

International Legal Education

David Kennedy*

I. INTRODUCTION

Thinking about a legal discipline as a whole, particularly one as broad as public international law, seems a risky business, and I hope you will indulge me, in the context of this informal presentation, if I confine myself to sharing a few somewhat personal reflections about teaching and studying in this field. I often find myself at a bit of a loss when students ask me about studying or practicing international law, and not just because we often seem to have different pictures of "study," "practice," "international," and, I suppose, even "law." I think my problem stems rather from the paradoxical way in which such questions are characteristically framed: combining enthusiasm and scepticism, as if the student wished there really were an international law to study and practice, but knew, tragically, that this was not the case. I guess it is always a bit difficult to explain why you find what you are doing to be interesting, even exciting. Such explanations usually strike me, at any rate, as somewhat forced and unconvincing, particularly when their inevitable idiosyncratic and coincidental nature is not acknowledged. Nevertheless, I do think that international law, especially now, is a fascinating field for both intellectual reflection and practical work, and I would like to use this opportunity to set out why.

That people should approach international law in a paradoxical and hesitant fashion is, I guess, not all so surprising. As a student, I know I had a great deal of difficulty sorting out the various mixed and at times bewildering messages about institutional and professional life that the field of international law seemed to be sending. These mixed messages about professional opportunities were paralleled by a rather diverse and confusingly unfamiliar set of intellectual issues that seemed peculiar to international law and that seemed to support simultaneously a certain enthusiasm and cynicism about the field. To the extent that the discipline continues to present such a confusing face, I suppose it will continue to produce a perplexed and sceptical response. It turns out, however, that international law is a great deal

* Assistant Professor and John Harvey Gregory Lecturer on World Organization, Harvard Law School.

An earlier version of this essay was presented on April 12, 1984 as a part of the Elihu Root Lecture Series of Harvard Law School.

simpler, more familiar and well-integrated than, I must confess, those of us who teach it often make it appear. In fact, international law is a relatively accessible discipline, intellectually as well as professionally, and one that is fairly open to creative re-imagination and development. Indeed, it has always seemed to me that the institutional, professional, and intellectual dimensions of international law work together to produce a remarkably coherent, if somewhat perplexing and isolated world. Unpacking this coherence seems the best antidote for the uncomfortable oscillation between enthusiasm and scepticism that I felt as a student of international law and that I suspect is a rather common reaction.

One way to think about this disciplinary coherence is to take a rough look at the recent history of the field in United States law schools. By paying attention to the similarities and differences among what might be thought of as "academic generations," many of the diverse tendencies in the doctrinal and theoretical work of scholars in a given period can be seen as related aspects of a single shared enterprise. The strong connection between the institutional, professional, and intellectual experiences of those I have encountered in international legal work has prompted me to reflect in a more systematic way about my own experiences of these various dimensions of international law. It is because young lawyers interested in international affairs confront such a well integrated legal and professional discipline that I thought our experiences might have enough in common to warrant sharing these personal, and somewhat informal observations.

I suppose it can be dangerous to think about a discipline in generational terms. Exploring the institutional and intellectual coherence of a discipline by focusing upon the experience of inter-generational continuity and change might seem to suggest that generational change might of itself unlock the discipline's coherence, squandering its accumulated wisdom or overturning its orthodoxy. Our normal cultural preference for things new or progressive often makes talk about intellectual generations sound like some oedipal manifesto when the whole point of such talk, of course, is to emphasize the reproductive capacity of a discipline, creating and recreating those issues that make it a discipline. Thinking about things this way is also dangerous because it can seem to distort the relationship between facts and ideas beyond recognition. To those who situate themselves in a stream of reasoned universals, identifying ideas with generations seems too contextual. To those for whom intellectual progress results from the historical pressure of truth or of facts, a generational approach seems insufficiently contextual. These are both real dangers. Nevertheless, if we are not too rigorous and dogmatic about it, generational thinking can provide a good picture of the interaction between ideas and their

context. Moreover, and perhaps more importantly, the common professional experiences of recently trained international lawyers seems sufficiently unique and the generational break in the flow of ideas about the field of public international law seems sharp enough to warrant reflections of this sort. This break gives contemporary students and teachers of international law a rather unusual opportunity to understand and perhaps to reformulate the intellectual and practical discipline within which we work. It is part, in other words, of what makes the field seem so accessible and exciting.

I would like, then, to describe the field of international law as I have encountered it as a student and teacher over the past few years. As I entered the field of public international law, a rather large group of imaginative and renowned scholars were reaching retirement. Rarely does the generation that defines a field depart from the scene as gracefully or with so few successors as has the generation that reached its apogee directly after the Second World War. If one thinks back upon the pre-war generation of international scholars and practitioners, one remembers a rather small group of bold men, who defined the field of public international law. These men produced the first comprehensive modern treatises of a distinct public international law in the United States and founded many of what were to become the large international law practices. Intellectually, these men consummated the nineteenth century struggle between naturalism and positivism in an uneasy positivist truce and fueled the two great waves of international institution building in this century. These were the years of the Harvard Research Project, a massive effort of intellectual systematization. This generation produced lawyers who developed individual practices of public international law. Imperialists and humanitarians, these men developed the private practice of statecraft and set in motion the international bureaucracy.

This generation found ready successors after the war, when a large cohort of practitioners and scholars entered the field, many of whom received their first professional experience in the post-war reconstruction effort or in the United States business and investment boom in Europe that followed. These men increased the scope of doctrinal systematization and expanded the international bureaucracy. If their predecessors had laid down the doctrinal contours of the field, these men gave it institutional shape, not only in the United Nations system and in the new international economic institutions, but also in the United States State Department, in the law firms, and in the multinational corporations.

These men were enthusiasts about international law and institutions. Nonetheless, they progressively abandoned the doctrinal purity and institutional isolation characteristic of the pre-war generation.

Participants in the post-war generation were self-described pragmatists and functionalists, sneaking up on sovereignty in diverse and divergent sectors. Suddenly, the boundaries between national and international, public and private law were self-consciously blurred. In the realm of theory, this group resurrected the struggle between norm and deed, reformulating it in the language of valuative sociology or consensual positivism.

If these men were the architects of the post-war international legal order, their successors, and, by and large, my teachers, were its builders and interior decorators. Fulfilling their program for a distinct international legal order, grounded in and integrated with a wide range of concrete national political and economic realities, required a great deal of imagination and work. The generation of international scholars and practitioners of the 1950's and 1960's expanded the international bureaucracy and increased the scope of doctrinal systematization. They developed a distinct international administrative law and fleshed out the diverse and more mature constitutional political processes of the post-war international institutions. They greatly expanded the number and flexibility of private international dispute resolution mechanisms and generated forms of international legal practice responsive to the growth of trade and investment. Intellectually, this generation contributed to the project of scholarly elaboration, textual drafting, and doctrinal compilation that the post-war scholars had set in motion. In their theoretical work, these scholars sought to account for the elaborate system they had been bequeathed and which they had worked to expand.

This theoretical work was their most imaginative and original contribution. Their problem was to account for the simultaneous distinctiveness of public international law and its now quite strongly asserted connection to private national economic structures and political processes. This dilemma produced a number of different theoretical tendencies. Some scholars focused upon the intellectual and doctrinal boundaries that were being transcended, developing literatures that organized doctrines and institutions so as to reflect these developments. The shift in focus from public international law to "transnational law" or the "international legal process" reflected, in part, attempts to account for the presence of national politics in international law and for the role of national legal systems, judicial institutions, and private interests in the elaboration of international law. Other scholars accounted for these changes within international law by developing interdisciplinary approaches to the neo-positivism and neo-naturalism of their immediate predecessors. Working with legal sociology, political science, game theory, and institutional psychology, these scholars

vastly expanded and complicated the enterprise of international legal theory.

As a result of this eclecticism, those of us who came to the field in the 1970's were confronted with a great variety of approaches to and accounts of international law that sent quite complicated and contradictory messages about international legal theory and practice. Despite this diversity, however, the discipline of international law, taken as a whole, presented two broadly divergent visions. On the one hand, the doctrinal and theoretical world of the pre-war generation had not been abandoned. On the contrary, the post-war cohort had self-consciously engaged in its "reconstruction." The doctrinal and institutional framework, which these scholars had set in place, in turn, had by and large been accepted and embellished by their successors. On the other hand, our teachers had devoted their careers to escaping the confines of those earlier doctrinal categories in a wide variety of different ways, although for all its consequent diversity, the discipline continued to be organized around this central set of issues. This ambiguity about traditional doctrine was particularly evident in the work of those who sought most assertively to re-imagine the field. People like Wolfgang Friedman, who wrote about the "changing structure of international law," focused precisely upon the ambiguous relationship among the notions of national and international, public and private, legal and political at the core of the discipline. At what might be thought of as the high water mark of international liberalism, scholars of the sixties sought to get those relationships straight, to modernize them, resolve their conflicts, and account for their divergences and flexibilities, once and for all.

What I would like to do here is reflect upon this corpus of theoretical and doctrinal practices from the perspective of one trained in international law after the Vietnam War. Like our predecessors, those of us who studied in the 1970's and 1980's were presented with no cataclysmic reordering project such as that which moved the immediate post-war generation or, I suspect, the pre-war scholars and practitioners. The reconstructed framework remained in place. The only difference (ignoring for the moment decolonization and Vietnam) is that for us the framework came quite well established and defended. It no longer seemed as fragile as it must have seemed in the 1950's and 1960's. Quite the contrary, it was stable enough to begin receiving attacks from both the left and right. In my own experience of the field, there was a relationship between this fact, the institutional, professional, and intellectual messages that it conveyed, and my sense of perplexed enthusiasm and scepticism about studying and practicing international law. I will talk about this relationship in two parts: first

the institutional and professional face of the discipline and, second, its intellectual components.

II. THE PROFESSIONAL FACE OF INTERNATIONAL LEGAL EDUCATION

A great deal of what you pick up in law school about a somewhat specialized academic discipline you learn from the way it is treated within the university and from the search for workable career options. In both of these respects, I kept picking up rather divergent signals about international law. Perhaps it was my own naive wish, but international law seemed to promise something quite grand. The whole institutional environment suggested a special dignity and glamor in international law. At Harvard, for example, the international law library occupied pride of architectural place in a law school that offered an extremely wide variety of seminars on the law of far flung places. There was a large graduate program, bringing a great number of foreign lawyers to study with us. I remember being fascinated by the photo displays of faculty and alumni in fading international settings.

On the other hand, despite all this, I also got the distinct impression that international, comparative, and, for that matter, historical legal studies were not in the mainstream of my legal education. Few if any of my professors "specialized" in international, comparative, or historical legal studies. Most taught both international and domestic subjects. It was usually argued, and I think quite correctly, that this arrangement signified the unity of the legal fabric or the simple fact that a good international lawyer must first of all become a good lawyer. Nonetheless, I had the feeling that these arguments about integration somehow detracted from international law's claim of special dignity and institutional status.

The curriculum, although rich in international and comparative offerings, conveyed a similar doubt. First of all, of course, they were all upper level courses and yet did not seem to be related to first year domestic offerings in any hierarchical or progressive way. Although international law seemed to make some claim to be concerned with fundamental jurisprudential questions or jurisdictional priority, many of the courses presented international law as the specialized continuation of some domestic subject such as taxation or investment. Several faculty members offered introductory second year courses variously labeled "Public International Law," "International Legal Process," "Transnational Law," and "International Business Transactions." I understood these offerings to be arranged along a continuum from "soft," speculative and quasi-historical to "hard," practical legal study,

although some of my fellow students thought of them as either public or private. In any case, we all knew that public was marginal and private was *municipal* legal study. Public led on to undersubscribed seminars in delightfully esoteric subjects. Private led on to advanced seminars in areas of domestic specialization like “international aspects of corporate taxation.” As a result, those of us who toyed with the idea of “specializing” in international law were gently redirected to a legal education that was considerably more focused on United States legal practice than we would have liked. This direction may have been a wise one, and indeed, most of us came to view it as both inevitable and desirable. Nevertheless, it left me a bit sceptical about the institutional stature that international law seemed to be claiming for itself. Bringing these claims to independent dignity and practical subservience together resulted all too often in an unfortunately arrogant ethnocentrism. I know I came to feel that international law was a somewhat special form of the United States municipal legal order.

This feeling was reinforced when I tried to work out the career alternatives in international legal practice. I remember talking a great deal about jobs when I was in law school—endless discussions about whether to seek work with a firm, a bank, a corporation, a government agency, or an international institution and if so with which one. Those of us who wanted to “practice international law” got the sense after a while that, although such practice would indeed be elite and glamorous, it was also unavailable. No one, we soon learned, “practiced” international law, and to admit such a desire in a job interview was to mark oneself a fool. One sought instead to practice corporate or tax or real estate law and expressed an “interest” in “international work.” When one encountered a senior partner with public international law experience, he seemed to acknowledge it as one acknowledges a bizarre foreign decoration—as an accidental, if fascinating, career by-way. The message was clear: international law was elite only when subservient to a private municipal practice.

But I think that the rumor mill of career placement did more than reinforce my rather confused sense of international law as both elite and ethnocentric. It also delivered a very similar message about the professional identity of the international lawyer. It is hard now to remember why I studied international law. Partly, I suppose, it was to deny that I was in law school at all, either by holding on to college experiences with languages, travel, history, and political science, or by looking ahead to a career in which all the technical distinctions of the first year might not prove so important after all. I remember a friend reassuring me that civil procedure was just a domestic distraction for those with higher, international ambitions. Of course, these motives contributed to my sense that international law was simply an

elite domestic discipline. But these aspirations had another aspect as well. International law promised a career close to power, to sovereignty and to what seemed to be the big issues of war, peace, international development, and social justice. Partly, I suppose, these ambitions were corrupt desires for the thrill of association with sovereign authority. Partly, they reflected a desire to transcend the technocratic duties that I associated with domestic lawyering and to grapple with injustice directly. Both of these aspirations had to do with avoiding what we took to be the normal drudgery of legal practice.

Although everyone accommodates his or her ambitions to the available career options on graduation, there was something about the budding international lawyer that gave a particular twist to the process. As students of international law, our aspirations were extra-bureaucratic: to float above the mechanics of domestic politics and practice, to maintain a certain broad perspective. Yet the job opportunities seemed singularly bureaucratic and we came to experience the reach of our specialization as a plunge into specificity.

There were, I was made to understand, no real possibilities for the independent private practice of international law. At the very least, one needed, so the mythology went, to associate oneself with one of the largest firms, and hope for the best. There was corporate law practiced for multinationals or real estate law practiced for foreigners, but there was no international law to practice. Public international law meant the State Department, the international wing of some other federal legal department, or work with an intergovernmental agency. We said it was Vietnam, but I suppose it was also the salary and the bureaucracy and the prestige that led us from public service. The story was the same for the intergovernmental administrations with reputations for anti-United States hiring or promotion quotas and moribund bureaucratic management styles. Besides, such jobs seemed few and, we thought, unduly specialized for those with aspirations to become an international lawyer. We thought things would be broader or better or of a "higher quality" in firm practice—that, in short, our horizons would be broader and our options would remain open.

It was not, in other words, merely the pressure to go private rather than public, it was the sense that international law offered a bureaucratization of progressive and expansive aspirations more profound than that of those who pursued other "public interest" specializations. There might be exceptions: we toyed with various fantasies about private arbitrators in Geneva or Paris, or about foreign investment moguls who might emerge from the largest Wall Street legal firm. In general, however, international law presented a stark insight into the modern experience of power. Working with the sovereign would mean administration, not power.

This insight, of course, came also from the university setting and from intellectual work in the field. Most of the courses were about the *management* of international life, about process and the avoidance of "politics," which seemed to intrude into international law in the most negative, if inevitable ways, threatening not only order, but also justice. Most directly, however, the realms of power and of politics threatened our aspiration to become international lawyers, the "technocrats" of a depoliticized procedural order.

I have gone on at some length about my own experience as a law student interested in international law because what I learned in selecting courses and investigating career possibilities contributed a great deal to my intellectual sense of the discipline. Both activities presented a somewhat vague general promise of special status and a less rosy set of concrete alternatives. I came to terms with these contrasts in complementary ways: by developing a certain indignation, if marginal ethnocentrism and a sense of the elite reality and inevitability of the bureaucratic function. Together, these coping mechanisms reinforced the combination of cynicism and enthusiasm with which I steamed forward into the field. This combination, it seems to me, was a tragic one, for it contaminated all the best insights that the field had to offer and clouded a healthy acclimation to the transformation of a perhaps naive political aspiration into the reality of an evolving identity as a professional manager.

III. THE INTELLECTUAL FACE OF INTERNATIONAL LEGAL EDUCATION

The enthusiastic cynicism, which I have described, led me to approach the intellectual and theoretical work in the field of international law in a somewhat skewed way. In a sense, of course, the theoretical literature in the field reinforced both enthusiasm and cynicism. Taken out of context, the academic side of international law seemed to protest its importance and coherence a bit too much, particularly given the field's general disinclination to pursue theoretical analysis in favor of pragmatic accounts of the trans-boundary legal process. What I failed to grasp at the time, however, was the context within which these two tendencies made a great deal of sense and the opportunity that their conjuncture provided for further imaginative work.

The first tendency in international legal literature and argumentation was an enthusiastic and self-justifying one. International law seemed to be getting better. There were more rules, more often observed, covering a wider variety of subject matters than before. The doctrinal elaboration of international law, or at least the mechanisms for its elaboration, had been established in the post-war period. Ever

more municipal legal systems provided mechanisms for the recognition of international rules. The full panoply of liberal institutions—parliament, administration, and judiciary—had been achieved on an international level and had had the chance, particularly at the regional level, to produce an astounding array of complex legal materials and practices in need of systematic scrutiny. It seemed particularly reassuring that even the third world, and the socialist bloc especially, had embraced international law as a framework for their claims. The array of private international law innovations that followed the multinationalization of business was further grounds for optimism.

This optimism situated the student intellectually in a particular set of notions about historical progress. History was seen as relatively continuous, if fueled by periodic disruption, and, on the whole, progressive. Things were getting better. This approach was characterized by the continual reexamination of history to identify the “roots” of contemporary legal institutions or doctrines and by the continual projection into the future of a perfected self-image. Thus, for example, the history of international institutions consisted of the enumeration of the first secretariat, the ways in which the League of Nations did and did not foreshadow the United Nations, etc. The future lay in the completion of a particular liberal image of institutionalization. That image might be in dispute (whether we were moving to world government, federalism, or merely functionally sneaking up on sovereignty remained open), but the sense of progress was sustained by the assurance that we were at least on the right track towards a utopia that could be named.

This optimism matched the experience of the post-war generation that developed it. They had been presented, by the war, with an unforeseen catastrophe, arising from the realm of facts and politics, that gave them the occasion for a heroic burst of institution building and law-making. They had witnessed the development of these fragile institutions into the highly sophisticated legal structure, which I, as a student, took for granted. As a result, the claim that dedication and creative imagination could respond to political chaos expressed their life experiences quite accurately. The trouble was that these claims seemed a bit disconnected from my own experience. The “increasingly interdependent world” seemed to require management, not reconstruction. This project, one of completion and continuity, led us to associate the accumulation of rules with the status quo, rather than to identify it as a creative response to a wide range of new political and social problems.

It seemed easy for us to be cynical about this enthusiasm, for it was a bit at odds with the rest of the intellectual message that we received. In particular, this optimistic face was presented as a somewhat delicate

facade. Intellectually, we were given one *reason* after another for believing in the doctrines of international law. Public international law was, for all its expansion, to be viewed alternatively as an infant industry and a frail dowager, too weak to withstand sustained criticism, in need of enrichment, protection, and an observant fealty. If there were weaknesses in the international legal system, scholars and practitioners should tolerate and explain them. If international law seemed rather simple, it was, of course, still "primitive." If it seemed unenforceable, it was simply a different *sort* of law ("horizontal"), like some eccentric cousin who still belonged at family celebrations. If the doctrinal distinctions seemed quaintly Eurocentric and formal, well, we would need to develop them, but we should not criticize them, for they were, after all, the only ancestors for future developments.

The delicacy of international law's optimistic facade was reinforced by a sense of its inevitability. If international enthusiasts were optimistic because we had come so far, it was difficult to imagine where else we might go. The goals of international order seemed to have been taken out of the discussion. When public international lawyers addressed substantive issues they presented their work as marginal theoretical or utopian speculation. As a result, those of us who wished to think of alternative practices were encouraged to take up what was understood to be the theoretical and utopian practice of fleshing out what could become, but would have to remain, a collective aspiration.

As a student, I learned these various justifications for the discipline much as social elites learn the art of social conversation. The budding international lawyer must be able to respond with gentility to the challenges one is bound to find lodged against what we hoped would become our status. Of course the challenges would come, for the normative moorings of the most basic discourse by international lawyers, diplomats, and scholars are infirm. Legal doctrines dissolve far too easily into thin disguises for assertions of national interests. Moreover, the manipulability of basic international legal norms becomes more visible as international law comes to be applied to ever more diverse situations by ever more diverse or ideologically motivated disputants. Meanwhile, theoretical explanations of international law had become increasingly polarized: defending its breadth by abandoning its normative power or emphasizing its strength by limiting its ambit. These tendencies to abstraction and reduction created an atmosphere in which students of international law were often confronted with cynical jibes from their municipally oriented peers.

The responses students learned were varied. Often we passed the blame on to others: the politicians, the ideologists, the terrorists, the UN bureaucrats, the Third World, the Soviets; all those who sought short-term gain at the price of long-term stability, in short, all those

who did not understand the importance of our work. Sometimes we reasserted the fragility of our field, suggesting with a pragmatic smile that of course one could not have unrealistic expectations, thereby consigning criticism to the margin reserved for utopias. At other times we reasserted the strength of international law in other areas, or in the great run of cases, or as the procedural infrastructure for other international activity. Criticism was thereby transformed into exception or breach or substantive politics within a greater normative rule or legal process.

It was easy to be cynical about these justifications. They seemed by the very necessity of their repetition to question the enthusiasm they were meant to support. Moreover, I guess I knew that these various justifications were inconsistent in their alternative reliance upon a broadly descriptive and a narrowly normative vision of the law we were defending. But these justifications did not really seem to matter anyway. The optimism of the discipline somehow eluded confrontation, and we engaged in theoretical justification only as one engages in a parlor game. The *real* intellectual work was elsewhere, in the elaboration and extension of pragmatically deployable doctrinal systems. Because the theory seemed marginal in this way, my optimism remained very complacent. Rather than criticism and response, I learned to practice explanation and justification. Explanation, which accepts frailty as the price of dignity, is a genteel criticism. Justification can consequently remain mild, eclectic and dignified. But again, the elaboration of these justifications and explanations only seemed unnecessary in a world that took for granted the stability of the institutional and bureaucratic order.

The second major tendency in international legal literature and argumentation recognized precisely this stability. Indeed, the basic difference between the generations of the 1950's and 1960's and their predecessors lay in the extent to which they already took the doctrinal contours and theoretical accounts of the discipline for granted. In fact, I should say that the systematic study of the doctrine of public international law in either its enthusiastic or self-justifying form had long since been out of fashion when I was in law school. It had either been kicked upstairs into quasi-historical seminars or supplanted by a wide range of sociological or value-based or political process analytical styles in courses offered at an introductory level. If we began by studying "public international law," we found casebooks full of UN debates, essays on world order or case studies of international policy making. But usually we began by studying "transnational law" or "international business transactions" or "the international legal process," picking up doctrine as we went along.

The variety of divergent approaches to public international law that appeared in United States law schools after about 1960 mirrored, often

with a peculiar twist, the innovations of policy science, inter-disciplinary study, and sociological positivism that transformed domestic legal study in the same period. In public international law these changes were all characterized by a move from doctrinal study to the study of something more self-consciously contextual, if, perhaps, more limited in scope.

Some of these approaches downplayed doctrines methodologically. In what now seems to have been another updated debate between naturalism and positivism, we studied either "systemic values" or "state behavior" depending upon the theoretical position of our instructor. Each approach sought to elaborate the conditions of doctrinal compliance without elaborating doctrine itself. Some approaches replaced doctrinal study with an interdisciplinary smorgasbord. Bits and pieces of political science, management theory, and game theory found their way into our international legal study. But they were all severed from their own theoretical context and put to buttressing and distracting attention from a shaky doctrinal edifice. For example, game theory, with its elaborate insights into the rationality of an objective psychology, was transformed into a theory of state interests against which doctrines of "reason" and "reciprocity" could be tested without elaborating a theory of the state or accounting for the manipulability of doctrine taken as a whole.

Other approaches turned away from the study of the doctrine of public international law by shifting attention to doctrines of United States municipal law, private law, or foreign law. By and large, these moves were not presented as analytic choices, but as descriptions. The doctrines and distinctions of public international law had simply been transcended. Thus, we did not abandon international for municipal law but studied "transnational law," a field clear in its aspiration to replace an outmoded distinction between municipal and foreign law. The format of the integration, however, was not itself available for scrutiny. If it were, it would have revealed a preoccupation with the traditional public international law doctrines. "Sources" became "the acceptance of foreign law in United States jurisprudence"; "states" became "sovereign immunity"; "territorial sovereignty" became "jurisdiction"; etc. Similarly, the study of international business was not presented as a direct alternative to public law doctrine, but as the transcendence of that traditional and "European" distinction. Yet the structural assumptions made by commercial law about the state, or, rather, about the community of states, were not directly analyzed except in distinctly supplemental discussions in the style of behavioral or evaluative jurisprudence.

In general these various approaches, richly eclectic, shared a common hesitance to relinquish an underlying and largely unexamined doctrinal dogmatism. This makes sense, of course, at a time when

one can be enthusiastic about doctrinal progress and must be careful not to damage a fragile doctrinal edifice. To me, however, this strategy seemed to discourage scrutiny of what was most in need of reflection and creative study, directing us instead to projects of specialized elaboration and intellectual continuity. Somehow, the enthusiasm, careful justification, and eclectic openness—which had reinforced one another in the work of post-war scholars—seemed to undermine one another, leaving me cynical, not just about the intellectual discipline, but about the profession of management to which it seemed to be leading me. In a way, my friends and I bounced back and forth between a certain intellectual frustration (born of our acceptance of the field's analytic pragmatism) and a sense of professional inevitability (born of our sense that real creativity was only possible in moments of cataclysmic reorganization and reconstruction). Both intellectually and professionally, I feared that my role would be a relatively specialized and uncreative one, elaborating and expanding upon an already well-developed system.

Together these tendencies in international legal thought seemed to produce an intellectual discipline harnessed to the management rather than the alteration of the international political order. The possibility for collective reimagination seemed intellectually and professionally foreclosed; a foreclosure that I enthusiastically accepted when sugar-coated in the field's elitist pretensions. But I guess it is not surprising that I approached the discipline of public international law with a certain scepticism as well.

A similar story could be told about the fields of comparative law and international institutions. For the most part, comparative law seemed to present an additional mass of doctrinal materials to master. I remember being encouraged to undertake such an effort in order to gain insights into our origins and into the lowest common denominator of Western Civilization as well as to acquire knowledges that might be useful in practice. These reasons were supplemented by a sense that comparison, like international law, was inherently interesting, promising escape from the prosaic world of domestic legal study.

Comparative law nevertheless seemed to fulfill these aspirations by organizing itself around the municipal law we knew. Thus, the insights were gained by alternating between contrasting foreign systems to our own in a way that confirmed our distinctiveness (civil/common, eastern/western, primitive/advanced) and assimilating foreign law into a greater universality, which would in turn confirm our centrality. Thus, for example, we uncovered foreign functional equivalents for our notion of separation of powers, confirming its importance for advanced legal systems. We studied divergent techniques for legislatively and administratively managing the presumably similar problems of post-industrial society, thus confirming the structure of our own

political landscape. I do not recall that we used foreign legal study to explore those notions of similarity and difference or to develop a notion of comparison that was neither ethnocentric nor culturally relativist.

Like public international law, comparative law seemed to eschew asking questions about its practice that might threaten a collective sense of its central intellectual importance. We were encouraged to supplement our doctrinal study with bits and pieces of anthropology, psychology, and history rather than to develop a theory of culture, power, or difference. Most importantly, we did not pay much attention to the relationship between comparative law and the rest of law: the crucial role played by the elaboration of the foreign in buttressing our sense of the inevitability and attractiveness of our own systemic identity. As with public international law, we students moved from intellectual and public concerns about comparing to careerist ambitions about compiling foreign knowledges for bureaucratic deployment.

To study international institutions when I was in law school was to analyze the legal constitution, production, and competence of the intergovernmental bureaucracies developed after the Second World War, occasionally comparing them with their immediate institutional predecessors. This doctrinal study was supplemented by the compilation of institutional practices and experiences that shed light upon post-war responses to conflicts built into the original doctrinal and institutional structure. To these two inquiries were added various anecdotes and theoretical borrowings from the fields of political science and diplomatic history. Together, these analyses defined the problem of extranational institutionalization in terms of the achievements of a particular group of governmental officials and lawyers who, building upon pre-war experience, had established the United Nations system.

The tensions and difficulties those individuals experienced were presented as inevitable conceptual choices in need of doctrinal resolution: universalism versus regionalism; general competence versus technical expertise; representative staffing versus merit; and so on. These dilemmas were generalized and imputed to the "state system" or to "politics" or to the peculiar nature of the public international legal framework within which institutionalization seemed inevitably to take place. Moreover, the basic doctrinal responses generated after the Second World War were presented as grand compromises among these inevitably conflicting principles. For example, the bicameral balance of competence and divergent voting practices of the General Assembly and Security Council of the United Nations was examined as a prototype compromise between universalism and great power responsibility.

These fixed points seemed to me to leave little room for reconsideration. At most, after careful analysis of the variety of intergovernmental constitutional schemes, I thought I might be able to design

an imaginative amalgamation should the need arise. But, given the success of the preceding generation in institutionalizing international life, this did not seem likely to happen in my career. Moreover, the hierarchy of institutions and inquiries seemed fixed, with career as well as intellectual consequences. Most important were the universal intergovernmental organizations. Least important were the non-governmental, non-profit institutions of special competence. In between were a variety of institutions that were worthy of study for the light they shed upon universal organizations. Ironically, we paid little attention to private profit making bureaucracies such as the multinational corporations or the international law firms, although we sensed that these might be both different and more important to our futures. Nevertheless, this hierarchy marked out a high moral ground that could be challenged no less easily than the stature of public international law. Indeed rather than challenging it, I remember practicing explanations for the weaknesses of intergovernmental organizations and came to believe that they represented the only public interest alternative to private practice.

The study of international institutions, like public international law and comparative law, seemed to be an elaborate corollary to domestic legal study. The progress of international government seemed to be measured against the models of federalism, confederation, and the tripartite democratic form. Not only were progress and perfection measured by the lowest common denominator of western governmental models (altered in accord with our political science notions about the special quality of intersovereign relations), but organizations and doctrines were classified to reflect familiar notions of public and private, economic, political or legal, and so forth. Looked at by a student in the 1970's, the discipline of international institutions seemed to present a framework that could be continued but not altered and to be unlikely to be of much use in transforming or escaping the doctrinal systematization of municipal law.

From the outside, to one who took the institutionalization of international life for granted, the discipline of international institutions seemed to leave a great deal of fertile ground unplowed. Concerned primarily with the doctrinal and experiential proceduralization of conflict, it seemed to downplay the systematic exploration of the drive to legalize and organize itself. It developed no theory of bureaucracy, no image of the liberal state whose external narcissism it seemed to nourish. As students of international institutions, we customarily reduced notions of power and of politics to explanations for doctrinal positions. We did not study the process of bureaucratic change except as doctrinal evolution. We did not explore the role of institutionalization in sustaining the image of an international legal regime. We

left unattended the relationships between the disciplines of bureaucratic and doctrinal study. For those of us who were on our way into well established bureaucratic structures, our study did not orient us to the processes of bureaucratic politics that we would experience in our careers.

These are all secondary questions for an institutionalizing drive that seems both necessary and fragile. Exploring them may have gotten in the way of what had seemed, twenty years before, the major business at hand for scholars and practitioners in the field. The combination of an image of creative opportunity unlikely to be repeated in my career and a practice of scholarship that seemed hesitant to explore its own assumptions, however, dampened my enthusiasm and made me sceptical. In any case, I experienced little guidance in the enterprise of creative management, which the success of institution building had made my most likely career path.

Each of these disciplines—public international law, comparative law, and international institutions—promised intellectual depth and access to questions of power and justice, of peace and development. For the post-war generations, the escape from public law doctrine, the turn to the compilation and systematization of foreign law, and the creation of intergovernmental institutions all expressed creativity and public service. The results were hard-won accomplishments, and the doctrinal and theoretical approaches of the post-war generations explored in some detail the routes that had led to that success and the tendencies that had seemed to threaten it. Post-war scholars and practitioners had reconstructed and improved the doctrinal and theoretical structure of the pre-war era. Far more importantly, the rigidity and contradictions of that period had been avoided, if not resolved or excised. The result, however, as an intellectual exercise, seemed to promise creativity only in a form that I would not know and to elaborate doctrinal schemes and solutions to situations a bit out of touch with my experience. All these fields contributed to a modest, centrist notion of liberal management, a way of being that seemed to offer me stability and specialization. But just as its doctrine deferred and proceduralized conflict, so its practice deferred and bureaucratized my aspirations. I became resigned, knowledgeable, mature, jaded, and eventually employable in the practices my predecessors had designed.

This cynical enthusiasm and scepticism about international law, which I developed as a student, was misdirected. If it resulted from a failure to see the claims that were made about international law and institutions in context, it also led to a much more important failure to realize the potential that the conjuncture of a fairly well worked out theoretical argumentative system and a well established bureaucratic regime opened up for creative study and practice.

IV. CONTEMPORARY INTERNATIONAL LEGAL
EDUCATION

It is possible, I think, to pursue international legal study and practice without cynical enthusiasm and to develop careers and intellectual projects that are exciting expressions of the life experiences of people trained into the discipline in the last two decades. Doing so, to my mind, requires giving up certain images of the international legal world that sustain the combination of naive enthusiasm and sceptical realism I have described. In particular, it requires getting beyond the bureaucratic image of international practice, which so often replaces a dashed desire to mastermind a new world order. I have only a few rather vague notions about an intellectual or professional program to achieve this. I do, however, feel fairly sure that international law is a good place to begin working on such a program. The broad outlines of what I am thinking about at this point would look something like the following.

Let me start with an intellectual program. Looked at from the outside, international law offers a well preserved, quasi-independent corpus of doctrines surrounded by a large number of diverse theoretical enterprises. I find this combination extremely useful for intellectual speculation. The doctrines are quite simple and broadsweeping and the theory is richly eclectic. I cannot think of another legal discipline in which the basic organizing ideas of the liberal state system are so visible in the doctrinal structure, or in which the diverse twentieth century theories of law are as accessible.

In order to prospect in these fields, one has to leave behind the theoretical projects of doctrinal clarification or avoidance that characterize much of post-war international legal scholarship. But this is easily done without damage to the doctrinal corpus or the institutional practice of international law. Once these projects have been left behind, the contemporary study of international law should begin by resurrecting the doctrine and history of public international law. By taking these doctrines seriously, in their own historical contexts, it is possible to experience the power of ideas in constituting institutional practices, here the practice of statecraft. I think international law is intellectually fascinating because if so inclined, one can easily get back to basics, to the study of doctrine and history and unlock their structure and power.

Rediscovering public international law doctrine as a set of historically specific ideas about social relations in turn provides a good standpoint for thinking about the mechanisms by which modern scholars dissect, sanctify, justify, and, I fear, all too often forget about doctrine. Because it is relatively easy to recapture doctrinal structures

in this field, it is also relatively easy to see what has happened to them. It is in this sense that I think it is interesting to think about the partial critiques and theoretical reforms brought about by the scholarship of transnationalism, world order and the legal process. By grounding ourselves more firmly in doctrinal studies, I think the current generation of legal scholars will be able to appreciate more fully the historical specificity of these reimaginative efforts.

Taken together, these somewhat distanced approaches to the doctrine and theory of international law can, I think, yield a number of interesting insights about the general nature of legal doctrine and theory. In general, for example, the gradual replacement of doctrine by theory has worked as doctrine itself works, by a continual process of distinction. Standing back for a moment permits one to explore the relationships among theoretical and doctrinal practices that sustain these distinctions. Intellectually, this means that we should be wary of the anti-intellectual tendency to retreat from history and doctrine that is often achieved by the separation of legal theory and practice. Instead, we might focus upon the historical presence of a group of specific ideas that work together to sustain our experiences of international social life.

By exploring the relationships among theoretical and doctrinal differences and similarities, it is possible to reconstruct our collective social image, an image that is often shrouded in doctrinal mystification. The relationships within doctrine, among distinctions, constitute its totality, its vision of social life. The relationships between this vision and the specializations of professional imagination constitutes a discipline. Working in this way, backwards from basic doctrinal categories, one can rebuild the connections among various faces of the liberal and modern vision of international life; connections that have been posited but not consistently acknowledged by contemporary international legal scholarship. For example, I think such studies might contribute to an awareness of the patriarchal imagination of sovereignty, an imagination that should not be severed from the patriarchy of property or family. To uncover these common structures requires a certain renunciation of isolated disciplinary specialization, undoing simultaneously its marginality and its arrogance. As a result, I think it makes good sense to meet, study, and inject other disciplines, renouncing any claim to special "international" expertise. The image I have of this cross-fertilization is, I think, a bit different from the borrowings that have informed efforts to account for the connection between doctrine and social life in a more direct fashion since the war. In this effort, I picture an injection of such analytic styles and disciplines as structuralism, literature, sociology, politics, or psychiatry,

which is not interdisciplinary but counter-disciplinary, finding in other intellectual areas the perspective to understand our own discipline as a whole, as social vision and practice.

By concentrating upon relationships—relationships among doctrines, theories, disciplines—it will be possible to think about our images and practices of differentiation in new ways. To a certain extent, international law has always been about suppressing cultural differences. Even comparative law, which often magnifies those distinctions, does so in a particular way, creating the foreign in the image of the familiar. I think international law provides a great opportunity to confront these differences as well as the mechanisms by which we categorize, minimize and exaggerate them. By examining the process of differentiation in this way, it is possible to develop a renewed sense of connection, renouncing the mechanisms of social division as well as disciplinary specialization. Renouncing specialization and acknowledging difference means abandoning the compromises of flexible formalism and pragmatic dogmatism that have defined the discipline. In order to do that, one needs in turn to renounce the worldly cynicism that has been their common theme.

If international law provides a good opportunity to investigate cultural and intellectual practices that recreate and sustain notions of similarity and difference, separation and connection, it is also likely to be a good place to uncover hidden and forgotten voices. Often, for example, in a very simple way, international law reinforces our sense that we are North Western and that everyone else lives in the Third World, a place that is rather monolithically South, Black, Poor and either East or West. By examining the intellectual mechanisms that sustain these images it might be possible to transform these seven or eight identities into thousands of distinct voices. Likewise, by understanding how international law sometimes leads us to hear only ourselves, echoing back in a Babel of distinct politics, it should be possible to turn our attention to the steady hum of the forgotten. For me, the frustration of having my own speech channelled into either the "real" and the "ideal" or the "norm" and the "deed" or the "theory" and the "practice" has faded a bit as I have tried to understand how the discipline's academic apparatus reproduces these distinctions. In international law, building upon the reimagining work of the 1950's and 1960's, it is now quite easy to see the public in the private, the national in the international, the center in the periphery, the politics in law.

All of these intellectual possibilities, the study of differences and similarities and so on, are the study of power. It has always been said that international law, so occupied with sovereignty, is a field that focuses one's attention on power: and I think that this is correct. Not

as we have understood power: as the object of policy, the possession of sovereignty, the cause of doctrine or the handmaiden of law, but as power flows among us, continually regenerated by our social and doctrinal practices of distinction and reified reconnection. It is quite easy in the field of international law to uncover the presence of the law in violence, of the State in terrorism, and of our aspirations in their defeat. To understand power in this way, one has to relinquish both the common desire to possess it and fantasies about its sudden deployment for good or ill. I think that students of international law should reformulate their sense of cause and effect in international affairs: rejecting reliance upon visions both of State interests that we too often take to propel doctrine and of the law that we take to restrain statesmen.

This intellectual program, the program of raking the doctrines that structure our vision and the theories that explain them to us as a whole, is really about positioning ourselves in the world. It is in this positioning endeavor that international law presents particularly dramatic opportunities. At this period of generational transition, the discipline cries out for integration and reimagination. The cynicism and naiveré, which have shielded those of us who study international law from confronting our own position, have enabled us to slink off into the institutional roles most easily available, are denounced by the discipline itself. Theoretically, nothing could be more conducive to situated scholarship than the self-consciously eclectic and doubting literature of international law. This openness, or availability to practical reorientation through intellectual reimagination, characterizes the fields of international institutions and comparative law as well. As a result, I think we should be able to reintegrate the professional and academic faces of the discipline.

Being positioned, to me, means rejecting the various congealed and objective discourses of interaction that the discipline offers, or, perhaps, entering the narrative they construct to engage in politics directly with others. In comparative law, for example, by standing back from the oscillation between cultural relativism and ethnocentricity, it should be possible to admit the presence of the familiar in our narrative of the foreign, situating ourselves as observers capable of telling stories about totalities and about moments rather than about timeless doctrinal contrasts and functional equivalence. In order to do this, I think you have to give up the desire for control, both cognitive and cultural, and position yourself in your own narration. International law can easily escape the voiceless modernism of the literature of law and society with its aspiration to know, to improve, and to develop. International legal study allows you to do this by understanding culture as a structure of power and identity.

Translating this intellectual effort into professional life is also much more direct in the international field than I have experienced it in other legal fields. In international law, the institutions are mature enough to be observed safely. Yet they have not developed so many institutional defenses that one's vision is obscured. As one comes to think about international law as a cultural phenomenon, one thinks of international institutions in a new way: not as instruments of policy, but as social worlds in which individuals make life experiences for themselves and others. Like doctrine, institutions can safely be taken seriously, as part of a social whole, partaking, as institutions, in a greater bureaucratic imagination. They can be criticized, not for inefficiency or impotence, but as social systems, arenas of power, participants in a social order of artificial and doctrinal boundaries and of repressive authority and possession. It might be productive to investigate these institutions as manifestations of objectivity and denials of human agency or position. International institutions, reduced caricatures of complex domestic political and bureaucratic machinery, are easy to think about in this way, not only because they are so simple, but also because they are somewhat, though not greatly, different, caught sort of sideways in the doctrinal and theoretical imagination of liberalism. By thinking about them anew, I think one can come to understand policy science and instrumental reason as they act and are, not as they present themselves, the agents of reform and order, but as they are lived by those of us who inhabit their ambit. After doing so, the challenge, of course, is to develop institutions against institutionalism, practices that confirm our positions, our identity and our differences: in short, our power. Such a practice or presence within institutions will generate a professional experience that accepts management and the bureaucratization of our generation but understands and relates to it in new, more creative ways.

It is clear that most of our professional lives will be lived in bureaucracies. We will not be masterminds but managers and we might as well start thinking of ways to be creative and imaginative about it. The question is how we will situate ourselves in these bureaucracies: how we will enter them without surrendering to their image of our collective future, in particular, their sense that *real* political and transformative activity always happens someplace else. It is when we accept that idea, I think, that we start to get cynically resigned to bureaucratic life, and thereby perpetuate it. I think it would be better if we were to use our intellectual exploration into the structure and power of bureaucracy to situate ourselves within it as whole, political people. I know that as I started out in the professional bureaucracies of international law, I felt the institutions tugging at my life and channeling me into public and private selves, each parasitic

upon the poverty of the other. I felt it rendering me a specialist, severed from other lawyers, competing beneath the collegial glow. I think it is foolish to harbor nostalgia for some organic group experience in public life. Nevertheless, I think we can come to take our institutions seriously for what they bring us to do rather than for what they call us or pay us. Taking professional environments seriously will allow us to abandon the wry cynicism with which we protect our wounds so that we might begin to critique our situation openly and honestly.

It is difficult to be specific about all this, partly because the opportunities that each institution provides are different. In any case, I think that positioning oneself in the bureaucracy, rather than surrendering to it, means discovering who is foreign to it and how we sustain it in this identity. I hope that it will be possible to begin to see constituents and clients in new ways, and to understand how we generate our world by excluding them from it. Perhaps our program will be to reverse the relations of service and fealty between center and periphery, lawyer and client, agent and constituent. Perhaps it would be a good start to upend the progressive centralization and formalization that have fueled the growth of intergovernmental bureaucracies.

Whatever specific program might eventually be devised, it seems to me that the international field is a good place to develop and experiment with it. There are a large number of different institutions and at this point relatively few overwhelming cultures of prestige and competition getting in the way of searching out new locations for international work in municipal situations, for public work in private practice, for political work in legal practice. Thinking about international law differently immediately opens up all sorts of new career paths. For example, were we to pursue public international law as every community's grassroots sense of the foreign rather than the lowest common denominator of sovereign accord, working abroad might come to mean working at a lower rather than a higher level of abstraction and generality.

In all of these efforts, I think the key to getting the most out of the field of international law is to take it up on its accessibility and to use it to develop a new stance towards one's career. Rather than consuming placements, we should work to create jobs. Rather than seeking to specialize, we should seek to recapture some connection to the rest of human life, expressing our identities rather than seeking assimilation. The goal is to find a way of being that gives play to imagination, redeems aspirations and regenerates rather than squanders professional energy. If this is what you're after, there is plenty of room to maneuver in international law.

A good place to start is with international legal education itself. In the first place, I think we should return to basics, thinking about the discipline from the ground up. There is no emergency in international legal education, nor, as far as I can see, much immediate reform that needs to be achieved. In fact there is already a lot of opportunity represented by the diversity of approaches currently available. What we need are some new ideas and some professional commitment. It is neither a marginal nor an especially elite field of study. It is just a place where there are lots of possibilities for thinking and developing new approaches to doctrine, institutions, and careers. Returning to basics will mean immersion in doctrinal and historical study, theoretical work and institutional analysis until it is possible to think of the discipline as a set of congealed ideas and practices. Such immersion is a bit at odds with cynicism.

It would be helpful, I think, if we developed some alternative points of access to the field. One way to do this is simply to formulate new intellectual avenues back to the basic materials. Another would be to develop international clinical programs exploiting the public interest in foreign cultures and the international aspects of domestic clinical practices. Such a program might also help develop alternative career paths or alternative stances towards more settled career alternatives. Another possibility would be to involve a larger array of people in the effort. In particular, we should reach out to alumni working in the discipline, seeking their participation in projects of research and reflection and practice.

To my mind, however we proceed, we should begin by recognizing the ways in which the enthusiastic cynicism so widespread in the discipline is reproduced and constantly regenerated, limiting our imaginations and cutting the discipline off from the mainstream of legal education and practice. The easy patois of lazy justification and arrogance, which I indulged in as a student, is what kept me from seeing the rich intellectual and career opportunities in international law. I felt I was being asked to be a bureaucrat, a laborer in an institutional plant that no one believed was able to respond to international racism, inequality or violence. No one seemed to think that international law was intellectually rich. No one seemed to think that bureaucratic careers of elaboration were creative or that institutions wanted us whole, as individuals with private and political lives as well as resumé-proven capacities. No one seemed to think that international institutional structures looked forward or provided socially and culturally engaged lives for their inhabitants. I think this negative image of a very lively discipline can and should be resisted.