multiplication of nuclear armaments threatening the instantaneous annihilation of an international community that has been in the making for millennia. It is a world that is living in a time that belongs to no one man or woman, no one nation, no one people. It is a time when the life, hope, and future of every man, every woman are becoming more clearly every day the responsibility of each man, each woman, all peoples. It is not only the evening news that tells us, but our love of nature, our instincts for our own survival and well-being, and our fears for our successors on the planet that tell us we are living not in the American Century—or the Soviet Century, the Third World Century, or the Century of the Ayatollah for that matter—but in the Century of the Earth.

A responsibility lies with the law schools to shape or reshape their programs in international legal studies in response to the need to forge a new consensus about the nature and function of international law in the brave, new world that we have already begun to populate.¹⁷ Important first steps have already been taken by courses focusing on such issues as the dimensions of the new international economic order, the attitudes of Third World societies toward traditional doctrines of public international law, the actual settlement of disputes arising within the international com-

15. For a more detailed discussion of this phenomenon, see Murphy, *Objections to Western Conceptions of Human Rights*, 9 HOFSTRA L. REV. 433 (1981).

16. See Trubek & Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062.

17. See generally Falk, *A New Paradigm for International Legal Studies: Prospects and Proposals*, 84 YALE L.J. 969 (1975); Vagts, *Are There No International Lawyers Anymore?*, 75 AM. J. INT'L L. 134 (1981).

munity, and the evolving jurisprudence of international human rights. Such courses encourage law students to form a reasonably sophisticated working picture of the international community—who the players are, what the stakes are, how the game is or should be played.

No program will measure up to its potential, however, until it self-consciously aims to identify both the major planetary problems of our time and the role of law and lawyers in their solution or accommodation. How do these problems implicate themselves in the otherwise routine problems of the nation client, the corporate client, the human client? What policy choices are available to decisionmakers facing such problems with such implications? What are the ethical issues facing a lawyer in working through these problems? What, that is, are his or her responsibilities not only to the client, but to the species as well? For that, really, is what the “game” is all about. As the authors of one new coursebook in public international law have indicated, in articulating their reasons for writing such a book, “[w]e are concerned . . . to ask . . . whether the law, *whatever it is*, is helpful in ameliorating the grave problems which humanity faces today and which, if there *is* a future, it is likely to face tomorrow.”¹⁸

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18. B. WESTON, R. FALK & A. D'AMATO, *INTERNATIONAL LAW AND WORLD ORDER* xix (1980) (emphasis in original). For a similar discussion of the changing nature of the ethical responsibility of lawyers, see G. HAZARD, *ETHICS IN THE PRACTICE OF LAW* (1978). The inspiration lies clearly in Justice Louis Brandeis' famous phrase, a “lawyer for the situation.” *Id.* at 58; see Frank, *The Legal Ethics of Louis D. Brandeis*, 17 *STAN. L. REV.* 683, 702 (1965).

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