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COMMENTS

Educating for the World View: A Primer on the Role of U.S. Law Schools

L. GILLES SION*

I. INTRODUCTION

A nation's welfare depends in large measure on the intellectual and psychological strengths that are derived from perceptive visions of the world beyond its own boundaries. On a planet shrunken by the technology of instant communications, there is little safety behind a Maginot Line of scientific and scholarly isolationism. In our schools and colleges as well as in our public media of communications, and in the everyday dialogue of our communities, the situation cries out for a better comprehension of our place and potential in a world that, though it still expects much from America, no longer takes American supremacy for granted.

Such are the words of a report recently issued by the President's Commission on Foreign Languages and International Studies.¹ The product of fourteen months of review and analysis, the report reveals some rather frightening facts about the state of international education in the United States today. It notes, for example, that only fifteen percent of American high school students now study a foreign language, down from twenty-four percent in 1965. Only eight percent of American colleges and universities require a foreign language for admission, compared with thirty-four percent in 1966. Foundation grants for advanced training in international affairs have decreased dramatically; the Ford Foundation alone has reduced its allocations in this field from \$27 million in 1967 to \$3 million in 1979. Even U.S. business has come to feel the strain of diminishing language and international marketing expertise; the report estimates that although there are 10,000 English-speaking Japanese business representatives in

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1. PRESIDENT'S COMMISSION ON FOREIGN LANGUAGE AND INTERNATIONAL STUDIES, STRENGTH THROUGH WISDOM: A CRITIQUE OF U.S. CAPABILITY 2 (1979) [hereinafter cited as COMMISSION REPORT]. For an editorial comment on the report, see *Parlez-Vous*, Wash. Post, Oct. 11, 1979.

the United States, there are fewer than 900 American counterparts in Japan, and only a handful of those have a working knowledge of Japanese.²

In view of these and other developments, the report issues a veritable call to arms to the government, private foundations, primary and secondary schools, and colleges and universities, warning that “[n]othing less is at issue than the nation’s security. At a time when the resurgent forces of nationalism and of ethnic and linguistic consciousness so directly affect global realities, the United States requires far more reliable capacities to communicate with its allies, analyze the behavior of potential adversaries, and earn the trust and sympathies of the uncommitted.”³

The Presidential Commission report is but one example of the increasing attention being paid to Americans’ scandalously low level of global awareness.⁴ The Council of Learning currently is sponsoring a two-year project on “Education and the World View” to encourage serious curricular reconsiderations in U.S. schools and universities

2. *Id.* at 7. According to a staff member of the American Chamber of Commerce in Japan, 33 of the 1,062 Chamber members are considered capable in Japanese, and only 10 are fluent. For a brief review of federal support of international education, see Trakman, *The Need for Legal Training in International, Comparative and Foreign Law*, 27 J. LEGAL EDUC. 509, 517-18 (1975).

3. COMMISSION REPORT, *supra* note 1, at 1-2. For the Commission’s principal recommendations, see *id.* at 12-27. Massachusetts Senator Paul Tsongas has argued that “America’s survival as a world power may be directly related to the ability and willingness of her people to accept other languages and cultures.” Osgood, *Tsongas: English Isn’t Enough*, Boston Globe, Nov. 23, 1980, at 35.

4. Other surveys have shown, for instance, that 27% of U.S. high school seniors believe that Golda Meir was President of Egypt, 40% think that Israel is an Arab nation, and 17% estimate that the U.S. population is larger than that of China or the Soviet Union. Close to half of the general U.S. population, moreover, is not aware that the United States is dependent on foreign countries for a large part of its oil supplies. Hechinger, *Studies in U.S. Illustrate Global Affairs Ignorance*, Int’l Herald Trib., Mar. 14, 1979, at 1. U.S. college students apparently also have significant misconceptions about matters such as their country’s record on signing human rights treaties, the major accomplishments of the Helsinki Accords, and the main purpose of the Tokyo Round of multilateral trade negotiations. Barrows, Clark & Klein, *What Students Know About Their World*, 12 CHANGE No. 4, at 10 (May-June 1980). One author recounts that when the Paris-based Institut d’Etudes Politiques decided to establish a prestigious seat of economics for an American professor, it was unable to find a suitable American economist who could speak French well enough to teach. Kurlansky, *Students and Colleges Profit from American Study Programs in France*, 13 CHANGE No. 2, at 48 (March 1981). See also Seldon, *Foreign Language Ignorance*, EUROPE, Jan.-Feb. 1980, at 39; N.Y. Times, Jan. 4, 1981, § 1, at 41, col. 3 (language skills said to be dwindling in the armed services).

"in view of the new realities of the world."⁵ *Change Magazine* recently devoted an entire issue to the question of "educating for the world view,"⁶ while the Carnegie Council on Policy Studies in Higher Education has commissioned a study on means of expanding the international dimension of higher education.⁷ Curriculum committees at major colleges and universities are coming around to the view that any truly "liberal" liberal arts education must comprise substantial study of foreign languages and cultures.⁸

Paradoxically, little of the new attention being paid to international studies has focused on the role of those institutions which, in the words of one author, "are our country's most enduring and principal conduit to power"⁹—the law schools. The Presidential Commission report makes brief mention of "professional schools," such as business, law, education and engineering, pointing out that "these schools tend to devote little systematic attention to preparing students for work in the international field,"¹⁰ but most of its recommendations seem to be

5. See Bonham, *Education and the World View*, 12 *CHANGE* No. 4, at 2, 5 (May-June 1980). For comments on the Council of Learning Report, see Bonham, *Global Imperatives*, 13 *CHANGE* No. 5, at 14 (July-Aug. 1981), *Boston Globe*, Apr. 26, 1981, at 50, Col. 5.

6. "Educating for the World View", 12 *CHANGE* No. 4 (May-June 1980). The magazine has recently devoted a monthly section to developments in international education. See, e.g., 13 *CHANGE* Nos. 1-2 (1981).

7. B. BURN, *EXPANDING THE INTERNATIONAL DIMENSION OF HIGHER EDUCATION* (1980). For a list of other books and studies on the subject, see Dell, *Readings for a Global Curriculum*, 12 *CHANGE* No. 4, at 70 (May-June 1980).

8. At Emory University, a 1976 statement of new curriculum objectives included a resolution that students gain knowledge of at least one culture not their own. 12 *CHANGE* No. 4 at 61 (May-June 1980). And at Mount Holyoke College, the faculty recently voted to require each student to take a course in "some aspect of Africa, Asia, Latin America, the Middle East or the non-white peoples of North America." Fiske, *Colleges Taking Steps to Bolster Curriculum in Liberal Arts Studies*, N.Y. Times, Mar. 12, 1981, § A, at 1. At Stanford University, as of the fall of 1982, undergraduate students will once again be required to study a foreign language, a requirement abolished in 1969. Hechinger, *U.S. Colleges are Rediscovering Foreign Languages*, Int'l Herald Trib., Aug. 5, 1981, at 5, col. 4. Numerous other institutions have recently joined the "pro-language" stream, including Berkeley, Kenyon, New York University, Smith, the University of North Carolina, and Williams. The need to broaden Americans' world view is even producing some interesting experiments at the secondary school level. For example, Hillcrest High School in Queens, New York has initiated an international studies program, in which participating students spend half of every day on a "tour" of world history and politics, and of foreign art, music and poetry. Hechinger, *Program Expands World Studies*, N.Y. Times, June 26, 1979, § C, at 4, col. 1.

9. H. TSENG, *THE LAW SCHOOLS OF THE WORLD* 16 (1977).

10. COMMISSION REPORT, *supra* note 1, at 84-85.

directed to business schools.¹¹ This comment is intended to initiate what will hopefully become a serious and ongoing discussion on the task facing law teachers in preparing their students for life and work in an interdependent world.¹² Some suggestions will be made regarding the importance of fully integrating courses on international and comparative law into the law school curriculum, and after a brief description of the present (deficient) state of international education in U.S. law schools, an agenda for action will be proposed.¹³ The thesis of the study can best be summarized as follows:

The widest and most neglected frontier of U.S. educational reform is no longer international studies. It is a global perspective on *all* studies . . . [C]ompetent American citizenship in an interdependent world cannot come from stuffing into . . . curricula another course or two about foreign areas and faraway cultures. It will come from a generation of students relearning in each course they take, on every subject, at every level of education, that the world is round . . .—that everything Americans do or do not do affects the rest of the world, and everything others do bears watching for its effect on our own lives, our own purposes, and our own destiny.¹⁴

II. WHY EDUCATE FOR THE WORLD VIEW?

A. *Practical Reasons*

The Need for Competent Private International Lawyers

The U.S. legal profession has long had a need for practitioners well-versed in international and foreign law. As early as 1935, one scholar argued that “international legal practice” was growing rapidly and that the American bar was unprepared for a new era in interna-

11. The report recommends, for example, that all business schools, whether graduate or undergraduate, should require a course in international business and should encourage their students to study a foreign language. *Id.* at 26. In addition, “[b]usiness schools that use the case-study method should include internationally-oriented cases in their curricula, and build into the cases culturally-oriented issues that are relevant to the decision-making process.” *Id.* at 132-33.

12. See Silk, *A Growing Interdependence*, N.Y. Times Econ. Survey, Feb. 8, 1981, § 12, at 1. See also Snyder, *International Legal Studies in the Century of the Earth*, 9 HOFSTRA L. REV. 1127 (1981) (discussing the nature and function of international legal studies in law school curricula).

13. It should be noted that action will be required in *all* educational institutions—from primary schools to graduate schools—but that this paper will focus on the role of law schools in the process.

14. Cleveland, *Forward to Basics: Education as Wide as the World*, 12 CHANGE No. 4, at 18, 19 (May-June 1980).

tional economic relations.¹⁵ This new era was definitively ushered in by the post-war re-ordering of world commerce, and called for lawyers competent to advise U.S. private enterprise on the laws of more than one country, and on the interrelation of these laws with a host of new international agreements. International lawyers were needed to evaluate the legal advantages to be obtained from establishing a business in one country or another, to propose different corporate structures or licensing arrangements, or to ensure the enforcement of awards resulting from international arbitration proceedings.¹⁶

The need for lawyers capable of handling such problems is perhaps even more acute today, at a time when one out of every eight jobs in industry and one out of every five in agriculture depends on international trade.¹⁷ U.S. companies are facing strong competition from Western European and Japanese concerns, and are finding it harder and harder to hold their own in the international export market.¹⁸ Neither U.S. technology nor U.S. business management techniques, moreover, command as much international respect as they did when Jean-Jacques Servan-Schreiber documented the cele-

15. Moses, *International Legal Practice*, 4 FORDHAM L. REV. 244, 247 (1935).

16. See generally, *Practicing Transnational Law: The Nature of the Business, Opportunities for Entry, and the Relevance of Contemporary Legal Education*, [1973] AM. SOC'Y INT'L L. PROC. 245, 256 [hereinafter cited as 1973 ASIL PROCEEDINGS]; Note, *Foreign Branches of Law Firms: The Development of Lawyers Equipped to Handle International Practice*, 80 HARV. L. REV. 1284 (1967). George Ball described the contexts in which multinational enterprises (MNEs) usually seek legal advice as follows:

The most frequent type of situation . . . involves an industrial company which has been exporting to a foreign country, but which, because of a change in quota, tariff or exchange regulations, or some other restrictive governmental action, finds it advisable to continue producing locally. Another frequent situation is where a manufacturer becomes interested in producing abroad only after it receives a proposal from one of its foreign dealers or distributors or from a group of foreign interests to undertake local production.

Ball, *The Lawyer's Role in International Transactions*, 11 REC. N.Y. CITY B.A. 61, 63 (1956).

17. Seldon, *supra* note 4, at 39. The number of jobs produced by export activity is even higher in certain industries. For instance, General Electric's export-related jobs amount to over 18% of its total U.S. employment, while nearly 20% of the domestic work force of members of the National Association of Manufacturers are engaged in export-related jobs. See Note, *Export Promotion through Tax Incentives: The Future of DISC under the GATT Subsidies Code*, 20 VA. J. INT'L L. 171, 172, n.6 (1979).

18. In the manufactured goods sector, for instance, the U.S. share of world exports has declined from 28% in 1958 to 18% in 1978; at the same time, America's participation in world steel production has gone from 47% in 1950 to 17% in 1978. *Id.* at 172, n.5.

brated "American challenge" to Europe.¹⁹ The private sector thus can no longer rely on the sole fact of being "American" in order to remain competitive. International operations must be structured more efficiently, novel financing arrangements must be devised, and foreign markets must be better understood if the United States is to earn the respect and trade of other nations. Such improvements in turn demand competent and imaginative legal advice.²⁰

Clearly law schools have a responsibility to provide the necessary training for this new generation of international lawyers. While traditional skills such as international tax planning, an understanding of the extraterritorial application of securities and antitrust laws, and a familiarity with public international law rules relating to sovereign immunity or to the expropriation of foreign investments must of course be imparted to the prospective international lawyer, even more is required in today's world. U.S. companies need attorneys who are capable of "build[ing] bridges to foreign counsel and to integrate their work with his,"²¹ attorneys who are, in other words, "able to work effectively with members of two or more national legal professions."²² It is only through effective liaison with local bar associations that counsel can help structure international transactions and international operations so as to avert the pitfalls of local law.

This implies that American international lawyers, while they need not be universal legal experts, must have sufficient knowledge of foreign legal systems to be able to spot possible problems and thus define the issues which must be referred to local counsel. They must also have a general understanding of the economic, political, and cultural setting in which foreign laws exist, which in turn suggests a

19. J.-J. SERVAN-SCHREIBER, *THE AMERICAN CHALLENGE* 153 (1968). For a description of the waning of the American economic empire, see R. HELLER & N. WILLIAMS, *THE EUROPEAN REVENGE* (1975); *The Continental Challenge*, *ECONOMIST*, Feb. 4, 1978, at 78; Altschull, *Exports: The Decline of the American Manager*, *N.Y. Times*, Sept. 14, 1980, § F, at 3, col. 1; *Why the United States Fell Behind*, *N.Y. Times*, Oct. 10, 1980, § D, at 2, col. 1.

20. In the words of Professor Eric Stein:

[T]hose who speak abroad on behalf of American interests—governmental and private—must now rely on their art of persuasion rather than on the imperial voice from Washington. For this purpose lawyers require better knowledge and deeper understanding of the international scene and particularly of the foreign legal systems within which their counterparts function.

Stein, *Uses, Misuses—And Nonuses of Comparative Law*, 72 *Nw. U. L. REV.* 198, 216 (1977).

21. Vagts, *Are There No International Lawyers Anymore?*, 75 *AM. J. INT'L L.* 134, 135 (1981).

22. Note, *supra* note 16, at 1286.

basic knowledge of one or more foreign languages.²³ A lawyer advising a U.S. firm seeking to invest in the People's Republic of China, for example, must be aware that law in China serves a function very different from that which it has in most other countries, including other Communist countries such as the Soviet Union.²⁴ Similarly, an attorney retained by a U.S. mining company which wishes to enter into a mineral-exploration and production agreement with a small African nation must be well-attuned to the history and politics of the host state in order to negotiate a contract which will both protect the company from possible expropriation and ensure that the host state will have adequate legal channels—such as third-party arbitration—through which to seek future adjustment of contractual terms.²⁵ In sum, international lawyers must be able to serve as interpreters of “systems and habits of thought with a responsibility for bridging the gulf of disparate national experiences, traditions, institutions, and customs.”²⁶

Of course, just how law schools are to impart this bundle of skills to future international practitioners is a matter which the profession has debated for years,²⁷ and which will need to be discussed in greater detail later in this paper. What it is important to establish at this point, however, is simply that there is a *need* for lawyers who have both the *technical* competence to advise U.S. business in an increas-

23. “The more recent national laws must be read for the most part in their native tongues; only to a limited extent are English translations of such materials available, and these are not reliable—as all well know, translation is a treacherous vehicle of communication.” Yntema, *Comparative Legal Research: Some Remarks on ‘Looking Out of the Cave’*, 54 MICH. L. REV. 899, 906 (1956). Moreover, all the participants at a 1973 roundtable on international lawyering agreed that knowledge of foreign languages and cultures is important. “To be able to communicate for your own [foreign] client, and to be able to communicate for your client with the . . . [foreign] company across the table, knowledge of the language is absolutely essential.” 1973 ASIL PROCEEDINGS, *supra* note 16, at 253.

24. Winterton, *Comparative Law Teaching*, 23 AM. J. COMP. L. 69, 81 (1975). See Cohen, *China's New Lawyers' Law*, 66 A.B.A.J. 1533 (1980); Gelatt & Snyder, *Legal Education in China: Training for a New Era*, 1 CHINA L. REP. 41, 41-43 (1980).

25. See Vagts, *supra* note 21, at 135. See also D. SMITH & L. WELLS, NEGOTIATING THIRD WORLD MINERAL AGREEMENTS (1975). In this vein, a recent article describes the emergence of a “new corporate function”—identifying and assessing key political factors in a foreign environment so as to help corporate executives make investment decisions. Fowler, *Assessing Politics Overseas*, N.Y. Times, Jan. 28, 1981, § D, at 19, col. 1.

26. Ball, *supra* note 16, at 61.

27. See, e.g., 1973 ASIL PROCEEDINGS, *supra* note 16; *International Law Teaching: Can the Profession Tell It Like It Is?*, [1972] AM. SOC'Y INT'L L. PROCEEDINGS 129 [hereinafter cited as 1972 ASIL PROCEEDINGS].

ingly competitive world marketplace and the necessary *disposition* and *cultural awareness* to “persuade”—to promote and protect U.S. commercial interests without treading on national sensibilities. Law schools, in other words, no less than high schools or colleges, have a duty to educate their students for a “world view,” a view which hopefully will lead to “the breaking down of parochialism and narrow nationalism and hence to greater international understanding and cooperation.”²⁸

The Need for Domestic Lawyers Aware of International Problems

Writing in a recent issue of *Change Magazine*, former Secretary of Education Shirley Hufstедler noted:

In an age of oil shortages, massive population movements, and fluctuating currencies, it is increasingly difficult to separate domestic from global issues. Our civic concerns can now be rarely seen in purely local or national terms, and few non-American events are any longer in fact extraneous to our lives. Our mass media reflect these new complexities fairly well; but the interrelatedness of global and national events is still only marginally reflected in what Americans are learning in their schools and colleges.²⁹

This remark is particularly applicable to the practice and teaching of law. The years since the war have witnessed a dramatic growth in the regulation of human activities on the basis of international arrangements. The proliferation of international organizations and agencies, accompanied by the conclusion of a large number of international agreements, have produced what has been referred to as “a complex international administrative apparatus, buttressed by a substantial body of international ‘legislation’ . . .”³⁰ Indeed, many areas of the law “previously deemed to be the exclusive preserve of domestic ordering” are no longer immune to the “impact of transnationalization.”³¹

Examples of this development abound. In the field of international safety standards for civil air transport, the International Civil Aviation Organization (ICAO) has largely supplanted domestic regu-

28. Winterton, *supra* note 24, at 111.

29. Hufstедler, *A World in Transition*, 12 *CHANGE* No. 4, at 8 (May-June 1980).

30. MacDonald, Morris & Johnston, *The New Lawyer in a Transnational World*, 25 *U. TORONTO L. J.* 343 (1975).

31. *Id.* at 347. MacDonald notes that “[e]ven the conveyancer may find a need to keep abreast of transnational arrangements such as those concerning the rights of alien owners of realty.” *Id.*

latory agencies,³² while the General Agreement on Tariffs and Trade (GATT) has just produced a series of codes to regulate matters such as subsidies and the levying of countervailing duties,³³ customs valuation,³⁴ and government procurement.³⁵ Many aspects of commercial arbitration have since 1958 been regulated by an international convention,³⁶ and international rules of procedure to govern the conduct of arbitration proceedings have been formulated.³⁷ Moreover, a cursory survey of the *Treaties in Force* pamphlet issued by the Department of State reveals that international conventions now cover subjects traditionally left to municipal legislatures and courts.³⁸ In fields as diverse as copyright law, labor law, taxation, human rights, torts, and banking law, the international legal order is becoming irrevocably enmeshed with the domestic legal order,³⁹ thus belying the traditional view that international law is "irrelevant."⁴⁰

32. See generally T. BUERGENTHAL, *LAW MAKING IN THE INTERNATIONAL CIVIL AVIATION ORGANIZATION* (1969). The ICAO can propose "international standards and recommended practices" which are binding on all member states except for those which expressly state that they will not implement the rule. See *International Civil Aviation Convention*, 3 BEVANS 944, at arts. 37-38 (1944).

33. Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, GATT Doc. No. MTN/NTM/W/236 (1979).

34. Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, GATT Doc. No. MTN/NTM/W 229 (1979).

35. Agreement on Government Procurement, GATT Doc. No. MTN/NTM/W/211 (1979).

36. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997.

37. See, e.g., UNCITRAL Arbitration Rules; Rules of Conciliation and Arbitration of the International Chamber of Commerce, reprinted in *INTERNATIONAL COMMERCIAL ARBITRATION* (Kenneth Simmons ed. 1980).

38. There is, for example, a Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638 (1969); a Convention on the Taking of Evidence Abroad in Civil and Commercial Matters, 28 U.S.T. 1781, T.I.A.S. No. 7444 (1972); a Convention on the Law Applicable to Products Liability, reprinted in 11 I.L.M. 1283 (1972); and a Convention Concerning the International Administration of the Estates of Deceased Persons, reprinted in 11 I.L.M. 1277 (1972).

39. See, e.g., R. Lillich, *The Use of International Human Rights in U.S. Courts* (1980) [unpublished study prepared for the Civil Rights Division of the U.S. Department of Justice]; Beckman, *Teaching the International Aspects of Business Law*, 15 AM. BUS. L.J. 31 (1977); MacDonald, *supra* note 30, at 345. "It is vital that these developments [in transnational law] be brought to the attention of our law students. These particular international agreements can be of importance not only to those lawyers who specialize in international law, but also to any U.S. practitioner who handles a case involving some foreign contact." Carl, *Conflicts of Law: An Appeal for Revival of Its Multinational Character*, 26 J. LEGAL EDUC. 495, 496 (1974).

40. See Claydon, *Canadian Perspectives on International Law and Organization Towards an Expanding Role in World Order*, 2 DALHOUSIE L. J. 533, 551 (1975)

It is imperative that all prospective lawyers be made aware of these developments. Article VI of the U.S. Constitution confers on international treaties the status of "supreme law of the land."⁴¹ This means that each and every lawyer must be just as familiar with the nation's international obligations as he/she is with federal and state statutes in order to meet the Code of Professional Responsibility's injunction regarding the competent representation of clients.⁴²

Most law firms do not have "international" departments in the sense that they have taxation, litigation, or trusts/estates departments; thus the individual practitioner cannot count on the help or advice of partners or colleagues "specializing" in international law. This is all the more true in view of the current trend towards specialization in narrow fields such as antitrust, securities law, and banking. A recent article casts some doubt on the continued existence of "international lawyers," suggesting that the "realm of transnational transactions" previously handled by such international practitioners has been divided up into domestic legal specialties.⁴³ We can thus expect to see litigators having to concern themselves with the taking of evidence abroad or on the enforceability abroad of U.S. arbitral awards, anti-trust counselors having to take into account the trade regulation laws of the European Communities, and securities specialists having to consider the impact of a future European companies law.⁴⁴ A large proportion of the current generation of law students, even those intending to practice outside the great commercial centers, will therefore certainly experience more than an occasional problem involving international or foreign law at some point in their careers.⁴⁵ Legal training which takes account of this fact is indispensable.

("Increasing transnational interdependence has resulted in a proliferation of international participants and the deepening penetration of international norms into national systems. This, coupled, with a more pervasive role of government in all sectors of life, has blurred dividing lines between public and private, domestic and international.")

41. U.S. CONST., art. VI, § 2. The other major source of international law—customary international law—is not mentioned in the Constitution, but the Supreme Court has ruled that it is "part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination." *The Paquete Habana*, 175 U.S. 677, 700 (1900).

42. MODEL CODE OF PROFESSIONAL RESPONSIBILITY CANON 6 (1979).

43. Vagts, *supra* note 21, at 134.

44. This trend was confirmed by the major role played in the litigation over Iranian assets in this country by lawyers and firms that were not in any sense international before. See Pryor, *Ayatollah's Lawyers: Six Against the World*, *Legal Times of Wash.*, Dec. 24, 1979, at 7.

45. Winterton, *supra* note 24, at 100.

Educating domestic lawyers for a world view is also important in light of the growth of foreign investment in the United States.⁴⁶ The problem here is not one of awareness of specific foreign laws or relevant international conventions, since it is primarily for knowledge of U.S. law that local counsel is being retained by foreign businesses. Rather, the need is for lawyers who know enough about the laws and government regulations under which foreign companies operate at home to serve as effective "interpreters" of U.S. laws. For instance, a French bank with a well-formulated plan for penetrating the U.S. retail market may not be aware of the complexities of U.S. bank regulation; in devising its marketing strategy, it may not have considered the dual banking system—the fact that branching across state lines will be possible only to a limited extent—or that it may be required to become a member of the Federal Deposit Insurance Corporation. The U.S. lawyer might, therefore, have to recommend changes in the bank's plan, and will be able to do so most effectively if he can understand what the bank intended to accomplish had the U.S. banking system been the same as France's. Successful lawyering, in other words, is often the product of an ability to understand a client, to communicate with him, and to devise a legal strategy that really meets the client's demands, as well as being technically sophisticated. It is submitted that a greater knowledge of foreign cultures and foreign legal systems will greatly enhance such successful lawyering by domestic attorneys.

The Training of Internationally-Minded Policymakers and Law Teachers

A legal education that stresses international and comparative perspectives is particularly important in view of the fact that a large number of law students either do not enter or do not remain in private practice, but become legislators and policymakers. We have already noted that in the United States, law schools are a principal conduit to

46. See Eales, *The Buying of America*, *ECONOMIST*, reprinted in *WORLD PRESS REV.*, Jan. 1981, at 27. The increase in foreign investment has been particularly dramatic in the banking industry. Between 1967 and 1974, for example, the assets of foreign banking institutions in this country increased sevenfold; between 1974 and 1979, they almost doubled. Note, *The Regulation of Foreign Banking in the United States After the International Banking Act of 1978*, 65 *V.A. L. REV.* 993, 996; Atkinson, *Foreign Banks in the U.S.*, *EUROPE*, March-April 1981, at 36. The situation alarmed the Congress enough to prompt it to enact a six-month moratorium on foreign bank takeovers. Depository Institutions Deregulation Act, H.R. 4986, 96th Cong., 1st Sess. (1979). See also *N.Y. Times*, Mar. 17, 1981, § D, at 15 (foreigners' trading of U.S. stocks up by 72% in 1980).

positions of leadership and power.⁴⁷ It is undeniable that (as Alexis de Tocqueville pointed out some 150 years ago) a characteristic of American civilization "is the extent to which lawyers are the chief leaders of our communities, and the important part which they play at all levels in shaping public opinion and ideas of national policy."⁴⁸ Thus, when law schools debate the meaning and purpose of a legal education, they must take into account the fact that it is future national and world leaders that they are training. They have a responsibility to ensure that these future leaders do not finish their professional education without at least a rudimentary awareness of international problems.⁴⁹

This is true both for domestic and international purposes. Future national legislators and policymakers must be made aware that the post-war period of *pax americana* is over, that "the ordering instrument of American law applied to economic events outside our borders" has outlived its usefulness,⁵⁰ and that therefore greater restraint should be exercised before making U.S. laws applicable extraterritorially.⁵¹ Moreover, they should be impressed early enough in their careers with the usefulness of looking to foreign legal developments, and provided with the skills to adapt successful foreign laws to U.S. circumstances.⁵² These policymakers should also be given the neces-

47. See note 9, *supra*, and accompanying text.

48. Bishop, *International Law in American Law Schools Today*, 47 AM. J. INT'L L. 686, 690 (1953). "By reason of the lawyer's training and familiarity with law in their [sic] daily work, it is the lawyers who are in the best position to guide effectively the public opinion of a democracy when legal questions arise in international relations." *Id.*

49. See Franklin, *Needed: More and Better Courses in International Law*, 4 J. LEGAL EDUC. 326 (1952) ("Essential to a successful 'waging of the peace' by the United States during the coming years is the development of a vast reservoir of competent personnel, particularly those trained in international law, who can assist in the formulation and execution of national foreign policy.").

50. Birenbaum and Johnson, *United States Law Under Fire*, N.Y. Times, Nov. 26, 1980, § A, at 19, col. 1.

51. Certain European countries have repeatedly opposed extraterritorial application of U.S. antitrust laws. The United Kingdom, for instance, in March 1980 passed the Protection of Trading Interests Act, aimed "to reassert and reinforce the defenses of the United Kingdom against attempts by other countries to enforce their economic and commercial policies against us." See generally, *Blocking Extraterritorial Jurisdiction: The British Protection of Trading Interests Act*, 75 AM. J. INT'L L. 257 (1981).

52. Trakman, *supra* note 2, at 512-13. "[I]n times like the present when the law is under the constant pressure of rapid social and economic change, and when the basic assumptions of the system are constantly being challenged and tested, there is

sary training to enable them eventually to form an internationally-oriented cadre of civil servants.⁵³

An often forgotten aspect of law school education is that in addition to producing litigators, estate planners, and Congressmen, it produces law teachers who will themselves educate future litigators, estate planners, and so on. Ensuring that these prospective educators are exposed to international and comparative law and other international studies at an early point in their academic tenure is vital for two reasons. First, effective legal scholarship and the development of a "science" of law demand an understanding of the underlying premises of a legal system—of what Professor Harold Berman has described as "the nature of law, its principles of development, its social functions, its relationship to political, economic, religious and other ideas and institutions."⁵⁴ The study of comparative law compels the articulation of such underlying premises and therefore is a necessary prologue to legal scholarship. Second, and on a more practical level, prospective law teachers must be trained in comparative and international law so as to ensure that if and when university administrators decide to increase the "global" content of legal education, there will be educators around capable of implementing the necessary changes in curriculum and teaching style.⁵⁵ There is currently a dwindling number of teachers who can offer an adequate grade of instruction in

also a need for new and alternative models of solutions to social problems. . . . [C]omparative law is a source of such models. . . ." Ault and Glendo, *The Importance of Comparative Law in Legal Education: United States Goals and Methods of Legal Comparison*, 27 J. LEGAL EDUC. 599, 600 (1975).

53. One author notes,

The agencies of international organization are still too exclusively the domain of national statesmanship, too dependent on the initiative of men who, by the nature of their positions, tend to be fundamentally spokesmen for a narrow national interest and viewpoint. Given the meaningfulness of the national state as the basic unit of today's world, it is necessary and proper that state-oriented men should *dispose*; given the realities of the ties of interdependence which unite the nations in a common destiny, it is necessary and proper that world-oriented men should *propose*.

Claude, *Multilateralism—Diplomatic and Otherwise*, 12 INT'L ORG. 43, 50-51 (emphasis in original).

54. Berman, *The Comparison of Soviet and American Law*, 34 IND. L.J. 559 (1959). See also notes 60 to 72 *infra*, and accompanying text.

55. "If there is any place where producing an international mentality can be especially effective, it would be with people who afterward would be going into teaching. We have scarcely considered that component of our student population." 12 CHANGE No. 4, at 41 (May-June 1980) (Discussion of Council of Learning; remarks of Chip Peterson).

subjects such as comparative or European Community law.⁵⁶ In the words of Richard Baxter,

[A] whole generation [of international and comparative law teachers] has or will retire during the decade of the 1970's. Universities—law schools in particular—are looking about for their successors, men and women in, say, their thirties who are desirous of following an academic career. . . . For all of the tremendous educational programs that we put on in the '50's and '60's, for all of the money that was poured into international legal studies, there are very few individuals who fall within the range of consideration [for international and comparative law teaching appointments]. We are not producing the requisite numbers of young scholars that we ought to be bringing along into the senior teaching posts now.⁵⁷

The problem here, of course, presents a vicious circle: there is a need for more international and comparative law teachers, but there are fewer and fewer people around to train them. What is important at this stage is that the problem be *recognized* by major law schools, and that it be viewed in the broader context of increasing the international and foreign law content of the law school curriculum.

B. *Pedagogical Reasons*

Enhancing the "Cultural" Content of Legal Education

It is often argued that because the United States adheres to a two-tiered system of higher education—in which professional studies in law, medicine, etc. are undertaken after four years of more general undergraduate studies—law schools are primarily trade schools, designed to develop certain narrow vocational skills such as legal research or oral advocacy. It is contended that U.S. law schools neither can nor should emulate their European counterparts, where university legal training is seen at least partly as a conduit for a broader, humanistic, "liberal" education; the college system which in the United States provides such a "liberal" component is unknown in Europe. Indeed, many leaders of the bench and bar—among them the Chief Justice of the U.S. Supreme Court—have issued calls for greater

56. *Legal Education and the Common Market*, 12 J. SOC'Y PUB. TEACHERS L. 235, 242 (1972). See also note 88 *infra*, and accompanying text.

57. Baxter, *The Present State of the Science of International Law in the United States*, reprinted in M. CARDOZO, *THE PRACTICAL STATE OF TEACHING AND RESEARCH IN INTERNATIONAL LAW* 1, 6 (1977) (Address given by Professor Baxter on Nov. 13, 1979, to the American Society of International Law and the Association of the Bar of the City of New York).

“skills” training in law school, for an enhancement, in other words, not of the intellectual content of law school courses but of the teaching of “the techniques of the law office and the courts.”⁵⁸

This tendency towards what one author has called “anti-intellectualism” in legal education⁵⁹ is regrettable, since all academic institutions, “by the nature of their central purposes of pursuing the larger truths . . . must tilt towards the larger moments of human history.”⁶⁰ Law schools must be concerned with producing minds that are not only technically sharp and adept but which are capable of relating legal rules and institutions to broader philosophical or political trends or to the proper role of law in contemporary society.⁶¹ In this vein, law schools have an obligation “to produce ‘educated’ men and women who are aware of the state of the world and who have at least some general knowledge of the nature of legal systems other than their own.”⁶² Can a prominent lawyer really claim to be “educated” if she knows nothing about the “new” law of the sea, or about an emerging law of international human rights? Can a future Congressman or Secretary of State claim to be an enlightened leader if he has never heard of the German *Bürgerliches Gesetzbuch* or of the French *Code civil*, or never thought about the role which law plays in far Eastern societies? It would be a poor reflection on U.S. legal education if a student could finish seven or more years of academic training “without knowing in a general way something about the world’s major legal systems and that legal wisdom may lie elsewhere than at home.”⁶³ After all, why should it be any more acceptable for a law

58. Allen, *The New Anti-Intellectualism in American Legal Education*, 28 MERCER L. REV. 447 (1977).

59. Professor Allen asserts:

The new anti-intellectualism insists on . . . “instantaneous practicality”; it is impatient with any educational activity that does not promise an immediate and discernible pay-off in private law practice . . . It is not an interest in improved legal “skills” training in legal education that identifies the new anti-intellectualism; nor is it the desire to equip students for a more humane and effective career at the bar. Its essence is, rather, the narrowing of interests, the rejection of humanistic and intellectual concerns, the militant assumption that the test of an educational endeavor is its impact on the law firm’s ledger.

Id. at 450.

60. Bonham, *supra* note 5, at 5.

61. For the view that law schools should provide both vocational and cultural training, see Yntema, *supra* note 23. Winterton has argued that “in spite of [the] vast offering of comparative law courses, frequently too little attention is paid to the use of comparative law for the study of the sociology of law.” *Supra* note 27, at 95.

62. *Id.* at 112.

63. *Id.*

student to ignore the world of the civil law or of the *Shaa'ria* than it would be for an English Literature student to omit reading Molière or Cervantes or for an American history scholar to disregard the lessons of the French Revolution? International and comparative law is as much a part of the lawyer's intellectual heritage as foreign history and literature are a part of the historian's patrimony.

Educating law students for the world view therefore serves the purpose of enhancing cultural sensitivity and ensuring that ours will not just be, in Hessel Yntema's words, an "honorable trade,"⁶⁴ but also a learned profession.

Providing a Deeper Understanding of One's Own Legal System

An often forgotten aspect of international and comparative law is that these subjects can provide valuable insight into the functioning of one's own legal system. International law, existing as it does in a vacuum of sovereign authority, can encourage the first-year student to think about the nature and purposes of law, or about how rules of conduct developed by a community (here, of nations) come to be adhered to and enforced and contribute to a system of "self-policing."⁶⁵ Even more useful is comparative law, which "puts the American legal system in perspective and enables the student to evaluate it more critically."⁶⁶

A couple of examples will suffice to make the point here. Students of constitutional law are inevitably introduced to the subject through a discussion of the celebrated case of *Marbury v. Madison*,⁶⁷ which, *inter alia*, raises important questions as to the power of judicial review of legislative action. Many students are puzzled by the instructor's repeated queries regarding the propriety of judicial review, and by the attempt made either in the casebook or in class to stress the unprecedented nature of the decision. The importance of the case might be understood a little better if reference were made to the fact that in certain legal systems, such as the French, ordinary civil courts do not have the power to invalidate legislation, nor, indeed, to try cases involving the sovereign; if the State is to be sued, it must be in a separate hierarchy of so-called "administrative" courts, and if the constitutionality of legislation is at stake, the matter must be referred

64. Yntema, *supra* note 23.

65. International Law has been described as "another useful means by which to teach law students to be lawyers." CARDOZO, *supra* note 57, at 13.

66. Comment, *American Legal Education: Some Advice from Abroad*, 23 BUFF. L. REV. 681, 687-88 (1974).

67. 5 U.S. (1 Cranch) 137 (1803).

to a special constitutional council. With this perspective, the landmark nature of *Marbury* might be better understood, and the "right" of judicial review no longer perceived as a "given."

Similarly, students of civil procedure might better comprehend the system established by the Federal Rules of Civil Procedure, with its simplified pleadings and extensive opportunity for discovery, by comparing it to what Professor Arthur von Mehren has referred to as the civil law's system of "discontinuous" trials.⁶⁸ They might also, in discovering the absence of a jury in most European civil cases, come to reflect on the extent to which rules regulating procedure or the presentation of evidence in common law trials have been affected by the presence of a jury.⁶⁹ A contracts student trying to make sense of the much-discussed case of *Hoffman v. Red Owl Stores* might find conceptual support for the decision in the civilian theory of *culpa in contrahendo*.⁷⁰ One conflicts teacher has reported that after his students "had worked through the comparative materials on jurisdiction and judgments, they seemed to have a better grasp of *International Shoe* and its successors."⁷¹

In sum, a legal education which enhances global awareness will produce lawyers who, because they can juxtapose their own legal system against other ways of ordering societal relations, will have a deeper understanding of the rules and institutions with which they must work. As was remarked close to forty years ago, "there is no type of legal study that will strengthen the muscles of the mind like the comparative study of . . . great legal systems."⁷² To this statement this author would simply add "—and like international law."

III. THE CURRENT STATE OF THE ART: ARE WE EDUCATING LAWYERS FOR THE WORLD VIEW?

The international and comparative content of law studies has fluctuated considerably over the years, no doubt as a function of broader economic and political trends. The universities of the medieval world, founded at a time when nation-states were not yet com-

68. A. VON MEHREN & J. GORDLEY, *THE CIVIL LAW SYSTEM: AN INTRODUCTION TO THE COMPARATIVE STUDY OF LAW* 203-05 (2 ed. 1977).

69. See generally Jacoby, *The Use of Comparative Law in Teaching American Civil Procedure*, 25 CLEV. ST. L. REV. 423 (1976).

70. *Hoffman v. Red Owl Stores*, 26 Wis. 2d 683, 133 N.W. 2d 267 (1967). See VON MEHREN & GORDLEY, *supra* note 68, at 873.

71. Carl, *supra* note 39, at 506.

72. Vanderbilt, *Law School Study after the War*, 22 CAN. B. REV. 68, 80 (1944). See also Winterton, *supra* note 24, at 97-116.

manding the allegiance of students and educators, devised a law school curriculum which stressed the uniformity and universal nature of Roman and Canon law.⁷³ These early "internationalist" tendencies were slowly undermined during the course of the 16th and 17th centuries, and were all but eradicated by the French Revolution and the subsequent growth of nationalism.⁷⁴ While there were some signs that the importance of international and comparative law had not been entirely forgotten—one historian points out that law educators during the early days of the U.S. republic "gave [their students] some picture of the law of nations"⁷⁵—it was not until the post-World-War I and particularly the post-World-War II era that internationalist sentiments once again took hold of law schools. In the United States, the early 1950's saw a flood of scholarly articles calling for an expansion of course offerings in international and comparative law,⁷⁶ and a foundation-nurtured movement to institutionalize international legal studies.⁷⁷ The number of U.S. law schools offering a course in international law had already grown from twenty-two in 1938 to sixty-four in 1953;⁷⁸ in 1951, five law schools actually required their students to study international law at some point in their law school careers.⁷⁹ By 1965, 106 U.S. law schools were offering courses in international legal studies.⁸⁰

The situation is far less encouraging today than it was fifteen years ago.⁸¹ While the number of law schools at which international

73. Winterton, *supra* note 24, at 87-89.

74. *Id.*

75. J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAWMAKERS* 258 (1950). For a historical discussion of the U.S. experience with comparative law, see Winterton, *supra* note 24, at 91-94.

76. For a listing of these articles, see R. EDWARDS, *INTERNATIONAL LEGAL STUDIES: A SURVEY OF TEACHING IN AMERICAN LAW SCHOOLS* (1963-1964) 1 n. 4 (1965). This flood of scholarly writing was no doubt prompted by the fact that at the time, as pointed out by Judge Vanderbilt, "not one lawyer in 500, possibly not one lawyer in a thousand, has ever . . . had a course in international law." Vanderbilt, *The Responsibilities of Our Law Schools to the Public and the Profession*, 3 J. LEGAL EDUC. 207, 209 (1950).

77. See Allen, *supra* note 58, at 447.

78. Bishop, *supra* note 48, at 687-88.

79. *Id.* at 688.

80. EDWARDS, *supra* note 76.

81. This is of course true of most fields of international study. As stated less than one year ago:

Almost all were on a more solid footing ten or fifteen years ago. Then, money was more readily available. Leadership was stronger, intellectual objectives clearer, the sense of intellectual advance more pronounced. The very best graduate students and young faculty members were more likely to be attracted.

Klitgaard, *Why International Studies? A Prologue*, 13 CHANGE No. 1, at 29 (Jan.-Feb. 1981).

and comparative law are taught continues to grow,⁸² many law teachers report that a declining number of students are enrolling in courses in the field, apparently because the courses are not seen as "relevant" to corporate legal practice.⁸³ Perhaps as a result of this, graduate programs in international legal studies have been discontinued or sharply reduced in most law schools.⁸⁴

At the same time, general faculty interest in the subject is low. Both comparative and international law are widely viewed as "weak" disciplines. This is reflected in the fact that "[a]lthough individuals knowledgeable in various foreign legal systems are scattered through major law faculties, no centers for systematic comparative legal research exist."⁸⁵

Perhaps most disturbing is the fact that the "transnationalization" of law referred to earlier in this paper is not producing correspondingly "transnationalized" courses. It has already been noted that the most neglected frontier of U.S. educational reform is the introduction of a global perspective into *all* studies.⁸⁶ In legal education, this is evidenced by the paucity of casebooks which present a comparative perspective on a subject or which even so much as mention relevant international developments.⁸⁷

The result of this state of affairs is a bench and bar unprepared to deal with the internationalization of all economic and social relations. In a 1972 decision, for instance, the U.S. Supreme Court revealed a sadly low level of global awareness when it failed to base its opinion on an international convention dealing squarely with the issue at bar. In *Scherk v. Alberto-Culver*,⁸⁸ the Court held that the Securities

82. See CARDOZO, *supra* note 57.

83. Winterton, *supra* note 24, at 98; Vagts, *supra* note 21, at 136-37.

Many students [feel] no need to pay attention to international law. It is seen as inoperative as a determinate of state behavior. This student perception is reinforced when State Department recruiters and Wall Street law firms counselling large corporations shy away from employing law students trained in international law. The recruiters are saying by their actions that those working in the international area don't need to know international law.

1972 ASIL PROCEEDINGS, *supra* note 27, at 130.

84. Stein, *supra* note 20, at 216. Paradoxically, graduate studies in other disciplines have increasingly gained recognition in university faculty appointments and in the marketplace generally. *Id.*

85. *Id.* at 214.

86. Cleveland, *supra* note 14, at 19.

87. *But see, e.g., DONAHUE, KAUPER & MARTIN, PROPERTY: AN INTRODUCTION TO THE CONCEPT AND THE INSTITUTION* (1974), in which the authors state, in the Preface: "[W]e think it desirable that the first-year student begin studying and thinking about [*inter alia*] the differences between the Anglo-American and other legal systems."

88. 417 U.S. 506 (1974).

Exchange Act of 1934, although designed to provide a private *judicial* remedy to aggrieved investors, did not require the invalidation of an arbitration clause in a transaction involving international business. In reaching its decision, the Court embarked on a rather long explanation of the policies of the Federal Arbitration Act, carefully distinguished an earlier decision on point, and concluded that "a contractual provision specifying in advance the forum in which disputes shall be litigated and the law to be applied is . . . an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction."⁸⁹ Hidden away in a footnote at the end of the opinion,⁹⁰ almost as an afterthought, was a reference to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards,⁹¹ which was said to "confirm" the result reached by the Court. Apparently overlooked was the fact that article II of that Convention, dealing with the enforceability of arbitration clauses,⁹² not only "supported" the Court's holding but in fact *governed* the case.

Surely a greater awareness of international treaties to which the United States is a party can be expected from this nation's judges and law clerks, even if, as a federal circuit court librarian reportedly told the editors of the *AMERICAN JOURNAL OF COMPARATIVE LAW*, federal judges are only interested in federal laws and cases and therefore unconcerned with foreign law.⁹³ No doubt the same can be said of the Wall Street lawyer, who, according to an anecdote recounted by Professor Detlev Vagts, responded to an associate's suggestion that the disposition of a decedent's foreign real estate holdings conceivably

89. *Id.* at 516.

90. *Id.* at 520 n. 15.

91. *See supra* note 36.

92. Article II of the U.N. Convention provides that Contracting States "shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them . . . concerning a subject matter capable of settlement by arbitration"; it also imposes a positive obligation on national courts to refer matters covered by such an agreement to arbitration so long as the agreement is not "null and void, inoperative or incapable of being performed."

93. Yntema, *supra* note 23, at 909. This apparent lack of interest in foreign legal scholarship stands in sharp contrast to the situation "in the golden age of Kent and Story and even to the turn of the century, [when] the luminaries of the profession had not lost the keys to comparative law and could cite the *Digest* or Pothier to their purpose as readily as their successors today quote the *Restatement of the Law*." *Id.* at 907.

could be governed by an international treaty with the question—"What's a treaty?"⁹⁴ This parochialism is just as evident among U.S. international lawyers themselves, who tend to view international law "as the lengthened shadow of our own . . . foreign relations law";⁹⁵ and among policymakers who, unlike their European counterparts, very rarely consider foreign law when they draft new legislation.⁹⁶

Clearly our law schools are doing something wrong. The following section will therefore suggest ways in which they can better meet their responsibility to train internationally-minded lawyers, judges, policymakers and educators.

IV. SUGGESTIONS FOR ACTION

In its October, 1980, Interim Report, the Harvard Law School's Committee on Educational Planning and Development issued a call for the "modernization" and "renovation" of law school curricula to meet, *inter alia*, the changing conditions of lawyering.⁹⁷ While the report (not surprisingly) made no mention of the transnationalization of legal practice, its basic suggestion that recent developments necessitate "major alterations of the content of law-school studies"⁹⁸ is sound. Educating law students for a world view, it is submitted, will require action on two fronts: first, the training furnished all law students, regardless of career plans, will have to include a new emphasis on international and comparative law; and second, expanded opportunities for specialization, language training, and overseas education will have to be provided to students contemplating a career in the international field.

A. Students Not Planning a Career in International Affairs

As has already been seen, exposing future "domestic" lawyers to international and comparative perspectives during their legal education has both practical and pedagogical advantages. It might be suggested, then, that requiring all law students to take at least one survey course in both international and comparative law would go a long

94. To this anecdote might be added the story of a New York attorney who, having won a Fulbright Scholarship to study law in Japan, was told by a law firm he was thinking of joining: "When you're done fooling around, we'd like to have you." 1973 ASIL PROCEEDINGS, *supra* note 16, at 254.

95. Baxter, *supra* note 57, at 3-4.

96. Stein, *supra* note 20, at 209-13.

97. Harvard Law School Committee, Educational Planning and Development Interim Report 28-29 (October 1980) (copy on file with author).

98. *Id.*

way towards educating them for the world view. While this may be true, it is unrealistic to expect law schools to impose such a burden on their students.⁹⁹ It would be far more practicable—and effective—for global perspectives to be introduced into the law school curriculum through standard courses, such as Contracts or Civil Procedure. Casebooks and class materials should introduce students to developments in foreign legal systems, and stress the relevance of emerging international norms to the domestic practitioner. Instructors should emphasize the value of listening carefully to “viewpoints other than our own,”¹⁰⁰ and should resist the subliminal tendency “to segregate domestic and foreign policies in separate compartments.”¹⁰¹ They must inculcate in their students an ability to relate what goes on abroad to their own life and work.¹⁰²

Since many teachers may find themselves inhibited by a lack of knowledge about things foreign and international, they might be encouraged, when they are unable to bridge the “gap” by their own study and research, to collaborate with other faculty members trained in international or comparative law.¹⁰³ A course in Constitutional Law, for example, might be taught jointly with an expert in International Human Rights Law, or with a foreign constitutional scholar. Similarly, an antitrust class could include several lectures on the competition law of the European Communities.

Finally, global perspectives might be introduced into legal education through extracurricular activities. Thus, moot court organizers might encourage some simple research into foreign and international law by drawing up a problem involving a conflicts of law question, or an international convention to which the United States is a party.

99. It is interesting to note, however, that international and comparative law are required courses in many civil law countries. In Belgium, for instance, law students at the Free University of Brussels must take at least two courses in international law and one course in comparative law, as well as a course on the “common law” and English legal terminology. UNIVERSITE LIBRE DE BRUXELLES, Vol. 2 (Faculte de Droit) 28-31 (1981). At the same time, many of the problems pointed out in this paper are perceived to exist, to a greater or lesser degree, in much of Europe. See, e.g., Lachs, *Teachings and Teaching of International Law*, 1976 III RECUEIL DES COURS 161. See also, Comment, *supra* note 66, at 686.

100. “We have usually asked others to listen to us. To listen carefully to viewpoints other than our own, alas, is not generally taught well in our universities.” Bonham, *supra* note 5, at 4.

101. Cleveland, *supra* note 17, at 22.

102. *Id.*

103. This idea has already been put forth elsewhere. See MacDonald, *supra* note 30, at 356.

These suggestions, of course, come up against the basic problem that law schools only have three years in which to produce practitioners, judges, and so on, and that even instructors who have the best intentions of discussing, say, the civilian theory of *usufructus*, simply do not have the time to do so in a three or four hour property course.¹⁰⁴ Moreover, it can be argued that a simplistic comparison of legal regimes or a passing reference to the act of state doctrine might be more destructive than helpful: neither the professor nor the student will in most cases have the necessary background in comparative or international law to make more than superficial or even incorrect analogies.¹⁰⁵

These criticisms are valid, though not conclusive. So far as time pressures and the need to learn basics are concerned, it is arguable that "the basics can be learned in ways that encourage narrower or wider understanding of the world about us."¹⁰⁶ Tulane Law School, for example, has for years successfully taught all first year courses comparatively.¹⁰⁷ As for the problem of simplistic analogizing, it will have to be resolved over an extended period of time, partly by collaborative efforts with established comparatists and internationalists, partly by the training of law teachers who have additional skills in these areas. What to do about the students' lack of background knowledge—for example, their ignorance of the inquisitorial or discontinuous nature of European trials, or of the absence of a jury in civil cases—is more troublesome.

B. *Students Planning a Career in International Affairs*

While a report issued in 1977 by the American Society of International Law reveals that most of the nation's law schools now offer courses in international legal studies,¹⁰⁸ a close analysis of the findings shows that a large majority of the courses are general, introductory courses in admiralty, international law, comparative law, international transactions, and international organizations. Such background courses are of course essential; they provide the basic instruction in the field and introduce concepts and ideas necessary for an understanding

104. See Schlesinger, *The Role of the "Basic Course" in the Teaching of Foreign and Comparative Law*, 19 AM. J. COMP. L. 616, 616-17 (1971).

105. See Vagts, *supra* note 21. See also Schlesinger, *supra* note 106; von Mehren, *An Academic Tradition for Comparative Law*, 19 AM. J. COMP. L. 624 (1971).

106. Cleveland, *supra* note 14, at 19.

107. Winterton, *supra* note 27, at 115, n. 266.

108. See CARDOZO, *supra* note 57.

of more complex matters.¹⁰⁹ For students contemplating a career in international affairs, however, this basic instruction is often insufficient.¹¹⁰ In fact, the low proportion of advanced, “nuts-and-bolts” courses to introductory courses may explain the discrepancy between the lower enrollment recorded in international and comparative law classes and the apparent growth in law student interest in international legal studies.¹¹¹ Evidently, the interest is there, but the desired specialized instruction is not, so that practical non-international courses are selected instead.

The task of law schools is to broaden their offerings in the international legal studies field, to the point where a “major” in international or comparative law would be possible. The Harvard Law School is currently studying a tightly-planned program of sequential studies in a field of concentration¹¹² and has just implemented a third-year research program,¹¹³ while Virginia is now offering a J.D. “With Specialization in Tax Law.”¹¹⁴ Such programs might be institutionalized for international legal studies, enabling students to develop expertise in subjects such as international taxation, international commercial arbitration, or Japanese law.¹¹⁵ If it were deemed inappropriate or infeasible to implement a “major” during J.D. study, specialized graduate programs might be developed.¹¹⁶ Thus, students

109. See von Mehren, *supra* note 105, at 626.

110. Not only is it insufficient in the amount of material covered, it often fails to relate, for example, doctrines of public international law to various aspects of a transnational commercial transaction. Such “linkages” should be made much clearer. See 1972 ASIL PROCEEDINGS, *supra* note 27, at 131-35.

111. This is evidenced by the phenomenal growth in the number of student-edited international law journals, and the increasing stature of the Jessup International Law Moot Court Competition. See CARDOZO, *supra* note 57, at 29-30.

112. F. Michelman, Working Papers on Major Sequential Programs for the Second and Third Years of Law School (March 1980) (Memorandum to Harvard Law School Committee on Educational Planning and Development) (copy on file with the writer).

113. See HARVARD LAW SCHOOL, PRELIMINARY REGISTRATION BULLETIN at 17 (1981-82).

114. See U. VA. SCH. L. REC. (1980-81).

115. Cornell Law School already offers a J.D. with specialization in International Affairs. See CORNELL UNIVERSITY, ANNOUNCEMENTS (1980-81).

116. This has already been proposed by Winterton, *supra* note 24, at 101-02. Of interest here is a program recently introduced at the Université de Clermont-Ferrand (France), in which students can obtain a *Diplôme d'Etudes Juridiques Anglaises et Américaines*. The program is taken in addition to regular legal studies, and is conducted entirely in English. Sultan, *Teaching American Law to French Law Students—in French*, 29 J. LEGAL EDUC. 577 (1978). Elsewhere, advanced degrees in Comparative Law, International Law and European Communities Law also are offered. See, e.g., UNIVERSITE LIBRE DE BRUXELLES, PROGRAMME DES COURS, Vol. 2

wishing to invest an additional year in preparing for international careers might enroll in an LL.M. program in European Community Law or Latin American legal studies.

Effective specialization will demand more than a broad range of courses and institutionalized sequential programs. It will require, in the words of Richard Baxter, "structured and systematic training in . . . those non-legal fields, such as languages, which are essential to the work of a lawyer in the international field."¹¹⁷ Too often, law school policies discourage students from obtaining intensive training in one or more foreign languages in the university's undergraduate division. This is unfortunate, not only because language skills are invaluable to the practitioner or law teacher seeking to understand foreign laws and legal concepts, but because of broader national concerns.¹¹⁸ In the same vein, students should be encouraged to take courses in international economics, comparative government, or diplomatic history and to integrate this work into their law school curriculum, perhaps through some sort of interdisciplinary research paper or thesis.

Other changes in traditional approaches to legal training could also be made. Clinical education programs in international law could be developed—perhaps along the lines of the one currently existing at the University of Denver, where law students are given the opportunity to be interns in consulates, customs offices, and multinational

(Faculte de Droit), at 39-43 (1981); UNIVERSITE LIBRE DE BRUXELLES, PROGRAMME DES COURS, Vol. 8 (Institut d'Etudes Europeenes) at 31-41 (1981). Would it be a pipe-dream to expect similar programs to enter the mainstream of U.S. legal education?

117. Baxter, *supra*, note 57, at 7.

118. "Talk about restoring U.S. influence in the world has focused on weapons, intelligence, hard political and economic bargaining. But it has overlooked one vital tool in understanding and swaying other countries. Effective use of these other resources requires a knowledge of foreign languages, which we have been losing for over a generation." Lewis, *The Language Gap*, N.Y. Times, Feb. 16, 1981, § A, at 19, col. 1.

"[U]nderstanding other peoples' speech can open a window to their minds and feelings and it helps open our own . . . For Americans to find out how others tick and how best to deal with them, more of us need to learn their languages." *Id.* See also P. SIMON, *THE TONGUE-TIED AMERICAN: CONFRONTING THE LANGUAGE CRISIS* (1980). It is interesting to note that in countries such as France, Israel, and the Soviet Union, courses in foreign legal terminology have been offered as part of the law school curriculum. Winterton, *supra* note 24, at 86-87. Law students at the Free University of Brussels can even take a course on "Interpretation Techniques of the Languages of the European Communities." UNIVERSITE LIBRE DE BRUXELLES, PROGRAMME DES COURS, Vol. 8 (Institut d'Etudes Europeenes) 50 (1981).

businesses.¹¹⁹ Study programs overseas might be instituted as an integral part of the three-year curriculum, rather than as interesting but useless summer adventures. Alternately, third-year students might be encouraged to apply to graduate programs abroad to improve their understanding of foreign legal terminology and concepts, an important experience if only because the language of the common law might not convey the full flavor of the civilian tradition. The institutionalization of such programs will in turn necessitate a competent and well-informed placement office, able to steer students interested in international legal affairs towards non-traditional study and work opportunities in the field.¹²⁰ Too often placement advisers are experts on job-seeking on Wall Street or Main Street, but novices to the field of international and comparative law.

Several criticisms can be levelled at these proposals. First they assume a student body with enough interest in international legal studies to warrant a substantial commitment of effort and funds to curricular and non-curricular changes. Many so-called "non-elite" or local law schools might face particular problems in this regard. Second, it may be argued that though "[t]he world is divided into problems . . . universities . . . are divided into departments," and that therefore "[e]nhancing the global dimensions of higher education . . . faces hurdles of considerable magnitude."¹²¹ The point here is that enhanced foreign language study or interdisciplinary work might face a number of practical problems, such as scheduling. Third, those who remain skeptical about the utility of international studies might point to a recent test given to U.S. college students which showed that individuals who had studied foreign languages or taken courses on international affairs were no more likely to have a grasp of world issues than other students.¹²² Finally, it might be contended that the function of law schools is to impart to students *intellectual* skills and standards—to teach them to think like lawyers—rather than to provide them with narrow substantive knowledge and practical or applied skills. Law schools, in other words, cannot and should not

119. See 1972 ASIL PROCEEDINGS, *supra* note 27, at 139.

120. These placement offices must of course themselves be convinced of the importance of foreign language and international studies. See Posvar, *Expanding International Dimensions*, 12 CHANGE No. 4, at 23, 26 (May-June 1980). Faculty members should also help students chart their way through the maze of course offerings and help them develop a program of study that includes a year overseas. See Rohan, *Legal Education and Training for the Profession—An Overview*, 50 ST. JOHN'S L. REV. 494, 501 (1976).

121. Bonham, *supra* note 5, at 4.

122. N.Y. Times, Apr. 16, 1981, § A, at 10, col. 3.

operate like graduate schools in economics or international affairs and therefore should resist any moves towards specialization.

These criticisms are valid, but again inconclusive. Non-elite law schools perhaps need not, at an early stage, implement the sort of programs suggested here, although they may find that student demand for opportunities in international and comparative law might increase as these fields earn greater national attention. Practical problems concerning the structure of the modern American university can be overcome, as evidenced by the proliferation of joint J.D./M.B.A. or J.D./Ph.D programs. The fact that foreign language and international affairs students are far less world-conscious than might have been expected is not conclusive either; in fact, it reinforces the point made throughout this paper that global awareness will only be improved by the systematic integration of international perspectives in all fields and at all levels of learning. As for whether such specialization is desirable at all, it might be noted that those clamoring for "thought" training are ignoring the larger trend towards specialization in the legal profession.¹²³ That few practitioners today can be masters of every field of law is particularly true for the international lawyer, who, apart from mastering the details of his own law of contracts or unfair trade practices, must be able to advise clients on foreign legal systems, international regulatory arrangements, and even political and economic developments. According to one writer, "legal educators must free themselves from the hypnotic effect of the conceptualization, developed in the last century, whereby international law is characterized as a single subject roughly equivalent to any other basic course. The fact of transnationalization demonstrates that international law can only be conceived today as a vast and complex field in which adequate instruction needs to be maintained throughout the three years of legal education."¹²⁴ Indeed, it may

123. "The A.B.A., for example, has repeatedly given favorable consideration to specialized training for graduate law students. The well-known Carrington Report on legal education in the United States has unequivocally stressed the need for both functional educational goal-oriented planning and specialization for all graduate law students." Trakman, *supra* note 2, at 550. See also Brachen, *Specialization in the Law: A Fact and Not a Theory*, 53 A.B.A.J. 325 (1967).

124. MacDonald, *supra* note 30, at 354. "Nothing is more fully shared among international lawyers, especially in North America, than a sense of the futility of the yearly effort to cover what amounts to the international equivalents of property, contract, tort, criminal law, legal process, and procedure within the compass of 45 or 60 hours . . . Because of the special nature of the international legal system, most students emerge from [such a] course in a state of considerable confusion." *Id.*

well be that advanced training in international legal studies is becoming as essential as, for instance, advanced training in taxation.

Perhaps more important than any specific curricular changes, whether aimed at prospective "domestic" practitioners or budding international lawyers, is a "mobilization of ideas and will,"¹²⁵ a renewed sense of mental adventure in planning for the task ahead. All legal educators—not just international and comparative law teachers—must recognize that a problem exists, move it to the forefront of their discussions and debates, and tackle it, if not with enthusiasm and verve, then at least with a sense of the broader significance of the issues in question.

In a recent article, the economist Leonard Silk noted that "[f]or the United States, born in a revolution of separation from Great Britain, the dominant political myth remains that of independence. But, increasingly, Americans are being forced to recognize that their economic well-being is greatly affected by a pervasive interdependence with other nations, whether highly industrialized or developing, communist or capitalist, oil-rich or oil-poor."¹²⁶ U.S. law schools would do well to heed Mr. Silk's words and to educate their students accordingly.¹²⁷

125. COMMISSION REPORT, *supra* note 1, at 3.

126. Silk, *A Growing Interdependence*, N.Y. Times Int'l Economic Survey, Feb. 8, 1981, § 12, at 1.

127. It might be noted that the subject of "educating for the world view" has received the attention of international conferences and organizations. For example, the Final Act of the Helsinki Accords commits Contracting States "to encourage the study of foreign languages and civilization as an important means of expanding communication among peoples." In 1973, the Institute of International Law set up a working group to collect information on the state of international law teaching, and drew the attention of universities and governments to the teaching of the subject "to the greatest extent possible." [1973] ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 800. In 1979, the Institute once again considered the matter, resolving that universities promote the "development and coherence of all subjects of international relevance" and of "the comparative method of investigation." It even recommended that "compulsory basic teaching covering private international law, as well as optional specialized teaching, be made general in universities." [1979] ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 205-09.