Teaching International Law in the Career of a Law Academic

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COMMENTARY BY MARY ELLEN O’CONNELL*

I am pleased to follow David Westin, because he set up very well what I want to say. I fundamentally disagree with many of the comments he just made, but he offers a perspective that resembles the perspective of law school faculty in general about the teaching of international law in the career of an academic. That is my topic for today.

First, I want to comment on the results of the survey relating to this particular subject. Then I want to discuss the internal law school view of teaching international law, which I believe is not dissimilar to what David Westin just related in terms of the real world. And then I want to talk about the real world, which I did not leave all that long ago and which I think has quite a different story to tell.

What do the survey results say? There is no specific question in the survey questionnaire on my topic of discussion, namely: How does teaching international law reflect upon your career as a law school academic? As an untenured faculty member, I would have been interested in the responses of law school deans to a question such as: What impact do you think teaching international law would have on a faculty member’s prospects for tenure?

We untenured faculty want clear messages from deans on this question. Frankly, I can anticipate what the responses would be, and I think they are reflected in the responses to a somewhat different question in the survey questionnaire. In Professor Gamble’s survey results, he states: “The questionnaire provided opportunities for professors to comment about the stature afforded international law. Most did so expressing the feeling that, while things are improving, American law schools still do not pay adequate attention to international law.”

On the other hand, elsewhere in the survey results is a table entitled: Faculty Assessment of Trends in Interest in International Law. According to the table, 82 percent of faculty believes that students consider international law to be increasingly important. However, a smaller percentage, 64 percent, believes that other faculty consider international law to be increasingly important. And a still smaller percentage, 52 percent, believes that deans consider international law to be increasingly important.

There is something of a tension between the survey results and the belief of international law teachers that international law is being treated inadequately. But both of those elements of the survey reflect my own perceptions of what teaching international law is for a law school academic. Within the ivory tower of the law school, there is a sense of inadequacy, a sense that international law is a lower priority, that it is an elective, that it is not as important as other courses. On the other hand, students, the people most in touch with the real world of those who were surveyed, think it is increasingly important.

I will now discuss these two views, the ivory tower view and the student, or what I call the outside, view. When I first started teaching at Indiana, my dean said to me, “After ten years we finally hired a public international law teacher. That’s very nice. We would like, however, for you to teach a real law course in addition to international law. The students will take international law more seriously if they see you’re teaching a real law course.”

“Real law” means constitutional law. That is the real law course, the “Cadillac” of courses taught at any law school. Although I began by saying that I would have liked the survey to provide an answer from the deans about what international law

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would do for my career, I think I found out immediately that I should switch to teaching constitutional law. We have one person on our faculty teaching international law. We have seven who are interested in constitutional law.

This year, when we did our hiring, we threw away all applications from international law people, but we seriously interviewed two more interested in constitutional law. What students would they teach? They would all be fighting over the few remaining students, whereas I have increasingly more students asking me to teach on more international law topics.

I do teach sales as a result of my dean’s request to teach a real law course. But think about what that means for the career of a law school academic. It means that I am teaching 133 students sales, because they followed Mr. Westin’s advice to take domestic law courses. I usually have only forty students in my public international law class. Public international law is where I do my research, where I have had years of graduate work, where I have practiced. But I am encouraged to teach in an area where I have not had those kinds of rich experiences in order to display my capableness to my students.

As a result, in sales, I am considered to be an “okay” teacher, pretty funny, but not deep, not well-versed in the subject matter. Thus, the vast majority of the evaluations I have received in two years as a teacher of sales say that I am a pretty good teacher, but not great. Whereas the international law teaching evaluations say that I am someone who is well-versed in the field and someone who has a lot of interesting and innovative things to say. But that evaluation comes from a much smaller number of students.

Of course, tenure is based upon the ability to teach, and that is taken almost entirely from the teaching evaluations. So, teaching international law has some downsides in the career of a law school academic.

There are other indications of the faculty perception that international law is not really law. One colleague suggested to me, for example, that I avoid publishing in “secondary” journals such as the Virginia Journal of International Law, the Harvard International Law Journal, the Yale Journal of International Law. They would much rather that I publish in the “main” (using their vocabulary) law reviews as opposed to the international law journals. I have tried to explain that, in fact, I myself read only the “secondary” journals, because that is where international law is published, and because it is better to publish my articles where people like me are more likely to read them.

The survey received, I believe, over 120 responses from law school teachers. That seems like a lot when you consider how many law schools there are. But I do not believe that the survey shows the distribution of international law teachers among the law schools. There are few schools with multiple international law teachers; some have none or very few. New York and Iowa Universities have a large number of international law teachers. I am the only one at Indiana. Our sister school in Indianapolis has not one public international law specialist, and we all know that some very well-known law schools also have no public international law specialists. I have been told that such schools do not consider international law to be a priority.

This is another indication that, within the law school communities, international law is just not the “Cadillac” course. I was trying to determine what car it is, if not the Cadillac. All I could come up with was the Renault. It probably belongs in the garage, but is it really a car? Now, constitutional law, there’s a car. That is a real law subject. It is ironic, because the number of our students who will actually
practice constitutional law is, I believe, much smaller than the number who will have some contact with international law in practice.

This leads me to the next point, which is the perception of international law teaching in the real world. Within the ivory tower of the law school, there are very few people who can discuss international law with us, who can read our manuscripts, who can help us develop courses. Outside, in the real world, we have students come into our offices every day, saying: "Can you talk about the war with me?" "What does international law have to say about this?"

A number of us had journalists calling us to talk about the "New World Order" and what it means under the rule of law. We have increasing numbers of people interested in international environmental law. The American Bar Association (ABA) Section on International Law and Practice is one of the largest sections. The international law section of the District of Columbia Bar Association is the largest section. And we must, of course, acknowledge that this is the UN Decade of International Law. The pressures from the outside and the number of law students who want to practice international law are growing.

In trying to convince my colleagues that international law is really law, that it is well worth pursuing a career in this area, that it is worth tenuring someone who teaches such a strange subject, I have tried to point out the recent impact of international law in other fields. Family law should definitely be taught with a reference to the new treaties on abduction. Evidence should be taught with information about the Hague Evidence Convention. How can you teach contracts without telling your students that the International Convention on the Sale of Goods is the governing law for contracts on sales between Americans and foreigners? I think most of our contracts teachers do not know this fact, and they may be guilty of malpractice for not alerting their students to it. How can you teach securities law now without alerting students to international securities law developments? I would like to see the person who teaches the seminar on capital punishment talk about the human rights implications of capital punishment in the United States. I have tried to discuss international law with my colleagues in the context of the subjects that they are teaching, that they consider to be important, and thereby show them the increasing importance of public international law.

That is why I disagree with David Westin's point that one should choose the domestic law course over the international law course. Having taught sales, in addition to international business transactions and public international law, I believe law students can work their own way through the Uniform Commercial Code better than they can grasp, on their own, the concept of customary international law or find applicable treaties. I believe that our field is more difficult for them to learn and that they should have the introductory course to it. They should have some broad survey knowledge. It will be extremely difficult for them to learn it on their own when it comes up in their international business practice.

I was shocked when I saw in the survey results that 80 percent of faculty answering do not think public international law should be a required course. That is myopic considering what is happening in law generally in this country. It does not take into account international law's increasing importance and its complexity, the difficulty of just picking it up on one's own.

Furthermore, international law offers an important jurisprudential orientation to all law, and it should be taught that way. It is the one area of law that actually has different jurisprudential underpinnings than our domestic law and can be taught in terms of its being a real law field. Yet, 80 percent of our colleagues disagree. They believe that it should remain an elective. I have been told: "Well, law academics
do not want students who are uninterested in taking their courses.’” That is not an appropriate interpretation of the survey results. Following the same reasoning, contracts, indeed all courses, should be electives.

International law should be a required course, both for its importance in the future of law generally and as a fundamental jurisprudential element of the ideal curriculum. I believe that we will see the demand for international law courses growing out of this real world demand, even if the course remains an elective and a marginalized subject in the law school curriculum. I will nonetheless continue to teach it. It is the most fun job a person could have. I absolutely love it, and I think it is a privilege to teach it, regardless of whether it is going to guarantee me tenure on my faculty.

**COMMENTARY by Elisabeth Zoller**

You may think that in Europe, international law is in much better shape than it is in this country, and I would say that, on the whole, you are correct. I would like to explain why the situation is different in European legal education.

Professor Gamble’s paper on the survey results provides a starting point for my comments on French and European legal education. I will refer to the more salient points of those survey results.

Professor Gamble states: “Above all else, we are interested in what determines the level of interest a law school has in international law.” He then goes on to describe a combination of student and faculty interest. In France, this sort of analysis is completely irrelevant.

You are probably thinking: “Well, of course it is irrelevant. French education exists in such a centralized state that students and faculty have no choice. Paris dictates everything. So, regardless of where the law school is located, regardless of student and faculty interest, a course in international law is mandatory.” However, even in the European federal states, such as Germany, the situation is the same as in France. International law teaching is given greater weight in Europe than it is in the United States.

The difference is explained by my central thesis, which is that the level of interest a law school has in international law is determined by the degree to which international law has penetrated other legal fields. Let us consider some examples.

Can you teach constitutional law in this country without ever making a reference to international law? The answer is: “Yes.” In fact, when I was teaching in this country, I noticed that some of my colleagues were teaching constitutional law on the basis of only the Fourteenth Amendment.

At the law school in Strasbourg, I teach the basic course on constitutional law, among other things. I cannot teach that course without making a reference to international law and to European Community law. And I cannot explain to the students the basic tenet of French public law, namely, the principle of national sovereignty, without referring to European Community law.

The same is true in the United Kingdom. Constitutional law is taught with reference to European Community law. In fact, my British colleagues have great difficulty reconciling, for their students, parliamentary sovereignty and Community law.

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