

# Left Legalism / Left Critique

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## When Renewal Repeats: Thinking against the Box

This essay was originally the conclusion to a longer study of renewal and criticism in the discipline of international law in the United States in the twentieth century. That study developed two ideas about what might be thought of as the “politics” of a professional discipline—here, international lawyers—involved in governance. These ideas served in turn as background for this effort to understand how one might intervene “critically” in the field as a progressive intellectual without being either hemmed in by the limits of the professional vocabulary or consigned to play the role of outsider or gadfly. How one might, as the title suggests, “think against the box” in a profession that had long since routinized the practices of criticism and disciplinary renewal.

The first idea about the politics of a professional discipline: the forms of expertise that constitute the vocabulary of the discipline might have biases or blind spots that could affect the distributional consequences of the discipline’s governance activities. And might do so even when this sort of bias or blindness is self-consciously denied and avoided in the discipline’s everyday work generating and defending the various institutions, doctrines, and policy ideas that make up the profession’s most direct contribution to global governance. Although there might be a scrupulous disciplinary practice of political evenhandedness, or of disengagement from politics, or of engagement with only the most benign universal humanism, the modes of expertise within which these disinterested denials and benign disengagements were propounded might nevertheless themselves introduce a bias.

This idea required a rather lengthy elaboration of what constituted the

field's "vocabulary": the stock of problems, solutions, terms of justification, explanation, and criticism that made up the expertise of international lawyers. It turned out that international lawyers had returned for more than a century to a small stock of simple polarized arguments about what international law was and could be. Disagreements about how to draw the line between these recurring argumentative pairs constituted the bulk of the profession's actual work in thinking about how international life should be organized. The terms of these disagreements were rearranged from one generation to the next, but the discipline's continuity was marked in their repetition. My project was to see whether this entire range of arguments left some things unsaid or biased the discipline's work in one or another political direction.

A great deal of the material produced by the discipline turned out to be denunciations of the weaknesses, biases, and blind spots of either the field as a whole or the international legal arguments and institutional proposals advanced by other people in the field. This disciplinary practice of self-criticism and renewal returned the field repeatedly to the same stylized arguments—but in the process it cleansed the discipline's vocabulary of overt signs of bias or blindness. Although the international law discipline has certainly been "captured" by one or another political position, ideological commitment, doctrinal or methodological idea in one or another time and place, the broad history of the field is of a systematic effort to avoid precisely this type of fixity. Like many contemporary governance disciplines, the field of international law is pragmatic, open, flexible, reasonable, moderate, cosmopolitan, expert, disengaged, balanced, and absolutely not dogmatic. Of two or more minds on just about everything.

This made it extremely difficult to sustain the intuition with which I began the project: that the discipline encouraged those who deployed its expertise to see some things and not others, and to contribute to global governance in ways that favored the interests of some and not others. And yet there were also, as it turned out, some commitments—to ideas like the distinction between public and private law and the distinction between government and the market—that were shared across the range of positions about which the field has self-consciously been preoccupied and that might, in some cases, introduce a bias or blind spot into the governance work of the profession. The preoccupation with a set of recurring arguments about which we would have to conclude that the discipline, taken as a whole and over time, was ambivalent might in some senses have rein-

forced both this tendency to bias and inattention to it. In this sense, we might locate the politics of a discipline in the vocabulary it speaks. We might say that international lawyers, whatever their own political affiliations and professional sensibility, were being politically spoken by their shared expertise.

The second idea about disciplinary politics explored in the original study was sociological rather than rhetorical. Although a common vocabulary does structure the exercise of expertise and may blind or bias outcomes, this vocabulary is extremely plastic. It can be torqued in dozens (although not hundreds) of different shapes. The political and personal projects of particular international lawyers—their intellectual commitments and aversions, their professional affiliations and disaffiliations, their wills to power and to submission—are also important elements in generating the "politics" of the discipline and in accounting for the shape the field's vocabulary took at different times. The second half of the earlier study developed a typology for thinking about these sorts of sociological factors and explored the intersection between the semiotic possibilities of the vocabulary and the projects of particular waves of international lawyers over time.

My idea was to understand the current state of play in the field as both a consequence of the very human political, intellectual, and professional projects of specific international lawyers, and as movements within a shared professional vocabulary. Understanding the politics of the field requires a sense for the blind spots and biases of this vocabulary as they intersect with the available range of actual social, personal, and professional projects. It was after developing this model that I turned, in the last part of the study, included here, to an interpretation of the international legal profession during the heyday of the Clinton administration's foreign policy. This provides the background for an account of my own effort to intervene in the profession as a teacher and a scholar during that period, aiming to expand its political range and counteract its bias and blindness by offering an experience of "thinking against the box" of its established vocabulary.

#### **International Law Today: Anxiety and the Search for a New Consensus**

The end of the cold war roughly coincided with the end of a stable professional consensus among American international lawyers about what inter-

national law was and could become. From the early 1980s, the field has been home to much ideological, methodological, and political debate—as well as much anxiety about what precisely international law could and should aspire to achieve. In the early Clinton years, a loose group of American international lawyers began a bid to establish a new consensus in the field that would support and accompany a return to power for international law and international lawyers within the American foreign policy establishment. By the last years of the Clinton presidency, this set of ideas and these professionals had largely established themselves as a new common sense. There were, and remain, criticisms, from the right and the left, but dominance of the field lay within their grasp.

Many of the reform ideas advanced as part of this broad project to renew the field were undoubtedly good ideas: more use of national judiciaries rather than foreign ministries to interpret and enforce international norms, emphasis on the role of nongovernmental organizations rather than intergovernmental bureaucracies to build a more cooperative and legally sanctioned international order, more insistent international support for democratic forces and voices at all levels of society rather than deference to national sovereign autonomy, increased attention to human rights enforcement, a new willingness to acknowledge the problems caused by failed states and governments, an embrace of the new global market as a potential force for stability and law, replacement of the aspiration for quasi-federal “world government” with a more flexible insistence on the necessity of “good governance.”

Although presented as recipes for broad reform of the field and of the world, many of the most compelling of these proposals restated and rearranged themes long present in the discipline—but saying so neither criticizes nor validates them. That this new mainstream had found a novel arrangement of ideas in the professional lexicon that could reposition the profession more successfully within the broader American foreign policy establishment is testimony to their ingenuity and intuitive grasp of the politics of their time. My worry about this wave of disciplinary renewal and consolidation has been another: that the urge to consolidate a new consensus about what law and governance can be at the international level will reinforce the field's long-standing biases and blind spots and miss the opportunity presented by this period of anxiety and contestation to probe more deeply into the politics of the profession. To understand the politics of the discipline, its distributional legacy and potential, we need a more basic

understanding of the assumptions common to both these new ideas and the projects they seek to displace, as well as the patterns of commitment, affiliation, and ambition within which these debates are occurring and this bid for a new consensus has been launched.

The most significant projects, affiliations, and commitments moving the international law profession at the moment are generational and political. Both are easy stories to sketch. The generational account picks up as the long engagement between my own generation, now in our forties, and our predecessors, now in their sixties and seventies, ends. From the late 1950s until the mid-1980s, the field of international law in the United States had been arranged as a gentlemanly disputation between a “Yale School” committed to “policy” and a realist focus on national interest, and a more dominant internationalist mainstream or “Columbia School” more committed to the use of legal norms to build a more collective and cosmopolitan international community. The displacement of this Yale-Columbia axis by the axis of support for and opposition to the proposed consensus—which is variously associated with the words “transnationalism,” “legal process,” and “liberalism”—is an event in the development of ideas that took fifteen years to achieve, from the mid-1980s to the end of the Clinton administration.

People in the field recognize it also easily as a generational phenomenon. The 1960–1989 generation was an extremely coherent one that entered the field early in the Kennedy administration and only began to lose its grip after the elections of Reagan and Thatcher. Since the end of the cold war they have retreated with remarkable generosity and grace or have reinterpreted themselves as allies of the new generational consensus. The leaders in the field are now largely my contemporaries, whose formative experiences in the field came after the disappointments of 1968 and Vietnam. At the same time, the field is expanding rapidly, and a much larger and potentially more diverse generation is coming on the scene, bringing new recruits and new critical voices. The disciplinary success of the transnational-legal process-liberals remains tenuous.

Generational change within a field is rarely smooth. A field can be dominated by people who understand themselves to be part of one generation for thirty or more years, and they can quite suddenly be displaced by another group who might differ in age among themselves by as much as twenty years, but still see themselves as a single generation. In American international law, this has been extremely pronounced, providing an op-

portunity to examine how a generation coalesces, announces itself, and displaces its predecessors. The presence of a potential third generation offers the opportunity to think about something equally complex: what strategic possibilities are open to an age cohort that is not yet formed either as junior members of my middle generation as it comes into power or as the avant-garde of the generation that will displace us. To put it starkly, "new thinking" for today's students can mean either submission to a proposed disciplinary common sense just being consolidated, or a far more uncertain effort to think beyond where my own generation has gone before we have even gotten there.

If we are to place this generational story in a social and political context, we might start with the observation that for international law in the United States the 1990s were like the 1950s. There are certainly contextual similarities: long economic expansion, newly unchallenged global role, a period of national cultural retrenchment, reaffirmation of conventional "family values" against the periodic cycles of modernist sexual and political openings. International lawyers again find themselves defending the machinery of multilateralism against a conventional isolationism translated by hegemony into a unilateral internationalism. We find again a displacement of public law aspirations by the priorities of free trade economic expansion on one side, and a creeping tendency to idiosyncratic humanitarian interventions on the other. It is not surprising that we find leading international lawyers today returning also to the ideas and practices of the 1950s: antiformalism, legal process, transnationalism, universal humanism, embrace of international relations, postwar liberal triumphalism, worry about the viability of humanism in a divided and decolonizing world, talk about a liberal world public order, defense of the universal in human rights. For international law, the 1950s were also a time of disciplinary doubt, of postwar anxiety about the viability of collective security, multilateralism, even international law itself, in the new world of "totalitarianism," "ideology," and the cold war. The 1950s saw deep methodological division in the field as scholars trained in the world of cultural modernism, sociological jurisprudence, functionalism, and legal realism struggled to reinvent their field on these new terms in new conditions — people like Hans Morgenthau, Pitman Potter, Josef Kunz, Leo Gross, Hans Kelsen, Myres McDougal, and Philip Jessup.

It was only in the 1960s that a methodological and political consensus settled on the field, the internationalist liberalism of people like Richard

Falk, Louis Henkin, Oscar Schachter, Tom Franck, Louis Sohn, and Abe Chayes, who consolidated a new mainstream way of thinking against the backdrop of the Yale policy alternative. In a way, the old public international law simply shipwrecked on the rocks of legal realism and policy science, and all the standard disciplinary debates about what international law was and could be that had been dominant before the 1950s were swept away. After 1960 it was routine to assert that all those who had come before had missed the most significant political developments: superpower convergence, decolonization, the emergence of development as a central substantive issue, the existence of cosmopolitan space between the superpowers. The field had been in urgent need of renewal, and suffered from an unhealthy methodological extremism when the practical problems of a newly interdependent world called out for an eclectic *via media*. The discipline's marginal status discouraged dissident voices in the field, even as it established a practice of professional dissidence. A call for new ideas in 1959 would have had many takers, all proposing one or another version of the liberal humanism that would then dominate the field for a generation. Their program would have rekindled the modernist and cosmopolitan recollections of the 1920s, enthusiasm about international administration, a chastened collective security, a critique of sovereignty, an embrace of political science, of expertise, a call for renewal.

The new generation that followed hitched their wagons to the foreign policy of the Kennedy era and to an American-style liberalism with an internationalist and cosmopolitan perspective at first promised by Kennedy's New Frontier, then by Hammar skjöld's revitalized United Nations. The disciplinary hegemony of the Hammar skjöld liberals in the field of public international law was surprisingly complete and long-lasting. It also had an enormous echo outside the United States, in many ways more than here at home for generations of young lawyers from the third world, as well as our industrialized allies and colonies, looking for a safe space between socialism and embrace of the American empire. As the liberal consensus on American internationalism dissipated, the field became increasingly marginal, isolated from both the cosmopolitanism of Republican free traders and the increasingly interventionist cold war liberalism of the Democratic Party, in Vietnam and elsewhere. Their commitment to the formal rules necessary to criticize the American hegemon or build a regime of coexistence with the Soviet Union isolated them further from American legal scholars in other fields eagerly embracing the world of "policy." There was

Ford, there were spurts of energy in the Carter years around human rights and the law of the sea, and then came Thatcher and Reagan and Bush.

By the time Clinton was elected, the field had again broken apart, its consensus dissipated—exactly as the isolationist consensus of American international lawyers before the Second World War collapsed after 1941—and for more than ten years we have been in a period of contestation and disciplinary anxiety. The context in which my disciplinary colleagues urge renewal of the field is one in which international lawyers have fallen far from power. For most in my generation, this is a problem, not an opportunity. The central project common to the new mainstream throughout the last decade has been an urgent effort to permit international lawyers to return to a position of authority within the American political establishment that they have not had in almost a century. The leaders of the field are no longer content to criticize power: they are anxious to exercise it. New ideas are thought necessary if the field is to give international lawyers a workable set of myths and methods to imagine themselves into the same social frame as the governing establishment of the Clinton presidency.

In this sense, the leading “new” scholars of my generation are to the Clinton era of renewed, if chastened, Democratic Party foreign policy what the Hammar skjöld generation was to the Kennedy and Johnson administrations. Their shared political project is the defense and development of a benignly hegemonic foreign policy of humanitarian interventions. They share with the Clintonites a way of thinking about markets and human rights, share with Clinton’s World Bank appointees a skepticism about neoliberalism, an earnest faith in modest interventionist development policy, and so forth. They seek a more humane, if only marginally more open, immigration, refugee, and asylum policy. Inside American legal culture, they are internationalist about the foreign relations law of the United States, favoring an expanded federal authority in foreign affairs and an increased role for international law in U.S. courts, even as they favor chaining the State Department to law when it acts abroad. Thus they favor decentralization of judicial adherence to international law and the use of national, or even local, courts to enforce human rights norms. Anyone and everyone should try Pinochet, for example. But they do not favor decentralization of American executive power in the foreign affairs field—allowing Massachusetts to use its purchasing power to sanction Burma, for example—at least whenever the Democratic Party finds itself in control of the national administration.

There are differences within the group, of course, about this or that intervention, the viability of a criminal court, and so on, but everyone wants U.S. courts to pay more attention to the International Court of Justice, wants the United States to “use” the institutions of multilateral dispute resolution more sincerely and more often. This is not the party of Buchanan or Helms or Perot or Nader—and also not of Rockefeller or Bush Republicanism. It is certainly not the party of Reagan, with his belligerence on cold war interventions, bilateral or unilateral enthusiasms, his obsession with the Contras, and all that. For international lawyers to be players in today’s political climate, the leaders of my generation concur that the discipline must dump the rule piety and policy skepticism inherited from the Columbia School. A dose of political science would obviously be a good idea, and the transnational—legal process—liberalism school has embraced a strand of the political science academy whose vocabulary converges with their own, worrying about “governance,” “regimes,” “global management,” and so forth. After all, recent Secretaries of State and National Security Advisors have been political scientists or Wall Street attorneys, but none have been international lawyers. These people are skeptical of human rights dogma—far too unrealistic and formal—but extremely supportive of the human rights ethic, process, procedures, machinery, just as they are empathetic about culture and poverty and other humanist commitments and enthusiastic about all sorts of efforts to dialogue and understand. Unlike some Catholic figures in the field, however, *raison d’état* rather than social justice is their first commitment. But it is a soft, embedded, humane *raison d’état*.

The transnational—legal process—liberalism school recognizes that the real players behind globalization are economists or international economic law specialists, and understand that an appreciation for economics alongside political science wouldn’t hurt. Still, they tend to be people who share the common idea in the broader liberal intelligentsia that economics is in some sense bloodless, or has a tin ear for ethics. As members of the governing establishment, they certainly support free trade, but these are not neoliberals of the Washington consensus. They are modest interventionists, interested in tempering free trade with appropriate regulations, sympathetic to the concerns raised by nongovernmental organizations (a new term for labor unions) about the social impact of trade. And so on.

What we have is a generational cohort proposing a new synthesis, animated by a set of overlapping political projects that they are pursuing vigorously. It is not difficult to identify among those promoting the new

consensus international lawyers with more specific commitments and affiliations. There are people who want to promote international economic law as a field, want to affiliate with law teachers in other, "tougher" fields, want to reinterpret international economic law as a somewhat public or constitutional legal order, amenable to at least some socially responsible regulatory initiatives. Being seen as a person who knows about economics or who consorts with law and economics scholars might well advance such a project. Similarly, there are people who want to redeem public international law as a possible partner in managing American foreign policy. To make it a worthy participant in statecraft, they feel they must demonstrate a certain hard-boiled understanding of power, and a rapprochement with the political scientists who have staffed the Democratic Party foreign policy establishment might be a good strategy.

This generational cohort of international law professionals has sought out-allies among those sharing one or another of their intellectual commitments — to interdisciplinarity in general, to the importance of economics and political science — among international lawyers and among those in neighboring fields who have felt international law had somehow gone astray, needed a cold hard look, a reengagement with policy science. They have cultivated friends among those of their elders who chafed most under the dominance of the old mainstream consensus. They have found support among those drawn to their intellectual and professional style, their hip sensibility and apparent political with-it-ness. They have mobilized institutional resources in universities, law firms, government. They have worked to mobilize professionals in a number of subdisciplines to generate operational examples of their general ideas: environmental law, refugee affairs, arms control. They have written broad-scale reinterpretations of the field's most basic doctrines and institutions: judicial review, the power of the Security Council, the role of courts, the function of international institutions. They have sought out and supported mentees and followers, have appealed to the desires of others in the field for energetic leadership. They have presented their suggestions for doctrinal and institutional reforms to one another's practitioner-beings in the hope of confirming adoption. All this is quite normal. Had they not done so we might have wondered about the usefulness of their ideas or the depth of their professional commitment and competence.

This emerging professional consensus has been criticized in numerous ways, by people within and without the field, by international lawyers from

the United States and elsewhere. Critics have made efforts to mobilize constituencies in opposition, just as the transnational—legal process—liberalism proponents have sought to do on their own behalf. Some of this opposition comes from people proposing other ideas to reorganize the field, some from people opposing one or another of the pet projects of the transnational—legal process—liberalism cohort. Some comes from the left and some from the right. Those who make these criticisms are working within the disciplinary vocabulary, but they generally take a somewhat stricter attitude about the formality of entitlements and the autonomy of national traditions. They are also professionals with projects and commitments and aversions of their own. In my own view, much criticism of the new mainstream international lawyers is both too sweeping and too wedded to the discipline's own vocabulary. Efforts to identify the dark side of disciplinary common sense and its capture by groups are important, but seem unlikely to be accomplished by a silver bullet. This new mainstream will not be defeated by a good argument, nor even a showing that its main ideas are tainted by historical or contemporary association with bad political actors. Rather, opposition requires an ongoing performance and counterdemonstration, an effort to uncover and make visible the blind spots and political projects firmed up in the more neutral vocabulary of disciplinary renewal and pragmatic persuasion.

As a result, my own hope has been that as the field rushes to embrace a new consensus, there will remain some who will keep doubt alive. While this new consensus has slowly emerged, generating and shaping its opposition, it has been my project to open a space within the field for a range of critical initiatives and alternative voices: to seek alliances, affiliations, power, to permit the development of ideas that did not fit into the available disciplinary lexicon. I have not tried to develop an all-points criticism of transnational—legal process—liberalism, any more than of the disciplinary vocabulary within which it has been articulated. Nor have I proposed an alternative. Many ideas in the new consensus might be worth pursuing further in one or another context. My project has been to sidestep these preoccupations to focus instead on the disciplinary vocabulary as a whole, on its blind spots and biases, and on its intersection with the sociological projects of the profession at particular times and places.

I have come to this project myself partly by following the energy of an intuition: that in some way the international legal profession has often made less likely the very things it claims to care most about, that the profes-

sional discipline is part of the problem, and that the established professional argumentative practice in the field repeatedly places its speaker in a posture of bad faith — overestimating small differences and overpromoting broad arguments about which one is also professionally ambivalent. This is an intuition, I'm afraid, that applies equally to those of my generational cohorts now proposing a new political and intellectual synthesis for the discipline, as well as to their most notable opponents.

Unfortunately, this remains, after close to twenty years of collaborative work, a very unworked-out intuition and a comparatively unsuccessful project. We have started to figure out how the discipline participates in keeping a terribly unjust international order up and running, even as it seeks with great passion to be a voice for humanitarian reform, even as it renews itself constantly to be more effective. But we are just getting started. The difficulty is not only an intellectual one, however. Transforming the discipline, just like reinforcing it, is a project that requires the mobilization of affinities, the building of groups, the staging of controversy, and the announcement of opposition and seductive appeals of recognition, engagement, play. Thinking against the box the field has built for itself is a performance in a particular context, a project of affiliation and disaffiliation, commitment and aversion, dominance and submission. On that score, I can offer some experiences that have stretched across the period from the collapse of one disciplinary common sense in the internationalist disappointments of the Carter and Reagan years to the consolidation of another in the last years of the Clinton era.

#### **Critical Performativity: The Situation and the Audience for Extraveneacular Disciplinary Projects**

A professional vocabulary for criticism and innovation is the backbone of an international lawyer's expertise. This vocabulary has limitations: a recurring experience of overstatement, an extreme plasticity, a range of blind spots and biases. Deploying this vocabulary seems conducive to a kind of professional sectarianism, the repeating narcissism of small differences. Still, it offers a form of ritualized combat, through which all sorts of projects and groups compete with one another, legitimate and delegitimate one another, the parties speaking with various degrees of sincerity. This presents a problem for those who have the intuition that the field's quotidian

practices of criticism and renewal do not go far enough in some way, that they may repeat and reinforce disciplinary blindnesses and biases.

My own search for "new thinking" in the field of international law arose from just this sort of intuition. It arose at a time of disciplinary self-doubt, when the accumulation of criticisms within the field seemed to overwhelm self-confidence in the profession's capacity to reform and rebuild itself. I felt a strong identification with the field of international law, with the promise and premise of international governance, with the perils of and possibilities for cosmopolitan rationalism. But I wanted to think outside the professional lexicon, and I wanted to build the institutional and social conditions that could make doing so possible and enjoyable. This desire faced an immediate obstacle in the quite normal tendency of a discipline either to interpolate frame breakers back into the disciplinary vocabulary or place them outside the field. I wanted to be in the field, but I wanted to develop and make known an intuition about the field's limits and dark side that seemed impossible to speak in the disciplinary vocabulary.

I have always had a hard time explaining that I meant this effort as a project within the field but outside the field's lexicon, that I was motivated both by the search for something new, for novelty, the excitement of fashion innovation, and by the impulse to criticize the field for shortcomings that could best be framed in earnestly ethical and political terms, that I meant it as something pleasurable and was quite serious, that I was probably on-the-left but that vernacular left-wing projects seemed as much a part of the problem as the solution, that my project was an intellectual one but that I felt this meant it was also a project in the domain of social power and institutional politics.

Perhaps most frustrating has been navigating the disciplinary demand for usefulness. It is conventional to distinguish new thinking that leads somewhere, that helps the field, that is linked to useful reform, and new thinking that does not — that is, depending on who is speaking, more daring or irresponsible, or theoretical, or perhaps simply "more radical." It is certainly true, in a discipline where practically everyone calls for "new thinking," that some people will seem to do so with a shorter-term reform horizon, will question less of the existing field, will harness their criticisms more directly to concrete reforms. Other people will see it as an act of brave disaffiliation to refuse all this, to place rather more of the discipline under question, to forgo the demand for immediate reformist suggestions. This



can be an important distinction to be sure, but throughout the discipline's history, and even in my own life, it is often very difficult to untangle these threads. If your project is to step outside the disciplinary vocabulary for reform, however, or if you neglect to orient your work to the imaginary practitioner-being, then you will be understood to be "more radical," not useful—or useful only if you succeed in becoming a generational innovator who reorients the field's lexicon for usefulness.

Being interpreted in this way places you in an odd double bind. Either you must want to remake the field's entire vocabulary, and will be judged not immediately, but pretty soon, on your ability to be accepted by everyone's practitioner-being as a new establishment in the field, or you are somewhere on the fringes of the field, perhaps even over the edge somewhere. You will be thought "critical," and not in the sense that everyone else in the field is constantly criticizing one another's proposals. They are criticizing things in the real world, or at least on behalf of or for an imaginary audience of the real world. If you are not speaking that language, you must be in some place other than the real world, and you must be criticizing them. As a colleague of mine once said, "I analyze the real world and you analyze me." This, of course, was itself meant as a criticism, of me, in the real world, just as it imagined my interlocutor somewhere outside the real world, a scholar, a proposer, someone who might influence practitioner-beings, but not an actor with a project.

Conventionally, criticism and reform within the field's vocabulary are thought more than compatible; they seem to be phases in the great cycle of progress: open things up, then reform. But this doesn't happen in a strictly linear way. It's much more mixed up than that, and people in the field are often criticizing and proposing at the same time. At any one time, some people will focus more on criticism, others on renewal. A discipline might go through periods in which many participants agree that the project should be one or the other, in which critics get all the evil parts, say, while modest reformers keep inheriting the kingdom. In international law, the uneasy interaction between these two related impulses has long been a central drama. When international lawyers frame the field as stuck, they call out the critical troops. When it seems they know already what the problems are, they figure the discipline as ripe for movement forward to reform. When I have looked for "new thinking," or thinking "outside" the field's current vernacular, or thinking against the field's current political effects, it can seem that I'm simply endorsing the excessive by-product of

the field's own commitment to reform, the distracting work of people who don't know when to stop.

I have never thought the distinction between critics and reformers was very helpful. Everyone is doing both. The distinction I have been interested in is between people operating within the disciplinary lexicon and people pursuing projects of criticism and reform outside it. But this way of stating the distinction is also misleading, for the boundaries of the field's self-conscious vernacular are porous. Once a blind spot or bias in the field's background assumptions has been identified, argument about it can easily become part of the field's routine vocabulary. And if we focus on political effects, it is very hard to tell when argument within the field's terms will be more effective than efforts to unblock the profession's background assumptions. We just don't have a good metric for identifying things that are "really" critical or effective or progressive or reforming or whatever. These are matters of contestation and desire, decided as much by audience reaction as by the script or the players. Creating the performative effect of having been critical, or innovative, or reforming is an alchemy of the professional situation, the projects and affinities of other actors, the seductive powers of the performer, the narrative desires of the audience, and more. Sometimes the most banal or commonplace observation generates all the heat of critical insight; at others, the most outspoken criticism reinforces the routines of the status quo.

In international law, moreover, the conventional debate between reformers and critics has never been a very balanced one. In a simple sense, it is only natural that individual international lawyers will often feel *other people's* ideas are stuck and need critique, but that they know, themselves, which way to go forward. Critique has a pretty short life in a progress narrative: who would want to invest in the background-looking techniques of ground clearing when the alternative is getting on with building a new society? It seems almost perverse not to see that at any particular moment it is better to look forward than back. We might say, as a rule of thumb, that for the energetic center of the discipline's mainstream, it always appears that the moment for critique has just passed and the moment for renewal is just dawning, just as, for those with a more critical impulse, more ground clearing will always seem necessary.

Even, perhaps especially, at moments of great disciplinary anxiety and self-doubt—American international law 1975–1989—it can feel obvious that we know what is wrong and yearn always already for reconstruction.

As a result, it can be risky to volunteer for the role of critic when many others in the field have already cast themselves as reformers. International lawyers often feel that rejecting the critic for the reformer would *itself* be progress. Much of the literature self-consciously situates itself forward of critique in the urgent task of reorienting, restructuring, rebuilding, redirecting the field. Although the field has passed through periods of both bold enthusiasm and more anxious introspection, for a century it has been broadly accepted in the field's mainstream that *right now*, whenever that is, is not the time for criticism—that was last year. We know what the problems are, it is time to move toward solving them. By this posture—forward of criticism, toward renewal—the field guarantees its progressivity by arousing, and then retouching, its own critical energy. Or by embracing, and then marginalizing, those who indulge too long the critical impulse.

It is very difficult to explain that one wants to involve people in intellectual work *without* rushing to renew or rebuild the discipline. At least not right away. It is not surprising that new thinking so often means a reconfiguration of the field's existing projects, or a shift in emphasis among enduring commitments. Although always a bit out of step with the establishment—viewing matters from a more rational and cosmopolitan point of view—international law has never been a radical spot, either intellectually or politically. The field's mainstream was rather quick to reject socialism, anarchism, Marxism, even anticolonialism in its most innovative and most challenging phase, and it has been very hesitant in absorbing the waves of intellectual innovation that have swept across the American legal academy in this century. Whereas American international lawyers have often criticized American foreign policy, enough to be largely left out of foreign policy making, they have rarely been in the vanguard of opposition. From Wilson forward, the discipline has offered a safe and modest platform for criticizing government action. If we think about internationally oriented third world intellectuals with innovative or critical energy, international law has provided a quite secure platform from which to criticize the “West” or “American hegemony” or the “global market,” without embracing democratic socialism or any other alternative that might have political consequences at home. The exceptions, of course, would be various human rights campaigns, most notably perhaps the anti-apartheid struggle, but here again, we rarely find international lawyers in the vanguard. We find them translating political initiatives into long-term, often procedural

language with which to instruct what they imagine to be an international establishment mistaken about its true interests.

Indeed, the key disciplinary contribution has been refracting these political and intellectual sympathies through the lens of a rational, cosmopolitan sensibility. This viewpoint is an original intellectual and political accomplishment. The repeated practice of criticism and renewal has produced a voice that performs the virtues of *speaking to power from a high place*. This is a very seductive voice. Speaking it requires that one manage one's interest in criticism and reform to place oneself ever so slightly forward of common sense, that one be, in a word, *savvy*. Savvy is the voice of the very best newspaper editorials. Taking on the field's vocabulary will mean forgoing the pleasures and powers of sounding savvy. And all I have to offer is the intuition, and from time to time the experience, that there are other pleasures and other powers.

In this sense, the international law profession is more than a professional lexicon, it is also this voice and viewpoint, and a whole bunch of people pursuing projects with and against one another. It never seemed to me that the discipline could be renewed by an idea, that one could write a great criticism of some doctrine and people would simply stop using it, that one could articulate the limitations of the professional lexicon and people would stop speaking it. And anyway, that would be a very lonesome project. The field builds itself, renews itself, pursues its vision and enforces its biases as a performance for an audience, as a project among people. My idea is that a project of criticism/reform that wants to step outside that vernacular would have to do the same: articulate a voice and viewpoint, a sensibility, style, or character more than a plan or proposal.

For a start, this means developing a strategy about the audience and the situation. It might be just my personality, but it has always seemed clear to me that my own project would likely have little resonance among either senior figures in the field or those of my own generational cohort most concerned about strengthening international law's role in the establishment. Perhaps if my project had been to renew the international legal vocabulary so that the discipline could return to power the situation would be different. Of course, the elder figures most wedded to the earlier particular arrangement of schools—at Yale, at Columbia—still might not have been interested. But senior figures who were a bit offside that debate, who were on the lookout for new energy, who yearned for someone to promise the re-

turn of their disciplinary vocabulary to the national intelligentsia's lexicon of savvy thinking could be expected to be supportive. And it would not be that difficult to forge an age cohort alliance: this is the new thinking we need if this discipline is going to get us back to power. Something like this seems to have been part of the situation and strategy for the transnational-legal process—liberals as they sought to reorient the field after the cold war.

I have always assumed that the better audience for my own project would be younger people and people outside the power struggles of the international law discipline with the rest of the American foreign policy establishment, in other disciplines, in other countries. Of course, people in the established field have been terribly important, as friends, as mentors, offering encouragement, training, criticism. And you can't have any project about the field unless you can get and maintain a foothold somewhere in it, and for that you must appeal also to people older and more established than yourself. And for all the discipline's mechanisms of, well, discipline, it can also be a porous and welcoming place, open to being entertained and even energized by a project that seems provocative or new.

Still, I have written and taught primarily to appeal to people not yet committed to the discipline's vocabulary and mission. This can be a pretty tough audience too, of course. Let us imagine law students who come to international legal studies with critical energy and reformist enthusiasm. It is difficult to compete with the promise of becoming savvy. Sometimes people who just know they already *are* savvy can become intrigued by the idea of adding something a bit exotic to their repertoire. And sometimes people who fear they never will be savvy, geeks and those who feel like outsiders at the party for various reasons, can be attracted to a project that seems to arrange status in different ways. Some people get interested if there seems to be buzz around the project, the teaching, the group. Some people come with political projects of their own and seek to make an alliance; people opposed to one or another project associated with the field might think they could learn more about criticism or find a sympathetic intellectual and social milieu for their own efforts. What I don't imagine is that there are lots of students out there reading and comparing different "approaches" to international law and deciding which one makes the most sense intellectually. But there might be some.

In pitching an extravenacular project to this audience, you need to have some sense for the sources of their interest and their resistance. Although most students begin rather skeptical even of the existence of international

law—as law, as a profession, as a possible lifestyle, as a solution to the world's ills—they do quickly become quite savvy about foreign policy, about law, about the possibilities for international governance. For most, criticism remains a rusty tool, harnessed to enthusiasm for the reform of the day. It is often startling how fluently they already speak the voice of the jaded but hopeful professional. Of course, law students are already rather well assimilated to the professional establishment and its status quo culture of modest reform. Learning about international law may simply provide a new terrain for displaying a well-developed posture. But young lawyers and scholars are also drawn into the discipline's project, come to share its will to power as their own. Energy to do something for international society—make peace, strengthen the global market, promote development, and so forth—is somehow harnessed to work both *for* the discipline and *on* the discipline, improving international law, procedures, governance, institutions, norms, that they might then make or simply *be* a contribution to the international community. There may remain skepticism about international law's power, but the idea that the discipline itself might be part of the problem gets lost. Alongside the critical impulse and the cautious skepticism arises an intense desire for international law to exist and a fealty to the project of its renewal.

At least in the United States, for many young lawyers and law students, taking up international law, even at its most conventional, is already a gesture of both professional rebellion and personal renewal. It isn't clear what the career options are in international law. It is clear that the political and professional posture of the field is somewhat offside the mainstream of the legal profession. Young international lawyers in the United States often feel they are rejecting, or toying with rejecting, or hoping for an escape from more conventional legal specializations. They know that they are embracing marginalization in some way; they have to explain having chosen international law to their parents, to their peers, and to themselves. They might explain it as a moral and political commitment—to better global governance, world peace, human rights—or as a reflection of their diagnosis of the future: things are becoming more global.

It is not *all* rebellion, of course. These young people also hope or expect that their choice will be redeemed by experience, that in the future everything will be international. There might be something chic in being a cosmopolitan internationalist, jetting around, seeing the big picture. There might somewhere be a spiffy career as well. But it is also not corporate or

intellectual property or commercial law. As a result, just becoming an international lawyer can feel like the expression of a broadly critical impulse. By comparison, all the rest of law seems too parochial or insufficiently humanitarian. At least in the United States, the field has been associated with pacifism, with critique of the American empire, with the progressive movement, with the left, with law as an instrument of social change, as well as with an insistently pluralist and cosmopolitan attitude toward the national political and legal culture. The mainstream players in the field announce themselves as "the left" in the national political culture, suggesting that if you are critical of *their* vocabulary you must be pretty wacky indeed. This places demands on the field, demands that the field live up to personal and professional choices that have already been or, more likely, are in the process of being made. These demands are familiar from other self-consciously humanitarian professional disciplines: poverty law, public interest law, increasingly all fields of public law.

It is not surprising that, having chosen a marginal discipline to express a humanitarian commitment or more general critical impulse, one is defensive about anything that would challenge the identity of the discipline. But the motive to build the field is stronger still. One is attracted to international law because it promises a professional domain that will institutionalize or routinize one's critical or humanitarian impulse as a professional practice. The discipline's routine practices become themselves signs of humanitarianism or cosmopolitanism. This demand for a routinization of professional virtue places the discipline in a difficult spot. Surely the current modes of practice only rarely offer this opportunity. The field is marginal, misunderstood, a sideshow to both the parochialism of national law and the vagaries of international politics. Something will have to change. To promise an establishment practice that sets itself against both national elites and the world of diplomacy, international law has its work cut out for it.

But the mainstream discipline has a pretty good strategy for filling this bill. International lawyers constantly reiterate — to one another, to themselves, to anyone who will listen — a belief in historical progress toward internationalism. They are also committed to the idea that in a global world, the broadly liberal, cosmopolitan, and rationalist sensibility they embody is and will be a virtue. This commitment lies so deep that to argue it explicitly, as has been tried from time to time, comes across as vaguely vulgar and unnecessary. To ensure that the field will be ready when the world gets international, to be sure that its practice will rightly express a

cosmopolitanism appropriate to that future world, to be sure its commitments will be recognized and embraced once the establishment understands the direction of history, all those in the field must meanwhile — and this is the crucial step — work nonstop to align the field with progress. If the field is virtue's future, work on its updating can only be a sign of grace. And so the good work of the field becomes work on the good field, paddling out, aligning the board, adjusting our weight, watching the water, waiting for the wave.

As a result, the classroom situation is not neutral. It is against something (the field up to now), it is for something (reforming international law), and it is waiting for something (the historical progress of internationalization). There is certainly a critical element here: whatever has kept the field marginal in the past must be rejected, and urgently. But there is a limit to this impulse: the point is to support international law and get it back into the mainstream to become, as the world progresses, ever more the voice of the international establishment or "community."

At least since the late nineteenth century, many international lawyers have experienced international law as both a commitment and a modest transgression, and this posture has become something of a professional identity. It is in this sense that to be an international lawyer is less to know a canon of cases or treaties than to have mastered the exhibition of a particular fantasy about one's progressive role among the governing elites. One has the tools, talents, and habits of *appearing as one who tells the establishment where its real or long-term interests lie*, speaking to power, not exactly as truth, but as the view from a point high above national pettiness, subjectivism, parochialism, offering a cosmopolitan and rational analytic standpoint as an ongoing professional practice. On offer are not simply ideas and expertise, but also an identity and a project. The field's promise turns into a program and a practice: for both students and senior figures, expressing and reaffirming the professional identity of international lawyers normally fulfills (and exhausts) both critical and renewal impulses. In some way, it would be progress if more people in government and out viewed matters as international lawyers do.

There is no doubt that this impulse to affirm their professional identity by renewing the field sometimes makes international lawyers willing to risk and challenge the broader establishment, as it sometimes makes them creative in their approach to practical problems. Affirming the international lawyer's position, viewing the elites from a higher, more cosmopolitan and

rationalist point of view, speaking to them from this great height, can be a challenging political intervention. But more often it makes the field timid, careful to preserve its own (now marginal) status in the name of a future boldness.

How this plays depends in part on the distribution of projects and powers in the field at a given moment. Near the end of a period of consolidation, a discipline can look stuck, can have trouble promising the pleasures and powers of savvy thought. A student with an extravaganza project looks out at a relatively unified field of ideas stretching from those just a few years older through to those nearing retirement. When I started in international law in 1980 there were few people in their twenties, thirties, or forties working in the discipline, and things had been intellectually stable for quite a time. In such a situation, new thinking is not that difficult to get going; often, many of the field's own familiar tropes have lain long dormant and need only be revived. There was also a lot of new thinking lying around in neighboring legal fields that had not yet been imported. For someone with the project of disciplinary renewal, a certain kind of will to power and the project of opening the field to criticism for, say, apologetic participation in an unjust status quo, it was not that difficult to figure out what to do.

The situation now is quite different, after more than a decade of anxious disputation. The lions of the early 1960s are still there, alongside the anxious, critical, and unsettled voices of the past decade. But there is also the Clinton cohort, riding into leadership in the field on the strength of their proposals for renewal. Each proposal has its idiosyncracies, but there is a broad sense that it is time to move forward from disciplinary doubt and disputation into a new consensus for a new millennium. There are already several dozen partially worked out renewal projects on the table, each of which needs help. These new ideas exert the intoxicating pull of affiliation with and submission to very well-established voices claiming to represent possibilities for statecraft and professional leadership.

We might look at the situation from the point of view of law students who have become interested in international law as a field of study and potential career option. They face a set of strategic choices. Some calls for renewal, of course, will blow over. But some of these new vocabularies will stick, and some of the current leadership's reform ideas will be implemented. International law might well migrate from administration to adjudication, from litigation to alternative dispute resolution, from multilateral standard setting to tradable permits. In a way, the field demands that

young international lawyers select among the various renewal projects on offer. Renewalists of my generation all need the energy of today's enthusiastic students to ride their ideas across the track from new thinking to established wisdom. Will the field be renewed by economics or political science? By adjudication or alternative dispute settlement? By trade law or human rights? In an important sense, today's students will decide.

They will decide in part by their career choices. Most renewal projects associate themselves with a career trajectory, the making-real-as-a-project of their intellectual appeal to practitioner-beings. If transnational adjudication is the thing, one should work for a nongovernmental organization bringing human rights cases in U.S. courts. If economic law is the thing, one should work for a firm in Washington advising interest groups on the use of trade law, the world's new "constitution," to expand or contract social regulation. If political science is the thing, one should do a joint degree, and work in the foreign relations establishment on projects of global "governance," building a multilateral "regime" as a multilevel game, and so forth. In many ways, the test of a new way of thinking about international law is precisely whether it theorizes an emerging practice, bringing the field in from the cold of marginalization to implementation in a now-really-for-the-first-time internationalized establishment. Those ideas that turn out to describe emerging professional practices, either because they predicted correctly or because they helped influence the emergence of the practice, are more successful academically. By building careers in the sector identified by one or another renewal theory, they both confirm and help extend the theory. As a result, the siren call of academics in the discipline is strong. Sign up now to ride the latest wave—you can both build a new establishment and then run it.

Precisely because the debate about "new thinking" in international law has placement consequences, however, our students will want to proceed cautiously here. Students of international law, like other law students, learn a lot in the effort to select a career path and find a job. There are lots of strategic issues, not unlike those that face practicing lawyers across their career. Which fields of law are hot? Will they still be hot in five, ten, twenty years? Which way is the practice moving: larger or smaller firms, regional or national or global practices, one-stop-shopping or niche markets? You don't want to become an antitrust specialist because it will offer interesting ways to think about public regulation of the market just before they stop enforcing the antitrust rules for ten years or stop seeing it as an arena of

public regulation. Similarly for litigation or environmental law or land-use planning. When I was in law school, the chic alternative to firm practice was management consulting; ten years before it had been government, ten years later it was investment banking. Then Internet startups and stock options. But for how long? Imagine you had settled into the field of security studies with all its terrifically sophisticated vocabulary about throw weights and elaborately modeled computer games in 1985, just before the end of the cold war would push the silo counters firmly to the margin. Or perhaps gone off to bring law to the developing world in 1965, shortly before disillusionment with the American empire and with the potential impact of liberal law on economic development dried up all the grant money.

In international law, it is not simply a matter of selecting a domain of practice with staying power. If one goes into international law as a commitment, signing up for a collective project to build a better international governance structure, the viability of the commitment will depend a great deal on what happens to the sector one selects. The expirience of a career — the buzz, if you like — will vary dramatically depending on where one is working. Imagine you had gone enthusiastically to the United Nations Secretariat in 1963, full of excitement for changing the world and riding the wave. Downer. Well, looked at now, will Amnesty International or Greenpeace be part of a broad project of disciplinary renewal in five years? Is CNN a better bet than the State Department? Citibank better than the World Bank? Will the daily work in human rights advocacy continue to feel connected to a broader aspiration to transform international society, or will it become a narrow specialty? We might think here of poverty law, refugee law, or legal services over the past thirty years: the career is still there, but the buzz has altogether changed.

A similar thing happens at the level of ideas. Much of the professional work of international lawyers in the United States participates in a polemic about and in favor of international law. Selecting among the renewalist options on offer is not merely to select a domain of practice, it is also to select a polemical style that will become part of one's professional identity. Will you be the sort of international lawyer who is always trying to get norms adopted, or trying to work loosely with whatever principles seem to be lying about? Either way you will connect better with some people in your office and less well with others. It is quite common in practice environments for people to feel bonded to one another because they share an implicit understanding about what is hot and what is not. Imagine a human

rights organization that has participated in one multinational UN conference cycle after another: suddenly a few people get hired who "know" that it's not worth it to codify another generation of human rights, what everyone should now be doing is litigating in domestic courts.

As students shop among the renewal proposals now on offer in the discipline, there is some danger that they will become stuck between generations, acolytes of ideas that now seem new but that will be pushed from fashion five or ten years from now. Of course, this might not happen; these might also be the students who push some of us a few years out off the stage. There is no reason to think my generation is entitled to a long run at the top, and there seems to be lots of loose and exciting energy in the field just at the moment among people under thirty. In a way, the dissensus among those thirty to fifty has its up side; it may be a while before consensus settles. There is already a right wing in the field that simply ignores the new center. They may all soon be gone; each of their proposals might fizzle for want of resonance with the establishment of the young, and today's students would get a shot at dominance rather than submission. But that might not be their project in the first place.

My own hope is that as today's students select among proposals and projects on offer in the field, they will also be interested in keeping a spark and energy alive to think beyond the discipline's current frame. That has been my own project: to draw out the dissensus a bit further, to slow the emergence of a new disciplinary middle way. Of course, whether that makes me a traitor to my age cohort or just another guy with a proposal, I leave to the audience. I should say, though, that drawing out the dissensus, exploring the edges and difficulties, hanging on to the ambivalence of the post-cold war moment does not translate directly into a mode of practice. It is certainly a project in the academy, but beyond that, what I have in mind is a kind of professional project that we would have to make up as we go. I thought I would conclude with some reflections on my efforts to launch and sustain an extraverucular project in the field, to make known the dark side of the box.

#### **One Project to Make New Thinking and Make It Known: New Approaches to International Law**

Looking back on my own extraverucular efforts, it is hard to know whether to foreground the development of "new thinking" or to situate my

own project in a world of commitments, aversions, affiliations, and wills to power. One could probably tell the story either way. In my own mind, it probably had phases in which I would have described it more as one or the other. What I can remember is that as I began teaching and writing, I tried to set aside the discipline's normal assumptions about what international law is and is for: that international law is a set of broadly universal norms governing relations among states rather than the professional practices and culture of particular people in specific contexts, that the discipline's goal is to strengthen "international law" against the forces of "politics" or "national interest," that international law is basically a good thing and that there should be more of it, that the discipline's central intellectual challenge will always and forever be to square respect for sovereign autonomy with a governable international community, that international lawyers function best as technocratic handmaidens to statecraft.

Perhaps, I imagined, we have lots of law and not enough politics; perhaps international law and the "international community" do as much harm as good; perhaps another question — about identity or cultural difference, or inequality, or social justice — could be placed front and center; perhaps international law could be better understood in cultural or intellectual terms, as a professional disciplinary project for its own sake, disconnected from the giving of advice to statespeople. These were not "new insights" about what international law should be about in the next millennium; rather, they were possible thought experiments, efforts to set traditional issues aside and see what we see. If it turned out that answering the field's central questions did, in some way, keep generating the same answers in wave after wave of "new thinking," it seemed better simply to leave these questions for the moment, to struggle for an attitude of agnosticism about all the issues that defined the poles between which the field had traditionally oscillated.

I don't want to underestimate the counterintuitive quality of the thought experiment, nor to propose it as a recipe. I tried to perform the posture, in teaching, in writing, in practice, of being an international lawyer, but not being at all preoccupied with the field's classic debates or doctrinal choices. Rather than inaugurate a sect within the field by presenting my own modest doctrinal or institutional readjustments as signs of a broad disciplinary renewal, such as by vowing to end the field's attachments to "sovereign autonomy" or "legal form," I experimented with escaping the oscillation between these classic alternatives. I tried to do this by running the argu-

ments insistently, eagerly, in both directions at once and by foregrounding or drawing out the professional ambivalences in my audience. Often, this produced only befuddlement, I must admit. More critical friends scoffed at my insistence on the posture of being *in* the field, rather than in some larger, longer, more fashionable and erudite tradition of criticism. Many in the field thought it an oddly unhelpful performance, strangely uninterested in responding to the pressing needs for reform and disciplinary engagement. But sometimes it did work, as far as I could tell, to open up the idea of a space for collaboration in the field that might at least promise to look beyond the discipline's conventional preoccupations.

If I think back to the moment in the late 1970s or early 1980s when I began this project, there was always a question about its "politics." We need to remember a time when Reagan had momentum and Carter didn't, when the left, both in and outside the academy, seemed split between a tired and assimilated establishment and a world of sectarian identity projects, when the effort to purge critical legal studies from the American legal academy was in full and successful swing. It was strategy, it was personality, it was commitment, but I felt far more comfortable launching a project for "new thinking" than one for a revitalized "critical" or "leftist" practice in the field. At the level of strategy, I thought there would be more young people intellectually open to the idea that the existing disciplinary lexicon was preposterous than to the idea that it was evil or status quo. At that time, the earnest projects of the identitarian left seemed as rooted in a misguided disciplinary vocabulary as those of their adversaries.

This may all be different now, when the energy in the field lies with a resurgent and Clinton-inspired center-left. Perhaps an extravaganza project would be more successful now presenting itself as a more critical and potent outsider-left. People in the field, the mainstream, the identity mavens, all have metabolized the idea that their vocabulary is preposterous, but not that it is less useful than it claims, that it might even be counterproductive. In the 1980s, the reverse seemed more the case: people had gotten used to the idea that the field was useless, but they didn't think it was preposterous.

In any event, I focused on the plasticity and hyperbole of the vocabulary, even though that put off possible allies interested in more immediate political payoff. I should probably acknowledge that although left-liberal statespeople everywhere could probably be helped in their practice by better international law arguments, doctrines, and institutions, this has never

been my first concern. I have never been opposed to trying to offer some, but in my experience, there are always lots of people stepping into that breach. We do not need to worry that the left-liberal establishment won't be able to think up good arguments for its hold, however tenuous, on state power. I think we are more in need of inreach than outreach: of looking at our discipline as a practice, as an intellectual project, with its own will to power, its own cultural contribution. Like any good dose of history, such an effort might help us avoid mistaking ideology for insight.

My intuition has always been that broad constitutional changes, changes in emphasis among the discipline's many ambivalent and contradictory ideas about how international governance ought to be achieved, seem like ways of *not* seeing, or of apologizing for other enduring injustices and systemic incapacities. At the same time, shared assumptions and commitments that lie just beneath the surface of the professional common sense and that seem implicated in these injustices are frustratingly difficult to bring to the forefront of the discipline's attention. It seems obvious to me, for example, that the most important work of perpetuating and normalizing the astonishing distributional inequities of our current world is done by the spatial division of the world's political cultures and economies into local and national units and by the conceptual separation of a political public law, which operates nationally, from an apolitical private law that operates internationally. We now think it obvious that poverty is a local problem, while wealthy people live more and more globally. But although these spatial and conceptual boundaries are legal productions, they are simply off the map of the discipline's concerns. I have spent most of my own disciplinary energy trying to figure out how the repeating practice of disciplinary renewal might entrench rather than eliminate background ideas like this.

Unfortunately, I don't think we yet have a very good idea about how this happens or how to avoid it. Why *are* spatial and conceptual ideas of this sort off the agenda when people speak of little else than rearranging space, "globalizing," ending sovereignty, and so forth? It is a real puzzle. It has something to do with colonialism, something to do with the distinction between public and private law, something to do with attitudes about cultural difference and geography, something to do with images of the natural differences between law and politics. It seems bound up with the difference between procedural and substantive matters in national and international law. We could perhaps date it: to nineteenth-century territorialization? To

colonial expansion in the seventeenth century? To twentieth-century efforts to unbundle sovereignty, rights, and personality, if only ever partially? It has something to do with the ideology of "development" and "participation" and assumptions about what is a fact and what is more plastic, political, or legal. There are some good projects picking away at these problems, but this whole line of inquiry remains speculative, partial, groping.

Perhaps as a consequence of the very preliminary nature of the inquiry, this line of work has not produced anything like a program for action or disciplinary renewal. I don't think I, or to my knowledge anyone else, has discovered a list of methodological errors or political mistakes, on the order of "too much sovereignty" or "too much formalism" or "not enough political science" or "too few women" or "too few third world nationals" at the drawing board, which cleanly account for the difficulties I am worried about, and whose elimination or reversal could therefore easily inspire a program of action. As a result, I am thrown back on the idea that we need to keep thinking before we rush to reform the field along any general line, not for any philosophical reason, and certainly not because I am not interested in reform, but because I haven't yet seen any critical work that has produced so clean a line or direction.

When I started out in international law with this sort of impulse in the early 1980s I was more or less on my own in the field. There were lots of generous folks among the senior figures who were receptive to a young person with energy, but my most important intellectual and professional support came from people who were pursuing similar projects in other fields. As I was trying to figure out how to think about international law, my most helpful intellectual interlocutors were mentors associated with critical legal studies who were completely outside the field, as well as my age cohort of assistant professors who were pursuing projects of criticism and renewal in other fields—contract law, trade law, family law. We read things together, tried to understand the lines of analysis that had been developed around the critical legal studies movement and the intellectual work of people in other fields who we had heard had an impulse that might turn out to be similar to our own. We differed in our attitudes about our work: some of us were more interested in reform than others, some more convinced of the plausibility of our own field's available modes of analysis than others. As I remember it, none of us was sure how our own particular projects related to modes of criticism already present in our fields. Would



we end up uncovering a recipe for reform, or would our work put the field's reform terrain under question in some broader way? We weren't sure, but some of us were more optimistic one way or the other.

As we tanked up intellectually for work in our various disciplines, our reading was not particularly systematic. The process was, at least in my experience, extremely interactive: a group of people learning together how to express our own intellectual, political, or libidinal impulses. In this sort of a project, the work of a "significant" intellectual—say, Foucault or Derrida—who was in vogue at the time was often helpful, and we puzzled together about numerous then-famous theoretical texts. But it turned out that texts written by our mentors and by one another were equally, often even more useful in terms of epiphanies per paragraph. As were conversations. The first people I met in international law who were at all interested in this project were students. Some had long been interested in international law but were somehow dissatisfied with the modes of renewal and analysis on offer. They had at least a vague intuition that if something stronger or more "radical" was out there, they would be interested. Others were far more sophisticated about critical methods and far more widely read in theoretical matters than I, and were willing to become interested in international law if the field could be made to seem a worthy terrain for development of their intellectual muscles.

In the early 1980s I met Martti Koskenniemi at a conference in Geneva; he was the first international lawyer I met who seemed interested in the project I was trying to pursue. We exchanged manuscripts and began a friendship. Soon thereafter I met Philip Allott, like Martti a person with significant experience in his foreign ministry, an established international lawyer, and a European at that, who seemed to have an analogous project. Someone told me I might like a book by Tony Carty called *The Decay of International Law* and I read it. Günter Frankenberg spent a year at Harvard teaching comparative law in the early 1980s and became a close friend. We began discussing our frustrations with the way foreign law study was undertaken. My old law school colleague Joel Paul began teaching international economic law, and we started talking about his critical intuitions in that field. We read Dan Tarullo's work together. And so it went, for the better part of a decade, while I got tenure, experimented with practice in the field of various sorts, dabbled in the neighboring fields of European Community law and international trade.

I had a couple of exceptionally good groups of students, and several

went on to careers in the field. I began a long collaboration with Nathaniel Berman, Karen Engle, Ileana Porras, Annelise Riles, Leo Specht, and others. During this period other people were developing a strong feminist approach to international law, and our paths kept crossing. Several people I knew, including some, like Hilary Charlesworth, whom I had met as students, were also interested in launching a broad feminist reexamination of the field. There were lots of overlaps between what my friends and I were doing and what mainstream feminists in the field were doing, but also lots of points of difference, and we had lots of discussions and arguments. Karen Engle's work on international human rights became something of a canonical intersection among these groups, as did Hilary's work and later that of Karen Knop. Fred Snyder and Lew Sargentich, then in charge of the somewhat moribund International Graduate Program at Harvard, had the idea that foreign students could form a far more cohesive and intellectually engaged cohort of colleagues and we began thinking about how that could be brought about. Throughout this period, as I was writing about the intellectual history of the field and seeking to capture the discipline's mainstream consciousness, I was very much helped by the support and encouragement of people in the field like Tom Franck and Louis Sohn, who made my representations of the discipline's thought more plausible by their ample and careful criticism.

It is a weird experience to write critically about a field from within its voice, and I tried to write in a bunch of different styles that I cobbled together by imitating articles I liked. It took experimenting to have a sense of what would come across too strong, what would be too weak to be provocative. Lots of things I wrote fell flat, never got read, or succeeded only in offending people. After lots of rejections from all the major law journals, I stopped submitting manuscripts to them and simply published wherever I met someone sympathetic or could get solicited to write by promising to speak at a symposium or conference. Getting tenure had taken its toll, and the original community that had sustained my effort unraveled. Getting a plausible tone in an academic or professional talk, managing to sound engaged yet be heard as somehow critical, simply being comprehensible, figuring out who the audience might be, was and remains a real challenge. I found myself increasingly writing and speaking for an imaginary younger person in the back of the room, a person who might turn out to have a critical impulse of his or her own, rather than for senior colleagues. In 1989 I left the academy to practice with Cleary, Gottlieb,

Steen and Hamilton in Brussels. My commitments to academic work had always competed with the desire to do something more hands-on and I had gotten interested in the law of the European Community on a sabbatical in Brussels five years earlier. I really enjoyed the teamwork and intensity of practice and let the critical project lie dormant for a time.

Nevertheless, by the time I returned to the academy there were probably a dozen law teachers and international lawyers beginning their careers who felt, to one degree or another, that they had a project in common with one another, and also with me. I don't think that any of us had a clear grasp of one another's work. I would say it was more that we recognized one another as people who had as a project mounting a more thoroughgoing criticism of the field of international law than we had seen. By early in the Clinton years, the situation had changed considerably. I suddenly had responsibility for a large number of foreign graduate students at Harvard, and some of them seemed, as Fred Snyder had predicted, more interested in developing critical and innovative intellectual work than most American law students at the time. In all this, the importance of leading intellectual institutions, their intellectual capital, reputation, resources, in the development of something that can seem "new" or critical is hard to ignore. The whole experience would have been quite different had I not been fortunate early on career-wise.

As it turned out, I suddenly had a fantastically energetic new group of friends in the graduate program, led by Jorge Esquirol and Athena Mutua. Of course, most of our work had nothing to do with a critical intellectual project; we were trying to improve the foreign program, to raise the status, profile, and quality of foreign legal education within Harvard. Most of the students and most of our program initiatives were oriented to other student and faculty constituencies. But I also got the chance to work with a number of advanced students from all over the place who were interested in new thinking and who formed something of an intellectual community with one another, a community that reminded me of the group with whom I had worked in the first years of my career with other young assistant professors. They read a range of then-fashionable theory together, puzzled over one another's texts, learned from one another's projects. I began to organize my own international law course around the work of my friends and students, offering their work as a continual counterpoint to more conventional materials in the course. By the early 1990s there was enough work to offer a wide range of quite different critical vantage points on many, if not yet

most, of the conventional doctrinal topics. A wide enough body of scholarly work (with lots of cross-citations) had been published to provide the basis for the network of friends-sharing-a-project to be noticed by people who were not part of the conversation.

Not all the recognition was favorable, of course, or even particularly related to the actual content of the work. Mainstream authors tended to assimilate us all to whatever they imagined "critical legal studies" or "feminism" to have been in other legal fields. We were variously thought to be policy types or Marxists or Grotian eclectics; people repeatedly would interpret our work as if it had set out to respond to the field's enduring questions in the available lexicon. In a way these were generous readings—at least we were being interpreted *into* the field—although readers were often frustrated at what seemed our obscurantism in stating what, as it turned out, was always already old hat. And sometimes we were also read as simply off point, interested in something that was not international law, unhelpful as it was in pointing the way to immediate reform. Most puzzling, we were all understood to be saying the same thing, when even we often couldn't see what our work had in common. The first people who produced broad and critical analyses of our work were often students, including my own, seeking their own way in the field by recapitulating and rejecting what they understood to be our project. In an odd twist, it was these dismissive essays that first got the group recognition. I took the opportunity of some lectures in Greece to try writing a more sympathetic introduction to the work produced to that point, but my text ended up being way too dense to be useful.

Once the group came to be recognized as a group, and had received critical notice, my relation with new students and colleagues shifted. At least some students came to my courses already thinking of me as somehow different or critical or just "new." For some students, of course, this is seductive, although sometimes this enthusiasm substitutes for any real engagement and the student ends up thinking one stands for whatever he or she came in thinking of as "critical." More often, this sort of identification makes students wary, suspicious that everything one says is part of a "line," that they are not really learning the field, that the teacher will not validate their own reform enthusiasm. I shifted my own teaching quite starkly to read classic materials in the field as carefully as possible, hoping to make it unmistakable that we were learning and exploring the consciousness of mainstream international law. I began taking numerous votes in the class

and teaching from the sensibility of the class majority, while foregrounding their own ambivalences. Critical recognition and reaction also made students who were, for one reason or another, skeptical about the field easier to recognize and engage.

As I became known to embody something "new," opportunities to speak and write increased. I began looking for younger colleagues and students who seemed to respond to the vague idea that "we could do something different," could go beyond the range of particular reforms now on display. There was a sort of implicit deal in my relations with these people as I came to know them: I would tell them what I knew about existing modes of critique in the field and they would share their own intuitions about how these critiques might be extended or where we might look for promising critical or reform ideas. Students or colleagues in other places often had an idea about some new vein of theoretical material that could be mined or brought to the discussion a new political or disciplinary preoccupation.

As it turned out, people who came into the project in the early 1990s differed a great deal from one another. Some were interested in pursuing theoretical critiques rooted in one or another branch of social theory they had studied. One person wanted to apply "autopoiesis" to international law, another had been influenced by Lacan, another by Baudrillard, still another by Bourdieu, another by Spivak and Bhabha. Some were interested in expressing a critical impulse within and about adjacent fields, particularly comparative law and international economic law. Some were interested in developing criticisms of modes of analysis they had become familiar with in other fields: law and economics, law and society. A large number became interested in the group to see if we could help them understand and express the disaffection they felt with other public interest-oriented internationalist fields. We had a large number of people who had lost faith in the "human rights" field, which by the early 1990s had in many ways lost its initial luster.

Perhaps the largest group of people who came into the milieu to express dissatisfaction with international law did so to express or understand their own experience as outsiders to the mainstream of the profession. Many of these people were intellectuals from the third world, who were far more identified with international law than were American students; it was already a real profession for them, as well as an important identity in their own local establishment. At the same time, many were also frustrated by the difficulty "third world voices" had in articulating criticisms that did not

fold easily back into the standard modes of modest reform. They were sometimes willing to work on developing new ways of understanding and criticizing the tradition from the inside, while encouraging the broader group to focus more attention on the exclusions and biases of the international law tradition.

Some foreign students were more interested in the ways their own local legal cultures were understood, both at home and abroad, through the disciplines of comparative law and area studies. There were often students from the Middle East or Asia or Latin America frustrated by the available traditions of area studies in the United States. I began to learn from them about the similarities and differences between the disciplinary limitations of comparative and international law. Others were women frustrated by the limitations of a "women's rights" approach in expressing their feminism within international law. The now expanding milieu was appealing, I think, to people who came with critical projects of their own and who were open to the idea that the humanitarian promises and practices of mainstream international law might not exhaust their critical or progressive ambitions. And some people were attracted to the milieu simply because it seemed like something was happening, like there was buzz, perhaps like that which was remembered or imagined to have been part of earlier moments of intellectual innovation and change in law associated with critical legal studies or the early moments of the law and society movement. We picked up the occasional person interested in legal theory with no prior interest in international law. Some people frustrated with the normalization of critical race theory, or hoping to launch a more active network of critical legal scholars interested in Latina/Latino affairs, or interested in generating a queer theory alternative to the mainstream gay and lesbian rights movement came to meetings and began influencing the group.

In short, the group was anything but homogeneous. There were deep national differences: the East Asian types influenced by postcolonial theory, the American human rights types straddling the line between reform and critique, the African scholars interested in renewing third world legal studies, influenced by third world nationalist and socialist traditions of criticism. The particular political projects of participants also differed, from becoming an organic third world intellectual, to doing something concrete to improve the situation of women in development, to opposing neoliberal trade policy in the name of expanded labor rights. There were all the classic tensions between African men and East Asian women, between Latin

Americans and Asians, and so forth. And of course, all this was overlaid by numerous interpersonal struggles for recognition, affiliation, domination, of students by teachers and teachers by students, of competition among mentees and mentors. Sometimes these different projects could be kept in conversation, but sometimes they couldn't. People got discouraged or angry or felt betrayed or used and left, carrying on their projects elsewhere or simply becoming demobilized.

While we were working to sort out these differences, the field of international law also changed. The broad consensus that had stabilized the field in the United States from the early 1960s had begun to break down. There were now other people of my generation who had also been working in the mid- to late 1980s to renew the field along lots of different lines. And there had been the dramatic changes of 1989, ending the cold war. My generational cohort shared a commitment to the field and a sense that the field had lost its way. Although our interest in international law had kept us somewhat distant from the methodological disputes that had divided American legal education in the 1980s, we had come through our legal education and our early professional development in law at a time when legal thought was divided methodologically and politically. It was not surprising that we would end up reflecting the range of theoretical and political commitments fashionable in legal education more generally—from critical legal studies, through left-liberalism, law and society, legal process, the interdisciplinary policy analysis of specialized fields that emerged from international business transactions, through to public choice theory and law and economics. Most renewalists of my generation did not share my own critical impulse and were more interested than I in the field's conventional problems, doctrinal and institutional choices. But suddenly the project I had been pursuing with friends and colleagues was one "new thinking" effort among many. Moreover, while we had been preoccupied with our own internal discussions, a completely alternative group of disciplinary outsiders had emerged among younger international law teachers who were more traditionally leftist and progressive, more enthusiastic about human rights, and more linked to American identitarian movements and methodologies.

By the mid-1990s, I found myself less the apostle of all things new than a positioned polemicist. I was associated with a particular intellectual project, a self-conscious effort to build a collective intellectual project of disciplinary criticism and renewal, which I called, I hesitate to say, *New Approaches to International Law*, or *NAIL*. I called it "new approaches" to

suggest a big tent, interested in the widest range of innovative energy without predetermining where it would lead. I also wanted to differentiate the group from critical legal studies, which had accumulated a lot of baggage by then. For many young scholars and students, critical legal studies seemed at once passé and dangerous, too politicized, too much associated with a "line" of some sort. The *NAIL* was not a movement of ideas or the working out of a general disciplinary problem, but a specific effort by a group of legal academics in particular institutions to encourage one another's work, hold conferences, write more and differently, get to know people they would not otherwise have met, experiment with new methods and ideas. We did not start with an insight or a disciplinary program, although we all came to think about international law as a legal intelligence with its own cultural politics and will to power rather than as a pragmatic handmaiden to governance.

In the 1990s, there were a series of academic meetings: at the European Law Research Center at Harvard held in Essex, Massachusetts, in October 1993; at Northeastern University in October 1994 (organized by Karl Klare); at the University of Connecticut in April 1995 (organized by Joel Paul); at the University of Wisconsin in June 1996 (organized by David Trubek and his Global Studies Research Program); at Utah College of Law in October 1996 (organized by Karen Engle, Mitch Lasser, Ileana Porras, and Tony Anghie). There were meetings abroad as well: at *ONATI* in Spain in June 1994 at the European University Institute in Florence in July 1993; at the International Institute for Peace in Vienna in 1993 (organized by Leo Specht); at the Real Colegio Complutense in Madrid in 1992 (organized by Enrique Alonso); at the University of Athens in May 1994 (organized by Iannis Drossos)—when people associated with the group had institutional resources to hold a meeting. During the years that I was director of the Graduate Program at Harvard Law School, some of the conferences and workshops organized by Harvard students brought *NAIL*-related academics together in Cambridge. We held an international feminism workshop (organized by Stella Rozanski), a postcolonial group (initiated by Tony Anghie), a meeting on private law theory and on progressive uses of law and economics (organized by Duncan Kennedy), a conference on third world approaches to international law (organized by James Gathii), and a conference bringing critical race theory, law and development, and postcolonial theory into discussion with one another (organized by Robert Chu).

Along the way a number of us tried a variety of typical academic initiatives to keep people talking with one another, to bring new people into the group, to provide an outlet for people's work: producing a symposium issue for a law journal, doing a collection of essays as a book, publishing a bibliography of people's ongoing work, keeping a mailing list of those who had come to meetings or were interested in staying in touch. This institutionalized effort lasted about ten years, depending on how one counts, beginning in the late 1980s. In the spring of 1998, we celebrated the end of this institutional project at a conference in Cambridge which we called "Fin de NAIL: A Celebration." Of course, one can't simply decree a network of people and a set of ideas to an end. There remain lots of echoes and side projects and successor groups active in many places. But I had lost some battles, my own institutional effort ended, and I sought to retire the monitor NAIL. There was some disagreement about drawing this phase of the effort to a close. My successor in the Harvard Graduate Program often asked me why I was ending it. Some combination of lost institutional resources and an intuition that this particular formula had run out its string, that the factoid NAIL was about to overtake whatever interesting work we were doing.

The numbers were always quite small. By 1998, I would say something like 500 people had come to one or another NAIL-related event, we had about 350 people on a mailing list, there were perhaps 20 people with professorships, about half of those in the United States, who put organizational energy into the project. There may have been as many as 50 younger scholars working on dissertations or beginning an academic career who were interested, at least vaguely, in NAIL-related work. About 200 came to the 1998 Fin de NAIL celebration. The number of people who helped organize this activity was also pretty small; perhaps a dozen or two over the lifetime of the project were central to the events. Since the NAIL project finished, a large number of its participants have extended our collaboration in other contexts: in the American Society of International Law, in the Helsinki Summer Program for International Lawyers, in a range of smaller reading groups and workshops. From time to time I have brought together people who participated in the project in small reading groups to critique one another's work, as well as to put together smaller conferences around more specific themes: the role of antiformalism in legal thought, the relationship between ideas about structural bias in law and ideas about identity.

Intellectually, the project was always rather diffuse. I was interested in public international law, others were interested in women's rights, in nationalism, in social theory, in colonial history. The NAIL offered an opportunity for cross-training, for those interested in feminism to learn about the economics of development policy and vice versa. For me, the most surprising, pleasurable, ambitious, even crazy aspect of the NAIL was the range of intellectual themes and disciplinary subjects brought to the party at various points. And of course, each constituency had to struggle with its own divisions and differences. Early on quite deep differences emerged between the Europeans and Americans in the group: the Europeans more devoted to the field of international law, the Americans more interdisciplinary; the Europeans more rigorous in their theoretical thinking, the Americans more interested in a sprawling network of questions related to constituency groups and identity politics. Those most interested in public international law were often European and male, preoccupied with historical studies and philosophical inquiry, although some were women frustrated with the tradition of human rights activism or developing a broader feminist critique of the field as a whole. There was a shared project — escaping the hypocritical and utopian lethargy of the pre-1989 field, or the neoliberal triumphalism of the post-cold war discipline — but there was no shared set of ideas or commitments or critiques.

Although some of us were friends, there were lots of people in the group who didn't particularly get on. Many of the public international law scholars who worked with the NAIL had taken my course at Harvard or elsewhere, but many had not. And it was not all public international lawyers by any means. Those most interested in international economic law were more technocratic in orientation, interested in trade liberalization and harmonization, often in the European Union context. Some were focused on strengthening public policy capacity in particular areas: labor standards, environmental protection, immigration. There were specialists in media or telecom, scholars interested in economic development, in private law theory, in comparative law. Many of these were people who had no preexisting interest in international law per se; they came to the group through study of local government, welfare policy, critical legal studies, or because they were friends with someone or had heard it was a fun scene. Linking public and private law in a common project meant that lots of public international law people had to learn about international economic law and vice versa. Private law people had to get over their phobia of politics and public law

people had to get over their policy, math, and economics phobias. There were also a number of people who were not particularly interested in either international law or trade policy, who were focused on identity issues: third world nationalists, postidentity diasporic intellectuals, third world nationals frustrated by the limitations of the human rights establishment, activists and literary theorists, queer theorists, not to mention men and women. A great deal of what went on under the heading of *New Approaches to International Law* was simply the working out of differences among all these constituencies.

There always seemed to be some disconnection between how I experienced the NAIL from the inside and how it was understood by the broader discipline. I was constantly being asked to write a brief summary of what NAIL people thought or to describe "the NAIL point of view" on something. The heterogeneity and yearly changes in the preoccupations of the group as one after another group of people placed their own concerns at the center of our activity would have made this difficult in any event. But it was also always difficult to explain why we didn't fit easily into the existing range of "schools of thought" about international law, to explain how one might foreground a different range of issues and questions. Efforts, like this one, to explain the effort in human rather than pragmatic terms always risk being dismissed as self-indulgent or not serious. As the group came to be known, moreover, it was difficult to avoid its acting as a sort of ink blot onto which people could project whatever they imagined the most salient critical issues to be.

For example, in the early years after the end of the cold war, people interested in international affairs at my own institution often seemed polarized, with the NAIL label somehow implicated in broad divisions between those who were generally optimistic about American hegemony and the emerging neoliberal consensus among international economic and humanitarian institutions and those who were more pessimistic about America's role in the world, between those who embraced political science and those more comfortable with cultural studies or economics, between those committed to liberal universalism and those more interested in the third world or in cultural identity, even between those who were women and those who were men. These are all important differences, to be sure, just as the difference between those who thought judges overstated the determinacy of law and those who thought critics overstated its indeterminacy was once a marker for the difference between mainstream and critical postures in the

American legal academy. But one can easily overstate differences of this sort, just as one can overstate the difference within the discipline between criticism and reform. There was always far more political and methodological agreement, crossover, and confusion than such a neat polarization suggests. Indeed, these differences initially had little to do with the preoccupations of the NAIL. And yet, as the foreign and American student body became more polarized along these lines, I found myself cast as opposition to neoliberal hegemony, and my colleagues in the international law field who seemed outside or hostile to the NAIL efforts were understood to be far more optimistic defenders of American neoliberal hegemony than they were. After some time, people drawn to the project by the set of polarized images went on to place the critique of neoliberal economic and political internationalism squarely on the group's agenda.

I was often aware that people who had not been involved with the group (and, in fairness, some who had) described it as a "cult" or "clique" or, more kindly, a "school of thought" united by a set of ideas or ideological commitments, or by fealty to a group of charismatic fanatics. It won't be surprising to hear that I didn't experience it this way. From the inside, I was constantly struck by the difficulty of keeping so many disparate marbles from rolling off the table, at the resistance within the group to learning from one another, at the difficulty of getting anyone in the circuit to restate anyone else's idea clearly. Of course I did try, with differing degrees of success, to influence others in the group to work on things I was interested in and pursue lines of inquiry I thought promising. And I also wanted to submit to the group's discipline, as an alternative audience and as a source for new ideas or avenues of inquiry.

I think the effort to see activities like the NAIL as cults is quite similar to the tendency by mainstream eclectics to think of schools of thought in terms of adherence to a set of propositions or methodologies, or by secular people to speak about religious groups as all "believing" in this or that. If your own project is to insist on the ecumenical, pluralistic, and rational openness of the mainstream or establishment, then it will be difficult to think of yourself as part of a "school" or "group" or "religion" and easy to think of those who are setting aside the mainstream preoccupations as unencumbered by differences of opinion or commitments to pluralism and rationality. In my own experience, however, it's just not so. Not for religion, not for international law, and not for the NAIL. Indeed, in my own experience, the disciplining effects of mainstream insistence on preserving

broad unresolvable debates while inflating modest doctrinal or institutional differences into matters of deep principle are themselves intensely sectarian.

Indeed, the group was filled with projects of intellectual affiliation and disaffiliation, as well as dominance and submission. Most of our events were structured as encounters between quite different tendencies: American critical race scholars, postcolonial theorists and people interested in developmental economics, or feminists and third world men interested in human rights, or Arabs and Israelis interested in progressive law and modernization, and so on. These discussions always seemed to me in danger of collapsing, as Latin Americans and Africans or South Asians and Arabs suddenly found it inconceivable to be part of the same endeavor. The Europeans and Americans, those with and without an affinity to critical legal studies, women and men, third world men and first world women were always in danger of refusing to engage. I don't think we ever figured out much of an intellectual basis for alliance among these different constituencies, other than the idea that one should "attend" to the interests of other constituencies who might be part of one's audience. Various of these constituencies connected with one another at different times, in partnership, in charismatic association, in opposition, in symbiotic arrangements of authority and submission. But if I look back on the NAIL for methodological tips about getting the spark of critical energy to light, I would probably point first to this obsessive effort with cross-training and building a broader imaginary audience for people. A large part of what was going on was encouraging people to imagine that one might write for this weird and diverse group of people rather than for those within one's preexisting specialty or affinity group.

But it is true that we sought to make some ideas known that were not known, to articulate a criticism of the disciplinary lexicon as a whole, and to link its blind spots to bias in the world. We had things in common, overlapping projects of political or intellectual commitment. For all the difficulty of our internal alliances and the diversity of people who became interested in the NAIL, there was also, at least some of the time for some people, the experience of being part of an undifferentiated ego mass, of sharing something—a commitment, a project, an experience—with a large group of others in a way otherwise unavailable in one's experience of either a professional context or disciplinary identity.

My guess is that the basis for this feeling was more a sensibility than a set

of ideas. One could probably name a sort of canon of works that many people in the NAIL would have heard about or read: Koskenniemi's *From Apology to Utopia*, Berman's piece on international law and cultural modernism, my own "Spring Break," Lama Abu-Odeh's piece on the veil, Duncan Kennedy's "Hale and Foucault" and *Critique of Adjudication*, Knop's "Re/statements," Anghie's piece on Vitoria and colonialism, Danielsen and Engle's *After Identity*. There were undoubtedly others as well, but I'm not sure very many people in the group could state very clearly the arguments of even the "canonical" texts. Nevertheless, we did develop a group vocabulary, which changed over time. For the last NAIL conference I wrote down a list of slogans in an effort to capture some of that vocabulary, to remember what words we had used to generate the feeling of being outside the disciplinary vernacular. When I read them out there was laughter at their routinization into slogans, some cheering at favorite propositions. Here is the list, many items of which are in tension with one another:

- Write history against the progress narrative.
- The politics of international private law.
- Law as culture.
- Not interdisciplinarity but counterdisciplinarity.
- There is more than one market.
- Economics is multiple (sublogans: institutionalism, path dependence, unstable equilibrium).
- Link internal and external critiques.
- Down with proceduralization, with process, with participation.
- Be skeptical about the sites of liberal political engagement, about human rights, about the new "civil society."
- Engage the new "civil society," support new social movements, seek postdevelopment strategies.
- Identities are important. *After Identity*.
- Identities are hybrids and constructs and projections.
- Celebrate intersectionality/the first world in the third, the third world in the first.
- Read liberalism symptomatically, its doctrines and institutions the surface face of a desire.
- Be alert for the will to power.
- Embrace the dark side—of modernism, of law, of liberalism.
- Ambivalence Rules: perilous, pervasive, personal, political ambivalence.

Whenever the ideas that move a group get codified, they quickly seem stable. This list seems somehow flat to me now, but not because I've given up on these ideas. Quite the contrary: they each are embedded in bits of work and still are worth thinking about. We certainly didn't exhaust their application or interpretation in the field. But a voracious critical energy often does devour its best ideas, outrun its own slogans. As energy like that which animated the NAIL goes on in other ways, these forms disappear. If I think about people whose work vibrates with critical energy today, some are elaborating these ideas, others have reached elsewhere, working on the comparative legacy of antiformalism, on the renewal of law and development, on the interface between human rights and development policy, on the legal culture of Latin American identity, on connections between critical space theory in local and global settings. The story moves on. Perhaps the NAIL goes on as well.

What did it all add up to? There were, in the end, lots of paradoxes about the NAIL. It was an eclectic project, a project of difficult alliances and unfinished dialogues, of growth by cross-training and interdisciplinarity. For some people it provided the satisfying experience of being part of an undifferentiated ego mass; for others this always left a bitter taste. It was a committed intellectual project. The work was there; we had some ideas about questions that might be explored, projects that might replace the field's canonical inquiries and ambivalences. Some of the work was better than the people who produced it, better than the group that inspired it, and some was a lot worse. I'm not a very reliable witness on that.

But as I've said, I don't think about "new thinking" as a set of methods or ideas or propositions. For me new thinking is a performance. I imagine that when dancers and choreographers think about their work, it must be interesting to look at videos, to study choreographic notation, to find recognition in empathetic reviews, but dance remains somehow inexorably a performance. It happened, and people who came, who danced, who choreographed, who played had an experience that would otherwise not have been available to them. When I think of the NAIL, I think of it as a performance artwork. There was a sensibility, there were moments of intellectual engagement when people felt the presence of innovation, when the bonds of conventional wisdom relaxed, when the discipline suddenly looked altogether different. Some people wrote things up, and taught things, and did things in the world afterwards, but to my mind these are largely dead things. At the Fin de NAIL celebration many participants knelt

down to hammer a finishing nail into a charred and fur-bedecked chunk of wood Günter Frankenberg had brought along. It was a disturbing ritual, and the relic remains an arresting mark of our endeavor together.

As one participant, I found in the NAIL a place where the spirit of new thinking lived for awhile for some people. There will be others. This book might be one. There is certainly a kind of empty feeling sometimes when the dancing stops, a nostalgia for favorite moments on tour when the production folds. But performances are also affirmations: that dramatic things are possible, that people do get together, that affiliation is possible, that projects can find their way to expression, that quotidian practices don't exhaust the possible. Of course, performance art doesn't just happen either. We can think about how to stimulate and support initiatives that might be animated by this sort of spirit. It might have something to do with decoupling critique from reform, with setting aside the discipline's template of institutional, doctrinal, and theoretical alternatives. It might have something to do with the anger and distance and hope people outside the field can bring to its central operations when given the opportunity. It might have to do with intellectual cross-training in the discipline's margins. And also with friendship and mentoring, with the mutual pleasures of commitment and aversion, domination and submission.

The animation for my own choreography has been the ambitious idea that terribly important questions—about society, poverty, governance, and also about ourselves as professionals—are not being attended to by the mainstream intelligentsia and that we can aspire to address them. Not simply as a form of cultural politics, not as back-office work for the party in opposition, but also not simply as creative play. I have in mind a shared sense that description matters, that things are terribly misrepresented, and that correcting, changing, influencing what is understood, what is seen, what can be asked can be a matter of passion and politics. I've noticed that you can sometimes ignite someone's creative impulse by providing a terrain that is not quite fully assimilated to the establishment or the mainstream, that provides a safe hint of ongoing opposition and possibility. Something terrific can happen when people who share this sense find ways of telling one another, of touching, itching, expressing the animus within. My own experience is that people—doctoral students, young lawyers—sometimes really turn on the gas if they see plausible professional life outside the mainstream, if they become convinced that intellectual work can be more than assimilation, credentialization, or work on the self.



This is probably not a project for everyone in the audience. It exploits a kind of division in the professional world sometimes marked by subtle and ephemeral questions of style and starting point and sensibility that are hard to describe. It might divide people who think things are basically legitimate from those who do not. Or those who believe in the unconscious and those who do not. Or "people of the body" and "people of the mind." Or those with a critical impulse and those with a more conventional will to rule. Those who are interested in genealogies of inequality and desire and those more interested in systemic restatement and renewal. Or those who begin intuitively and those who find rationalist modes of understanding and explanation largely satisfying. Those who are comfortable with ambivalence and those who are not, those with modernist and those with premodern sensibilities. I am not sure any of these distinctions would stand up under much scrutiny. But for me, "new thinking" is less a matter of new methods or ideas or programs than a lived experience that can split the audience along lines like these.

Such a common intellectual project also takes (and needs) institutional shape: as a series of conferences, a bibliography, an intervention in particular institutional and professional settings. It takes shape with all the anxieties of influence, contamination, exclusion, suffocation that attend collective work. These sorts of institutional settings are pretty ephemeral; the project attracts hostility and misdescription, the initiative passes to others, there are the routine professional coups d'état and disagreements. Someone with critical energy has some institutional resources—a journal, a class, a program, publishing space—and tries something. And the form can become rigid, a factoid one cannot escape, prisoner of imposed misdescriptions. The resulting institutional changes can really shock the project. Losing a slice of bureaucratic power here or there can change who is involved. Initiatives just getting going can collapse, people who seemed well-established can lose the incentive or space to connect with one another. Without a base camp, the initiative can flounder. I am sure a lot of this went on as the NAIL initiative and my association with the Harvard Graduate Program ended.

The sensibility I have in mind can also shed the skin of these forms, can move to another institutional frame and intellectual question. It is worth celebrating moments when this sort of thing comes together, and I am very proud of all that went on in the NAIL in this last incarnation. But I do not think we got to the end of the effort to figure out what the discipline should

do. I can say that on our best nights, we performed what the discipline can be. There will be other performances, projects, parties. Perhaps some new NAIL will emerge. If I hear of anything, I will be sure to let you know and hope to see you there. And if you find yourself with an exciting project of criticism and innovation or if you see the light on far off down some road and think something great might be going on, call me. I've got my dancing shoes polished, and I'd love to come along.

#### Note

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